Bearing the Greatest Responsibility:

Select Jurisprudence of the Special Court for Sierra Leone

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Preface

The Residual Special Court for Sierra Leone created *BEARING THE GREATEST RESPONSIBILITY: Select Jurisprudence of the Special Court for Sierra Leone* by producing *verbatim* the factual findings and legal conclusions from the final judgments of the two Trial Chambers of the Special Court for Sierra Leone, as affirmed by the judgments of the Appellate Chamber of that Court in its four trials concerning nine accused persons: *Prosecutor v. Charles Ghankay Taylor* (Charles Taylor); *Prosecutor v. Issa Hassan Sesay, Morris Kallon, Augustine Gbao* (RUF); *Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu* (AFRC); and *Prosecutor v. Moinina Fofana and Allieu Kondewa* (CDF). This project organises the final judgements of the Trial and Appeals Chambers so as to allow researchers and the public to more easily review the Court's findings by location, time period, types of crimes committed, and modes of liability.

The *Compilation* is part of a legacy project begun by the Special Court for Sierra Leone and carried on by the Residual Special Court. It is, to the editors' knowledge, the only work of its kind using this methodology. Although Editor's notes have been provided to assist in the use of the book, it was considered critical to present the words of the judgments themselves, without additional annotation or interpretation, in a format that would bring all of the final Trial and Appellate judgments together in one volume and make searching that jurisprudence more convenient and accessible.

Of course, court judgments have limitations. Not every crime or injustice or event can be addressed by the Courts. The judges of the Special Court could only rule on the issues raised in the cases before them. Also, there may appear to be factual inconsistencies between judgments. This can be due to the fact that investigations and issues change depending on the focus of successive cases and new facts that were either unavailable or irrelevant in previous trials may come to light. Nevertheless, given the geographic scope of the crimes charged and the prosecution of leaders from all three sides involved in the conflict, these judgments create a significant detailed and reliable account of the atrocities committed during the conflict, the suffering of the people of Sierra Leone, and the responsibility of major perpetrators.

The *Compilation* was prepared by Legal Officers of the Appeals Chamber of the Special Court for Sierra Leone: Melissa Ruggiero, Jesenka Rešidović, Kamran Choudhry, Caroline Stone and Hannah Tonkin, with special thanks to interns Kasey Murray and Jennifer Wilson. Melissa Ruggiero was the project coordinator and editor, under the supervision of Senior Legal Officer Rhoda Kargbo.

The *Compilation* was undertaken under the directions of Presidents Jon Kamanda, Shireen Avis Fisher, Philip Waki and Renate Winter during their respective terms. Gratitude is extended to the RSCSL Registrar Binta Mansaray for her support and guidance on this project, as well as to the Registrar's Legal Officers Joseph Stefanelli, Camilla van der Walt, Lydia Aylett and Sophia Ugwu for their assistance in the final stages of editing and production.

Introduction

By Treaty between the United Nations and the Government of Sierra Leone entered into on 16 January, 2002:

> *There is hereby established* ***a Special Court for Sierra Leone 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.*

That mandate was completed on September 26, 2013, when the Appeals Chamber delivered its final judgment on the last of nine men charged with bearing the greatest responsibility for the atrocity crimes committed in the Sierra Leonean conflict. The prosecutions were divided into four trials: *Prosecutor v. Charles Ghankay Taylor* (Charles Taylor); *Prosecutor v. Issa Hassan Sesay, Morris Kallon, Augustine Gbao* (RUF); *Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu* (AFRC); and *Prosecutor v. Moinina Fofana and Allieu Kondewa* (CDF). At the conclusion of each trial, the panel of three judges hearing the evidence recorded their findings and conclusions in a Final Judgment in which they determined whether or not each Accused was guilty of each of the crimes charged against him. In a separate Sentencing Judgment, the same panel passed sentence on those found guilty and explained those sentences according to the relevant facts and law. Each of these judgements was appealed to a five judge Appeal Chamber which produced final appellate judgements in which they reviewed the findings and conclusions challenged on appeal. This book is a compilation of the findings and conclusions which the SCSL Trial Chambers recorded in their Final Judgments and Sentencing Judgments in each of the four cases, and the Final Appellate Judgments of the Appeals Chamber on the correctness of those findings and conclusions when challenged on appeal.

The judgments speak for themselves, and thus the *Compilation* recites the judgments *verbatim*. However, judgments of international courts follow an order of presentation that is designed to address legal formalities as well as legal convenience and habit. This makes the information they contain less available to those not familiar with the legal culture of the particular international court, and it makes the job of collecting and accessing that information more daunting. We have endeavoured to remove as many barriers to accessibility as we can in this volume because we believe that the judgments of international tribunals involved in adjudicating crimes against humanity and war crimes have considerable value over and above their primary role as determinative of the guilt or non-guilt of the persons charged. Those values are historical, academic, educational and personal.

Historically these judgments present a narrative of what happened, as tested by cross examination and the rules of evidence and told by those who witnessed and bore witness to the inhumanities of the conflict. Their value to legal scholarship goes beyond their merit as judgments on the accused. They form part of the articulation of international law and can contribute to the discourse on the interpretation of relevant treaty and custom. Educationally, they put future combatants on notice as to the activities that will not be tolerated, even in times of armed conflict, and the personal criminal liability attached to those who nonetheless engage in atrocity crimes, assist others in engaging in atrocity crimes, or fail to prevent or punish those under their control who perpetrate atrocity crimes.

But perhaps the greatest value of the information contained in these judgments is as an undeniable record of the voices of those who suffered and bore witness to the suffering caused at the hands of perpetrators of unthinkable crimes. Those voices speak through the judgments and those voices should be heard by more than lawyers, judges and historians. It is to the people of Sierra Leone that this book is dedicated in the hope that we have, through this compilation, made more accessible to them the record of the crimes perpetrated against them, not as a tragic reminder of the horrors of war, but as a tribute to their courage and resilience, and as a weapon against any who might deny the atrocities they suffered and overcame.

Justice Shireen Avis Fisher
Past-President
Special Court for Sierra Leone

How to use this Compilation

Overview

The Table of Contents is the key to accessing this *Compilation.* Chapters 1 through 11 document the eleven categories of international atrocity crimes charged against nine people found guilty of bearing the greatest responsibility for serious violations of international humanitarian law committed against the people of Sierra Leone since 30 November 1996. These Chapters are subdivided according to the four cases in which the nine people were convicted:

- *Prosecutor* v. *Charles Ghankay Taylor* (SCSL-03-01-T, Trial Judgement, 18 May 2012 and SCSL-03-01-A, Appeal Judgement, 26 September 2013) ("Charles Taylor");

- *Prosecutor* v. *Issa Hassan Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T, Trial Judgement, 2 March 2009 and SCSL-04-15-A, Appeal Judgment, 26 October 2009) ("RUF");

- *Prosecutor* v. *Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu* (SCSL-04-16-T, Trial Judgement, 20 June 2007 and SCSL-04-16-A, Appeal Judgment, 22 Feburary 2008) ("AFRC"); and

- *Prosecutor* v. *Moinina Fofana and Allieu Kondewa* (SCSL-04-14-T, Trial Judgement, 2 August 2007 and SCSL-04-14-A, Appeal Judgment, 28 May 2008) ("CDF").

Chapters 12 and 13 explain the individual criminal responsibility of each convicted person.

Chapter 14 presents the reasoning behind the punishment pronounced by the Court for each of the convicted persons.

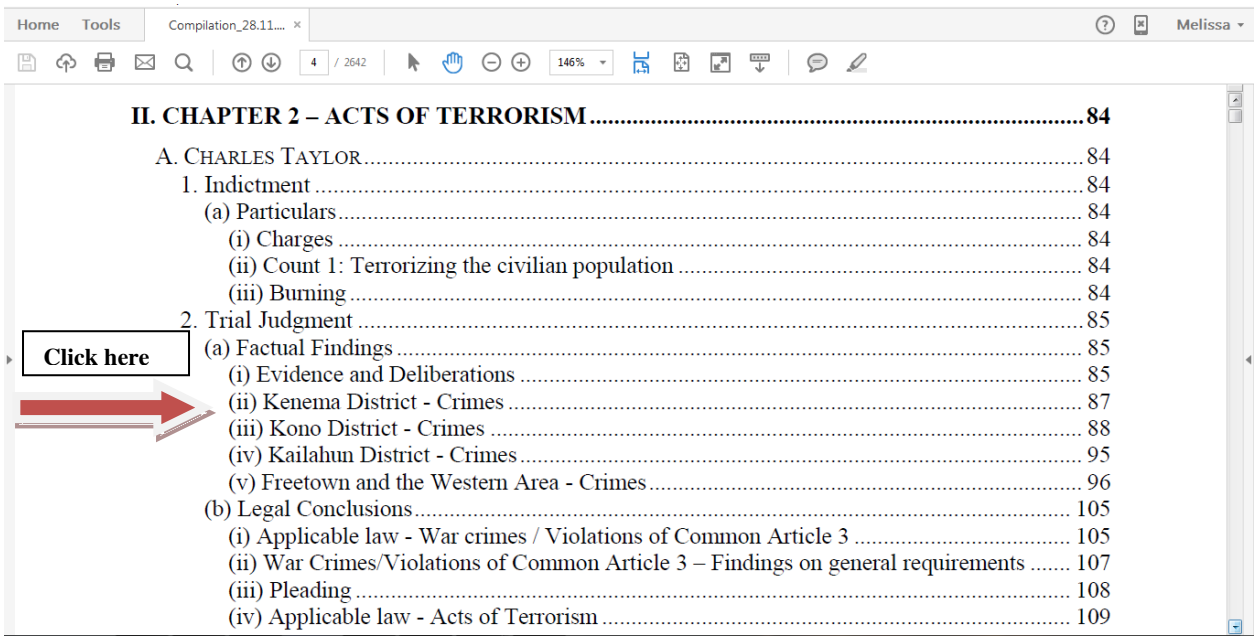
Annex A provides a roadmap to the judgments in the *RUF* case where offenses against UNAMSIL personnel are adjudicated; Annex B sets out the SCSL principles for evaluation of evidence summarised in the *Taylor* case; and Annex C lists the Authorities cited in each of the judgments.

Table of Contents

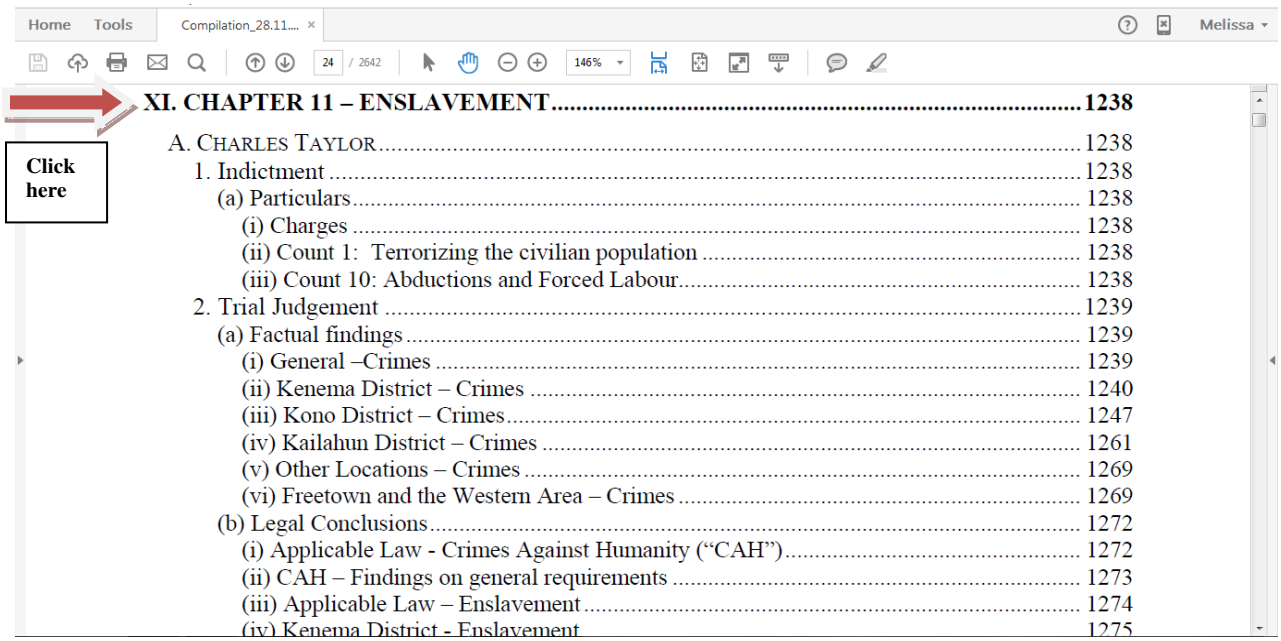
The Table of Contents appears at the beginning of the *Compilation* and provides a sequential list of the book's organisational structure as well as the page numbers where each section begins. The *Compilation* is in PDF format which is digital and requires a computer or other electronic device to display. Adobe Reader or Adobe Acrobat are programs used to open PDF files. Adobe Reader is

free to download, and may be found at http://get.adobe.com/reader/. The Table of Contents provides an efficient way to navigate the large volume of information contained in the *Compilation* by offering links to each chapter and section and sub-section within the chapters, accessible simply by clicking on the section listed in the Table of Contents to which the reader wishes to "jump".

For example, if the reader would like to know the acts of terrorism committed in Kenema District from the evidence presented in the Taylor Trial, s/he should first search the Table of Contents for the Chapter entitled "Terrorism". The reader may then scroll down the Table of Contents to the "Charles Taylor" section and continue scrolling to "Trial Judgment" and click on "Kenema District". This will take the reader to the sub-section of the *Compilation* regarding the acts of terrorism committed in Kenema District as found by the Court in the Taylor Trial Judgment. If the reader would like to see what the Trial Chamber adjudicating the RUF case found to be acts of terrorism committed in Kenema District, s/he may return to the "Terrorism" chapter in the Table of Contents, then scroll down to the "RUF" section and continue scrolling to "Trial Judgment" and click on "Kenema District." The reader will then jump to that portion of the *Compilation*.



Likewise, if the reader would like to know about the facts that the Court found had been proven about enslavement, s/he should find the chapter entitled "Enslavement" in the Table of Contents, scroll down to the case or cases of interest (Taylor, RUF, AFRC, or CDF) and area of interest (general crimes or geographic location), and click on the desired sub-section to jump to that page.

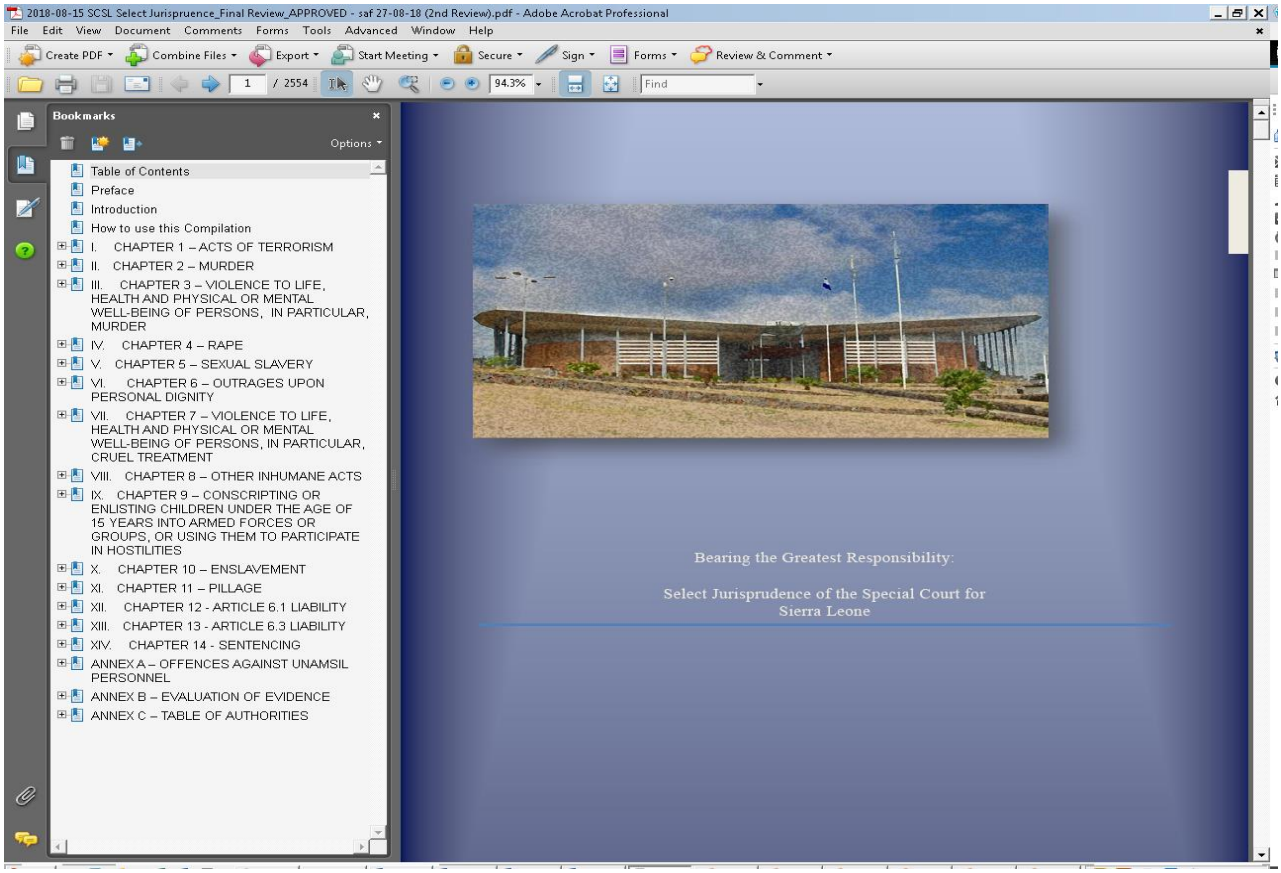


Once the reader has left the Table of Contents and jumped into the content, the reader may return to the Table of Contents to find and jump to another section of interest by returning to the top of the *Compilation* [shift+control+pg up] and scrolling through the Table of Contents, or by using the navigation pane.

Navigation Pane

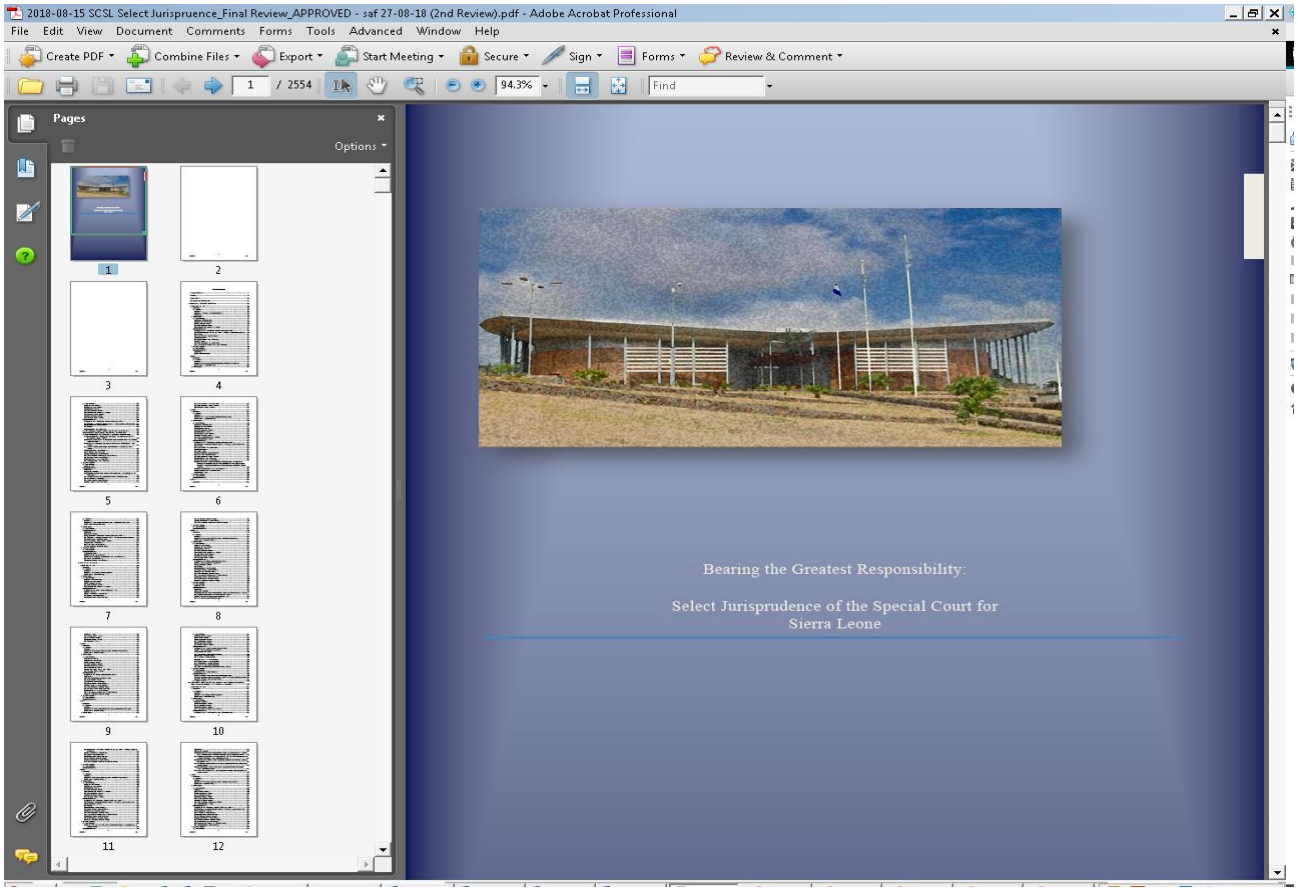
Bookmarks

The navigation pane appears in a left hand column next the PDF *Compilation* document and should be opened at all times when the reader is using the document. This device enables the reader to view both the Table of Contents, in the form of "Bookmarks," and the text of the *Compilation* at the same time ("Bookmarks" Example Below). The Bookmarks in the navigation pane will show the reader the title of the chapters. The sections and sub-sections within the chapter are "nested" within the chapter headings and will be displayed by clicking on the plus icon, located next to the title of the chapter or sections. The reader may jump to a section or sub-section of the *Compilation* by clicking on the desired section or sub-section in the navigation pane. When all of the subsections within a chapter or section are revealed, the plus icon will become a minus icon and can be clicked to "renest" the sections within that heading.



Thumbnails

The navigation pane may also be used to display "Thumbnails", that is, miniature reproductions of each of the pages in the *Compilation* ("Thumbnails" Example Below). By clicking the Thumbnail icon above the navigation pane at the upper left corner of the PDF screen the navigation pane will replace the Bookmark version of the Table of Contents with the Thumbnails of the entire *Compilation*, through which the reader may more easily scroll when looking for a particular page. Clicking on the Thumbnail page will allow the reader to jump to the corresponding page in the main text. To return to Bookmarks, simply click on the Bookmark icon at the top of the navigation pane.



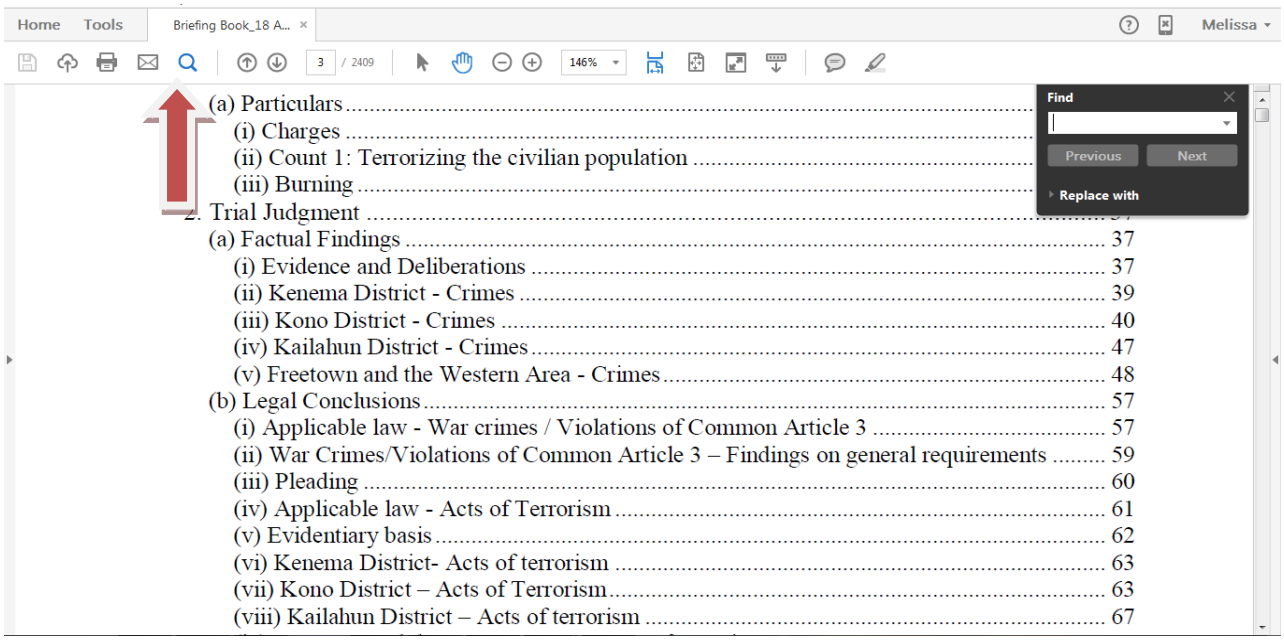
Links

Embedded in the *Compilation* are links and hyperlinks. The links appear in brackets and reference a *Compilation* paragraph number, for example [6394]. By clicking on these links, the reader will jump to the numbered paragraph. In order to return to the previous content, the reader needs to right click, which will produce a window with various labels, then find and left click on the label titled Previous View. Hyperlinks to the Indictments and Judgments for each of the cases are provided within the *Compilation* in every chapter, and the reader is encouraged to click on these hyperlinks to view the original documents.

Keyword Search

To search within the *Compilation* for specific "keywords," such as place names, witness references, and points of law, the reader may select the Search button (an icon of a magnifying glass) from the tool bar header in Adobe Acrobat Reader, or use the keyboard shortcut Control+F. This will open the Search PDF box in a separate window or in the header toolbar (See examples below). In this box, the reader can then search the open *Compilation* for a "keyword" or phrase by typing that word or phrase in the box. If that word or phrase exists in the *Compilation*, the reader will automatically jump to a place where it appears. The reader may find all places where the word or phrase appears

by clicking on the "Next" or "Previous" tab, or, alternatively by clicking on the "Next" or "Previous" arrow.



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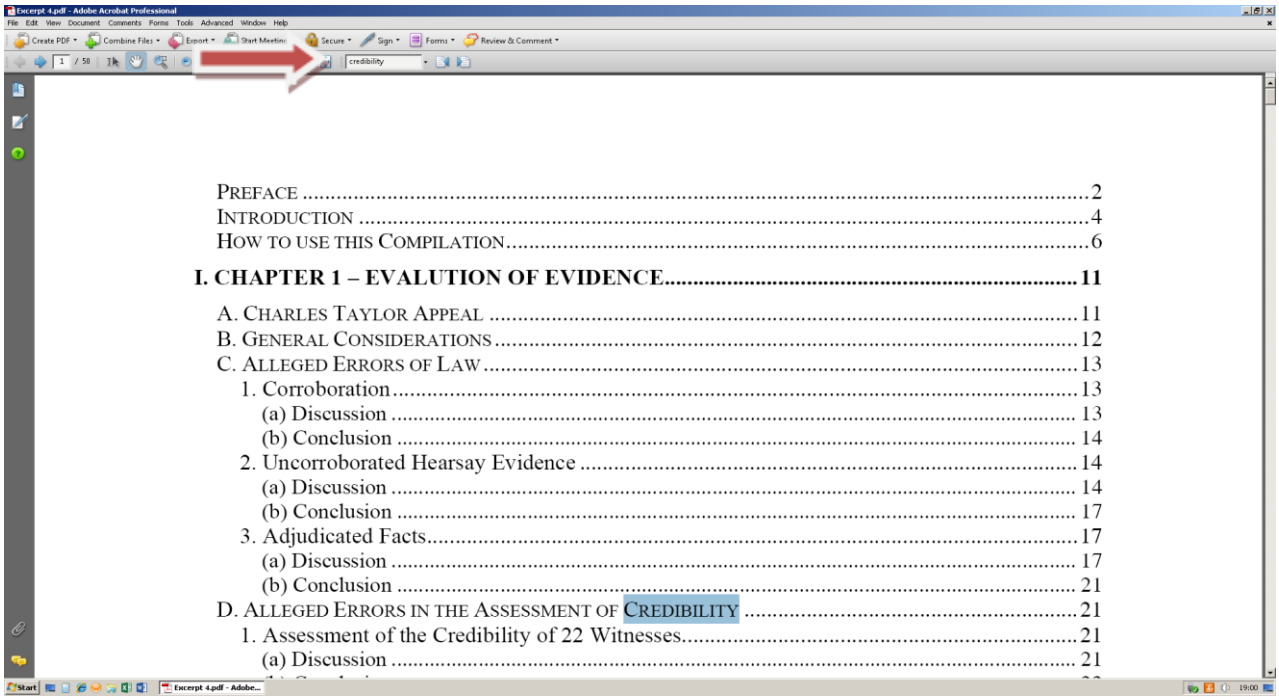


Numerical References

Indictments and Judgments are written in numbered paragraphs. In compiling this book we have reproduced the words of the original documents as they were written and have included and underlined the original paragraph numbers so that the reader may find the paragraphs in the original documents. These underlined paragraph numbers are NOT links. Several paragraphs contain

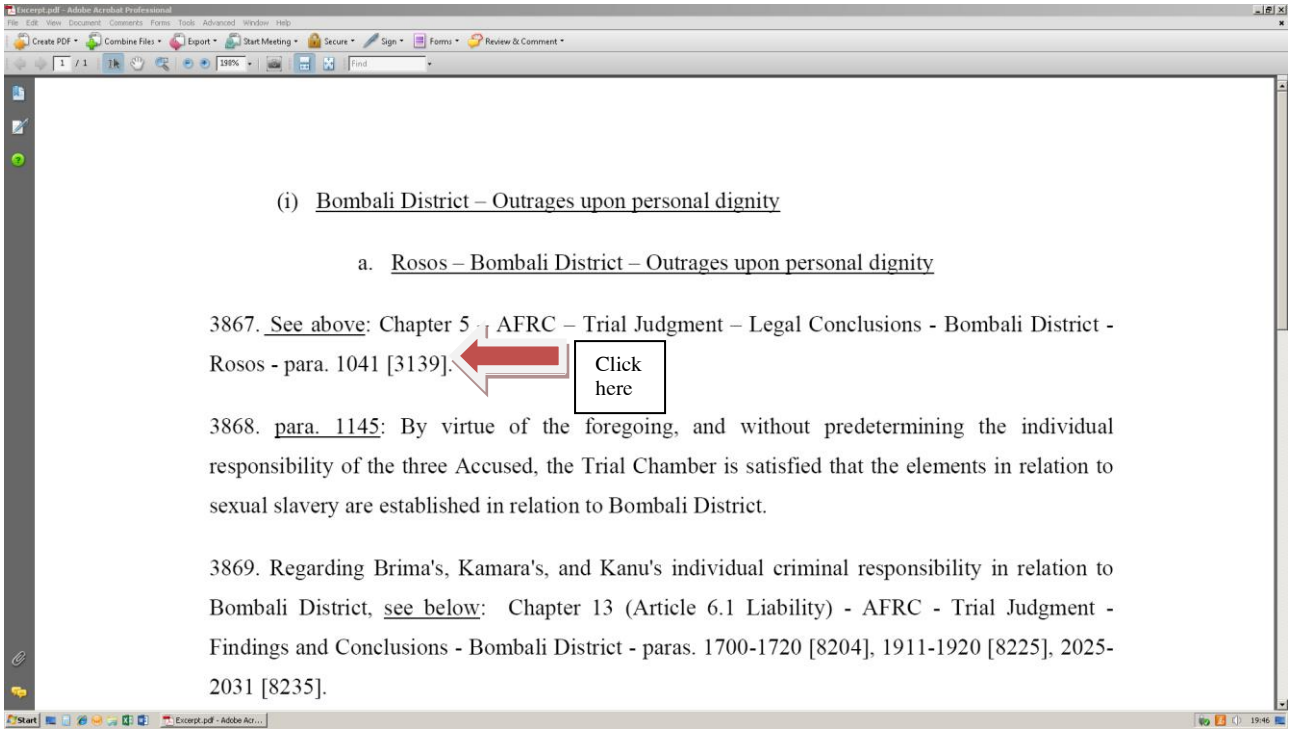
footnotes. We have included the accurate footnote numbers as they appear in the judgments but the content of the footnotes is not included because of the volume. We invite the reader to consult the actual judgments, especially as to the footnotes, many of which contain valuable clarifying information. This can be easily done because the judgments and indictments are hyperlinked, and can be accessed by clicking on the citations found at the beginning of each section.

Chapters 1 through 11. Shared Crime Categories

Chapters 1 through 11 are divided according to the eleven categories of international atrocity crimes charged in three or more of the cases, and subdivided by location where the crimes were committed. Convictions for "Offenses Against UNAMSIL Personnel" were only obtained in one case (RUF) and therefore are addressed separately in Annex A, found at the end of the *Compilation*.

The Chambers sometimes relied on the same evidence or reasoning in whole or in part as the basis for findings or conclusions in more than one Chapter. Rather than repeat the same paragraphs each time they arise, there are references to other chapters and sections in the *Compilation* where the language relied upon is identical. When this occurs, links are provided in brackets to those other parts of the *Compilation*. Clicking on a link will allow the reader to jump to the section to which the link refers.

The example below shows that the factual findings relied on by the Taylor Trial Judgment for the crime of "outrages upon personal dignity" committed in Bombali District and reported in the Chapter entitled "Outrages" are also relevant to crimes of sexual violence as set out in the chapter entitled "Rape". If the reader wants to review those factual findings, s/he may click on the *Compilation* paragraph number in brackets. This will take the reader to the factual findings in the "Rape" chapter. If the reader then wishes to return to the "Outrage" chapter, s/he may right click, which will produce a window with various labels, then find and left click on the label titled Previous View until returned to the original page. Alternatively the reader may make a note of the original page before clicking the bracketed link, and then quickly scroll through and click on the desired page in the "Thumbnails" to return to the noted page (See above, **Navigation Pane**).



At times in the *Compilation* reference is made to findings in two respective chapters, for example "see chapters 3 and 4" and thereafter the pertinent judgment paragraphs are cited. When the findings in both chapters are identical, the complete findings are only quoted in the first referenced chapter. The bracketed link/s will take the reader directly to the full factual finding in the first referenced chapter.

Chapters 12 and 13. Individual Criminal Responsibility and Command Responsibility

Chapters 12 and 13 are each organised in the same order as Chapters 1 through 11. The RUF, AFRC and CDF section headings for Chapters 12 and 13 refer to findings and conclusions by specific locations. Due to the organisation of the content of the Taylor Trial and Appeal Judgments dealing with criminal responsibility, the Taylor Trial Judgment section is not organized by location, but refers instead to the findings and conclusions regarding the modes of responsibility such as joint criminal enterprise, aiding and abetting, and planning, and is further divided by time period.

Chapter 14. Sentencing

Chapter 14 recites the sentencing judgements of the Trial Chambers and the portions of the Appellate judgements related to sentencing. Following the format of the previous Chapters, Chapter 14 is divided according to the four cases. Each section includes *verbatim* paragraphs from the Trial Judgments and Appeal Judgments pronouncing the sentences delivered by the Court for each person convicted of crimes, the factors the Court considered when it decided on the sentence, and the law on which it relied.

Annex A - Offenses against UNAMSIL Personnel

Offenses against UNAMSIL Personnel were charged only in one case (RUF), and thus fail to meet the commonality criteria for inclusion in the main body of the *Compilation.* However, because of the importance of these charges in the jurisprudence of the SCSL, Annex A contains an annotated guide to the paragraphs and pages of the RUF Appellate, Trial, and Sentencing Judgments where those charges were adjudicated. Annex A also provides an online hyperlink for access directly to each of the Judgments and is meant to be a roadmap for navigating references to offenses against UNAMSIL personnel where they appear in each RUF Judgement.

Annex B - Evaluation of Evidence

Annex B is a summary of the Special Court's approach to the principles and application of evidence as digested and abridged from the *Taylor* appeal judgment. The Appeals Chamber took the opportunity in that judgment to systematically set out its jurisprudence on evidence as it was applied throughout its mandate. Although the wording of the judgment has not been altered, Annex B extracts from that judgment, where possible, principles that are not case specific, and omits the facts in dispute unless they are intrinsic to the understanding of the section.

Annex C – Table of Authorities

Annex C reproduces the table of authorities referenced in each of the four Trial and Appellate Judgments.

Not Included in the Compilation

This document does not include the SCSL's trial or appellate motion decisions or its jurisprudence on post-judgment matters such as contempt and early release. The pre-trial procedural history for each of the cases may be found in the annexes of each of the Trial Judgments, to which hyperlinks are provided multiple times in this document. For all other decisions, the reader is referred to the website of the Residual Special Court for Sierra Leone (RSCSL) where these decisions may be accessed. http://www.rscsl.org/

Please Report Problems

Readers who experience technical difficulties in accessing or using this document in the manner described herein are kindly requested to contact info@rscsl.org .

Citing This Document

Although every effort has been made to accurately reproduce the language of the judgments and indictments *verbatim*, it is inevitable that a document this size will contain some mistakes and typographical errors. Use of quotations should be checked against the original documents and cited thereto. Hyperlinks to the original documents are provided throughout this *Compilation*.

CHAPTER 1 – ACTS OF TERRORISM

A. CHARLES TAYLOR

1. Indictment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-I, Indictment, 16 March 2006

(a) Particulars

(i) Charges

1. By his acts or omissions in relation to the below described events, the ACCUSED, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:[1]

(ii) Count 1: Terrorizing the Civilian Population

> **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

2. Members of the Revolutionary United Front (RUF), Armed Forces Revolutionary Council (AFRC), AFRC/RUF Junta or alliance, and/or Liberian fighters, including members and ex-members of the NPFL (Liberian fighters), assisted or encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, burned civilian property, and committed the crimes set forth below in paragraphs 6 through 31 and charged in Counts 2 through 11, as part of a campaign to terrorize the civilian population of Sierra Leone.[2]

(iii) Burning

3. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters assisted or encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, engaged in widespread destruction of civilian property by burning, including the following:[3]

[1] *Prosecutor v. Taylor,* SCSL-03-01-PT, Prosecution's Second Amended Indictment, Charges, p. 2 ("Taylor Indictment").
[2] Taylor Indictment, para. 5.
[3] Taylor Indictment, para. 6.

i. Kono District – Between about 1 February 1998 and about 31 December 1998, in various locations including Koidu, Tombodu or Tumbodu, Sewafe or Njaima Sewafe, Wendedu and Bumpe;[4]

ii. Freetown and Western Area – Between about 21 December 1998 and about 28 February 1999, in locations throughout Freetown, including Kissy and eastern Freetown and the Fourah Bay, Upgun, State House, Calaba Town, Kingtom and Pademba Road areas of the city, and Hastings, Goderich, Kent, Grafton, Wellington, Tumbo, Waterloo and Benguema in the Western Area.[5]

2. Trial Judgment

The Prosecutor v. *Charles Ghankay Taylor*, SCSL-03-01-T, Judgement, 18 May 2012

(a) Factual Findings

(i) Evidence and Deliberations

a. Primary purpose of certain acts of violence

4. para. 1966: As a preliminary observation, the Trial Chamber is of the view that certain acts of violence are of such a nature that the primary purpose can only be reasonably inferred to be to spread terror among the civilian population regardless of the context in which they were committed.[4382]

5. para. 1967: Conversely, the purpose behind an individual act of violence may not necessarily correspond with that of the campaign in which it simultaneously occurs. It follows that certain acts of violence, even when committed in the context of other acts of violence in a campaign whose primary purpose may be to terrorise the civilian population, may not have been committed in furtherance of such a campaign.[4383] The Trial Chamber is of the opinion that this is the case with regards to certain acts of violence underlying Counts 9 (Child Soldiers), 10 (Enslavement) and 11(Pillage), which will now be discussed.

b. Enlistment, conscription and use of children under the age of 15 years to actively participate in hostilities

6. para. 1968: The Trial Chamber has found that children under the age of 15 years were abducted and conscripted into the RUF and AFRC to be trained as SBUs in places such as

[4] Taylor Indictment, para. 7.

Tonkolili,[4384] Kailahun,[4385] Kono,[4386] Port Loko[4387] and Bombali Districts.[4388] The Trial Chamber has also found that children under the age of 15 years were used by the RUF and AFRC for military purposes such as participating actively in hostilities by fighting at the frontlines, acting as armed bodyguards to commanders, taking part in armed food-finding missions, guarding mines, carrying loads, including arms and ammunition, and committing crimes against civilians. Such instances occurred in the districts of Kenema,[4389] Kono,[4390] Kailahun,[4391] Koinadugu,[4392] Port Loko,[4393] Bombali,[4394] and in Freetown and the Western Area.[4395]

7. See below: Chapter 9 – Taylor – Trial Judgment – Legal Conclusions – Child Soldiers – paras. 1367 [4759], 1377-1378 [4760], 1416-1422 [4774], 1430-1432 [4782], 1434 [4785], 1438-1439 [4786], 1445-1446 [4788], 1449-1450 [4790], 1453-1456 [4792], 1467-1468 [4797], 1470-1472 [4799], 1476-1482 [4802], 1485 [4808], 1489-1490 [4812], 1492-1493 [4814], 1495 [4816], 1497 [4817], 1502-1505 [4818], 1509 [4822], 1512 [4823], 1516 [4824], 1519 [4824], 1526 [4829], 1528-1529 [4830], 1540-1541 [4832], 1546-1547 [4834], 1533 [4699], 1564-1565 [4836] , 1573-1575 [4839], 1581-1582 [4842], 1455-1458 [4844].

c. Enslavement

8. para. 1970: The Trial Chamber has found that wide-spread and large scale abductions of civilians were carried out by the RUF and AFRC in Kenema District,[4396] Kono District,[4397] Kailahun District[4398] and in Freetown and the Western Area.[4399] In all of those areas civilians were used as forced labour. In Kenema District, civilians were forced to work in diamond mines. In Kono District, civilians were not only forced to work in diamond mines but to carry loads, go on food-finding missions, carry out domestic chores and undergo military training. In Kailahun District, civilians were forced to carry loads, farm, fish, carry out domestic chores, go on food-finding missions, undergo military training and construct an airfield. In Freetown and the Western Area, civilians were forced to carry loads, perform domestic chores and destroy a bridge.

9. See below: Chapter 10 – Taylor – Trial Judgment – Legal Conclusions – Enslavement – paras. 1649-1658 [5422], 1663 [5432], 1672-1678 [5433], 1681 [5440], 1686-1688 [5441], 1691 [5444], 1694 [5445], 1705-1710 [5446], 1716-1718 [5452], 1764-1766 [5465], 1769 [5468], 1771 [5469], 1778-1780 [5470], 1788-1789 [5473], 1792-1794 [5475], 1800-1803 [5478], 1807-1808 [5482], 1812-1813 [5484], 1815 [5486], 1821-1823 [5487], 1828-1830 [5490], 1833 [5493], 1838-1839 [5495], 1842 [5497], 1857-1864 [5498], 1870-1874 [5506].

[5] Taylor Indictment. para. 8.

d. Pillage

10. para. 1973: The Trial Chamber has found that there were numerous instances of looting that occurred in Masiaka, Port Loko District, and Makeni, Bombali District, as part of Operation Pay Yourself.[4400] It has also found that in Kono District, money was looted from the Commercial Bank in Koidu Town sometime between February and April 1998, and that other items were looted from individuals in Koidu Town and Tombodu.[4401] Further, the Trial Chamber has found that civilian property was looted by rebels during the Freetown attack and during the retreat from Freetown in various locations including State House and several areas of Kissy.[4402]

11. para. 1974: The declaration of an operation known as "Operation Pay Yourself" in Masiaka suggests that AFRC and RUF rebels appropriated civilian property for their own personal gain, as they were not being paid by the rebel forces. Witnesses testified that there was a strategic decision that "each soldier should take responsibility for feeding himself".[4403] This is reinforced by the fact that much of what was looted during this period in Bombali and Port Loko Districts consisted of food, money and clothing.

12. para. 1975: The fact that the looting in February-March 1998 in Kono District was part of "Operation Pay Yourself" suggests that AFRC and RUF rebels appropriated civilian property for their own personal gain, as they were not being paid by the rebel forces. Moreover, the instances of looting that the Trial Chamber has found to have been proved in Kono District were cases in which items were looted opportunistically. Similarly, the Trial Chamber further finds that those who looted the Commercial Bank in Koidu Town were motivated by profit.

13. para. 1976: Given that many of the items that were taken during the advance and the retreat from Freetown were food, money and clothing, the Trial Chamber finds that much of this looting was undertaken in order to maintain the rebel forces during the attack and the retreat from Freetown. TF1-143, for example, testified that the rebels took drinks to sustain themselves on the advance to Freetown[4404] and Alimamy Bobson Sesay indicated that in their advance towards Freetown, they took "logistics like rice and other things".[4405] In addition, the Trial Chamber heard evidence that property such as vehicles may have been appropriated for logistical or military purposes. Alimamy Bobson Sesay testified, for example, that he and other AFRC forces commandeered vehicles from the UN House which were later used by Gullit and other commanders.[4406]

14. See below: Chapter 11 – Taylor – Trial Judgment – Legal Conclusions – Pillage – paras. 1900 [5977], 1910 [5978], 1917-1918 [5980], 1933 [5983], 1937 [5984], 1940 [5985], 1943

[5986], 1946 [5987], 1948 [5988], 1952 [5989], 1954 [5990], 1956 [5991], 1960 [5992], 1962 [5993].

(ii) Kenema District - Crimes

15. para. 1979: The Trial Chamber has found in relation to the murders committed in Kenema District that the elements of the crime of terrorism have been established beyond reasonable doubt.[4407]

16. See below: Chapters 2 and 3 – Taylor – Trial Judgment – Legal Conclusions – Murder or Unlawful Killings – paras. 589 [1412], 591 [1413], 595-597 [1414], 599-600 [1417], 602-603 [1419], 605-606 [1421], 609-610 [1423], 622-624 [1425], 627 [1428], 631-632 [1429], 635-636 [1431], 640-641 [1433], 643-644 [1436].

(iii) Kono District - Crimes

a. Burning – Kono District - Crimes

17. para. 1980: The Indictment alleges that between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance and or/Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the Accused, engaged in widespread destruction of property by burning in Kono District between about 1 February 1998 and about 31 December 1998, in various locations, including Koidu, Tombudu or Tumbodu, Sewafe or Njaima Sewafe, Wendedu and Bumpe.[4408]

18. para. 1981: The Prosecution submits that the burning of civilian houses and property "was an essential part of the strategy to make an area fearful".[4409] In Kono District, it contends that

> [w]hen the rebel forces retreated to Kono District following the Intervention, the strategy to be pursued against civilians in this District was made clear by [Johnny Paul Koroma]. At a meeting in Tankoro village attended by Hassan Papa Bangura, Dennis Mingo, Issa Sessay, Mike Lamin and other commanders, he declared that "Kono…should be a no go area for civilians", and specifically directed that houses should be burned down. Between about 1 February and about 31 December 1998, this strategy underpinned the forces' actions and operations throughout the District resulting in attacks on various towns and villages including those specifically mentioned in the Indictment […][4410]

19. para. 1982: The Prosecution submits that operations in Kono District occurred pursuant to an articulated strategy of actions and operations which resulted in attacks on various towns and villages in Kono. Specifically, it submits that the attacks "pursued against civilians in this

District" were ordered by Johnny Paul Koroma, who declared that Kono "should be a no go area for civilians" and that houses should be burnt down.[4411]

20. para. 1983: Alimamy Bobson Sesay testified he attended a meeting in Tankoro village near Gandorhun in mid-March 1998[4412] after retreating RUF and AFRC fighters reached Koidu Town.[4413] The witness stated that he, Hassan Papa Bangura, Denis Mingo, Issa Sesay, Mike Lamin and others were present at the meeting.[4414] Alimamy Bobson Sesay testified that,

> [I]n that meeting Johnny Paul [Koroma] said now that we have seen the people in Koidu Town, that is Kono, they don't like the junta and that they will go to places and bring the Kamajors to base in Koidu and launch attacks on the junta, he said now he declares that Kono should serve as a strong base for the junta forces and it should be a no go area for civilians. And that as he was leaving we shouldn't encourage civilians and that, if we encouraged them, the civilians will find a way to get them again to come back to town and start fighting against us. So he said we should declare Kono a no go zone for civilians, and then he said we should get some able bodied civilians who will assist us and they will serve as recruits and that we should make sure that we burn down houses in Kono so that people will not be able to base there. He said that now he was leaving and he was going to Liberia to meet former President Taylor to see how they could arrange to get logistics to serve as support for us and then he will send them to Kono, because he said since Kono was a [diamondiferous] area…[4415] He said that if we allow the civilians to come and base in those houses again they will find ways to fight against us. So, he said we should not allow that to happen.[4416]

21. para. 1984: Alimamy Bobson Sesay further testified that in March/April 1998, there was a continuing attack against areas in Kono that involved the burning of houses.[4417] During this period, there was no "enemy threat".[4418]

22. para. 1985: In addition to the evidence of Alimamy Bobson Sesay, the Trial Chamber has considered the evidence of witnesses TF1-371 and Issa Sesay, as according to Alimamy Bobson Sesay, they were also present at this meeting 1986. TF1-371 does not mention the occurrence of such a meeting. Rather, he testifies that a meeting took place in Masiaka to reorganise the command.[4419] After TF1-371 left Masiaka, he travelled to Makeni and then through Magburaka, Masingbi, Njaima Sewafe, and Koidu en route to Kailahun District.[4420] The only order to burn houses that he heard was given by Morris Kallon in Koidu Town (as discussed below).[4421]

23. para. 1987: Issa Sesay testified for the Defence that Johnny Paul Koroma gave instructions to withdraw to Kono at a meeting held in his village, Magbonkineh. Morris Kallon was the only one of the RUF not present at the meeting because he was not in Makeni. Other senior commanders were present, including the witness, Mike Lamin, Isaac Mongor, Superman, Eldred Collins, Peter Vandi, SAJ Musa, Charles Conteh, Brigadier Mani, SFY Koromo, General Bropleh

and Boise Palmer of the AFRC. Johnny Paul Koroma told those present that he had spoken with Bockarie and he then instructed Superman to mobilise the RUF to move to Kono.[4422]

24. para. 1988: In Exhibit P-078, Amnesty International reported that,

> In the days immediately after their removal from power by ECOMOG, AFRC and RUF forces indiscriminately killed unarmed civilians, looted and burned houses, both in Freetown and other towns. As the rebel forces were pursued eastwards by ECOMOG forces through towns such as Bo in Southern Province, Kenema and Koidu in Eastern Province and Makeni in Northern Province during February, March and April 1998, they were responsible for widespread killings, torture and ill-treatment including rape and other forms of sexual assault, and abduction. Villages and towns were burnt to the ground, destroying thousands of homes. Koidu, a major town in the diamond-rich Kono District, was almost totally destroyed by AFRC and RUF forces and villages between Njaiama-Sewafe and Koidu were repeatedly attacked.[4423]

25. para. 1989: This evidence of burning in Kono District corroborates the following evidence of burning in specific places within that district.

b. Koidu – Kono District - Crimes

26. para. 2005: While there is some evidence that the buildings burnt in late February/March and late April/May 1998 in Koidu were suspected of being the houses of Kamajors, Tamboros or, in the case of burnings in May 1998, that the buildings were used by the RUF, the evidence of the number of properties burnt and the articulated strategy behind the burnings establishes beyond reasonable doubt that, overall, the acts of burning were intentionally directed against civilians or their properties.

27. para. 2006: There is also some evidence that the purpose of burning was to gain military advantage by depriving enemy forces of the use of the buildings. However, the Trial Chamber finds that the evidence of the large-scale nature of the burnings of buildings, some of which were occupied by persons at the time, and of the stated objective of making the area "fearful", proves beyond reasonable doubt that the burnings were committed with the primary purpose of spreading terror amongst the civilian population.

c. Tombodu – Kono District - Crimes

28. para. 2017: Based upon the foregoing evidence, the Trial Chamber finds that the Prosecution has proved beyond a reasonable doubt that civilian houses were burnt by members of the AFRC/RUF forces in Tombodu in February/March 1998. The Trial Chamber further finds that

the evidence of TF1-375 and Alimamy Bobson Sesay proves beyond a reasonable doubt that the perpetrators wilfully made civilian persons and their property the object of the attacks and that the burnings were committed with the primary purpose of spreading terror, in that the objective of the attacks was to make the area "fearful" so as to cause civilians to leave the area.

d. Sewafe – Kono District - Crimes

29. para. 2021: Based on the evidence of Alimamy Bobson Sesay and Perry Kamara, the Trial Chamber is satisfied beyond a reasonable doubt that houses were burnt in Sewafe by AFRC, RUF and STF fighters on the orders of Johnny Paul Koroma, that the fighters wilfully made civilian homes the object of their attack, and that the primary purpose of the burning was to terrorise the civilian population by demonstrating the repercussions of collaborating with the enemies of the RUF and AFRC.

e. Wendedu (a.k.a. Wondedu) – Kono District - Crimes

30. para. 2025: Based on the first-hand evidence of Alex Tamba Teh, the Trial Chamber finds that it has been proved beyond reasonable doubt that at least five houses were burnt in Wendedu village after April 1998 on the orders of an AFRC commander, and that civilians or their property were wilfully made the objects of such violence.

31. para. 2026: Unlike other places in Kono District in which the burning of civilian property by the AFRC/RUF forces occurred, in the case of Wendedu there was no evidence in which the purpose of the burning was explicitly stated. However, the nature, manner and timing of the wanton burning of the houses in Wendedu followed a pattern of similar burnings by AFRC/RUF forces in other towns in Kono District which had the primary purpose of spreading terror among the civilian population. In the Trial Chambers view, all of the circumstances lead to the inescapable inference that the burnings in Wendedu were part of the same campaign to terrorize the civilian population. The Trial Chamber is accordingly satisfied beyond a reasonable doubt that primary purpose of the burning of the houses in Wendedu was to spread terror among the civilian population.

f. Bumpe – Kono District - Crimes

32. para. 2031: Based on the foregoing evidence, the Trial Chamber finds beyond reasonable doubt that civilian houses in Bumpe were burnt by members of the RUF/AFRC, that the

perpetrators wilfully made persons and their property the object of the burnings, and that the burnings were committed with the primary purpose of spreading terror amongst the civilian population.

g. Unlawful Killings – Kono District - Crimes

33. para. 2032: The Trial Chamber has found in relation to a number of murders which were perpetrated in various pleaded locations in Kono District that the elements of the crime of acts of terrorism have been established beyond reasonable doubt.[4530]

34. See below: Chapters 2 and 3 – Taylor – Trial Judgment – Legal Conclusions – Murder or Unlawful Killings – paras. 658-663 [1438], 670-672 [1444], 674-675 [1447], 682-684 [1449], 686-687 [1452], 691-692 [1454], 697-698 [1456], 702-704 [1458], 709-710 [1461], 712-713 [1463], 715-716 [1465], 721-722 [1467], 729-730 [1469], 735-736 [1471], 739-740 [1473], 746-747 [1475], 749-750 [1478].

h. Sexual Violence – Kono District - Crimes

35. para. 2033: The Trial Chamber has found proved beyond reasonable doubt that Finda Gbamanja was raped in Koidu Town by a rebel named Peppe in February 1998; that Finda Gbamanja was raped by Sergeant Foday in Koidu Town and at Superman Ground in 1998; that TF1- 189 was raped in Koidu Town by her AFRC and RUF captors between March and April 1998, that AFRC commanders, including Alimamy Bobson Sesay, raped an unknown number of women and girls in Tombodu between March and June 1998; that Sia Lappia was raped by Staff Alhaji in Tombodu in approximately April 1998; that Rebecca and an unknown number of women were raped at Wondedu by men under the command of Rocky in 1998; that an unknown number of women were raped in Superman Ground by RUF, AFRC and STF fighters in or about April 1998; and that an unknown number of women and girls were raped at PC Ground by RUF, AFRC and STF fighters including Isaac Mongor in or about April 1998.[4531]

36. para. 2034: Further, the Trial Chamber has found proved beyond reasonable doubt that an unknown number of women were used as sex slaves by RUF and AFRC fighters in Koidu Town in February 1998; that an unknown number of women were used as sex slaves by RUF and AFRC fighters in Koidu Town in March to June 1998; that an unknown number of women were used as sex slaves by RUF, AFRC and STF fighters at Superman Ground and PC Ground in around April 1998; that TF1-189 was used as a sex slave by members of the RUF in Koidu Town from 12

March 1998 to August 1998; that Finda Gbamanja was used as a sex slave by a member of the RUF in Koidu Town from approximately March/April 1998; that Finda Gbamanja was used as a sex slave by rebels loyal to Superman at Superman Ground from approximately April to October 1998.[4532] The Trial Chamber has also found that all of these instances constitute outrages upon personal dignity.[4533]

37. para. 2035: It is well established 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.[4534] Expert witness Beth Vann stated in her report that sexual violence was used as a tactic by the AFRC/RUF to "send a message" to the enemy.4535 Exhibit P-330, a Human Rights Watch report, states that the "rebel forces have used sexual violence as a weapon to terrorize, humiliate and punish, and to force the civilian population into submission".[4536] Experts who worked with victims of sexual violence during the conflict in Sierra Leone reported that the victims suffered from sexually transmitted diseases, exhibited signs of post-traumatic stress disorder, and were often socially isolated, stigmatized and rejected by their families.[4537] Such sexual violence was therefore deliberately aimed at destroying the traditional family nucleus, thus undermining the cultural values and relationships which held society together.[4538]

38. para. 2036: In her expert report, in which she interviewed refugees from Kono and Kailahun District, Beth Vann indicated that all of the interviewees described witnessing at least one public rape.[4539] There was evidence that Sia Lappia was forced at gunpoint to take off her clothes in public and was then raped in front of a group of civilians, including her own child.[4540] Not only were victims publicly undressed and violated, but some were subjected to perverse methods of sexual violence. For example, after Sia Kamara was raped, one rebel inserted a stick into her vagina.[4541]

39. See below: Chapter 4 – Taylor – Trial Judgment – Legal Conclusions – Rape – paras. 893-894 [2763], 898 [2765], 904-905 [2766], 908 [2768], 913-914 [2769], 919 [2772], 929-932 [2773].

40. See below: Chapter 5 – Taylor – Trial Judgment – Legal Conclusions – Sexual Slavery – paras. 1089 [3167] , 1092 [3168], 1094 [3169], 1098 [3170], 1102 [3171], 1108 [3172], 1116-1118 [3173], 1127 [3176], 1132 [3177], 1142-1146 [3178].

41. See below: Chapter 6 – Taylor – Trial Judgment – Legal Conclusions – Outrages Upon Personal Dignity – paras. 1199-1200 [3469].

i. Physical Violence - Tombodu – Kono District - Crimes

42. para. 2039: The Trial Chamber has found that 15 civilians had their hands amputated and/or were mutilated by Savage, Guitar Boy and Staff Alhaji in March or April 1998, that six persons, including witnesses Ibrahim Fofana and Mustapha Mansaray, had their hands amputated by Staff Alhaji or Rambo in April 1998, and that Samuel Komba's right hand was mutilated in Tombodu by rebels after March 1998.[4542]

43. para. 2040: The amputations and mutilations practised by the RUF were notorious, and served as a permanent, visible and grotesque reminder to all civilians of the consequences of resisting the AFRC or RUF or of supporting Kabbah or ECOMOG.

44. para. 2041: Moreover, Alimamy Bobson Sesay, whose evidence the Trial Chamber has accepted in relation to these incidents, testified that the civilians whose hands were amputated by Savage, Guitar Boy and Staff Alhaji were targeted because they were thought by Savage to be ECOMOG supporters, and that after their hands had been amputated, they were urged to seek relief from ECOMOG troops.[4543] These amputations occurred in the context of the commission of widespread burnings and other crimes. The Trial Chamber therefore finds that it has been proved beyond reasonable doubt that the primary purpose of these amputations and/or mutilations was to spread terror among the civilian population by demonstrating the repercussions of collaborating or being perceived to collaborate with ECOMOG.

45. para. 2042: The Trial Chamber further finds that the amputations of Fofana's and Mansaray's hands and the unsuccessful amputation of Komba's hand were also perpetrated with the primary purpose of spreading terror among the civilian population.

46. See below: Chapters 7 and 8 – Taylor – Trial Judgment - Factual Findings – Physical Violence – para. 1217 [3860].

j. Physical Violence - Kayima – Kono District - Crimes

47. para. 2043: The Trial Chamber has found that 18 captured persons, including the witness Sorieh Kondeh, had their bodies carved with the letters "RUF" and/or "AFRC" by AFRC fighters in Kayima in mid-1998.[4544]

48. para. 2044: The carvings practiced by the RUF were notorious, and served as a permanent, visible and grotesque reminder to all civilians of the consequences of resisting or escaping from the AFRC or RUF or of supporting Kabbah or ECOMOG. The Trial Chamber is therefore

satisfied beyond reasonable doubt that the AFRC fighters who carved the words "AFRC" or "RUF" into the bodies of 18 captured persons were acting with the primary purpose of spreading terror.

49. See below: Chapters 9 and 10 – Taylor – Trial Judgment – Legal Conclusions – Physical Violence – paras. 1221-1223 [3861].

k. Physical Violence - Wondedu – Kono District - Crimes

50. para. 2045: The Trial Chamber has found that an unknown number of civilians had the letters "RUF" and/or "AFRC" carved on their bodies by RUF fighters in Wondedu after April 1998, and that Alex Tamba Teh was physically injured in a serious and permanent manner by AFRC Commander Banya, who used the butt of his gun to knock out his teeth.[4545]

51. para. 2046: Such disfigurements practised by the RUF were notorious, and served as a permanent, visible and grotesque reminder to all civilians of the consequences of resisting the AFRC or RUF or of supporting Kabbah or ECOMOG. In addition, Tamba Teh, whose evidence the Trial Chamber has accepted in relation to this incident, testified that the rebels "said that people shouldn't escape and go to ECOMOG. In fact they shouldn't escape and go, so with that carving if you go to the side of ECOMOG they will kill you, so you never had anywhere else to go".[4546] The Trial Chamber is satisfied beyond reasonable doubt that the primary purpose of these disfigurements was to terrorise the civilian population by demonstrating the repercussions of escaping from the AFRC or RUF, or of collaborating or being perceived to collaborate with ECOMOG.

52. para. 2047: However, with respect to the injuries caused to Alex Tamba Teh, the Trial Chamber finds that this act was not perpetrated with the primary purpose of terrorizing the civilian population, but was rather a spontaneous punishment inflicted upon him by AFRC Commander Banya.

53. See below: Chapters 7 and 8 – Taylor – Trial Judgment – Legal Conclusions – Physical Violence – paras. 1228-1232 [3864].

(iv) Kailahun District - Crimes

a. Unlawful Killings – Kailahun District - Crimes

54. para. 2050: The Trial Chamber has found in relation to the unlawful killings perpetrated in Kailahum District that the elements of the crime of acts of terrorism have been established beyond reasonable doubt.[4548]

55. See below: Chapters 2 and 3 – Taylor – Trial Judgment – Legal Conclusions – Murder or Unlawful Killings – paras. 768-771 [1480].

b. Sexual Violence – Kailahun District - Crimes

56. para. 2051: The Trial Chamber has found that it has been proved beyond reasonable doubt that an unknown number of women and girls captured in Kenema District were used by the AFRC and RUF as sex slaves after February 1998 in Buedu and Kailahun Town; that an unknown number of women and girls were used as sex slaves by RUF members in Buedu and that TF1-189 was used as a sex slave by a member of the RUF in Kailahun Town from August to September 1999.[4549] The Trial Chamber also recalls that it has found that each of these instances constitutes an outrage upon personal dignity.[4550]

57. para. 2052: The Trial Chamber has found that in Kailahun District the crime of sexual slavery was both widespread and systematic. There was evidence that girls as young as 7-15 years were used as sex slaves in Kailahun District,[4551] and that victims of sexual slavery were also humiliated and degraded. For example, witness Dennis Koker testified that in Buedu, CO Kallon brought a woman who had been subjected to sexual slavery to his office saying that she had disrespected him. He had then stripped her to her underwear and beaten her.[4552] As in Kono District, Trial Chamber is further satisfied from this evidence that the public nature of these crimes of sexual violence was a deliberate tactic on the part of the perpetrators to instil fear among civilians.

58. See below: Chapters 5 – Taylor – Trial Judgment – Legal Conclusions – Sexual Slavery – paras. 1053 [3159], 1060 [3160], 1066 [3161], 1071-1075 [3162].

59. See below: Chapters 6 – Taylor – Trial Judgment – Legal Conclusions – Outrages Upon Personal Dignity – paras. 1202 – 1204 [3472].

c. Physical Violence – Kailahun District - Crimes

60. para. 2054: The Trial Chamber has found that the evidence of physical violence perpetrated in Kailahun District is relevant to proof of the chapeau requirements only.[4553]

61. See below: Chapters 7 and 8 – Taylor – Trial Judgment – Legal Conclusions – Physical Violence – paras. 1263 [3869].

(v) Freetown and the Western Area - Crimes

a. Burnings – Freetown and the Western Area - Crimes

62. para. 2068: The Trial Chamber accepts the evidence of all of these witnesses as proof beyond reasonable doubt that members of the RUF, AFRC, AFRC/RUF Junta burned civilian property in Freetown and the Western Area, wilfully made civilians or their property the object of such acts, and that the primary purpose of such acts was to spread terror among the civilian population.

63. para. 2069: The Prosecution also adduced the following evidence of incidences of burning at specific places within Freetown and the Western Area.

b. Waterloo– Freetown and the Western Area - Crimes

64. para. 2068: The Trial Chamber accepts the evidence of all of these witnesses as proof beyond reasonable doubt that members of the RUF, AFRC, AFRC/RUF Junta burned civilian property in Freetown and the Western Area, wilfully made civilians or their property the object of such acts, and that the primary purpose of such acts was to spread terror among the civilian population.

65. para. 2069: The Prosecution also adduced the following evidence of incidences of burning at specific places within Freetown and the Western Area.

c. Waterloo – Freetown and the Western Area - Crimes

66. para. 2082: The Trial Chamber is satisfied beyond reasonable doubt by the foregoing evidence that members of the AFRC/RUF forces[4620] burned civilian property in Waterloo and wilfully made civilians or their property the object of such acts. Moreover, the similar circumstances of the two separate instances of the burning of civilian property in Waterloo on

around 22 December 1998 and in January 1999 respectively lead to the inescapable inference that they were part of the same campaign to terrorise the civilian population. The Trial Chamber is accordingly satisfied beyond reasonable doubt that the primary purpose of the burning of civilian property in Waterloo in December 1998 and January 1999 was to spread terror among the civilian population.

d. Tumbo – Freetown and the Western Area - Crimes

67. para. 2088: Based on the foregoing evidence, the Trial Chamber is satisfied beyond reasonable doubt that members of the AFRC/RUF forces[4633] burned civilian property in Tumbo and wilfully made civilians or their property the object of those acts. Moreover, the nature, manner and timing of the burning of houses in Tumbo followed a pattern of similar burnings by AFRC/RUF forces in other parts of Freetown and the Western Area which had the primary purpose of spreading terror among the civilian population. Accordingly, the Trial Chamber is also satisfied beyond reasonable doubt that the primary purpose of the burnings in Tumbo was to spread terror among the civilian population.

e. Kissy and Fourah Bay in Eastern Freetown – Freetown and the Western Area - Crimes

68. para. 2122: The evidence establishes beyond a reasonable doubt that members of the AFRC/RUF forces burned civilian properties in Kissy and Fourah Bay, that they wilfully made persons or their property the object of such acts, and that such acts were committed with the primary purpose of spreading terror among the civilian population.

f. State House and Pademba Road – Freetown and the Western Area - Crimes

69. para. 2132: The Trial Chamber is satisfied beyond reasonable doubt on the evidence that in January 1999 members of the AFRC/RUF forces burned civilian property in Freetown, including State House and Pademba Road, and that they wilfully made persons and their property the object of the burnings, the primary purpose of which was to spread terror amongst the civilian population.

g. Kingtom – Freetown and the Western Area - Crimes

70. para. 2138: The Trial Chamber is satisfied beyond reasonable doubt on the evidence that in January 1999 members of the AFRC/RUF forces[4756] burned civilian property in Kingtom and that they wilfully made persons or their property the object of the burnings.

71. para. 2139: Although there is some evidence to suggest that the purpose of the attack on Kingtom was to repel ECOMOG forces, the Trial Chamber finds that the evidence of the burning of homes, some of which had people locked inside, and the evidence that one of the stated objectives was to punish civilians for supporting ECOMOG, establishes beyond reasonable doubt that the burnings were committed with the primary purpose of spreading terror among the civilian population.

h. Upgun – Freetown and the Western Area - Crimes

72. para. 2141: The only evidence of civilian property being burned in Upgun is Exhibit P-285 (the interview notes of TF1-169), which simply records that "few private houses were burned in the Upgun area but the number of government buildings burnt down was about 10".[4758]

73. para. 2142: The paucity of the available evidence does not permit the Trial Chamber to draw the inference submitted by the Prosecution. Such evidence is not capable of proving beyond reasonable doubt that the burning of civilian property in Upgun was perpetrated by AFRC/RUF forces, nor that the burning was committed with the primary purpose of spreading terror among the civilian population.

74. para. 2143: Therefore, the Trial Chamber is not satisfied that the elements of the crime of acts of terrorism in relation to burning in Upgun have been established.

i. Wellington – Freetown and the Western Area - Crimes

75. para. 2151: The evidence establishes beyond reasonable doubt that in January 1999 members of the AFRC/RUF forces[4783] burned civilian property in Wellington, that the perpetrators wilfully made persons or their property the object of the burnings and that the burnings were committed with the primary purpose of spreading terror amongst the civilian population.

j. Calaba Town – Freetown and the Western Area - Crimes

76. para. 2162: The Trial Chamber is satisfied beyond reasonable doubt on the evidence that in January 1999 members of the AFRC/RUF forces burned down civilian houses in Calaba Town, that the perpetrators wilfully made persons or their property the object of the burnings and that the burnings were committed with the primary purpose of spreading terror amongst the civilian population.

k. Hastings, Grafton and Benguema – Freetown and the Western Area - Crimes

77. para. 2164: Confidential Exhibit P-284 records that during TF1-169's inspection he saw that a few civilian houses and vehicles were burned and damaged in Grafton, Hastings, Waterloo, Goderich, Kent, Tombo and Benguema. However, TF1-169 was concerned with government property and so could not say the amount of the damage as he did not pay attention to privately owned property.[4805]

78. para. 2165: There is no other evidence of civilian property being burned in Hastings, Grafton and Benguema.

79. para. 2166: The paucity of the available evidence does not permit the Trial Chamber to draw the inference submitted by the Prosecution. Such evidence is not capable of proving beyond a reasonable doubt that the burning of civilian property in Grafton, Hastings and Benguema was perpetrated by AFRC/RUF forces, nor that the burning was committed with the primary purpose of spreading terror among the civilian population.

80. para. 2167: Therefore, the Trial Chamber is not satisfied that the elements of the crime of acts of terrorism in relation to burning in Hastings, Grafton and Benguema have been established.

l. Goderich and Kent – Freetown and the Western Area - Crimes

81. para. 2169: The only evidence of burning in these areas is in Confidential Exhibit P-284, in which TF1-169 records that during his inspection he saw that a few houses and vehicles were burned and damaged in Grafton, Hastings, Waterloo, Goderich, Kent, Tombo, and Benguema. However, TF1-169 was concerned with government property and so could not say the amount of the damage as he did not pay attention to privately owned property.[4806]

82. para. 2170: The paucity of the available evidence is not capable of proving beyond a reasonable doubt that the burning of civilian property in Goderich and Kent was perpetrated by AFRC/RUF forces, nor that the burning was committed with the primary purpose of spreading terror among the civilian population.

83. para. 2171: Therefore, the Trial Chamber is not satisfied that the elements of the crime of acts of terrorism in relation to burning in Goderich and Kent have been established.

m. Unlawful Killings – Freetown and the Western Area - Crimes

84. para. 2172: The Trial Chamber has found in relation to the unlawful killings perpetrated in Freetown and the Western Area that the elements of the crime of acts of terrorism have been established beyond reasonable doubt.[4807]

85. See below: Chapters 2 and 3 – Taylor – Trial Judgment – Legal Conclusions– Murder or Unlawful Killings – paras. 785-788 [1484], 805-808 [1488], 813-814 [1492], 830-831 [1494], 839-841 [1496], 843-844 [1499], 853-854 [1501], 859-860 [1503], 862 [1505], 867-870 [1506].

n. Sexual Violence – Freetown and the Western Area - Crimes

86. para. 2173: The Trial Chamber has found proved beyond reasonable doubt that: men and boys under the command of Gullit raped an unknown number of women and girls in the grounds of the State House over three nights in January 1999;[4808] AFRC and RUF commanders and fighters raped an unknown number of girls inside State House during the Freetown attack of January 1999; Alimamy Bobson Sesay, a commander in the AFRC, captured and raped a young girl in Freetown during the 1999 attack; RUF fighters raped an unknown number of girls on Blackhall Road during the Freetown attack on January 1999; rebels, some under the command of Captain Blood, raped an unknown number of girls in Kissy on or about 22 January 1999.[4809]

87. para. 2174: The Trial Chamber has also found proved beyond reasonable doubt that: an unknown number of women and girls were used as sexual slaves by AFRC fighters in Benguema until approximately March 1999; TF1-029 was used as a sex slave by Major Arif, an ex-SLA/AFRC soldier, in Wellington, Calaba Town and Benguema from late January to March 1999; Akiatu Tholley was used as a sex slave by an STF fighter named James from approximately late January through early April 1999; TF1-023 was used as a sex slave by a member of the AFRC in Calaba Town, Benguema and Four Mile from late January through March 1999.[4810] The Trial Chamber has also found that all of these instances constitute outrages upon personal dignity.[4811]

88. para. 2175: The evidence establishes that the commission of acts of rape and sexual slavery in Freetown and the Western Area by the rebel forces were widespread and systematic, both during the attack on Freetown and during the retreat. In particular, the Trial Chamber has found that there was a recognized system of ownership and hierarchy among captured women in the rebel forces in Freetown and the Western Area, as illustrated by TF1-023 being accorded special treatment as a commander's wife.[4812]

89. para. 2176: There was evidence to prove beyond reasonable doubt that girls were raped publicly outside State House, that they were raped publicly on Blackhall Road in the presence of other civilians, including TF1-028 who tried to stop them, and that girls were raped publicly in Kissy.[4813] Many of the victims of these rapes were girls as young as 13.[4814] Victims were also humiliated and degraded, as they were often undressed prior to having intercourse, and in some cases, were subjected to perverse methods of sexual violence. For example, Tholley, who at that time had not yet had her menses, testified that a commander called James "damaged her in the vagina" when she refused to have sex with him.[4815] The Trial Chamber is satisfied from this evidence that the public nature of these crimes of sexual violence was a deliberate tactic on the part of the perpetrators to instil fear among civilians.

90. para. 2177: Given the geographical and temporal proximity of these crimes to each other, and to the burnings, killings and amputations that occurred in Freetown and the Western Area during the advance towards Freetown, the attack and the retreat, the Trial Chamber finds that the rebels regularly used rape and sexual slavery to spread terror among the civilian population of Freetown and the Western Area.

91. para. 2178: The Trial Chamber therefore finds that it has been proved beyond reasonable doubt that members of the AFRC/RUF forces wilfully made the girls and women of Freetown and the Western Area the object of acts of sexual violence with the primary purpose of spreading terror among the civilian population.

92. See below: Chapter 4 – Taylor – Trial Judgment – Legal Conclusions – Rape – paras. 980 [2783], 983-984 [2784], 989 [2786], 992 [2787], , 999 [2788], 1007 [2789], 1015-1016 [2790].

o. Physical Violence - Freetown – Freetown and the Western Area - Crimes

93. para. 2179: The Trial Chamber has found proved beyond reasonable doubt that two civilians had their hands amputated, one civilian had his hands and tongue amputated, and one civilian had both her eyes mutilated by rebels in Freetown in January 1999.[4816]

94. para. 2180: The amputations and carvings practiced by the AFRC and RUF were notorious, and served as a permanent, visible and grotesque reminder to all civilians of the consequences of resisting the AFRC or RUF or of supporting Kabbah or ECOMOG. The gruesome nature of these particular amputations and mutilations included the amputation of tongues, and a woman whose eyes were pulled out so that they protruded from their sockets.[4817] TF1-158 testified that he had treated patients who had been attacked and amputated or mutilated by the rebels, and that when they were being attacked, "their immediate families were positioned such that … they will be in full view of what they were doing, especially for those who suffered amputations and rape".[4818] The Trial Chamber is satisfied on this evidence that these amputations and mutilations were perpetrated with the primary intention of spreading terror.

95. para. 2181: The Trial Chamber has also found that Abu Bakarr Mansaray was beaten and physically harmed in a permanent manner by rebels outside State House on 8 January 1999.[4819] However, the evidence is not sufficient to establish the intent of the perpetrators, and the Trial Chamber is thus not able to conclude that they acted with the primary purpose of spreading terror.

96. See below: Chapters 7 and 8 – Taylor – Trial Judgment – Legal Conclusions – Physical Violence – paras. 1272-1273 [3870].

p. Physical Violence - Kissy, including Kissy Mental Hospital – Freetown and the Western Area - Crimes

97. para. 2182: The Trial Chamber has found proved beyond reasonable doubt that: a Nigerian man called Ike had his ear amputated and was wounded on his thigh in Kissy on 18 January 1999;[4820] three persons, including witness James Kpumgbu, had their hands amputated or mutilated near Kissy Mental Home by rebels on 6 January 1999;[4821] two civilians had their hands amputated by TF1-143 and another boy in Kissy Market in January 1999;[4822] Ibrahim Wai was physically harmed and his hand was amputated by Captain Blood in January 1999;[4823] the brother of the brother-in-law of Ibrahim Wai had his hand amputated in Kissy in January 1999;[4824] Mohamed Sampson Bah's hand was amputated in Kissy by rebels led by Tafaiko in January

1999;[4825] Mohamed Sesay's arms were amputated on 19 January 1999;[4826] Alusine Conteh and Boi Barrie's hands were amputated on 20 January 1999;[4827] TF1-083, Pa Sorie and Musa had their hands amputated by rebels on 21 January 1999;[4828] three 13-year-old girls had their arms amputated by rebels around 20-22 January 1999;[4829] three civilians had their hands amputated by Changa Bulanga at Shell Old Road in Kissy in January 1999.[4830]

98. para. 2183: In several of these cases, the rebels told their victims that they should show these amputations to Kabbah, or ask him for new hands. Kpumgbu, for example, testified that the rebel who amputated his hands then said that Kpumgbu "should go and tell Tejan Kabbah that they were fighting for power".[4831] Wai also testified that Captain Blood told him that he should go to Pa Kabbah,[4832] because "Pa Kabbah had brought so many hands for us, for those whose hands are…off, they should go to him".[4833] The rebel who amputated Boi Barrie's arms told him "go and tell Tejan Kabbah, no more politics no more votes", and that rebels told Alusine Conteh, who had both hands amputated, that he should tell Kabbah that he was a messenger.[4834] Similar statements were made in relation to the amputations of TF1- 083, Pa Sorie, and Musa, where the rebels told them they should go to Kabbah to get new hands. Several of these amputations were performed by child soldiers, who were often incapable of performing the amputations successfully, leaving victims with mangled hands, or needing older rebels to finish the amputations, such as in the case of the Mohamed Sesay.[4835]

99. para. 2184: These amputations occurred in the context of widespread burning, rape and killing, and in situations where rebels had been ordered to target civilians who they believed were Kamajors or supporters of ECOMOG. In the case of the amputations performed by Changa Bulanga at Old Shell Road, this operation was ordered by Gullit in order to punish civilians who he believed had welcomed ECOMOG to Freetown. These incidents also occurred in a context where witnesses observed bunches of human hands that had been tied together and buried in the dirt at Kissy Road.

100. para. 2185: The Trial Chamber is accordingly satisfied beyond reasonable doubt that the amputations that occurred in Kissy from 6 January to 22 January 1999 were perpetrated by members of the AFRC/RUF forces, who wilfully made civilians the object of the physical violence with the primary purpose of spreading terror among the civilian population.

101. See below: Chapters 7 and 8 – Taylor – Trial Judgment – Legal Conclusions – Physical Violence – paras. 1272-1273 [3870], 1279 [3873], 1284-1285 [3874], 1289-1293 [3876], 1297 [3881], 1301-1302 [3882], 1304 [3884], 1309 [3885], 1314-1315 [3886], 1321-1325 [3888].

q. Physical Violence - Fourah Bay – Freetown and the Western Area - Crimes

102. para. 2186: The Trial Chamber has found proved beyond reasonable doubt that seven civilians, including witness Alpha Jalloh, had their hands amputated at Fourah Bay by members of the SLA around 18 January 1999, and that an unknown number of civilians had their hands amputated by Major Mines and Kabila at Fourah Bay.[4836]

103. para. 2187: After the civilians had been amputated, the rebels told the amputees that they could go to Pah Kabbah to get more hands.[4837] The amputations also served as a message to Kabbah and ECOMOG of the atrocities of which the rebels were capable. These amputations also took place in the context of widespread burning, rape and killing in Freetown.

104. para. 2188: The Trial Chamber is accordingly satisfied beyond reasonable doubt that the amputations that occurred in Kissy from 6 January to 22 January 1999 were perpetrated by members of the AFRC/RUF forces who wilfully made civilians the object of the physical violence with the primary purpose of spreading terror among the civilian population.

105. See below: Chapters 7 and 8 – Taylor – Trial Judgment – Legal Conclusions – Physical Violence – paras. 1329-1331 [3893].

r. Physical Violence - Upgun – Freetown and the Western Area - Crimes

106. para. 2189: The Trial Chamber has found proved beyond reasonable doubt that three captured civilians had their hands amputated by Five-Five in Upgun in January 1999. One civilian was given a "short-sleeve" amputation and the others "long-sleeve" amputations.[4838] For the reasons articulated above in relation to the other areas, and given that this amputation was performed by Five-Five as a "demonstration", the Trial Chamber is satisfied that these amputations were perpetrated by members of the AFRC/RUF forces, who wilfully made civilians the object of the physical violence with the primary purpose of spreading terror.

107. See below: Chapters 7 and 8 – Taylor – Trial Judgment – Legal Conclusions – Physical Violence – para. 1334 [3896].

s. Physical Violence - Wellington – Freetown and the Western Area - Crimes

108. para. 2190: The Trial Chamber has found proved beyond reasonable doubt that Sarah Koroma's left hand was amputated and her right hand mutilated in Wellington on 6 January 1999; that seven civilians had their hands amputated in Wellington on 6 January 1999; that the hand of a child between 3 to 4 years old was amputated in Wellington in January 1999 and that Akiatu Tholley was beaten and physically harmed in a serious manner in Wellington in late January 1999.[4839]

109. para. 2191: The rebels who amputated Koroma's arm told her to go tell Kabbah that the rebels wanted peace.[4840] The rebels also amputated the arm of a 3 to 4 year old child. Based on this evidence, given the widespread burning, rape and killing that occurred during both the rebels' advance into Freetown in early January and their retreat in late January, and for the reasons articulated above in relation to the other areas, the Trial Chamber is satisfied that these amputations were perpetrated by members of the AFRC/RUF forces who wilfully made civilians the object of the physical violence with the primary purpose of spreading terror.

110. See below: Chapters 7 and 8 – Taylor – Trial Judgment – Legal Conclusions – Physical Violence – paras. 1343-1348 [3897].

(b) Legal Conclusions

(i) Applicable Law - War Crimes / Violations of Common Article 3

111. para. 561: Article 3 of the Statute, entitled 'Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II', provides that:

> 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 recognised as indispensable by civilised peoples; and

h. Threats to commit any of the foregoing acts.

112. para. 562: In order for liability to be established under Article 3 of the Statute, the acts of the Accused must have formed part of an armed conflict. The jurisprudence has identified three chapeau (or general) requirements for violations against international humanitarian law.

a. The existence of an armed conflict – Applicable law – War Crimes/ Violations of Common Article 3

113. para. 563: Although Article 3 Common to the Geneva Conventions is expressed to apply to armed conflicts "not of an international character", the distinction between internal armed conflicts and international conflicts 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 conflicts form part of the broader category of crimes during international armed conflict".[1309] The Appeals Chamber of the ICTY has ruled that "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".[1310] 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 committed or the purpose for which it was committed".[1311]

114. para. 564: The criteria for establishing the existence of an armed conflict are the intensity of the conflict and the degree of organisation of the warring factions.[1312] 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".[1313]

115. para. 565: International humanitarian law applies from the initiation 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, until a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply to the entire territory of the warring States or, in the case of internal conflicts, the entire territory under the control of a party, whether or not actual combat takes place there.[1314]

b. Nexus – Applicable law – War Crimes/Violations of Common Article 3

116. para. 566: For an offence to fall within the scope of Article 3 of the Statute, the Trial Chamber must establish that a sufficient link between the alleged breach of Common Article 3 or Additional Protocol II and the underlying armed conflict existed.[1315] The rationale of the said requirement is to protect the victims of internal armed conflicts, but not from crimes unrelated to the conflict. The nexus is satisfied where the perpetrator acted in furtherance of or under the guise of the armed conflict.[1316]

117. para. 567: The following factors have been considered in the jurisprudence to determine if an act was sufficiently related to the armed conflict: whether the perpetrator was a combatant; whether the victim was a member of the opposing party; whether the act can be said to have served the ultimate goal of a military campaign; and whether the crime was committed as part of or in the context of the perpetrator's official duties.[1317] The Appeals Chamber has stated that "in 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".[1318]

c. Protected persons – Applicable law – War Crimes/Violations of Common Article 3

118. para. 568: Both Common Article 3 and Additional Protocol II protect only those persons who take no active or direct part in the hostilities, and those who have ceased to take part therein and are therefore placed hors de combat by sickness, wounds, detention or any other cause.[1319] The Prosecution must therefore establish the relevant facts of each victim with a view to ascertain whether that person was directly involved in the hostilities at the relevant time.[1320]

(ii) War Crimes/Violations of Common Article 3 – Findings on General Requirements

a. The existence of an armed conflict – War Crimes/Violations of Common Article 3 - Findings

119. para. 571: The Trial Chamber took judicial notice of the fact that there was an armed conflict in Sierra Leone, lasting from March 1991 until January 2002.[1324] The parties agree that "[d]espite temporary lulls in the fighting occasioned by a 30 November 1996 peace agreement and a 7 July 1999 peace agreement, active hostilities continued in the Republic of Sierra Leone until about 18 January 2002".[1325] Therefore, the Trial Chamber finds that it is established beyond reasonable doubt that there was an armed conflict in Sierra Leone at all times relevant to the Indictment period.

120. para. 572: The Trial Chamber took judicial notice of the fact that

> Armed groups who participated in the armed conflict in Sierra Leone included: a) The Revolutionary United Front (RUF); b) The Armed Forces Revolutionary Council (AFRC); c) The Civil Defence Forces (CDF)".[1326]

b. Conclusions on the *Chapeau* Requirements – War Crimes/Violations of Common Article 3 - Findings

121. para. 573: The Trial Chamber finds that the Prosecution proved beyond reasonable doubts that there was an armed conflict in Sierra Leone at all times relevant to the Indictment, involving among others members of the RUF, AFRC and CDF.

122. para. 574: The questions of whether (i) nexus existed between the alleged violation and the armed conflict, (ii) that the victim was not directly taking part in the hostilities at the time of the alleged violation and (iii) that the perpetrator knew or had reason to know that the victim was not taking a direct part in the hostilities at the time of the alleged act or omission are considered on a case by case basis in the findings on the crimes section.[1327]

(iii) Pleading

123. para. 402: Count 1 charges the Accused with acts of terrorism, a violation of Additional Protocol II, punishable under Article 3(d) of the Statute.[994] The Prosecution alleges that the Accused committed the crimes set forth in paragraph 6 to 31 of the Indictment, and charged in

Counts 2 to 11, "as part of a campaign to terrorise the civilian population of the Republic of Sierra Leone".[995]

124. para. 1965: The Prosecution submits that "the ultimate objective of the Indictment Crimes was to forcibly control the territory and population and to pillage the resources of Sierra Leone, in particular diamonds. However, the primary purpose of the criminal means by which these ultimate objectives were to be achieved was terror. Terror was deliberate, organised and spread via a campaign involving the commission of a multiplicity of crimes including burning and the crimes charged in Counts 2 through 11 in the Indictment".[4381]

(iv) Applicable Law - Acts of Terrorism

125. para. 403: In addition to the chapeau requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute, the following elements of the crime of acts of terrorism must be proved beyond reasonable doubt:

i. Acts or threats of violence directed against persons or their property;

ii. The perpetrator wilfully made persons or their property the object of those acts and threats of violence; and

iii. The acts or threats of violence were committed with the primary purpose of spreading terror among protected persons.996

126. para. 404: Actual terrorization is not a required element of the crime of terror, although evidence of such terrorization may be used to establish other elements of the crime.[997]

127. para. 405: The Prosecution must prove that the spreading of terror was specifically intended.[998] However, while spreading terror must be the primary purpose of the acts or threats of violence, it need not be the only purpose.[999] Such intent can be inferred from, *inter alia*, the "nature, manner, time and duration"[1000] of the acts or threats of violence, and may also be inferred from the actual infliction of terror and the indiscriminate nature of the attacks.[1001]

128. para. 406: The Defence submits that the ICTY has held in the Milosevic Trial Judgement that an act or threat can be considered as "terrorism" only where it results in "death or serious injury to body or health within the civilian population or to individual civilians".[1002] It notes, however, that Trial Chamber I of the Special Court explicitly rejected this requirement in the RUF Trial Judgement.[1003] The Defence submits that this represents a divergence between the two courts which has not been resolved on appeal, and urges the Trial Chamber to resolve it in the manner most favourable to the Accused.[1004] The Prosecution does not address this issue in its submissions.

129. para. 407: However, contrary to the Defence submissions, there is appellate authority resolving this issue, as in the *Milosević* case, the Appeals Chamber of the ICTY found that the Trial Chamber had "misinterpreted the *Galić* jurisprudence by stating that 'actual infliction of death or serious harm to body or health is a required element of the crime of terror', and had thus committed an error of law".[1005] The Appeals Chamber of the ICTY further found that actual infliction of death or serious bodily harm was not a required element of the crime of terror, but that it must be shown that the victims suffered grave consequences resulting from the acts or threats of violence, which may include death or serious injury to body or health.[1006] The Trial Chamber concurs with this approach.

130. para. 408: The Defence submits that, in addition to these requirements, the Appeals Chamber of the Special Tribunal for Lebanon ("STL") has recently held that a customary rule of international law regarding the crime of terrorism has emerged which requires the following three key elements: "(i) the perpetration of a criminal act (such as murder, kidnapping, hostage-taking, arson, and so on), or threatening such an act; (ii) the intent to spread fear among the population (which would generally entail the creation of a public danger) or directly or indirectly coerce a national or international authority to take some action, or refrain from taking it; (iii) when the act involves a transnational element".[1007] The Defence submits that the second and third requirements, which differ from the definition of "acts of terrorism" as defined above, should be included in the definition of the crime of "acts of terrorism".[1008] The Prosecution does not address this issue in its submissions.

131. para. 409: The Trial Chamber notes that the Appeals Chamber of the STL found that these three key elements were applicable to "a customary rule of international law regarding the international crime of terrorism" at least in times of peace.[1009] It distinguished this from the war crime of "acts of terrorism".[1010] The Appeals Chamber of the ICTY and the Trial Chamber of this court have held that the war crime of "acts of terrorism" (which does not contain these additional elements) is firmly established in customary international law.[1011]

132. para. 410: The Trial Chamber is therefore of the view that the additional elements referred to in the above paragraphs do not form part of the war crime of "acts of terrorism".

(v) Evidentiary Basis

a. Enlistment, conscription and use of children under the age of 15 years to actively participate in hostilities

133. para. 1969: Such evidence, in the Trial Chamber's opinion, establishes that the purpose of the conscription and use of child soldiers by the RUF and AFRC during the conflict in Sierra Leone was primarily military in nature. Accordingly, the Trial Chamber finds that such acts were not done in furtherance of a primary purpose to terrorise the civilian population.

b. Enslavement

134. para. 1971: The Trial Chamber finds that the primary purpose behind the commission of abductions and forced labour was not to spread terror among the civilian population, but rather was primarily utilitarian or military in nature. The Trial Chamber does not discount that the abduction of persons from their homes, their continued detention, and their subjection to forced labour, including forced mining and living in RUF camps, under conditions of violence may have spread terror among the civilian population. However, the Trial Chamber finds that the "side-effect" of terror is not sufficient to establish the specific intent element in relation to these crimes.

135. para. 1972: As with evidence of the abduction and use of child soldiers, therefore, even where abductions and forced labour occurred simultaneously with other acts of violence otherwise examined by this Chamber with regards to the crime of acts of terrorism, the Trial Chamber is of the opinion that such acts cannot be considered to have been committed with the primary purpose of spreading terror.

c. Pillage

136. para. 1977: The Trial Chamber does not discount that the widespread lootings of homes and businesses during Operation Pay Yourself in Bombali and Port Loko Districts, in Kono District, and during the attack on Freetown in which pillage was committed in the context of several other crimes, may have had the side-effect of spreading terror among the civilian population. However, the Trial Chamber finds that the "side-effect" of terror is not sufficient to establish the specific intent element in relation to these crimes.

137. para. 1978: Accordingly, the Trial Chamber finds that the pillage of civilian property that occurred in these districts was not perpetrated with the primary purpose of spreading terror.

(vi) Kenema District – Acts of Terrorism

138. para. 1979: The Trial Chamber has found in relation to the murders committed in Kenema District that the elements of the crime of terrorism have been established beyond reasonable doubt.[4407]

(vii) Kono District

a. Koidu – Kono District – Acts of Terrorism

139. para. 2005: While there is some evidence that the buildings burnt in late February/March and late April/May 1998 in Koidu were suspected of being the houses of Kamajors, Tamboros or, in the case of burnings in May 1998, that the buildings were used by the RUF, the evidence of the number of properties burnt and the articulated strategy behind the burnings establishes beyond reasonable doubt that, overall, the acts of burning were intentionally directed against civilians or their properties.

140. para. 2006: There is also some evidence that the purpose of burning was to gain military advantage by depriving enemy forces of the use of the buildings. However, the Trial Chamber finds that the evidence of the large-scale nature of the burnings of buildings, some of which were occupied by persons at the time, and of the stated objective of making the area "fearful", proves beyond reasonable doubt that the burnings were committed with the primary purpose of spreading terror amongst the civilian population.

b. Tombodu – Kono District – Acts of Terrorism

141. para. 2017: Based upon the foregoing evidence, the Trial Chamber finds that the Prosecution has proved beyond a reasonable doubt that civilian houses were burnt by members of the AFRC/RUF forces in Tombodu in February/March 1998. The Trial Chamber further finds that the evidence of TF1-375 and Alimamy Bobson Sesay proves beyond a reasonable doubt that the perpetrators wilfully made civilian persons and their property the object of the attacks and that the burnings were committed with the primary purpose of spreading terror, in that the objective of the attacks was to make the area "fearful" so as to cause civilians to leave the area.

c. Sewafe – Kono District – Acts of Terrorism

142. para. 2021: Based on the evidence of Alimamy Bobson Sesay and Perry Kamara, the Trial Chamber is satisfied beyond a reasonable doubt that houses were burnt in Sewafe by AFRC, RUF and STF fighters on the orders of Johnny Paul Koroma, that the fighters wilfully made civilian homes the object of their attack, and that the primary purpose of the burning was to terrorise the civilian population by demonstrating the repercussions of collaborating with the enemies of the RUF and AFRC.

d. Wendedu (a.k.a. Wondedu) – Kono District – Acts of Terrorism

143. para. 2026: Unlike other places in Kono District in which the burning of civilian property by the AFRC/RUF forces occurred, in the case of Wendedu there was no evidence in which the purpose of the burning was explicitly stated. However, the nature, manner and timing of the wanton burning of the houses in Wendedu followed a pattern of similar burnings by AFRC/RUF forces in other towns in Kono District which had the primary purpose of spreading terror among the civilian population. In the Trial Chambers view, all of the circumstances lead to the inescapable inference that the burnings in Wendedu were part of the same campaign to terrorize the civilian population. The Trial Chamber is accordingly satisfied beyond a reasonable doubt that primary purpose of the burning of the houses in Wendedu was to spread terror among the civilian population.

e. Bumpe – Kono District – Acts of Terrorism

144. para. 2031: Based on the foregoing evidence, the Trial Chamber finds beyond reasonable doubt that civilian houses in Bumpe were burnt by members of the RUF/AFRC, that the perpetrators wilfully made persons and their property the object of the burnings, and that the burnings were committed with the primary purpose of spreading terror amongst the civilian population.

f. Unlawful Killings – Kono District – Acts of Terrorism

145. para. 2032: The Trial Chamber has found in relation to a number of murders which were perpetrated in various pleaded locations in Kono District that the elements of the crime of acts of terrorism have been established beyond reasonable doubt.[4530]

g. Sexual Violence – Kono District – Acts of Terrorism

146. para. 2037: The Trial Chamber finds that committing crimes of sexual violence in public was a deliberate tactic on the part of the perpetrators to spread terror. Such crimes were part of a campaign of rape and sexual slavery committed by members of the AFRC/RUF against the women of Kono District not merely as a means of sexual gratification, but in order to spread terror among the civilian population.

147. para. 2038: The Trial Chamber therefore finds that it has been proved beyond reasonable doubt that members of the AFRC/RUF forces wilfully made the girls and women of Kono District the object of acts of sexual violence with the primary purpose of spreading terror among the civilian population.

h. Physical Violence - Tombodu – Kono District – Acts of Terrorism

148. para. 2041: Moreover, Alimamy Bobson Sesay, whose evidence the Trial Chamber has accepted in relation to these incidents, testified that the civilians whose hands were amputated by Savage, Guitar Boy and Staff Alhaji were targeted because they were thought by Savage to be ECOMOG supporters, and that after their hands had been amputated, they were urged to seek relief from ECOMOG troops.[4543] These amputations occurred in the context of the commission of widespread burnings and other crimes. The Trial Chamber therefore finds that it has been proved beyond reasonable doubt that the primary purpose of these amputations and/or mutilations was to spread terror among the civilian population by demonstrating the repercussions of collaborating or being perceived to collaborate with ECOMOG.

149. para. 2042: The Trial Chamber further finds that the amputations of Fofana's and Mansaray's hands and the unsuccessful amputation of Komba's hand were also perpetrated with the primary purpose of spreading terror among the civilian population.

i. Physical Violence - Kayima – Kono District – Acts of Terrorism

150. para. 2044: The carvings practiced by the RUF were notorious, and served as a permanent, visible and grotesque reminder to all civilians of the consequences of resisting or escaping from the AFRC or RUF or of supporting Kabbah or ECOMOG. The Trial Chamber is therefore satisfied beyond reasonable doubt that the AFRC fighters who carved the words "AFRC" or

"RUF" into the bodies of 18 captured persons were acting with the primary purpose of spreading terror.

j. Physical Violence - Wondedu – Kono District – Acts of Terrorism

151. para. 2046: Such disfigurements practised by the RUF were notorious, and served as a permanent, visible and grotesque reminder to all civilians of the consequences of resisting the AFRC or RUF or of supporting Kabbah or ECOMOG. In addition, Tamba Teh, whose evidence the Trial Chamber has accepted in relation to this incident, testified that the rebels "said that people shouldn't escape and go to ECOMOG. In fact they shouldn't escape and go, so with that carving if you go to the side of ECOMOG they will kill you, so you never had anywhere else to go".[4546] The Trial Chamber is satisfied beyond reasonable doubt that the primary purpose of these disfigurements was to terrorise the civilian population by demonstrating the repercussions of escaping from the AFRC or RUF, or of collaborating or being perceived to collaborate with ECOMOG.

152. para. 2047: However, with respect to the injuries caused to Alex Tamba Teh, the Trial Chamber finds that this act was not perpetrated with the primary purpose of terrorizing the civilian population, but was rather a spontaneous punishment inflicted upon him by AFRC Commander Banya.

k. Conclusion – Kono District – Acts of Terrorism

153. para. 2048: The foregoing findings by the Trial Chamber establish that the Prosecution has proved beyond a reasonable doubt that members of the AFRC/RUF forces in Kono District wilfully made civilian persons or their property the object of acts of violence in the forms of burning of civilian property (in Koidu, Tombodu, Sewafe, Wondedu and Bumpe), unlawful killings, sexual violence and physical violence (in Tombodu, Kayima and Wondedu), committed with the primary purpose of spreading terror among the civilian population.

154. para. 2049: The Trial Chamber has already found that there was an armed conflict in Sierra Leone at all times relevant to the Indictment, involving, among others, members of the RUF and AFRC.[4547] Further, the Trial Chamber is satisfied beyond reasonable doubt that crimes discussed in the above findings were directly linked to that armed conflict and that the victims were civilians not directly taking part in hostilities. The Trial Chamber therefore finds that the elements of the

crime of acts of terrorism (Count 1) as a serious violation of article 3 common to the Geneva Conventions and of Additional Protocol II (Count 1) have been proved reasonable doubt.

(viii) Kailahun District – Acts of Terrorism

a. Unlawful Killings – Kailahun District – Acts of Terrorism

155. para. 2050: The Trial Chamber has found in relation to the unlawful killings perpetrated in Kailahum District that the elements of the crime of acts of terrorism have been established beyond reasonable doubt.[4548]

b. Sexual Violence – Kailahun District – Acts of Terrorism

156. para. 2053: On the basis of the evidence relating to sexual slavery in Kailahun District, the Trial Chamber finds that the widespread and systematic use of women as sex slaves instilled fear and a sense of insecurity among the civilian population, and is therefore satisfied beyond reasonable doubt that members of the AFRC/RUF wilfully made the women of Kailahun District the object of acts of sexual violence with the primary purpose of spreading terror among the civilian population.

c. Physical Violence – Kailahun District – Acts of Terrorism

157. para. 2054: The Trial Chamber has found that the evidence of physical violence perpetrated in Kailahun District is relevant to proof of the chapeau requirements only.[4553]

d. Conclusion – Kailahun District – Acts of Terrorism

158. para. 2055: The foregoing findings by the Trial Chamber establish that the Prosecution had proved beyond reasonable doubt that members of the AFRC/RUF forces wilfully made civilian persons the object of acts of violence in the form of unlawful killings and sexual violence in Kailahun District, committed with the primary purpose of spreading terror among the civilian population.

159. para. 2056: The Trial Chamber has already found that there was an armed conflict in Sierra Leone at all times relevant to the Indictment, involving, among others, members of the RUF and AFRC.[4554] Further, the Trial Chamber is satisfied beyond reasonable doubt that crimes discussed in the above findings were directly linked to that armed conflict and that the victims were civilians

not directly taking part in hostilities. The Trial Chamber therefore finds that the elements of the crime of acts of terrorism (Count 1) as a serious violation of article 3 common to the Geneva Conventions and of Additional Protocol II (Count 1) have been proved reasonable doubt.

(ix) Freetown and the Western Area – Acts of Terrorism

a. Waterloo – Freetown and the Western Area – Acts of Terrorism

160. para. 2068: The Trial Chamber accepts the evidence of all of these witnesses as proof beyond reasonable doubt that members of the RUF, AFRC, AFRC/RUF Junta burned civilian property in Freetown and the Western Area, wilfully made civilians or their property the object of such acts, and that the primary purpose of such acts was to spread terror among the civilian population.

b. Waterloo – Freetown and the Western Area – Acts of Terrorism

161. para. 2082: The Trial Chamber is satisfied beyond reasonable doubt by the foregoing evidence that members of the AFRC/RUF forces[4620] burned civilian property in Waterloo and wilfully made civilians or their property the object of such acts. Moreover, the similar circumstances of the two separate instances of the burning of civilian property in Waterloo on around 22 December 1998 and in January 1999 respectively lead to the inescapable inference that they were part of the same campaign to terrorise the civilian population. The Trial Chamber is accordingly satisfied beyond reasonable doubt that the primary purpose of the burning of civilian property in Waterloo in December 1998 and January 1999 was to spread terror among the civilian population.

c. Tumbo – Freetown and the Western Area – Acts of Terrorism

162. para. 2088: Based on the foregoing evidence, the Trial Chamber is satisfied beyond reasonable doubt that members of the AFRC/RUF forces[4633] burned civilian property in Tumbo and wilfully made civilians or their property the object of those acts. Moreover, the nature, manner and timing of the burning of houses in Tumbo followed a pattern of similar burnings by AFRC/RUF forces in other parts of Freetown and the Western Area which had the primary purpose of spreading terror among the civilian population. Accordingly, the Trial Chamber is also

satisfied beyond reasonable doubt that the primary purpose of the burnings in Tumbo was to spread terror among the civilian population.

d. Kissy and Fourah Bay in Eastern Freetown – Freetown and the Western Area – Acts of Terrorism

163. para. 2122: The evidence establishes beyond a reasonable doubt that members of the AFRC/RUF forces burned civilian properties in Kissy and Fourah Bay, that they wilfully made persons or their property the object of such acts, and that such acts were committed with the primary purpose of spreading terror among the civilian population.

e. State House and Pademba Road – Freetown and the Western Area – Acts of Terrorism

164. para. 2132: The Trial Chamber is satisfied beyond reasonable doubt on the evidence that in January 1999 members of the AFRC/RUF forces burned civilian property in Freetown, including State House and Pademba Road, and that they wilfully made persons and their property the object of the burnings, the primary purpose of which was to spread terror amongst the civilian population.

f. Kingtom – Freetown and the Western Area – Acts of Terrorism

165. para. 2139: Although there is some evidence to suggest that the purpose of the attack on Kingtom was to repel ECOMOG forces, the Trial Chamber finds that the evidence of the burning of homes, some of which had people locked inside, and the evidence that one of the stated objectives was to punish civilians for supporting ECOMOG, establishes beyond reasonable doubt that the burnings were committed with the primary purpose of spreading terror among the civilian population.

g. Upgun – Freetown and the Western Area – Acts of Terrorism

166. para. 2142: The paucity of the available evidence does not permit the Trial Chamber to draw the inference submitted by the Prosecution. Such evidence is not capable of proving beyond reasonable doubt that the burning of civilian property in Upgun was perpetrated by AFRC/RUF forces, nor that the burning was committed with the primary purpose of spreading terror among the civilian population.

167. para. 2143: Therefore, the Trial Chamber is not satisfied that the elements of the crime of acts of terrorism in relation to burning in Upgun have been established.

h. Wellington – Freetown and the Western Area – Acts of Terrorism

168. para. 2151: The evidence establishes beyond reasonable doubt that in January 1999 members of the AFRC/RUF forces[4783] burned civilian property in Wellington, that the perpetrators wilfully made persons or their property the object of the burnings and that the burnings were committed with the primary purpose of spreading terror amongst the civilian population.

i. Calaba Town – Freetown and the Western Area – Acts of Terrorism

169. para. 2162: The Trial Chamber is satisfied beyond reasonable doubt on the evidence that in January 1999 members of the AFRC/RUF forces burned down civilian houses in Calaba Town, that the perpetrators wilfully made persons or their property the object of the burnings and that the burnings were committed with the primary purpose of spreading terror amongst the civilian population.

j. Hastings, Grafton and Benguema – Freetown and the Western Area – Acts of Terrorism

170. para. 2166: The paucity of the available evidence does not permit the Trial Chamber to draw the inference submitted by the Prosecution. Such evidence is not capable of proving beyond a reasonable doubt that the burning of civilian property in Grafton, Hastings and Benguema was perpetrated by AFRC/RUF forces, nor that the burning was committed with the primary purpose of spreading terror among the civilian population.

171. para. 2167: Therefore, the Trial Chamber is not satisfied that the elements of the crime of acts of terrorism in relation to burning in Hastings, Grafton and Benguema have been established.

k. Goderich and Kent – Freetown and the Western Area – Acts of Terrorism

172. para. 2170: The paucity of the available evidence is not capable of proving beyond a reasonable doubt that the burning of civilian property in Goderich and Kent was perpetrated by

AFRC/RUF forces, nor that the burning was committed with the primary purpose of spreading terror among the civilian population.

173. para. 2171: Therefore, the Trial Chamber is not satisfied that the elements of the crime of acts of terrorism in relation to burning in Goderich and Kent have been established.

l. Unlawful Killings – Freetown and the Western Area – Acts of Terrorism

174. para. 2172: The Trial Chamber has found in relation to the unlawful killings perpetrated in Freetown and the Western Area that the elements of the crime of acts of terrorism have been established beyond reasonable doubt.[4807]

m. Sexual Violence – Freetown and the Western Area – Acts of Terrorism

175. para. 2177: Given the geographical and temporal proximity of these crimes to each other, and to the burnings, killings and amputations that occurred in Freetown and the Western Area during the advance towards Freetown, the attack and the retreat, the Trial Chamber finds that the rebels regularly used rape and sexual slavery to spread terror among the civilian population of Freetown and the Western Area.

176. para. 2178: The Trial Chamber therefore finds that it has been proved beyond reasonable doubt that members of the AFRC/RUF forces wilfully made the girls and women of Freetown and the Western Area the object of acts of sexual violence with the primary purpose of spreading terror among the civilian population.

n. Physical Violence - Freetown – Freetown and the Western Area – Acts of Terrorism

177. para. 2180: The amputations and carvings practiced by the AFRC and RUF were notorious, and served as a permanent, visible and grotesque reminder to all civilians of the consequences of resisting the AFRC or RUF or of supporting Kabbah or ECOMOG. The gruesome nature of these particular amputations and mutilations included the amputation of tongues, and a woman whose eyes were pulled out so that they protruded from their sockets.[4817] TF1-158 testified that he had treated patients who had been attacked and amputated or mutilated by the rebels, and that when they were being attacked, "their immediate families were positioned

such that … they will be in full view of what they were doing, especially for those who suffered amputations and rape".[4818] The Trial Chamber is satisfied on this evidence that these amputations and mutilations were perpetrated with the primary intention of spreading terror.

178. para. 2181: The Trial Chamber has also found that Abu Bakarr Mansaray was beaten and physically harmed in a permanent manner by rebels outside State House on 8 January 1999.[4819] However, the evidence is not sufficient to establish the intent of the perpetrators, and the Trial Chamber is thus not able to conclude that they acted with the primary purpose of spreading terror.

o. Physical Violence - Kissy, including Kissy Mental Hospital – Freetown and the Western Area – Acts of Terrorism

179. para. 2185: The Trial Chamber is accordingly satisfied beyond reasonable doubt that the amputations that occurred in Kissy from 6 January to 22 January 1999 were perpetrated by members of the AFRC/RUF forces, who wilfully made civilians the object of the physical violence with the primary purpose of spreading terror among the civilian population.

p. Physical Violence - Fourah Bay – Freetown and the Western Area – Acts of Terrorism

180. para. 2188: The Trial Chamber is accordingly satisfied beyond reasonable doubt that the amputations that occurred in Kissy from 6 January to 22 January 1999 were perpetrated by members of the AFRC/RUF forces who wilfully made civilians the object of the physical violence with the primary purpose of spreading terror among the civilian population.

q. Physical Violence - Upgun – Freetown and the Western Area – Acts of Terrorism

181. para. 2189: The Trial Chamber has found proved beyond reasonable doubt that three captured civilians had their hands amputated by Five-Five in Upgun in January 1999. One civilian was given a "short-sleeve" amputation and the others "long-sleeve" amputations.[4838] For the reasons articulated above in relation to the other areas, and given that this amputation was performed by Five-Five as a "demonstration", the Trial Chamber is satisfied that these amputations were perpetrated by members of the AFRC/RUF forces, who wilfully made civilians the object of the physical violence with the primary purpose of spreading terror.

r. Physical Violence - Wellington – Freetown and the Western Area – Acts of Terrorism

182. para. 2191: The rebels who amputated Koroma's arm told her to go tell Kabbah that the rebels wanted peace.[4840] The rebels also amputated the arm of a 3 to 4 year old child. Based on this evidence, given the widespread burning, rape and killing that occurred during both the rebels' advance into Freetown in early January and their retreat in late January, and for the reasons articulated above in relation to the other areas, the Trial Chamber is satisfied that these amputations were perpetrated by members of the AFRC/RUF forces who wilfully made civilians the object of the physical violence with the primary purpose of spreading terror.

s. Physical Violence - Conclusion – Freetown and the Western Area – Acts of Terrorism

183. para 2192: The foregoing findings by the Trial Chamber establish that the Prosecution has proved beyond a reasonable doubt that members of the AFRC/RUF forces in Freetown and the Western Area wilfully made civilian persons or their property the object of acts of violence in the forms of burning of civilian property (in Freetown and the Western Area, Waterloo, Tumbo, Kissy, Fourah Bay, State House, Pademba Road, Kingtom, Wellington and Calaba Town), unlawful killings, sexual violence and physical violence (in Freetown, Kissy, Fourah Bay, Upgun and Wellington), committed with the primary purpose of spreading terror among the civilian population. The Trial Chamber has already found that there was an armed conflict in Sierra Leone at all times relevant to the Indictment, involving, among others, members of the RUF and AFRC.[4841] Further, the Trial Chamber is satisfied beyond reasonable doubt that crimes discussed in the above findings were directly linked to that armed conflict and that the victims were civilians not directly taking part in hostilities. The Trial Chamber therefore finds that the elements of the crime of acts of terrorism (Count 1) as a serious violation of article 3 common to the Geneva Conventions and of Additional Protocol II (Count 1) have been proved reasonable doubt.

184. Regarding Taylor's individual criminal responsibility (Aiding and Abetting), see below: Chapter 12 (Article 6.1 Liability) – Taylor – Trial Judgment – Findings and Conclusions – Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute – Aiding and Abetting – paras. 6904-6906 [6351], 6910-6915 [6354], 6918-6924 [6360], 6927-6937 [6367], 6940-6946 [6378], 6947-6952 [6385], 6953 [6391].

185. Regarding Taylor's individual criminal responsibility (Planning), see below: Chapter 12 (Article 6.1 Liability) – Taylor – Trial Judgment – Findings and Conclusions – Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute – Planning – paras. 6957-6971 [6392].

186. Regarding Taylor's individual criminal responsibility (Instigating), see below: Chapter 12 (Article 6.1 Liability) – Taylor – Trial Judgment – Findings and Conclusions – Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute – Instigating – para. 6972 [6407].

187. Regarding Taylor's individual criminal responsibility (Ordering), see below: Chapter 12 (Article 6.1 Liability) – Taylor – Trial Judgment – Findings and Conclusions – Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute – Ordering – para. 6973 [6408].

188. Regarding Taylor's superior responsibility, see below: Chapter 13 (Article 6.3 Liability) – Taylor – Trial Judgment – Findings and Conclusions – Legal Findings on Responsibility Pursuant to Article 6.3 of the Statute – Superior Responsibility – paras. 6977 – 6986 [8613].

3. Appellate Judgment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-A, Judgment, 26 September 2013

(a) Factual Findings

189. para. 253: The Trial Chamber found that the RUF/AFRC's operational strategy was characterised by a campaign of crimes against the Sierra Leonean population, including the crimes charged in all 11 Counts of the Indictment,[578] which were inextricably linked to the strategy of the military operations themselves. This strategy entailed a campaign of terror against civilians as a primary *modus operandi*, to achieve military gains at any civilian cost and political gains in order to attract the attention of the international community and improve the RUF/AFRC's negotiating stance with the Sierra Leonean government (the "Operational Strategy").[579]

190. para. 254: In assessing Taylor's alleged criminal liability, the Trial Chamber found that Taylor, by his acts and conduct, was "critical in enabling" the RUF/AFRC's Operational Strategy, "supported, sustained and enhanced" the functioning of the RUF/AFRC and its capacity to implement its Operational Strategy, planned an attack of terror as the *modus operandi* of the attack on Freetown and had a substantial effect on the crimes committed by the RUF/AFRC.[580] It further found that Taylor knew of the RUF/AFRC's Operational Strategy, knew that his acts and conduct assisted the commission of crimes in the implementation of that Operational Strategy and knew the essential elements of the crimes in which he was participating.[581]

191. Regarding the RUF/AFRC's Operational Strategy, see below: Chapter 12 (Article 6.1. Liability) –Taylor – Appellate Judgment – Findings and Conclusions – The RUF/AFRC's Operational Strategy - paras. 257-302 [6411].

192. para. 303: The Appeals Chamber has reviewed the Trial Chamber's assessment of the evidence and affirmed the findings in the Judgment.[821] It has further affirmed the Trial Chamber's finding that the RUF/AFRC leadership pursued an Operational Strategy to commit the crimes charged in Counts 1-11 of the Indictment.[822]

193. Regarding Taylor's Acts, Conduct and Mental State, see below: Chapter 12 (Article 6.1 Liability) – Taylor – Appellate Judgment – Findings and Conclusions – Taylor's Acts, Conduct and Mental State – paras. 303 – 343 [6457].

(b) Legal Conclusions

(i) Pleading

a. Locations - Pleading

194. para. 40: Contrary to the Prosecution submission,[88] the Appeals Chamber's holding in *Sesay et al.* is consistent with its holding in *Brima et al.*[89] The non-specific and inclusive pleading of locations – through the use of words such as "throughout" a district or "in various locations, including"[90] – *maybe adequate* in light of the "sheer scale" of the alleged crimes.[91] Equally, such pleading of locations *may be defective*.[92] It is for the Trial Chamber to determine in each case whether non-specific and inclusive pleading of locations is sufficient to provide sufficient notice to the accused to enable him to prepare a defence, both generally and within the narrow "sheer scale"exception.[93] In making this determination, it must take into account the fair trial rights of the accused,[94] the Prosecution's obligation to plead clearly the material facts it intends to prove,[95] the particulars of the case[96] and the interests of justice.[97] The Appeals Chamber is satisfied that in this case the Trial Chamber properly considered whether locations were pleaded with the requisite specificity.[98]

195. para. 41: The Prosecution further fails to establish that the Trial Chamber improperly concluded that the locations at issue were *defectively* pleaded. Even where it is impracticable or impossible to specifically plead all material facts, the Prosecution must still put forward its best understanding of the case in the indictment, based on the information in its possession.[99] It must know its case before it proceeds to trial; it cannot omit material aspects of its allegations that are

known to it; and it cannot develop its case as the evidence unfolds.[100] It is not part of the Prosecution's case in this appeal that it could not have provided further specificity in the Indictment, particularly as Taylor was re-arraigned on 3 July 2007, after the Trial Judgment in Brima et al. was published on 20 June 2007 and long after the Prosecution closed its case in *Sesay et al.* on 2 August 2006.[101] The Prosecution was, presumably, aware what evidence its witnesses would give, as a number of Prosecution witnesses in the instant case also testified in the *Brima et al.* trial and the *Sesay et al.* trial in respect of the same events.

196. para. 42: For the reasons given, the Appeals Chamber comes to the conclusion that the Trial Chamber did not err in law in finding that the non-specific and inclusive pleading of locations in the Indictment was defective.

197. para. 43: The Prosecution, however, contends in the alternative that, even if the Indictment was defective, the Trial Chamber erred in law by failing to consider whether the defect was cured by other forms of timely, clear and consistent notice to Taylor of the unspecified locations.[102]

198. para. 44: It needs to be emphasised that the indictment is the primary accusatory instrument.[103] It is, therefore, incumbent on the Prosecution to plead in the indictment with such specificity[104] as would satisfy the accused's right to be informed of the nature and cause of the charges against him and afford him adequate time and facilities for the preparation of his defence.[105] The Appeals Chamber opines that even though a Trial Chamber may, in the interest of justice and consistent with the rights of the accused, consider whether a defective pleading was cured by the provision of timely, clear and consistent information detailing the factual basis underpinning the charges,[106] the Prosecution may not rely on a defective pleading in the expectation that it will be subsequently rectified by the Trial Chamber. Besides, the Trial Chamber is not obliged to find a cure for a defective indictment.[107] For these reasons, the Appeals Chamber finds this argument misdirected and rejects it.

(ii) Evaluation of Evidence

199. See below: Annex B encompasses the discussion of the evaluation of evidence relating to all the crimes [Annex B].

200. Regarding Taylor's Criminal Liability, see below: Chapter 12 (Article 6.1 Liability) – Taylor – Appellate Judgment – Findings and Conclusions – Taylor's Criminal Liability – paras. 497-595 [6630].

B. RUF

1. Indictment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-2004-15-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

201. Paragraph 19 through 39 are incorporated by reference.[6]

202. These attacks [para.41: 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] were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property.[7]

203. 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 used in combat training and active fighting. AFRC/RUF also physically mutilated men, women and children, including amputating their hands and feet and carving "AFRC" and "RUF" on their bodies.[8]

[6] *Prosecutor v Sesay, Kallon and Gbao*, SCSL-2004-15-PT, Corrected Amended Consolidated Indictment, para. 40 ("RUF Indictment").
[7] RUF Indictment, para. 42.
[8] RUF Indictment, para. 43.

(ii) Counts 1-2: Terrorizing Civilian Population and Collective Punishments

204. Members of the AFRC/RUF subordinate to and/or acting in concert with Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, committed crimes set forth below in paragraphs 45 through 82, and charged in counts 3 through 14, as part of a campaign to terrorize the civilian population. The AFRC/RUF also committed the crimes to punish the civilian population or 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.[9]

205. 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[10]

(iii) Count 14: Looting and Burning

206. At all times relevant to this Indictment, AFRC/RUF engaged in widespread unlawful taking and destruction by burning civilian property. This looting and burning included the following:[11]

> i. Bo District: Between 1 June 1997 and 30 June 1997, AFRC/RUF forces looted and burned and unknown number of civilian houses in Telu, Sembehun, Mamboma and Tikonko;[12]
>
> ii. Koinadugu District: 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;[13]

[9] RUF Indictment, para. 44.
[10] RUF Indictment, para. 44.
[11] RUF Indictment, para. 77.
[12] RUF Indictment, para. 78.
[13] RUF Indictment, para. 79.

iii. Kono District: 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;[14]

iv. Bombali District: 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;[15]

v. Freetown and the Western Area: 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;[16]

207. 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.[17]

2. Trial Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-T, Judgement, 2 March 2009

[14] RUF Indictment, para. 80.
[15] RUF Indictment, para. 81.
[16] RUF Indictment, para. 82.
[17] RUF Indictment, para. 82.

(a) Factual Findings

(i) Kono District – Crimes

a. Background to Kono District – Kono District – Crimes

208. para. 1136: Kono District is in the east of Sierra Leone and its major town is Koidu.[2176] Koidu 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.

209. para. 1137: The RUF leadership Seely 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]

210. para. 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.

211. para. 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 period.[2185]

b. Koidu Town – Kono District – Crimes

i. Looting and Burning upon arrival in Koidu – Koidu Town – Kono District – Crimes

212. para. 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]

213. para. 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]

214. para. 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 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]

215. para. 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]

216. para. 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]

ii. Looting of Tankoro bank – Koidu Town – Kono District – Crimes

217. para. 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]

iii. Killings during attack on Koidu – Koidu Town – Kono District – Crimes

218. para. 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 being held captive.[2202] An unknown number of civilians were killed by Junta forces at other locations in Koidu during this attack.[2203]

iv. Killing of civilians by Rocky and his men – Koidu Town – Kono District – Crimes

219. para. 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]

220. para. 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]

221. para. 1149: Soldiers then brought forward a 15 year old boy and place his right hand on a stick. He 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]

222. para. 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]

223. para. 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]

v. Rapes in Koidu – Koidu Town – Kono District – Crimes

224. para. 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]

225. para. 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]

vi. Sexual slavery and 'forced marriages' – Koidu Town – Kono District – Crimes

226. para. 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]

227. para. 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]

vii. Burning during retreat from Kono – Koidu Town – Kono District – Crimes

228. para. 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]

229. para. 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]

230. para. 1158: As the rebels retreated from Koidu, they destroyed the Sewafe Bridge so that ECOMOG forces would be unable to defend the town.[2222]

c. Tombodu – Kono District – Crimes

i. Burning of civilian homes – Tombodu – Kono District – Crimes

231. para. 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]

232. para. 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]

ii. Beating and Looting of civilian petty traders – Tombodu – Kono District – Crimes

233. para. 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]

234. para. 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:

> 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]

235. para. 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]

236. para. 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]

iii. Killings by Savage and Staff Alhaji – Tombodu – Kono District – Crimes

237. para. 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]

238. para. 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 informed that this pit was called "Savage Pit".[2236]

239. para. 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]

240. para. 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]

241. para. 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]

iv. Killing of Chief Sogbeh – Tombodu – Kono District – Crimes

242. para. 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]

v. Rape of a woman by Staff Alhaji – Tombodu – Kono District – Crimes

243. para. 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 woman." [2244]

vi. Amputations by Staff Alhaji's men – Tombodu – Kono District – Crimes

244. para. 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]

vii. Floggings by Staff Alhaji and his men – Tombodu – Kono District – Crimes

245. para. 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]

d. Wendedu – Kono District – Crimes

i. Killing of female Nigerian civilian – Wendedu – Kono District – Crimes

246. para. 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.

247. para. 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, who was the RUF Battle Group Commander.[2247]

ii. Killing of Sata Sesay's family – Wendedu – Kono District – Crimes

248. para. 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]

iii. Beating of TF1-015 – Wendedu – Kono District – Crimes

249. para. 1777: 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

iv. Sexual slavery and 'forced marriages' – Wendedu – Kono District – Crimes

250. para. 1778: 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 did not see her again until after disarmament.[2252]

251. para. 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]

e. Sawao – Kono District – Crimes

i. Rapes, beatings and amputations – Sawao – Kono District – Crimes

252. para. 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]

253. para. 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]

254. para. 1182: The rebels ordered the civilians to carry loads on their head to Sawao.[2261] When the 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]

255. para. 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]

256. para. 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]

257. para. 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 this maltreatment has experienced physical pain for five years.[2269]

f. Yardu – Kono District – Crimes

i. Killings and amputations – Yardu – Kono District – Crimes

258. para. 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]

259. para. 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]

g. PC Ground – Kono District – Crimes

i. Killings – PC Ground – Kono District – Crimes

260. para. 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]

261. para. 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]

h. Kayima – Kono District – Crimes

i. Carving 'AFRC/RUF' on civilians – Kayima – Kono District – Crimes

262. para. 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]

i. Penduma – Kono District – Crimes

i. Rapes, Killings and Amputations – Penduma – Kono District – Crimes

263. para. 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]

264. para. 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]

265. para. 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]

266. para. 1194: Men holding guns ordered him to watch and to count the men raping his wife. His 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]

267. para. 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]

268. para. 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]

269. para. 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]

270. para. 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 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]

271. para. 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]

272. para. 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]

j. Koidu Buma – Kono District – Crimes

i. Killing of 15 civilians – Koidu Buma – Kono District – Crimes

273. para. 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]

k. Bumpeh – Kono District – Crimes

i. Rapes and sexual violence – Bumpeh – Kono District – Crimes

274. para. 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.

275. para. 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]

l. Bomboafuidu – Kono District – Crimes

i. Rape and sexual violence – Bomboafuidu – Kono District – Crimes

276. para. 1207: TF1-192 and 20 other civilians were captured in Bomboafuidu at the beginning of the 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]

277. para. 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]

m. Tomandu – Kono District – Crimes

i. Carving 'RUF' on civilian men – Tomandu – Kono District – Crimes

278. para. 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]

279. para. 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]

n. Kissi Town – Kono District – Crimes

i. 'Forced Marriages' of TF1-016 and her daughter – Kissi Town – Kono District – Crimes

280. para. 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 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]

281. para. 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]

282. para. 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 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]

283. para. 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]

o. Forced labour of civilians (Feb to Apr 1998) – Kono District – Crimes

284. para. 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]

285. para. 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 foodfinding 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]

286. para. 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 District.[2323]

p. Treatment of civilians in RUF Camps – Kono District – Crimes

i. Background – Treatment of civilians in RUF Camps – Kono District - Crimes

287. para. 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]

288. para. 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]

289. para. 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 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]

290. para. 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]

291. para. 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]

292. para. 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]

ii. Superman Ground – Treatment of civilians in RUF Camps – Kono District – Crimes

293. para. 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]

iii. Kaidu – Treatment of civilians in RUF Camps – Kono District – Crimes

294. para. 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]

295. para. 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]

296. para. 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]

297. para. 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 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]

298. para. 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]

299. para. 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]

300. para. 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]

iv. Wendedu – Treatment of civilians in RUF Camps – Kono District – Crimes

301. para. 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,

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]

302. para. 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]

303. para. 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.

304. para. 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]

v. Kunduma – Treatment of civilians in RUF Camps – Kono District – Crimes

305. para. 1236: From Wendedu, the civilians were moved to Mogbedu, Masundu and then Madina, 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]

306. para. 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]

307. para. 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]

308. para. 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]

q. Forced mining in Kono (Dec 1998 to Jan 2000) – Kono District – Crimes

i. Overview of the mining process – Forced mining in Kono (Dec 1998 to Jan 2000) – Kono District – Crimes

309. para. 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 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]

310. para. 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]

311. para. 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 District.[2373]

312. para. 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]

313. para. 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]

314. para. 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 District.[2380] The diamonds would be used by the RUF for bartering and buying ammunitions, arms, medicine and food.[2381]

ii. "Government" mining sites in Kono District – Forced mining in Kono (Dec 1998 to Jan 2000) – Kono District – Crimes

315. para. 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]

316. para. 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 released at the end of each day.[2389]

317. para. 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]

318. para. 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]

319. para. 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, 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]

iii. Mining in Tombodu and Bendutu – Forced mining in Kono (Dec 1998 to Jan 2000) – Kono District – Crimes

320. para. 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]

321. para. 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]

322. para. 1253: If diamonds were not found, the rebels held the civilians in Tombodu responsible, 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.

323. para. 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]

324. para. 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]

325. para. 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]

326. para. 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 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.

327. para. 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]

iv. Private mining for RUF Commanders – Forced mining in Kono (Dec 1998 to Jan 2000) – Kono District – Crimes

328. para. 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]

r. Forced military training at Yengema (Dec 1998 to Jan 2000) – Kono District – Crimes

329. para. 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]

330. para. 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]

331. para. 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]

332. para. 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]

333. para. 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 the base. The SBU's life was spared by the advisor.[2432]

334. para. 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]

(ii) Kenema District – Crimes

a. Background to Kenema District – Kenema District – Crimes

335. para. 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 diamonds for their operations.[2015]

336. para. 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]

337. para. 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]

b. Kenema Town – Kenema District – Crimes

i. Introduction

338. para. 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.

ii. The "Flag Trick" and the beating of TF-122 – Kenema Town – Kenema District - Crimes

339. para. 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 Sierra Leonean flag.202 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]

340. para. 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]

iii. TF1-129 arrested by Issa Sesay – Kenema Town – Kenema District - Crimes

341. para. 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]

342. para. 1049: A rebel named Francis nicknamed Rambo heard the gunshots and came to ask what 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]

343. para. 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]

344. para. 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]

345. para. 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 the second storeroom, where he was detained overnight.[2041]

346. para. 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]

iv. 'Flogging' of Police Commissioner Konneh and Chief Police Officer Issa – Kenema Town – Kenema District – Crimes

347. para. 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]

348. para. 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]

349. para. 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 "flogged."[2049]

v. Three corpses at Mambu Street – Kenema Town – Kenema District – Crimes

350. para. 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]

vi. Killing of a suspected Kamajor at the NIC building – Kenema Town – Kenema District – Crimes

351. para. 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]

352. para. 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]

vii. Killing of Mr. Dowi – Kenema Town – Kenema District – Crimes

353. para. 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 wounds.[2055]

viii. Killing of Bonnie Wailer and two others – Kenema Town – Kenema District – Crimes

354. para. 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]

355. para. 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]

356. para. 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]

ix. Killing of two alleged thieves – Kenema Town – Kenema District – Crimes

357. para. 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 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]

x. Killing of an alleged Kamajor boss – Kenema Town – Kenema District – Crimes

358. para. 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]

xi. Arrest of suspected Kamajors in Kenema Town – Kenema Town – Kenema District – Crimes

359. para. 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]

360. para. 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]

361. para. 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]

362. para. 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]

363. para. 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]

364. para. 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]

xii. Beating and killing of B.S Massaquoi and others – Kenema Town – Kenema District – Crimes

365. para. 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. The wounds had become septic as the men had not received medical treatment.[2084]

366. para. 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]

367. para. 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]

368. para. 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]

369. para. 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. 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]

370. para. 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]

371. para. 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]

372. para. 1079: Kallon heard that Bockarie and Eddie Kanneh had killed B.S. Massaquoi and certain other civilians for supporting Kamajors.[2097]

c. Tongo Field – Kenema District – Crimes

i. Killing at Lamin Street – Tongo Field – Kenema District – Crimes

373. para. 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]

ii. Killing of Limba man for his palm wine – Tongo Field – Kenema District – Crimes

374. para. 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 hand to fire a gun at a civilian, the fighter should also be shot in the hand.[2099]

iii. Killings at Cyborg Pit - Tongo Field – Kenema District – Crimes

375. para. 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]

376. para. 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]

377. para. 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]

378. para. 1085: Sometime in August 1997, while senior Commanders were engaged in festivities, some 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]

379. para. 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]

380. para. 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]

iv. Forced mining at Tongo Field and Cyborg Pit - Tongo Field – Kenema District – Crimes

381. para. 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 Gullit.[2110]

382. para. 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 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]

383. para. 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]

384. para. 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]

385. para. 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 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]

386. para. 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]

387. para. 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]

388. para. 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]

(iii) Bo District – Crimes

a. Background to Bo District – Bo District – Crimes

389. para. 991: Bo District is located in the south of Sierra Leone. Its capital is Bo, which is often called Bo Town in order to distinguish the two. Other towns in Bo District include Tikonko, Sembehun and Gerihun.[1926]

390. para. 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]

b. Tikonko – Bo Ditsrict – Crimes

i. First attack on Tikonko – Tikonko – Bo District - Crimes

391. para. 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]

392. para. 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]

ii. Second attack on Tikonko – Tikonko – Bo District – Crimes

393. para. 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]

394. para. 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]

395. para. 997: Fighters killed one of the Kamajors with a shot to the forehead fired from the antiaircraft 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]

396. para. 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 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]

397. para. 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]

398. para. 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]

399. para. 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]

400. para. 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 of his clothing which had been set alight.[1956]

401. para. 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]

402. para. 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]

403. para. 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]

c. Sembehun – Bo District – Crimes

404. para. 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]

405. para. 1007: Bockarie and his subordinates first entered the house of Ibrahim Kamara, the section 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]

406. para. 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]

407. para. 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]

d. Gerihun – Bo District – Crimes

408. para. 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]

409. para. 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 window overlooking the entrance to the Paramount Chief's house.[1971]

410. para. 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]

411. para. 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]

412. para. 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]

(iv) Kailahun District – Crimes

a. Background to Kailahun District – Kailahun District – Crimes

413. para. 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.

414. para. 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]

415. para. 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]

416. para. 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]

417. para. 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 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]

418. para. 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.

b. Killings – Kailahun District – Crimes

i. Introduction

419. para. 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]

ii. Killing of suspected Kamajors in Kailahun Town – Killings – Kailahun District – Crimes

420. para. 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]

421. para. 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]

422. para. 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]

423. para. 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]

424. para. 1391: Tom Sandy investigated the first group, whom he declared not to be Kamajors. These 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]

425. para. 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]

426. para. 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] 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]

427. para. 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]

428. para. 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]

429. para. 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 office.[2589] The following day, civilians were ordered to dispose of the bodies.[2590]

430. para. 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]

iii. Killing of Fonti Kanu in Pendembu – Killings – Kailahun District – Crimes

431. para. 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]

432. para. 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]

iv. Killing of Foday Kallon in Buedu – Killings – Kailahun District – Crimes

433. para. 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 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]

434. para. 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.

435. para.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]

v. Killing of Dr. Kamara – Killings – Kailahun District – Crimes

436. para. 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]

437. para. 1404: As a consequence of his actions, Dr. Kamara was killed in May 1999 at the MP station in Buedu by a named RUF Commander on the instructions of Bockarie.[2609]

c. Sexual violence in Kailahun District – Kailahun District – Crimes

438. para. 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.

i. ‘Forced Marriage’ of TF1-314 – Sexual violence in Kailahun District – Kailahun District – Crimes

439. para. 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]

440. para. 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]

ii. ‘Forced Marriage’ of TF1-093 – Sexual violence in Kailahun District – Kailahun District – Crimes

441. para. 1408: In the rainy season of 1996, at the age of 15, TF1-093 was raped in Njala, Moyamba 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]

iii. ‘Forced Marriages’ of an unknown number of women – Sexual violence in Kailahun District – Kailahun District – Crimes

442. para. 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]

443. para. 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:

> 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]

444. para. 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]

445. para. 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]

446. para. 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 children to their rebel "husbands."[2629]

d. Forced labour – Kailahun District – Crimes

i. Overview – Forced labour – Kailahun District – Crimes

447. para. 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.

448. para. 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]

449. para. 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 arrested, beaten or killed.[2640]

ii. RUF "government" farms – Forced farming - Forced labour – Kailahun District – Crimes

450. para. 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]

451. para. 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 some cases to injuries, starvation and death.[2648]

452. para. 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]

453. para. 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]

454. para. 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.

455. para. 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]

456. para. 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]

457. para. 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]

iii. Farms of RUF Commanders – Forced farming - Forced labour – Kailahun District – Crimes

458. para. 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]

459. para. 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]

iv. Forced subscription of produce – Forced farming - Forced labour – Kailahun District – Crimes

460. para. 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 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]

461. para. 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]

462. para. 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 Giema to Gbao in Kailahun Town.[2691]

v. Forced Labour for trading of produce – Forced farming - Forced labour – Kailahun District – Crimes

463. para. 1430: From 1996 to 2000,[2692] the Guinea border was open for trading and civilians were 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]

464. para. 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 I Kailahun were also forced to carry logistical materials including ammunition across the Mo River to the front line areas in Kono District.[2704]

vi. Forced mining - Forced labour – Kailahun District – Crimes

465. para. 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 overseen by Mr. Patrick, a civilian.[2707]

466. para. 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]

vii. Forced military training - Forced labour – Kailahun District – Crimes

467. para. 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).

viii. Bayama Training Base (1996-1997) – Forced military training - Forced labour – Kailahun District – Crimes

468. para. 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]

ix. Bunumbu Training Base (Camp Lion) (1998) - Forced military training - Forced labour – Kailahun District – Crimes

469. para. 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]

470. para. 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]

471. para. 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]

472. para. 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 in formation, attack towns, burn houses, fight, fire AK-47s, rocket propelled grenades and double-barrelled guns.[2733]

473. para. 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]

474. para. 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]

475. para. 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.

x. Other forms of forced labour - Forced labour – Kailahun District – Crimes

476. para. 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 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]

(v) Freetown and the Western Area – Crimes

a. Background to the AFRC Attack on Freetown – Freetown and the Western Area – Crimes

477. para. 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.

i. Perpetrators of the Attack on Freetown - Background to the AFRC Attack on Freetown – Freetown and the Western Area – Crimes

478. para. 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]

479. para. 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]

480. para. 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 soldiers.[2825]

481. para. 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]

482. para. 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.

ii. Targeting of the civilian population in Freetown - Background to the AFRC Attack on Freetown – Freetown and the Western Area – Crimes

483. para. 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.

484. para. 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]

485. para. 1518: The rebels carried out abductions, rapes, lootings and killings in and around 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]

486. para. 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]

487. para. 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]

488. para. 1521: Amputations were a hallmark of the retreating forces and many civilians were subjected 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]

489. para. 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]

b. State House – Freetown and the Western Area – Crimes

490. para. 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]

c. Kingtom – Freetown and the Western Area – Crimes

491. para. 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 burned their houses.[2845]

d. Guard Street – Freetown and the Western Area – Crimes

492. para. 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]

e. Upgun and Fourah Bay - Freetown and the Western Area – Crimes

493. para. 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]

494. para. 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]

495. para. 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]

496. para. 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]

497. para. 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]

f. Wellington Freetown – Freetown and the Western Area – Crimes

i. Killing and Looting of TF1-235 and his family - Wellington– Freetown and the Western Area – Crimes

498. para. 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]

499. para. 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 back."[2862]

500. para. 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]

501. para. 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]

502. para. 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]

ii. Killings and Amputations at Loko Town – Wellington – Freetown and the Western Area – Crimes

503. para. 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]

504. para. 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 killed by the rebels.[2884]

iii. Killing, Looting and Abduction at a clinic – Wellington – Freetown and the Western Area – Crimes

505. para. 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]

iv. Looting and Burning of TF1-235's home – Wellington – Freetown and the Western Area – Crimes

506. para. 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]

507. para. 1540: The following day, 22 January 1999, TF1-235 and his family decided to return to their 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]

g. Kissy – Freetown and the Western Area – Crimes

i. Killings at Kissy Police Station - Kissy – Freetown and the Western Area – Crimes

508. para. 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]

ii. Killings and Beatings at a clinic - Kissy – Freetown and the Western Area – Crimes

509. para. 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]

510. para. 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]

511. para. 1544: Subsequently, at about 5:00pm on 18 January 1999, a group of fighters entered the 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]

512. para. 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]

iii. Killings and Amputations of TF1-101 and others - Kissy – Freetown and the Western Area – Crimes

513. para. 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.

514. para. 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] 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]

515. para. 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]

516. para. 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 hospital and seek help.[2928]

iv. Killings at Rogbalan Mosque - Kissy – Freetown and the Western Area – Crimes

517. para. 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]

518. para. 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]

519. para. 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]

v. Killings, Amputations and Looting of TF1-022 and others - Kissy – Freetown and the Western Area – Crimes

520. para. 1553: On 22 January 1999 in Kissy, TF1-022 heard gunshots and saw many houses in the 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]

521. para. 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]

vi. Amputations and Looting of TF1-097 and others - Kissy – Freetown and the Western Area – Crimes

522. para. 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 many more rebels walking with machetes, axes and wooden sticks, and also observed them torching houses.[2950]

523. para. 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]

vii. Abduction of nuns at Kissy Mental Home - Kissy – Freetown and the Western Area – Crimes

524. para. 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]

h. Allan Town, Calaba Town and Benguema – Freetown and the Western Area – Crimes

i. 'Forced Marriage' of TF1-023 - Allan Town, Calaba Town and Benguema– Freetown and the Western Area – Crimes

525. para. 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 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]

526. para. 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]

527. para. 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]

528. para. 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] 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]

ii. 'Forced Marriage' of TF1-029 - Allan Town, Calaba Town and Benguema – Freetown and the Western Area – Crimes

529. para. 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]

530. para. 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]

531. para. 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 rebels and at least one civilian was killed.[2983]

532. para. 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]

(vi) Koinadugu District – Crimes

533. para. 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]

534. para. 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]

535. para. 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] Alikalia,[2796] Badela,[2797] and Dankawalie.[2798]

536. para. 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.

537. para. 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.

538. para. 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 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]

539. para. 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]

540. para. 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.

541. para. 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 thetroops 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.

542. para. 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 cannot be attributed to the Accused.

(vii) Bombali District – Crimes

543. para. 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.

544. para. 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]

545. para. 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 assistance from the RUF during their operations.

546. para. 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 cannot be attributed to the Accused.

(viii) Port Loko District – Crimes

547. para. 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.

548. para. 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]

549. para. 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.

550. para. 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.

551. para. 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.

(b) Legal Conclusions

(i) Applicable Law - War Crimes / Violations of Common Article 3

552. para. 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.

553. para. 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.

554. para.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.

a. The existence of an armed conflict – Applicable law – War crimes / Violations of Common Article 3

555. para. 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]

556. para. 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]

557. para. 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 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.

558. para. 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]

559. para. 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]

560. para. 99: The Chamber is of the opinion that international humanitarian law applies from the 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]

b. Nexus – Applicable law – War crimes / Violations of Common Article 3

561. para. 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 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]

562. para. 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]

c. Protected persons – Applicable law – War crimes / Violations of Common Article 3

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

564. para. 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.

565. para. 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]

566. para. 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]

(ii) War Crimes / Violations of Common Article 3 – Findings on General Requirements

567. para. 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 war crimes charged.[1886]

568. para. 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]

569. para. 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 organized 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]

570. para. 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.

571. para. 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.

a. State of Armed Conflict in Sierra Leone - War Crimes / Violations of Common Article 3 – Findings on General Requirements

572. para. 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]

573. para. 970: The Chamber further took judicial notice of the fact that the RUF began "organized armed operations" in March 1991 and that the RUF, AFRC and CDF were involved in the armed conflict in Sierra Leone.[1892]

b. Nature of the Sierra Leone Conflict - War Crimes / Violations of Common Article 3 – Findings on General Requirements

574. para. 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]

575. para. 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]

576. para. 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 recognized Kabbah Government, its intervention cannot be classed as recourse to armed force between two States.[1896]

577. para. 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.

578. para. 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]

579. para. 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.

580. para. 977: The Chamber therefore finds that the armed conflict in Sierra Leone was of a non-international character.[1901]

c. General Requirements of AP II - War Crimes / Violations of Common Article 3 – Findings on General Requirements

581. para. 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.

582. para. 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]

583. para. 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]

584. para. 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 threshold would necessarily constitute an armed conflict under Common Article 3.[1909]

d. Law of Occupation - War Crimes / Violations of Common Article 3 – Findings on General Requirements

585. para. 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]

586. para. 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]

587. para. 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]

588. para. 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]

589. para. 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.

590. para. 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 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.

591. para. 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.

(iii) Applicable Law - Acts of Terrorism

592. para. 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]

593. para. 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]

594. para. 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]

595. para. 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

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

596. para. 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.

597. para. 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]

598. para. 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]

599. para. 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 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]

600. para. 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]

601. para. 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]

602. para. 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]

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

(iv) Pleading

a. Criminal Acts and Events - Pleading

604. para. 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 Indictment.[794]

605. para. 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]

606. para. 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]

607. para. 414: In the Bill of Particulars, the Prosecution specified the additional criminal acts on 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]

608. para. 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]

609. para. 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]

610. para. 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 Counts 6 to 9 of the Indictment in Kono District.[811]

611. para. 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.

612. para. 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.

b. Locations - Pleading

613. para. 420: The Sesay and Kallon Defence both argued in their Final Trial Briefs that theIndictment 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 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]

614. para. 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]

615. para. 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.

c. Timeframes – Pleading

616. para. 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]

617. para. 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 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]

618. para. 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.

619. para. 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 of the conflict.

620. para. 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.

621. para. 428: The Chamber considers, therefore, that this manner of pleading did not adversely affect the ability of the Accused to prepare their defence.

622. para. 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.

623. para. 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]

624. para. 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]

625. para. 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.

d. Conduct Charged under Common Article 3 and Additional Protocol II – Pleading

626. para. 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]

627. para. 437: The Kallon Defence also submitted that the Indictment does not plead the nature of 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]

628. para. 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.

629. para. 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]

630. para. 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.

631. para. 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.

632. para. 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.

633. para. 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]

634. para. 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]

635. para. 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.

636. para. 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]

637. para. 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.

e. Acts of Terrorism – Pleading

638. para. 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]

639. para. 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".

640. para. 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]

641. para. 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 elements of the crimes enumerated in paragraph 28.[867]

642. para. 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.

643. para. 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]

(v) Kono District – Acts of Terrorism

644. para. 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).

645. para. 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.

646. para. 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.

a. Unlawful Killings as Acts of Terrorism – Kono District – Acts of Terrorism

647. para. 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 June1998;[2501]

(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]

648. para. 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.

649. para. 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.

650. para. 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.

651. para. 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.

b. Sexual Violence as Acts of Terrorism – Kono District – Acts of Terrorism

i. General Considerations – Sexual Violence as Acts of Terrorism – Kono District – Acts of Terrorism

652. para. 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.

653. para. 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]

654. para. 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.

655. para. 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 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.

656. para. 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]

657. para. 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 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.

658. para. 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.

ii. Koidu Town – Sexual Violence as Acts of Terrorism – Kono District – Acts of Terrorism

659. para. 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.

iii. Rapes in Other Locations – Sexual Violence as Acts of Terrorism – Kono District – Acts of Terrorism

660. para. 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 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.

661. para. 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.

iv. Sexual Slavery, 'Forced Marriage' as Acts of Terrorism – Sexual Violence as Acts of Terrorism – Kono District – Acts of Terrorism

662. para. 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.

(c) Physical Violence as Acts of Terrorism – Kono District – Acts of Terrorism

663. para. 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.

664. para. 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.

(d) Enslavement as Acts of Terrorism – Kono District – Acts of Terrorism

665. para. 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.

666. para. 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.

(e) Looting and Burning as Acts of Terrorism – Kono District – Acts of Terrorism

(i) Attack on Koidu Town and Tombodu – Looting and Burning as Acts of Terrorism – Kono District – Acts of Terrorism

667. para. 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 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.

(ii) Retreat from Koidu Town – Looting and Burning as Acts of Terrorism – Kono District – Acts of Terrorism

668. para. 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.

(iii) Koidu Town - Looting and Burning as Acts of Terrorism – Kono District – Acts of Terrorism

669. para. 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.

670. para. 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.

(iv) Tombodu - Looting and Burning as Acts of Terrorism – Kono District – Acts of Terrorism

671. para. 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.

(v) Kenema District – Acts of Terrorism

672. para. 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]

673. para. 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.

674. para. 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]

a. Kenema Town – Kenema District – Acts of Terrorism

675. para. 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]

676. para. 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.

677. para. 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.

678. para. 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 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.

b. Tongo Field – Kenema District – Acts of Terrorism

679. para. 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.

680. para. 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.

681. para. 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 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.

682. para. 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.

(vi) Bo District – Acts of Terrorism

683. para. 1031: 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 spread terror among the civilian population.

a. Tikonko

684. para. 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.

685. para. 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.

b. Sembehun

686. para. 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.

687. para. 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.

c. Gerihun

688. para. 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.

689. para. 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.

(vii) Kailahun District – Acts of Terrorism

690. para. 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).

691. para. 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.

692. para. 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 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]

a. Killings of 63 Civilians Accused of Being Kamajors – Kailahun District – Acts of Terrorism

693. para. 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.

694. para. 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.

b. Sexual Violence and Enslavement in Kailahun District – Kailahun District – Acts of Terrorism

695. para. 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.

696. para. 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.

697. para. 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 been responsible. The Chamber therefore finds that these crimes did not constitute acts of collective punishment as charged in Count 2.

(viii) Freetown and the Western Area – Acts of Terrorism

698. para. 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).

699. para. 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.

700. para. 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]

701. para. 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]

702. para. 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 civilianswere 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]

703. para. 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 population in terror, a consequence of the practice of the AFRC rebels to spread fear within the civilian population.

704. para. 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]

705. para. 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.

706. para. 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.

707. para. 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.

708. para. 1604: For the foregoing reasons, the Chamber finds that the unlawful killings, sexual violence, physical violence, abductions, forced labour, threats, looting and burning described above constitute acts of terrorism as charged in Count 1 of the Indictment.

(ix) Koinadugu District – Acts of Terrorism

709. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras.1496-1505 [533].

(x) Bombali District – Acts of Terrorism

710. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras.1506-1509 [543].

(xi) Port Loko District – Acts of Terrorism

711. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras.1609-1613 [547].

3. Appellate Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-A, Judgment, 26 October 2009

(a) Factual Findings

(i) Kono District

712. para. 428: As an introductory remark, the Appeals Chamber notes that the crimes in Kono District were found to have been committed after the ECOMOG intervention on 14 February 1998 ousted the AFRC/RUF Junta from Freetown. The Trial Chamber found that AFRC/RUF troops launched a failed attack on Kono District in the second half of February, but that around 1 March 1998 they get to capture Koidu Town.[1066] After this successful attack, the AFRC and RUF were

found to have organised an integrated command structure in Koidu Town, which included the JCE members Johnny Paul Koroma, Sesay, Superman and Bazzy.[1067] The Trial Chamber found that in early April 1998 ECOMOG troops forced the AFRC/RUF to retreat from Koidu Town.[1068]

(b) Legal Conclusions

(i) Pleading

713. para. 83: The Trial Chamber stated as a matter of law that conduct that was adequately pleaded in the Indictment would be considered under the offences of acts of terrorism and collective punishments, even if such conduct does not satisfy the elements of any other crimes charged in the Indictment.[168] In these grounds, Sesay does not contest the holding that, as a matter of law, acts not amounting to one of the offences listed in Counts 3-14 could be the basis of a conviction for acts of terrorism or collective punishments; rather, he contests the holding that the Indictment provided him with adequate notice that the acts of terrorism and collective punishments, as pleaded in Count 1 and Count 2, included such acts, and in particular acts of burning.

714. para. 84: The Trial Chamber's finding that Counts 1 and 2 included acts of burning was based in part on the Appeals Chamber's decision in regard to the legal character of acts of terrorism and on the pleading of that crime in the *Fofana and Kondewa* Indictment.[169] The Appeals Chamber held that: (i) acts of terrorism need not involve acts that are otherwise criminal under international criminal law, (ii) whether the Trial Chamber should have considered acts of burning as acts of terrorism turned on the pleading in the Indictment, (iii) the material facts which supported Count 6 (acts of terrorism) of the indictment in that case were the material facts pleaded in relation to Counts 1 to 5 of the indictment, including "threats to kill, destroy and loot," and (iv) the Trial Chamber should have considered all conduct that was adequately pleaded in the Indictment, including acts of burning, irrespective of whether it satisfied the elements of any other crime.[170]

715. para. 85: The material facts pleaded in relation to Counts 1 to 5 of the *Fofana and Kondewa* Indictment include "threats to kill, destroy and loot," and as a consequence of that pleading the Appeals Chamber found that the Trial Chamber erred in only considering crimes charged and found to have been committed as acts of terrorism.[171] It found that this error resulted from the *Fofana and Kondewa* Trial Chamber's exclusion of the phrase "threats to kill, destroy and loot" from its interpretation of the pleading of the count charging acts of terrorism. Since the holding in *Fofana and Kondewa* rested in part on the notice provided by the phrase "threats to kill,

destroy and loot," and the Indictment in this case omits that phrase, it cannot be said that the Indictment has provided notice to the Accused in the same manner.

716. para. 86: It is undisputed that the Indictment in this case charged acts of burning as a crime under Count 14.[172] Whether the Indictment also provided notice that acts of burning were charged as acts of terrorism and collective punishments turns on a reading of the Indictment as a whole, and in particular the provisions relevant to the pleading of the material fact of acts of burning.[173]

717. para. 87: Paragraph 44 of the Indictment states that the Accused "committed the crimes set forth below in paragraphs 45 through 82 and charged in Counts 3 through 14, as part of a campaign to terrorize the civilian population." In the text after paragraph 44, the Indictment refers to the conduct charged as "these events" and this phrasing is used in relation to each of the counts in the Indictment which each allege that the accused incurred individual criminal responsibility for their acts or omissions in relation to "these events ... for the crimes alleged below."[174] Use of the expression "these events" in this manner indicates that it does not refer to the "crimes" themselves, since this would result in an illogical construction. Rather, the phrase "these events" as used in paragraph 45 and elsewhere in the Indictment refers to the conduct alleged under the relevant Count.

718. para. 88: The Indictment provides further notice to the accused that destruction and burning are charged as acts of terrorism and collective punishments. In paragraph 42, under the heading "Charges," the Indictment alleges that:

> attacks were carried out primarily to terrorise the civilian population, but also were used to punish the population for [their conduct.] ... The attacks included ... 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.

719. para. 89: For these reasons, the Appeals Chamber is satisfied that the Indictment provided adequate notice to Sesay that acts of burning were charged as acts of terrorism and collective punishments.

720. para. 132: Kallon challenges the pleading of his liability as a superior for crimes in Kono District. The Appeals Chamber notes that he was convicted pursuant to Article 6(3) of the Statute of the following crimes in Kono District:

> (i) Acts of terrorism (Count 1), for sexual slavery in Kissi Town, Kono District;
>
> (ii) Sexual slavery (Count 7) in Kissi Town, Kono District;

(iii) Other inhumane acts (forced marriage) (Count 8) in Kissi Town, Kono District;

(iv) Outrages upon personal dignity (Count 9) in Kissi Town, Kono District;

(v) Enslavement (Count 13) in relation to events in unspecified locations in Kono District;

721. para. 133: Kallon makes general submissions that he lacked notice that he was alleged to have superior responsibility for crimes committed in Kono District, but he fails to provide substantiating arguments.[257] His submissions are at odds with a plain reading of the Indictment. It charges that Kallon "was a senior officer and Commander in the RUF, Junta and AFRC/RUF forces,"[258] and that when he was a "Battle Field Inspector, … he was subordinate only to the RUF Battle Group Commander, the Battlefield Commander, the leader of the RUF … and the leader of the AFRC."[259] Kallon was BFI at the times relevant to his convictions for crimes in Kono.[260] The Indictment further charges that in his position, Kallon "exercised authority, command and control over all subordinate members of the RUF, Junta and AFRC/RUF forces"[261] and that he "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 … failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof."[262] The Indictment expressly lists locations in Kono District as those at which the crimes charged under Counts 6-9 and 13 were committed[263] and states that by his "acts or omissions in relation to these events, … MORRIS KALLON …, pursuant to … Article 6.3. of the Statute, [is] individually criminally responsible for" the crimes charged under Counts 6-9 and 13.[264]

722. para. 134: In relation to sexual violence, forced marriages and acts of terrorism at Kissi Town in Kono District, Kallon additionally argues that his subordinates at Kissi Town "were never sufficiently or at all particularized."[265] The Appeals Chamber notes, however, that in addition to the pleading of Kallon's superior position, discussed above, the Indictment states that the crimes were committed by "members of AFRC/RUF" at "Kissi-town (or Kissi Town)… and AFRC/RUF camps such as … Kissi-town (or Kissi Town) camp."[266] The Indictment, therefore, puts Kallon on notice of the charge that ARFC/RUF members who were his subordinates at Kissi Town committed the crimes charged in Counts 6-9. Kallon fails to argue how this pleading did not sufficiently identify his subordinates.

723. para. 492: The Appeals Chamber holds that so long as Gbao agreed to the Common Criminal Purpose and was, therefore, a member of the JCE as the Trial Chamber found,[1256] he is responsible for all crimes that he either intended, or were naturally foreseeable would be

committed by members of the JCE or persons under their control. This is consistent with the pleading of the crimes in the Indictment (which must be read in its entirety) and which pleaded each of the crimes in Count 1 to 14 as either within the JCE or as a reasonably foreseeable consequence of the JCE.[1257]

724. para. 877: The Trial Chamber found that acts of terrorism were committed in Bo,[2278] Kenema,[2279] Kailahun,[2280] and Kono Districts.[2281] In Bo,[2282] Kenema,[2283] Kailahun,[2284] Kono Districts,[2285] Kallon incurred Article 6(1) JCE liability for crimes committed under Count 1.

725. para. 883: Kallon submits that the Trial Chamber "erred in law by relying on the burning of civilian homes in Rembodu [*sic*][2293] and Koidu Town not pleaded in the indictment. This occasioned prejudice to the Accused preparation for defence as he had no notice of these occasions and crimes."[2294] As a preliminary matter, the Appeals Chamber notes that the Trial Chamber makes no reference to the location "Rembodu" in its judgment. The Appeals Chamber therefore understands Kallon to contend that he lacked notice of the crimes because ***Koidu Town*** was not a named location in the Indictment under Count 14, which pertained to acts of burning.

726. para. 884: The Indictment particularises the charge under Counts 14 in relation to Kono District as follows:

> 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.[2295]

727. para. 885: The relevant question on appeal is whether the pleading of locations of acts of burning in Kono District as "in *various locations* in the District, including Tombodu, Foindu and Yardu Sando" without naming Koidu Town, is sufficiently specific to allow Kallon to prepare his defence for alleged JCE liability for acts of burning as terrorism in Koidu Town.

728. para. 886: The Appeals Chamber recalls that the specificity required for the pleading of locations will depend on factors including those previously discussed.[2296] Kallon was convicted for acts of burning as acts of terrorism pursuant to his participation in the JCE. His liability for these acts derives significantly from his conduct in relation to other events and crimes, including those committed in locations in Kono that were pleaded with sufficient specificity.[2297] Much of his culpable conduct did not occur in Koidu Town, and therefore the pleading of the location does not require a high degree of specificity for Kallon's ability to prepare his defence with respect to his culpable conduct.

729. para. 887: In regard to his notice of the alleged criminal acts in Koidu Town, the Appeals Chamber recalls that the Trial Chamber found that nonexhaustive pleading of locations may be adequate in light of the "sheer scale" of the alleged crimes.[2298] Therefore, in this case, Kallon had adequate notice notwithstanding the nonexhaustive pleading of locations.[2299] The Appeals Chamber has not found error in the Trial Chamber's general approach to applying the exception,[2300] and Kallon has not offered any argument as to why this exception to the requirements for pleading specificity should not apply to the pleading of acts of burning in Koidu Town, in view of the fact that his liability is pursuant to his participation in the JCE. Accordingly, the Appeals Chamber, Justices Winter and Fisher dissenting, reject Kallon's submission.

(ii) Pleading – Dissents

a. Justice Fisher:

730. para. 65 (p.529): In Ground 16, Kallon contends he lacked notice of acts of burning as acts of terrorism in Koidu Town. Sesay similarly objects in his Ground 8. Acts of burning were charged under Counts 1, 2 and 14,[92] but none of these counts names Koidu Town as a location.[93] The Appeals Chamber denied these grounds and reasoned that because much of Kallon's conduct that gave rise to his JCE liability for the crimes did not occur in Koidu Town, the location did not need to be pleaded with greater specificity for Appellants to prepare their defence.

731. para. 66 (p.529-530): In my view, this reasoning is correct only to the extent that an accused's ability to provide certain defences, such as alibi, depend on his ability to challenge evidence of his presence at the location where his culpable conduct was alleged to have taken place.[94] The accused, however, is entitled to prepare a defence against *both* the allegation that the crime occurred and the allegation that he is liable for the crime (*i.e.*, "the nature and cause of the charges"[95]). To defend against the former, he must have adequate notice of the location of the offence, which would not vary as a result of the mode of liability charged. Thus, the Majority's inquiry should not have ended with its examination of the form of the accused's participation in the crime. It should have also examined whether the other factors it identified led to the conclusion that the accused had sufficient notice of the location of the crimes.

732. para. 67 (p.530): In applying those factors, I consider that the failure to plead Koidu Town as the location of burning as acts of terrorism and collective punishment rendered the Indictment defective as to this criminal incident. In contrast to the systemic looting described above, the burnings of civilian houses did not happen simultaneously in many locations within a larger area

which was sufficiently pleaded. Instead, as found by the Trial Chamber, it was restricted to Koidu Town[96] in order to punish civilians for failing to support the AFRC/RUF.[97] The only other location in Kono District in which the Trial Chamber found burnings was Tombodu, a village which was much smaller than Koidu Town and removed by some considerable distance. Tombodu was specifically pleaded in the Indictment.[98] Koidu Town, the seat of Kono District and the site of significant destruction by burning, was not. There was nothing in the Indictment to place Sesay or Kallon on notice that they were being charged with the crimes of acts of terrorism and collective punishments for the large scale burning of Koidu Town, crimes for which they were ultimately convicted.

733. para. 70 (p.531): The Majority concludes, I believe wrongly, that the Trial Chamber was correct when it declined to review on appeal the adequacy of the pleading of locations and relied instead on its pre-trial decisions on the form of the Indictment. That Trial Court decision, which the Majority upholds, relied on the mode of liability and in addition the "sheer scale" exception without inquiring further as to the necessity for, or the practicability of, alleging particular locations. It concluded that pleading entire districts or using phrases "such as" and "including but not limited to" was "acceptable if the reference is … to locations but not otherwise."[104] The Trial Chamber fails to reason this conclusion or explain why location is as a general matter less material to notice necessary to understand the charges and prepare a defence than other facts for which it did not allow such vague pleading.

734. para. 71 (p.531-532): In my view, the Majority wrongly upholds the Trial Chamber in its application of the "sheer scale" exception to the pleading of locations because the exception does not apply when it is practicable for the Prosecution to adduce witness evidence of the material fact.[105] Contrary to the approach adopted by the Trial Chamber in its pre-trial decision on the form of the Indictment, it is not enough simply to find the cataclysmic dimensions of the alleged criminality.[106] Rather, the "sheer scale" exception is grounded in the impracticability of pleading in greater detail *as a consequence* of the scale of the alleged crimes,[107] and the Trial Chamber therefore must assess not only the general dimensions of the criminality, but, given the crimes as pleaded in the Indictment, whether the scale of the crimes charged made it "impracticable" for the Prosecution to plead locations with greater specificity.[108] As held by the ICTY and ICTR Appeals Chambers, the Prosecution is expected to know its case before proceeding to trial and may not rely on the weaknesses of its own investigation in order to mould the case against the accused in the course of the trial depending on how the evidence unfolds.[109]

735. para. 72 (p.532): The Prosecution did know before proceeding to trial about the acts of mutilation and physical violence against the four persons in *Penduma* and *Yardu*. The Prosecution's Supplemental Pre-Trial Brief shows that it would adduce evidence of the exact crimes under Counts 10 and 11 that were found to have occurred at those villages. In relation to *Penduma*, the Prosecution knew it had a witness who would, and did, testify with specificity about the specific events of the crime.[110] In relation to *Yardu*, the Prosecution knew that the witness it would later rely upon at trial expressly named *Yardu* during the investigation as the location of the exact crimes which were found by the Trial Chamber.[111]

736. para. 73 (p.532-533): Likewise, it was practicable for the Prosecution to include in the Indictment that the burnings that were charged as Acts of Terrorism and Collective Punishment in Kono occurred in Koidu Town. The Prosecution Supplemental Pre-Trial Brief shows that a witness relied upon by the Trial Chamber would give evidence in relation to Koidu Town, that the "rebels burnt the town."[112]

737. para. 74 (p.533): This information might have been considered (with additional disclosures) to cure the defective Indictment, but, as the Appeals Chamber noted, "the Prosecution bears the burden of showing on appeal that the defect in the Indictment did not prejudice Kallon's ability to prepare his defence. The Prosecution has not offered any submissions that Kallon had notice of the charge as a result of timely, clear and consistent information detailing the factual underpinnings of the charge."[113]

738. para. 75 (p.533): Since the Prosecution knew from the outset the evidence with which it intended to establish these discrete and site-specific crimes, the "sheer scale" exception did not apply. The Trial Chamber's application of the "sheer scale" exception to relieve the Prosecution of its duty to name these locations in the Indictment is, in my opinion, an error, resulting from the Trial Chamber's failure to first inquire as to whether it was practicable for the Prosecution to provide more details in the Indictment.

739. para. 76 (p.533): The error is compounded by the Trial Chamber's attenuated analysis of whether the pleading of locations was defective. Rather than properly assessing the degree of specificity required for the pleading of locations, the Trial Chamber wrongly considered the Appeals Chamber to have "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."[114] Relying in part on this incorrect reading of the Appeals Chamber's holding in *Brima et al.*, the Trial Chamber failed to consider whether the Appellants lacked sufficient notice of crimes charged at locations that were not named in the Indictment.[115]

740. para. 77 (p.533-534): Contrary to the interpretation ascribed by the Trial Chamber, the Appeals Chamber actually held that the *Brima et al.* Trial Chamber properly exercised its discretion to (i) reverse a previous decision that the pleading of locations was sufficient, (ii) hold that the pleading of locations was defective, and (iii) refuse to enter convictions for crimes at unnamed locations. The Appeals Chamber stated that it falls within the discretion of a Trial Chamber to reconsider such a decision if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice.[116] The Appeals Chamber further held that:

> [T]he Trial Chamber's limited treatment of the evidence of crimes committed in such locations was a proper exercise of its discretion in the interest of justice, taking into account that it is the Prosecution's obligation to plead clearly material facts it intends to prove, so as to afford the Appellants a fair trial.[117]

741. para. 78 (p.534): By so holding, the Appeals Chamber agreed with the *Brima et al.* Trial Chamber that the pleading of locations non-exhaustively through the use of phrases such as "in locations including," "in various locations in [a specified] District, including," "in several locations including" is insufficiently specific and can render an indictment defective in regard to crimes charged at unnamed locations.

742. para. 79 (p.534): I recognise that in cases of crimes committed on a massive scale there are inherent difficulties in pleading the material facts, such as the identity of the victims, the time and place of the events, and the means by which the offence was committed. Nonetheless, since the *Brima et al.* Appeal Judgment, the Appeals Chamber has held that Trial Chambers must apply the "sheer scale" exception in a manner that safeguards the fair trial rights of the accused. To do so, I would submit, the Trial Chamber must determine the degree of specificity for pleading locations particular to the charges in the Indictment and whether it is practicable for the Prosecution to plead location with sufficient specificity to give notice of the crimes alleged. The factors provided by the Appeals Chamber, and discussed above, guide an assessment of the required degree of specificity for pleading locations. It is my view that such inquiry must focus on the relevance of location both to the accused's ability to defend against the crime itself and against his liability for the crime.

743. para. 80 (p.534-535): As held by the ICTY and ICTR Appeals Chambers, where the Trial Chamber finds that the Prosecution was capable of pleading a material fact, but it did not, then the "sheer scale" exception does not apply.[118] If the Trial Chamber concludes that the Indictment is defective, such defects will render the trial unfair with respect to the affected charge if the Prosecution has not cured the resulting prejudice by providing timely, clear and consistent notice of the material facts of the charge.[119]

744. para. 81 (p.535): For the reasons above, I find the locations of the crimes in Penduma and *Yardu*, and the burnings in Koidu Town should have been pleaded in the Indictment by reference to the village and town names. The sheer scale exception does not excuse the Prosecution's failure to plead the names of the locations when it knew from the outset the evidence with which it intended to establish that these discrete crimes occurred at specified locations. The resulting prejudice from these defects may have been cured by subsequent Prosecution disclosures, but, if so, the Prosecution made no attempt to demonstrate this.

745. para. 82 (p.535): I therefore find the Indictment defective with respect to the pleading of Koidu Town under Counts 1, 2 and 14 and *Penduma* and *Yardu* under Counts 10 and 11. I further find that although the pleading of Penduma and Yardu under Counts 10 and 11 was only challenged on appeal by Kallon, the lack of notice with respect to these named locations affected the fair trial rights of Sesay as well since he was also convicted for these crimes.[120] I would, therefore, allow Sesay's Ground 8, in part, and Kallon's Grounds 19 and 22 and reverse the convictions for Sesay and Kallon under Counts 1 and 2 for acts of burning in Koidu Town and Counts 10 and 11 for the crimes at *Penduma* and *Yardu* in Kono District. As I would not have found JCE liability for Gbao, I need not address his liability for crimes at these locations.

746. para. 20 (p.517): The primary justification suggested by the Majority for its radical departure from customary international law is that its conflation of JCE 1 and JCE 3 *mens rea* standards "is consistent with the pleading of the crimes in the Indictment."[33] That an Indictment may plead in the alternative does not establish that there is no distinction between the forms of liability so pled. Also, whether the Indictment permissibly pleaded JCE is irrelevant as an evidentiary matter.

747. para. 22 (p.518): Finally, in a perplexingly contradictory and unexplained pronouncement, the Majority expresses its agreement with the Prosecution's position at the Appeal Hearing that Gbao "shared the intent for the crimes to be committed in Kailahun District, so he was a participant in the joint criminal enterprise."[37] As an initial matter, this position is contrary to the Majority's own reasoning, as it envisages a common criminal purpose different from that found by the Trial Chamber and confirmed unanimously on appeal. That different "subsidiary" common criminal purpose is limited solely to Kailahun District and excludes acts of pillage (Count 14), as no such crimes were committed there.

748. para. 23 (p.518): If in fact the Majority accepts the position of the Prosecution that the shared intent for commission of the crimes committed in Kailahun describes the common criminal purpose of the JCE, then Gbao would presumably have been liable under JCE 1 for the crimes in

Kailahun District, and liable under JCE 3 for the crimes in other Districts. However, such a limited, "subsidiary" JCE was neither sufficiently pleaded in the Indictment nor found by the Trial Chamber. Nor did the Trial Chamber make any findings that the crimes in Bo, Kenema and **Kono** were reasonably foreseeable by Gbao as a consequence of the implementation of that "subsidiary" JCE, (as opposed to the country-wide JCE found by the Trial Chamber.) This theory therefore finds no support in the pleadings or the evidence.

749. para. 24 (p.518-519): The only JCE pleaded, established and upheld in this case had as its Common Criminal Purpose to control the territory of Sierra Leone through the commission of the crimes charged under Counts 1 to 14.[38] Gbao either shared the intent of this criminal purpose – both in terms of the type of crimes and the geographical scope it encompassed – or he did not.

b. Justice Winter:

750. para. 5 (p.482-483): In addition to this clarification, I also wish to express my complete agreement with the reasoning and conclusions expressed by Hon. Justice Fisher in her Partially Dissenting and Concurring Opinion insofar as it pertains to Gbao's Sub-Grounds 8(j) and 8(k), Gbao's Sub-Ground 8(i), Sesay's Grounds 33 and 46, and her opinion regarding the failure to plead locations with sufficient specificity. In particular, I join her dissent from the Majority's decision to confirm Gbao's conviction under JCE liability, given the Trial Chamber's findings that he did not share the Common Criminal Purpose with the other participants in the case before us.

(iii) Crimes Charged as Criminal Means of Furthering Common Criminal Purpose – Acts of Terrorism

751. para. 333: The Trial Chamber held that the crimes charged under Counts 1 to 14 constituted the criminal means of furthering the Common Criminal Purpose.[771] The crimes to maintain power over the territory of Sierra Leone commenced "soon after the coup in May 1997."[772]

752. para. 348: Sesay submits that some of these crimes could not be part of the Common Criminal Purpose because they were not found to have been committed with intent to (i) take control over Sierra Leone;[815] or (ii) to spread terror or collectively punish.[816] His first argument fails, because the Trial Chamber found that the JCE participants, in particular Sesay,[817] contemplated all the crimes charged under Counts 1 to 14 as the means to achieve the objective of gaining and exercising political power and control over the territory of Sierra Leone, in particular

the diamond mining areas.[818] It was not required that the persons who perpetrated the crimes shared the same intent.[819] Sesay's second argument is wrong insofar as it states that the means to achieve the objective were limited to acts of terrorism and collective punishment (Counts 1 and 2).[820] As explained, the means also included the crimes charged under Counts 3 to 14. In this regard, the Appeals Chamber notes that the Trial Chamber did not explicitly find that those acts of unlawful killing (Counts 3 to 5), sexual violence (Counts 6 to 9) and physical violence (Counts 10 and 11) which did not amount to terrorism were also means to achieve the objective of controlling the territory of Sierra Leone. However, it is evident that these acts were also found to be means to that end, given the Trial Chamber's conclusion that "the crimes charged under Counts 1 to 14 were within the [JCE] and intended to further the common purpose."[821]

753. para. 356: Indeed, Sesay himself recognises the finding that the Supreme Council was involved in the planning and organisation of the enslavement at Tongo Fields in Kenema from August 1997. However, he argues, the only crimes committed before that point in time were the terror attacks in Bo in June 1997, and so there were no crimes on the basis of which the Trial Chamber could infer the existence of a JCE.[852] However, although the enslavement at Tongo Fields commenced in August 1997,[853] it is evident from the Trial Chamber's findings that the "planned and … systematic policy of the Junta" which devised the large scale enslavement and implemented it "pursuant to a centralised system" must have started much earlier.[854] Indeed, "[w]ithin a week of the coup of 25 May 1997, RUF rebels and the military Junta were in full control of" Kenema Town.[855] Moreover, whether or not it amounted to acts of terrorism,[856] sexual violence in Kailahun was a means to achieve the AFRC/RUF objective throughout the Junta period.[857] The fact that the victims of the forced marriages were initially captured before the Indictment period does not detract from the finding that these crimes were "for the benefit . of the Junta" throughout their continuous commission. 858

754. para. 377: Sesay argues that "Bockarie's actions in Kenema Town" were erroneously found to be in pursuance of the Common Criminal Purpose.[917] Sesay's submission primarily concerns the period of time after early September 1997, when Bockarie left Freetown for Kenema.[918]

755. para. 378: The Appeals Chamber notes that, contrary to Sesay's assertion,[919] the finding that Bockarie's relocation from Freetown to Kenema did not impact on the Common Criminal Purpose and that the cooperation between the leadership continued, was supported by evidence.[920] While Sesay argues that the Trial Chamber "downplayed" the evidence concerning Bockarie's departure, in support he merely restates evidence already assessed by the Trial Chamber without

explaining why such assessment was unreasonable.[921] Sesay invokes[922] evidence suggesting that Bockarie became an "outlaw," refused to take orders from Koroma[923] and, due to his dissatisfaction with the AFRC, felt that the RUF should withdraw from Freetown.[924] However, he fails to acknowledge that the same evidence also shows that the AFRC and RUF "fought together on all the battlefronts until [they] pulled out of Freetown"925 and that the RUF remained in Freetown until February 1998.926

(iv) Crimes Charged and JCE *mens rea* (short review) – Acts of Terrorism

756. para. 467: The Trial Chamber found that "the crimes charged under Counts 1 to 14 were within the [JCE] and intended by the participants to further the common purpose."[1199] As previously noted, the Common Criminal Purpose found by the Trial Chamber consisted of the non-criminal objective to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas, and the crimes as charged under Counts 1 to 14 as means of achieving that objective.[1200] It further held that mid- and low-level RUF and AFRC Commanders and rank-and-file fighters were used by JCE members 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."[1201] The Trial Chamber held that it would not consider teh Appellant's liability pursuant to JCE 2.[1202]

757. para. 468: The Trial Chamber concluded that Kallon "shared with the other participants in the [JCE] the requiste intent to commit" the crimes in Bo, Kenema, Kono and Kailahun Districts.[1203] In terms of Gbao's *mens rea*, the Trial Chamber found he did not intend the crimes committed in Bo, Kenema and Kono Districts as a means of achieving the Common Criminal Purpose.[1204] Instead, the Trial Chamber found that Gbao knew that the crimes in these Districts were being committed by RUF fighters, continued to pursue the Common Criminal Purpose of the joint criminal enterprise,[1205] and "willingly took the risk that the crimes charged and proved … might be committed by other members of the joint criminal enterprise or persons under their control."[1206] The Trial Chamber found that Gbao shared with the other JCE members the intent to commit the crimes in Kailahun District.[1207]

758. para. 482: In support of Ground 8(j) Gbao states in paragraph 144 of his Appeal Brief: "The Majority of the Trial Chamber erred in fact by finding Gbao individually criminally responsible as a member of the joint criminal enterprise by using the extended JCE *mens rea* against him in Bo, Kenema and Kono Districts when all crimes found to be part of the JCE were found to have been committed pursuant to the first form of JCE." He cites paragraph 1985 of the

Trial Judgement in support. A perusal of the whole paragraph shows that the Trial Chamber made no such finding. Paragraph 1985 states:

> 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 excercise political power and control over the territory of Sierra Leone, in particluar the diamond mining areas. The Chamber finds that the crimes were contemplated by the participants of the joint criminal enterprise to be within the common purpose. The Chamber further finds that the 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 violance. In addition, tje joint AFRC/RUF forces continued to rely on 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.

Nowhere in that paragraph did the Majority of the Trial Chamber make the finding alleged by Gbao. It is not proper for Gbao to put words into the mouth of the Trial Chamber for the apparent purpose of manufacturing a case that bears no semblance to reality. The ground is without merit and the Appeals Chamber, Justices Winter and Fisher dissenting, dismisses it in this short shrift.

759. para. 492: The Appeals Chamber holds that so long as Gbao agreed to the Common Criminal Purpose and was, therefore, a member of the JCE as the Trial Chamber found,[1256] he is responsible for all crimes that he either intended, or were naturally foreseeable would be committed by members of the JCE or persons under their control. This is consistent with the pleading of the crimes in the Indictment (which must be read in its entirety) and which pleaded each of the crimes in Counts 1 to 14 as either within the JCE or as a reasonably foreseeable consequence of the JCE.[1257]

760. para. 493: The Appeals Chamber agrees with the Prosecution's submission during the Appeal Hearing that Gbao "shared the intent for the crimes to be committed in Kailahun District, so he was a participant in the joint criminal enterprise."[1258] Gbao it must be recalled was at all material times the senior RUF Commander stationed in Kailahun. It follows that, since Gbao was a member of the JCE, so long as it was reasonably foreseeable that some of the members of the JCE or persons under their control would commit crimes, Gbao would be criminally liable for the commission of those crimes.[1259] As the Trial Chamber found that the crimes in Bo, Kenema and Kono Districts, which were within the Common Criminal Purpose, were reasonably foreseeable, it follows that the Trial Chamber did not err. Gbao's Ground 8 is accordingly dismissed. (Note: Justices Fisher and Winter dissenting)

(v) Acts of Terrorism – Definition

761. para. 879: Second, [Kallon] argues that the Trial Chamber erred in law in convicting him of acts of terrorism. he argues that there is no consensus on the definition of terrorism in international criminal law currently and there was even less consensus when the acts were allegedly committed. Accordingly, Kallon contends, the crime lacks sufficient precision, thereby violating the principle of *nullum crimen sine lege*.[2287]

762. para. 888: The principle of *nullum crimen sine lege* provides that "a criminal conviction can only be based on a norm which existed at the time the acts or omission with which the accused is charged were committed."[2301] The principle further requires that the criminality of the conduct as charged by the Prosecution was sufficiently foreseeable and accessible at the relevant time period for it to warrant a criminal conviction and sentence.[2302] The Appeals Chamber notes that the principle of *nullum crimen sine lege* does not impede the development of the law through the interpretation and clarification of the elements of a particular crime,[2303] but it does preclude the creation of a new criminal offence by defining a crime that was previously undefined or "interpreting existing law beyond the reasonable limits of acceptable clarification."[2304]

763. para. 889: The starting point for analysis is the crime under the criminal heading chosen by the Prosecution for which the Appellant was convicted and sentenced.[2305] The Appeals Chamber notes that the Trial Chamber found that Count 1, as charged by the Prosecution, was a charge defined under Article 13(2) of Additional Protocol II.[2306] The Appeals Chamber recalls that the specific elements of acts of terrorism as defined under Article 13(2) of Additional Protocol II are (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 (iii) the acts or threats of violence were carried out with the specific intent of spreading terror among the civilian population.[2307] The Appeals Chamber adopts the opinion of the ICTY Appeals Chamber that the prohibition of terror against a civilian population as enshrined under Article 13(2) of Additional Protocol II has been declared an offence that gives rise to individual criminal responsibility under customary international law by 1992.[2308] The Appeals Chamber, therefore, considers that acts of terrorism as defined under Article 13(2) of Additional Protocol II incurred individual criminal responsibility at the time of the offences for which Kallon was convicted. Kallon asserts, however, that the crime prohibiting acts of terror against a civilian population was insufficiently precise or accessible to determine criminal conduct during the relevant time period.[2309]

764. para. 890: The Appeals Chamber is not persuaded by this assertion. Kallon points to various formulations of the crime of terrorism to support his claim that the definition of the crime was unsettled at the time of the offences here.[2310] However, the authority he relies on concerns prohibitions against terrorism or terrorism-related offences found in other international law than that controlling the crime now in question and are therefore inapposite to his claim that the prohibition found in Article 13(2) of Additional Protocol II was not customary international law at the time of the offences.[2311] Kallon's bare argument that the prohibition in Article 13(2) of Additional Protocol II has been variously described as "infliction of terror,"[2312] "terror against the civilian population"[2313] or "acts of terrorism"[2314] does not demonstrate that the elements of the offence, whatever its title, were not "defined with sufficient clarity under customary international law for its general nature, its criminal character and its approximate gravity to have been sufficiently foreseeable and accessible"[2315] at the time period relevant to commission of the offences.

765. para. 891: The Appeals Chamber notes that a determination of "foreseeability" and "accessibility" with respect to the principle of *nullum crimen sine lege* must take into account the "specificity of international law."[2316] The prohibition against acts of terror as set out in Article 13(2) of Additional Protocol II is by its grounding in the laws of war considered customary international law.[2317] Customary law is not always laid out in written form and therefore determination of its accessibility may not be straightforward.[2318] However, in this instance, by virtue of its customary international law nature and codification in the Additional Protocols, the prohibition against acts of terror as enshrined in Article 13(2) of Additional Protocol II is sufficiently foreseeable and accessible to put the Appellant on reasonable notice that infringement of this norm could entail criminal responsibility.[2319] Kallon's conviction under Count 1 therefore does not violate the principle of *nullum crimen sine lege*. Kallon's submission in this regard is dismissed.

(vi) Specific Intent for Acts of Terrorism

766. para. 646: The Trial Chamber found that six acts of unlawful killings and physical violence committed in Kenema Town constituted acts of terrorism.[1622] The Trial Chamber found that "a number of the victims were prominent members of civil society and were targeted on this account."[1623] It further found that AFRC/RUF fighters publicised these crimes.[1624] The Trial Chamber concluded 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",[1625] and thus were committed with the specific intent to terrorise the civilian population.[1626]

767. para. 650: As Sesay was convicted for the acts of terrorism in question under JCE 1 liability,[1641] and as the Trial Chamber found that one or more members of the JCE used the non-members who carried out the *actus reus* to commit the crime of acts of terrorism,[1642] his arguments turn on the initial proposition that the Trial Chamber was required to find that the non-members of the JCE who carried out the *actus reus* had the specific intent for those crimes.

768. para. 651: The Appeals Chamber notes as an initial matter that the *mens rea* of those who carry out the *actus reus* of the crime is not among the elements of JCE 1 liability as set out in *Tadić*.1643 While "participants in a basic or systemic form of joint criminal enterprise must be shown to share the required intent of the principal perpetrators,"[1644] this holding only reinforces that the members of the JCE must share the intent to commit the crime for which they are held to be responsible under JCE 1 and JCE 2, and does not imply that non-members used by a JCE member to carry out the *actus reus* of the crime must share the intent with the members of the JCE.

769. para. 652: Further, the Appeals Chamber agrees "that what matters in a first category JCE is not whether the person who carried out the *actus reus* of a particular crime is a member of the JCE, but whether the crime in question forms part of the common purpose."[1645] As persuasively explained by the ICTY Appeals Chamber, the persons who carry out the *actus reus* of the crime need not share the common purpose of the JCE in order for liability for their acts to attach to members of the JCE.[1646] To the contrary, the primary question for the purposes of JCE liability is whether the acts of non-members who carried out the *actus reus* of the crimes can be imputed to the members of the JCE.[1647] So long as it is established that a member of the JCE used the non-member to commit a crime within the common purpose of the JCE, there is no need to show that the non-member intended to further the common purpose of the JCE or indeed even knew of that common purpose.[1648]

770. para. 653: For the purposes of determining the liability of JCE members for the acts of non-members who carry out the *actus reus* of the crime, the critical inquiry is not the *mens rea* of the non-member, but rather the acts and mental state of the JCE member, who uses the non-member to commit a crime within and in furtherance of the common purpose.[1649] As the *mens rea* element of JCE 1 liability relates solely to the shared intent of the members of the JCE, and as the persons who carry out the *actus reus* of the crime need not be members of the JCE, the *mens rea*

of non-members who carry out the *actus reus* of the crime is not a legal element of JCE 1 liability.[1650]

771. para. 654: The Appeals Chamber does not consider that the finding of the ICTY Appeals Chamber in *Limaj et al.*, cited by Sesay, is relevant to the present issue, as the Appeals Chamber there was concerned with the scope of the common purpose as pleaded in the indictment, a distinct issue from the present question.[1651]

772. para. 655: Accordingly, the Appeals Chamber concludes that under JCE 1 liability, the Trial Chamber was not required to find, as an element of the liability of JCE members, that non-members who carried out the *actus reus* of the crime had the requisite *mens rea* for the crime of acts of terrorism. Rather, in addition to finding that the members of the JCE shared the intent to commit the crime and finding that the acts of the non-members who carried out the *actus reus* of the crimes could be imputed to a member of the JCE, the Trial Chamber was only required to find that the acts of the non-members satisfied the *actus reus* of the offence.

773. para. 656: While the Trial Chamber did find that those who carried out the *actus reus* of the crime acted with the specific intent to spread terror,[1652] such a finding is only relevant as a matter of evidence to the other findings that the Trial Chamber was required to make. The Appeals Chamber finds that Trial Chamber's alleged errors with respect to the *mens rea* of the non-members who carried out the *actus reus* of the crimes,[1653] even if accepted *arguendo*, would not render those findings unreasonable. Sesay challenges related to the *mens rea* of non-members who carried out the *actus reus* of the crimes are dismissed.

774. para. 657: Sesay further challenges the Trial Chamber's findings that Bockarie, as the perpetrator and member of the JCE, acted with the requisite *mens rea* for acts of terrorism. Sesay fails to show an error[1654] in the Trial Chamber's findings regarding the killing of the man at the NIC Building.[1655] Sesay neither explains how the Trial Chamber's finding that Bockarie acted with the requisite intent would be erroneous even if it were accepted that the victim was a Kamajor who was *hors de combat*, nor explains how Bockarie's desire to "do away with all the Kamajors"[1656] is inconsistent with or renders unreasonable the Trial Chamber's finding. This claim is therefore dismissed.

775. para. 658: Sesay fails to establish that the Trial Chamber erred in finding that the beating of TF1-129 was committed with the specific intent to spread terror.[1657] Contrary to Sesay's claim, the Trial Chamber did not need to find a "single, all-encompassing intention" among all those who participated in the beating of TF1-129,[1658] as the Trial Chamber's findings show that it found that

Sesay and Bockarie used those who carried out the beatings to commit the crime.[1659] In particular, the Appeals Chamber notes the following findings: (i) Sesay ordered his bodyguard to molest TF1-129 during his arrest;[1660] (ii) Sesay's bodyguard further injured TF1-129 when he was to be taken to the Secretariat building;[1661] (iii) Sesay instructed a small boy to guard TF1-129 and kill him if he moved;[1662] (iv) TF1-129 was beaten while being taken to Bockarie and Sesay;[1663] (v) Bockarie and Sesay ordered TF1-129 to be taken to the "dungeon", and TF1-129 was beaten on the way to and from the "dungeon".[1664]

776. para. 659: In addition, Sesay argues that there was no evidence that he sought to publicise the beating,[1665] and that the Trial Chamber therefore erred in finding that he and Bockarie used the non- members who carried out the *actus reus* of the crimes to commit an act of terrorism.[1666] In this respect, the Appeals Chamber recalls the Trial Chamber's findings that acts of terrorism were within the Common Criminal Purpose of the JCE,[1667] and therefore that the intent to commit acts of terrorism was shared by the members of the JCE, including Sesay and Bockarie. The Trial Chamber further found that the six acts of violence in Kenema Town,[1668] including the beating of TF1-129, targeted prominent members of civil society and were publicised.[1669] The Trial Chamber accordingly reasoned that the six acts of violence 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," and therefore were committed with the specific intent to terrorise the civilian population.[1670] The Appeals Chamber also recalls the Trial Chamber's finding "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."[1671] Finally, the Trial Chamber found that Bockarie targeted alleged Kamajors on a number of occasions[1672] and publicly expressed his intent to target alleged Kamajors.[1673]

777. para. 660: In light of the above findings, whether or not the Trial Chamber found that Sesay or others sought to publicise the beating directly, the Trial Chamber did find that TF1-129 was targeted because he was considered to be prominent[1674] and a "chief Kamajor."[1675] Sesay fails to show that no reasonable trier of fact could have concluded on that basis that he and Bockarie used the non-members who carried out the *actus reus* of the crimes to commit acts of terrorism. Sesay further argues that as TF1-129 was a suspected Kamajor ally, "an aggravated Bockarie" ordered his arrest, and therefore, any crimes committed during TF1-129's arrest were not committed with the primary intent of spreading terror.[1676] Although the Trial Chamber found that certain acts of violence did not constitute acts of terror because the acts were committed in response to conduct that aggravated the perpetrators,[1677] Sesay misinterprets that finding and

ignores the evidence as a whole as relied on by the Trial Chamber, in particular the findings noted above. Accordingly, Sesay fails to establish that the Trial Chamber erred in finding that he and Bockarie acted with the specific intent to spread terror.

778. para. 880: Third, Kallon submits that the Trial Chamber erred in fact in inferring that the acts were committed with the specific intent to cause terror, whereas other inferences were available from the evidence.[2288]

779. para. 892: In arguing that multiple reasonable inferences could be drawn relating to the specific intent for acts of terrorism,[2320] Kallon offers alternative inferences that are either unsupported by the Trial Chamber's findings or the evidence or have been duly considered by the Trial Chamber. The Appeals Chamber notes that the Trial Chamber explicitly considered alternative inferences such as the directing of attacks at legitimate military targets[2321] and found that attacks such as the one on Tikonko "were not directed at any military or other legitimate objective."[2322] With regard to acts that Kallon asserts were perpetrated in the context of theft,[2323] the Trial Chamber found that the looting of money from Ibrahim Kamara was not an act of terror,[2324] but rather amounted to an act of pillage.[2325] The Trial Chamber found, however, that the killing of Tommy Bockarie when he refused to turn over a cassette player in the context of an attack on Sembehun was an act of violence that "served no discernible purpose apart from terrorising the civilian population."[2326] In this way, the Trial Chamber considered and distinguished acts that were solely perpetrated in the context of thefts from those acts that evinced the specific intent to spread terror. In light of the Trial Chamber's findings, Kallon fails to explain why no reasonable trier of fact could have excluded his proposed inferences based on the evidence adduced at trial.

780. para. 893: Moreover, where the Trial Chamber's findings point to the possibility of an additional purpose for the acts found to constitute acts of terrorism, the Appeals Chamber recalls that "[t]he specific intent to spread terror need not be the only purpose of the unlawful acts or threats of violence," and the fact of coexisting purposes does not disprove the specific intent to spread terror provided the intent to spread terror was "principal among the aims."[2327] Kallon in putting forth multiple alternative inferences does not challenge the primacy of the specific intent to spread terror.[2328] Therefore, the mere existence of additional purposes such as the enslavement of civilians to mine for diamonds in Cyborg Pit[2329] in order to realise a profit does not alone disprove the requisite intent to spread terror. With regard to sexual violence in Kailahun, Kallon puts forth the alternate inference that sexual violence was committed "for the individual perpetrators' own sexual gratification."[2330] However, the Trial Chamber explicitly found that

sexual violence committed in Kailahun was "not intended merely for personal satisfaction or a means of sexual gratification for the fighter," but rather 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 civilian population as a whole."[2331] In other instances, the Trial Chamber found that the alternative inference posited by Kallon such as preventing opposition and addressing the Kamajor military threat[2332] were closely intertwined with the intent to spread terror such that crimes committed 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."[2333] Kallon accordingly fails to demonstrate the error in the Trial Chamber's findings that the criminal acts perpetrated in Bo, Kenema, and Kailahun were committed with the specific intent to spread terror.

(vii) Kono District – Acts of Terrorism

781. para. 452: Sesay submits that the Trial Chamber erred in imputing to members of the JCE the burning of civilian houses in Tombodu between February and April 1998 ordered by Staff Alhaji. In support, Sesay challenges Trial Chamber's reliance on TF1-012's testimony, yet without explaining why the impugned findings are unreasonable in light of all the evidence on which the Trial Chamber relied which was not limited to TF1-012's testimony.[1154] Sesay also challenges the finding that the burning in question amounted to acts of terrorism. He refers to the Trial Chamber's finding that the burning:

> [W]as intended to punish civilians for failing to support the AFRC/RUF and to prevent civilians from remaining in these towns. 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.[1155]

While Sesay is correct that acts of terrorism and acts of collective punishment require proof of different intentions, it does not follow, as he appears to suggest, that the two cannot be established on the same evidentiary basis.[1156] Beyond that erroneous assertion, Sesay does not challenge the finding that the burning amounted to acts of terrorism. The fact that the Trial Chamber provided sufficient reasons for imputing Staff Alhaji's crimes to the JCE members has already been established.[1157] Sesay's submissions are therefore disallowed.

782. Regarding Sesay's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings

and Conclusions – Kono District – JCE – Participation in and shared intent – Sesay – paras.624 [7658], 627-634 [7659].

783. Regarding Kallon's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Kallon – paras.806 [7667], 810-815 [7668].

784. para. 877: The Trial Chamber found that acts of terrorism were committed in Bo,[2278] Kenema,[2279] Kailahun,[2280] and Kono Districts.[2281] In Bo,[2282] Kenema,[2283] Kailahun,[2284] Kono Districts,[2285] Kallon incurred Article 6(1) JCE liability for crimes committed under Count 1.

785. para. 883: Kallon submits that the Trial Chamber "erred in law by relying on the burning of civilian homes in Rembodu [*sic*][2293] and Koidu Town not pleaded in the indictment. This occasioned prejudice to the Accused preparation for defence as he had no notice of these occasions and crimes."[2294] As a preliminary matter, the Appeals Chamber notes that the Trial Chamber makes no reference to the location "Rembodu" in its judgment. The Appeals Chamber therefore understands Kallon to contend that he lacked notice of the crimes because Koidu Town was not a named location in the Indictment under Count 14, which pertained to acts of burning.

786. para. 884: The Indictment particularises the charge under Counts 14 in relation to Kono District as follows:

> 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.[2295]

787. para. 885: The relevant question on appeal is whether the pleading of locations of acts of burning in Kono District as "in *various locations* in the District, including Tombodu, Foindu and Yardu Sando" without naming Koidu Town, is sufficiently specific to allow Kallon to prepare his defence for alleged JCE liability for acts of burning as terrorism in Koidu Town.

788. para. 886: The Appeals Chamber recalls that the specificity required for the pleading of locations will depend on factors including those previously discussed.[2296] Kallon was convicted for acts of burning as acts of terrorism pursuant to his participation in the JCE. His liability for these acts derives significantly from his conduct in relation to other events and crimes, including those committed in locations in Kono that were pleaded with sufficient specificity.[2297] Much of his culpable conduct did not occur in Koidu Town, and therefore the pleading of the location does not

require a high degree of specificity for Kallon's ability to prepare his defence with respect to his culpable conduct.

789. para. 887: In regard to his notice of the alleged criminal acts in Koidu Town, the Appeals Chamber recalls that the Trial Chamber found that nonexhaustive pleading of locations may be adequate in light of the "sheer scale" of the alleged crimes.[2298] Therefore, in this case, Kallon had adequate notice notwithstanding the nonexhaustive pleading of locations.[2299] The Appeals Chamber has not found error in the Trial Chamber's general approach to applying the exception,[2300] and Kallon has not offered any argument as to why this exception to the requirements for pleading specificity should not apply to the pleading of acts of burning in Koidu Town, in view of the fact that his liability is pursuant to his participation in the JCE. Accordingly, the Appeals Chamber, Justices Winter and Fisher dissenting, reject Kallon's submission.

790. Justice Fisher-Dissent, para. 65 (p.529): In Ground 16, Kallon contends he lacked notice of acts of burning as acts of terrorism in Koidu Town. Sesay similarly objects in his Ground 8. Acts of burning were charged under Counts 1, 2 and 14,[92] but none of these counts names ***Koidu Town*** as a location.[93] The Appeals Chamber denied these grounds and reasoned that because much of Kallon's conduct that gave rise to his JCE liability for the crimes did not occur in ***Koidu Town***, the location did not need to be pleaded with greater specificity for Appellants to prepare their defence.

791. Justice Fisher-Dissent, para. 66 (p.529-530): In my view, this reasoning is correct only to the extent that an accused's ability to provide certain defences, such as alibi, depend on his ability to challenge evidence of his presence at the location where his culpable conduct was alleged to have taken place.[94] The accused, however, is entitled to prepare a defence against *both* the allegation that the crime occurred and the allegation that he is liable for the crime (*i.e.*, "the nature and cause of the charges"[95]). To defend against the former, he must have adequate notice of the location of the offence, which would not vary as a result of the mode of liability charged. Thus, the Majority's inquiry should not have ended with its examination of the form of the accused's participation in the crime. It should have also examined whether the other factors it identified led to the conclusion that the accused had sufficient notice of the location of the crimes.

792. Justice Fisher-Dissent, para. 67 (p.530): In applying those factors, I consider that the failure to plead Koidu Town as the location of burning as acts of terrorism and collective punishment rendered the Indictment defective as to this criminal incident. In contrast to the systemic looting described above, the burnings of civilian houses did not happen simultaneously in many locations within a larger area which was sufficiently pleaded. Instead, as found by the

Trial Chamber, it was restricted to Koidu Town[96] in order to punish civilians for failing to support the AFRC/RUF.[97] The only other location in Kono District in which the Trial Chamber found burnings was Tombodu, a village which was much smaller than Koidu Town and removed by some considerable distance. Tombodu was specifically pleaded in the Indictment.[98] Koidu Town, the seat of Kono District and the site of significant destruction by burning, was not. There was nothing in the Indictment to place Sesay or Kallon on notice that they were being charged with the crimes of acts of terrorism and collective punishments for the large scale burning of Koidu Town, crimes for which they were ultimately convicted.

793. Justice Winter-Dissent, para. 5 (p.482-483): In addition to this clarification, I also wish to express my complete agreement with the reasoning and conclusions expressed by Hon. Justice Fisher in her Partially Dissenting and Concurring Opinion insofar as it pertains to Gbao's Sub-Grounds 8(j) and 8(k), Gbao's Sub-Ground 8(i), Sesay's Grounds 33 and 46, and her opinion regarding the failure to plead locations with sufficient specificity. In particular, I join her dissent from the Majority's decision to confirm Gbao's conviction under JCE liability, given the Trial Chamber's findings that he did not share the Common Criminal Purpose with the other participants in the case before us.

794. para. 881: Fourth, Kallon argues that the Trial Chamber failed to provide adequate reasoning in support of its findings relating to unlawful killings as acts of terrorism in Kono District, thus depriving him of a meaningful review on appeal. Kallon argues that the Trial Chamber found that there was "an overwhelming amount of evidence that point[s] to the execution of policies that promote violence, targeted civilians, civilian object[s] in order to spread terror among the civilian population" and did not consider any alternative reasons for the conduct or explain its rationale.[2289]

795. para. 894: The Appeals Chamber recalls that, while the Trial Chamber is obliged to provide a reasoned opinion,[2334] it is not required to articulate every step of its reasoning in relation to each finding it makes or to set out in detail why it accepted or rejected a particular piece of evidence.[2335] It need only make findings of material facts that are essential to the determination of guilt in relation to a particular Count.[2336]

796. para. 895: The Trial Chamber explained that the killing of an unknown number of civilians during an attack on Koidu Town,[2337] the killing of 30 to 40 civilians by Rocky,[2338] the killing of a 15 year old boy,[2339] the killing of an unknown number of civilians by Savage and Staff Alhaji,[2340] the killing of Chief Sogbeh,[2341] and the killing of Sata Sesay's eight family members[2342] amounted to acts of terrorism in Kono,[2343] by stating that these unlawful killings "were all committed widely

and openly, without any rationale objective, except to terrorise the civilian population into submission."[2344] The Trial Chamber also explained that its findings were based on "an overwhelming amount of evidence that point[s] to the execution of policies that promoted violence, targeted civilians, [and] civilian objects in order to spread terror among the civilian population."[2345] In addition, Kallon's contention that the Trial Chamber did not consider any alternative reasons for the unlawful killings is belied by the fact the Trial Chamber found that the unlawful killings amounting to acts of terrorism were carried out "without any rationale [*sic*] objective."[2346] The Trial Chamber in this way sufficiently reasoned that certain unlawful killings in Kono amounted to acts of terrorism while the killing of Waiyoh and the unlawful killings in Koidu Buma and near PC Ground did not.[2347]

797. para. 896: For these reasons, Kallon fails to establish that the Trial Chamber erred in finding him responsible for acts of terrorism in Bo, Kenema, Kailahun and Kono Districts.

(viii) Kenema District – Acts of Terrorism

798. para. 370: The Trial Chamber found that acts of unlawful killings, physical violence and enslavement were committed in Kenema District, some of which amounted to terror and collective punishment.[901] It found that these crimes fell within time period of the Junta and that the common plan and plurality of person remained the same.[902]

799. para. 382: Furthermore, that Bockarie ensured continued cooperation from Kenema is buttressed by the finding that the forced mining activities, which included acts of terrorism,[940] were jointly conducted and controlled by the AFRC and RUF.[941] The Appeals Chamber now turns to Sesay's challenges to this finding.

800. para. 423: The alleged Kamajor boss was killed by AFRC/RUF fighters during "Operation No Living Thing," which had been launched by the RUF and AFRC as a pre-emptive measure due to rumours of an impending Kamajor attack.[1050] "Operation No Living Thing" did not refer to a particular military campaign, but it "described a set of brutal and merciless tactics which AFRC/RUF fighters were encouraged to adopt in combat."[1051] The killing also formed part of the AFRC/RUF's "deliberate strategy to terrorise the civilian population and prevent any support for their opponents."[1052] Seen against the background that the AFRC/RUF Junta, headed by most JCE members, controlled Kenema Town,[1053] the Appeals Chamber is satisfied that these findings suffice to explain the Trial Chamber's reasons why the killing was imputed to the JCE members. Sesay's and Gbao's claims to the contrary fail.

801. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Specific intent for acts of terrorism – paras. 646 [766], 650-660 [767].

802. Regarding Sesay's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District – JCE – Participation in and shared intent – Sesay – paras. 617 [7580], 619-623 [7581].

803. para. 662: The Trial Chamber found that the following acts at Tongo Field constituted unlawful killings: (i) the killing of a civilian at Lamin Street,[1678] (ii) the killing of a Limba man,[1679] and (iii) the killing of 63 civilians at Cyborg Pit.[1680] In regard to the killing of 63 civilians at Cyborg Pit, the Trial Chamber found 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."[1681] On a fourth occasion at Cyborg Pit, "three civilians and two fighters were killed by the AFRC/RUF."[1682] It further found that the killing at Lamin Street and the killings at Cyborg Pit constituted acts of terrorism.[1683]

804. para. 666: The Appeals Chamber recalls its conclusion that the Trial Chamber was not required to find that those who carried out the *actus reus* of the crimes had the requisite *mens rea* for acts of terrorism.[1695] Sesay's claims will be addressed in light of that conclusion. In that respect, the Appeals Chamber notes the Trial Chamber's findings that acts of terrorism were within the Common Criminal Purpose of the JCE,[1696] and that, with respect to Kenema District, Sesay intended the commission of acts of terrorism and "shared, with the other participants, in the joint criminal enterprise the requisite intent to commit these crimes."[1697] The Trial Chamber further found that one or more members of the JCE used the non-members who carried out the *actus reus* of the crimes to commit the crime of acts of terrorism.[1698]

805. para. 667: In arguing that the Trial Chamber erred in finding that the deaths at Cyborg Pit constituted unlawful killings,[1699] Sesay merely reargues his position at trial without addressing the evidence relied on by the Trial Chamber. In particular, by only referencing the absence of corroborating testimony from other witnesses, Sesay fails to establish that no reasonable trier of fact could have preferred the affirmative testimonies of witnesses TF1-035 and TF1-045. This claim is therefore dismissed.

806. para. 668: Contrary to Sesay's claim,[1700] the fact that the acts of violence were intended to serve a further goal, such as the enslavement of the civilian population, does not show that the intent to spread terror was not the principal purpose of those acts.[1701] Simply, it need not be shown

that the intent was to spread terror only for its own sake.[1702] Rather, the requirement that the principal purpose be to spread terror serves to distinguish "terror that is merely an incidental effect of acts of warfare which have another primary object and are in all other respects lawful."[1703] Accordingly, whether the goal of the acts of terrorism was to further the enslavement of the civilian population, or further the Common Criminal Purpose of taking control of the territory of Sierra Leone by criminal means, the fact that the acts of terrorism were committed to further another objective would not show that the intent to spread terror was not the principal purpose of the acts of violence.

807. para. 669: The Appeals Chamber considers that the facts highlighted by Sesay do not establish that the killings did not spread terror in fact.[1704] Moreover, even if the Trial Chamber had been satisfied that the killings did not have that effect, the actual terrorisation of the civilian populations is not an element of the crime,[1705] but is only an evidentiary consideration to be assessed in light of the circumstances as a whole. Sesay fails to address the other considerations the Trial Chamber relied on, and fails to establish that the Trial Chamber's conclusion was unreasonable.

808. para. 671: The Trial Chamber found that AFRC/RUF rebels forced an unknown number of civilians to mine for diamonds at Cyborg Pit in Tongo Field, Kenema District between about 1 August 1997 and about 31 January 1998, and found that this constituted enslavement and an act of terrorism.[1707] It held that Sesay incurred JCE liability for these crimes.[1708]

809. para. 678: Sesay first argues that the Trial Chamber was not entitled to rely on the fact that the killings at Cyborg Pit amounted to acts of terrorism to conclude that the enslavement also constituted an act of terrorism because the perpetrators of the two crimes were different.[1732] The Appeals Chamber notes that the Trial Chamber considered "the massive scale, of the enslavement, the indiscriminate manner in which civilians were enslaved and the brutal treatment of the victims" in concluding that the enslavement at Cyborg Pit amounted to an act of terrorism.[1733] To the extent that the Trial Chamber had in mind the killings at Cyborg Pit when referring to "the brutal treatment of the victims," it did not err. It was not unreasonable for the Trial Chamber to consider that the intent of the perpetrators of these killings to spread terror, among other mistreatment,[1734] was part of the "brutal treatment" of the victims of the enslavement, which treatment was one of the factors leading the Trial Chamber to infer that the enslavement also constituted an act of terror.

810. para. 679: Sesay's second argument is that the Trial Chamber should have found that the enslavement at Cyborg Pit was not specifically intended to spread terror among the civilian

population, but, instead, that terror was a mere "side-effect" of the enslavement, as it found in respect of the enslavement in Kono District.[1735] Contrary to Sesay's position, however, the circumstances of the enslavement in Kono District were distinguishable from those prevailing at Cyborg Pit.[1736] For example, while the Trial Chamber found that the enslavement in Kono District was "widespread," the enslavement at Cyborg Pit was of "a massive scale."[1737] Similarly, while the civilians forced to mine in Kono District were mistreated,[1738] the civilians at Cyborg Pit were enslaved in an "indiscriminate manner" and subjected to "brutal mistreatment."[1739] Therefore, although the mistreatment at both locations was grave, it was reasonably open to the Trial Chamber to infer that the enslavement at Cyborg Pit was committed with the specific intent to spread terror among the civilian population, whereas terror was a "side-effect" of the enslavement in Kono District.[1740] Sesay's argument is dismissed.[1741]

811. Regarding Kallon's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District – JCE – Participation in and shared intent – Kallon – paras. 798 [7598], 801-804 [7599].

812. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Kono District – Acts of terrorism – paras. 881 [794], 894-896 [795].

(ix) Kailahun District – Acts of Terrorism

813. para. 388: The Appeals Chamber is not persuaded by Sesay's submission. The Trial Chamber made extensive findings on RUF members and Commanders, including Superman,[954] committing acts of sexual slavery and forced marriage[955] as well as enslavement[956] in Kailahun District. Whereas only the former two crimes also amounted to acts of terrorism,[957] the Appeals Chamber recalls that it was not required that the crimes constituted either such acts or collective punishment in order to fall within the Common Criminal Purpose.[958]

814. Regarding Sesay's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Sesay – para. 635 [7758].

815. Regarding Kallon's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings

and Conclusions – Kailahun District – JCE – Participation in and shared intent – Kallon – paras. 817 [7759], 820-824 [7760].

816. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Kono District – Acts of terrorism – paras. 881 [794], 894-896 [795].

817. Regarding Gbao's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Gbao – paras. 982 [7791], 983 [7792], 986 [7793], 987 [7794], 988 [7795], 989 [7796], 990 [7797], 991 [7798], 992 [7799], 993 [7800], 994 [7801].

818. para. 1100: The Trial Chamber found that the acts of sexual slavery and forced marriage in Kailahun District were committed with the specific intent to spread terror and therefore constituted acts of terrorism.[3019]

819. para. 1103: The Appeals Chamber recalls its conclusion that the Trial Chamber was not required to find that those who carried out the *actus reus* of the crimes had the requisite *mens rea* for acts of terrorism.[3024] The Appeals Chamber notes the Trial Chamber's findings that acts of terrorism were within the Common Criminal Purpose of the JCE,[3025] and that, with respect to Kailahun District, Gbao intended the commission of acts of terrorism and shared that Common Criminal Purpose.[3026] The Trial Chamber further found that one or more members of the JCE used the non-members who carried out the *actus reus* of the crimes to commit the crime of acts of terrorism.[3027]

820. para. 1104: By merely referring to the Trial Chamber's factual findings on acts of sexual slavery and forced marriage in Kailahun District,[3028] Gbao fails to establish that no reasonable trier of fact could have found that the persons who committed those acts acted with the specific intent to spread terror. Gbao only offers an alternative interpretation of the evidence without explaining how the Trial Chamber's conclusion was unreasonable. Gbao further fails to address the Trial Chamber's finding that the members of the JCE intended the commission of acts of terrorism.

(x) Bo District – Acts of Terrorism

821. Regarding Sesay's participation in and shared intent of the JCE in relation to Bo District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and

Conclusions – Bo District – JCE – Participation in and shared intent – Sesay – paras. 612 [7905], 614 [7906].

822. Regarding Kallon's participation in and shared intent of the JCE in relation to Bo District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Bo District – JCE – Participation in and shared intent – Kallon – paras.791 [7908], 794-796 [7909].

823. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Kono District – Acts of terrorism – paras. 881 [794], 894-896 [795].

C. AFRC

1. Indictment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

824. Paragraphs 21 through 36 are incorporated by reference.[18]

825. These attacks [para. 38: 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] were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property.[19]

[18] *Prosecutor v Brima, Kamara and Kanu*, SCSL-2004-16-PT, Further Amended Consolidated Indictment, para. 37 ("AFRC Indictment").
[19] AFRC Indictment, para. 39.

826. 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.[20]

(ii) Counts 1-2: Acts of Terrorism and Collective Punishments

827. Members of the AFRC/RUF subordinate to and/or acting in concert with ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, committed the crimes set forth below in paragraphs 42 through 79 and charged in Counts 3 through 14, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population.The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF.[21]

828. By their acts or omissions in relation to these events, ALEX T AMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, 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.

[20] AFRC Indictment, para. 40.
[21] AFRC Indictment, para. 41.

(iii) Count 14: Looting and Burning

829. 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: [22]

> i. Bo District - 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; [23]
>
> ii. Koinadugu District - 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; [24]
>
> iii. Kono District - 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; [25]
>
> iv. Bombali District - 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; [26]
>
> v. Freetown and the Western Area - 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; [27]

830. By their acts or omissions in relation to these events, ALEX T AMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, 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.

[22] AFRC Indictment, para. 74.
[23] AFRC Indictment, para. 75.
[24] AFRC Indictment, para. 76.
[25] AFRC Indictment, para. 77.
[26] AFRC Indictment, para. 78.
[27] AFRC Indictment, para. 79.

2. Trial Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-T, Judgement, 20 June 2007

(a) Factual Findings

(i) Evidence and Deliberations

a. Primary Purpose of Certain acts of Violence

831. para. 1445: As a preliminary observation, the Trial Chamber is of the opinion that the purpose behind an individual act of violence may not necessarily correspond with that of the campaign in which it simultaneously occurs. It follows that certain acts of violence, even when committed in the context of other acts of violence the primary purpose of which may be to terrorise the civilian population, may not have been committed in furtherance of such a campaign. The Trial Chamber is of the opinion that this is the case with regards to certain acts of violence underlying Counts 3 through 14 of the Indictment, as outlined below.

832. para. 1446: Conversely, the Trial Chamber is also of the opinion that certain acts of violence are of such a nature that the primary purpose can only be reasonably inferred to be to spread terror among the civilian population regardless of the context in which they were committed.

i. Child Soldiers

833. para. 1447: The Trial Chamber has found that children abducted by the AFRC/RUF were forced to undergo military training[2646] and were organised into "Small Boy Units" (SBUs)[2647] and battalions.[2648] Child soldiers were forced to fight along side the AFRC/RUF[2649] and to guard strategic points of interest such as Cyborg Pit, a diamond mine in Kenema District, diamonds being the main source of conflict in the region. Child soldiers were forced into labour which supported and maintained the troops. Such labour included carrying loads of food and other "luggage", fetching water and pounding rice. Child soldiers were forced to flog captured civilians[2650], act as bodyguards[2651] , amputate civilians[2652] and were used as human shields.[2653]

834. See below: Chapter 9 – AFRC – Trial Judgment - Factual Findings - Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to

participate actively in hostilities – paras. 1254 [5099], 1271 [5116], 1255 [5100], 1262 [5107], 1268 [5113], 1270 [5115], 1275 [5120].

835. para. 1448: Generally speaking, the Trial Chamber has concluded that Junta forces abducted children for military purposes in Kenema District during the Junta period, that AFRC forces abducted children for military purposes in Kono, Koinadugu and Bombali Districts in 1998 and in Freetown and the Western Area in 1999. The Trial Chamber has also concluded that children were used for military purposes in Kenema District in 1997-1998, Kono District in 1998, and Freetown and Western Area in 1999.[2654] On the basis of the evidence of expert witnesses, the Trial Chamber has also concluded that persons under the age of 15 were used for military purposes by all factions, including the AFRC, during the conflict including the period 25 May 1997-mid 1999.

836. See below: Chapter 9 – AFRC – Trial Judgment - Legal Conclusions - Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities - para 1278 [5138].

837. para. 1449: The Trial Chamber notes the evidence of Witness TF1-334 who stated that during the 1999 invasion of Freetown, the Accused Brima ordered the capture of civilians saying it would attract the attention of the international community[2655] and the finding of the Chamber that children were among those captured. While this evidence suggests that a non-military purpose also drove the AFRC to abduct children in this context, the Trial Chamber finds this purpose was subordinate given the overwhelming evidence of the conscription and use of child soldiers for military purposes. This is supported by the further evidence of Witness TF1-334 who testified that the children abducted from Freetown were later trained to be SBUs.[2656]

838. para. 1450: The Trial Chamber finds that the primary purpose of the conscription and use of child soldiers by the AFRC during the conflict in Sierra Leone, was not to spread terror among the civilian population, but rather was primarily military in nature. Therefore, even where such acts may have occurred simultaneously with other acts of violence considered by this Chamber with regards to the crime of terror, the Trial Chamber is of the opinion that such acts cannot be considered to have been committed as part of any such campaign. That is, in this particular factual context, the conscription and use of child soldiers cannot be considered as acts in furtherance of a primary purpose to terrorise protected persons.

ii. Abductions and Forced Labour

839. para. 1451: The Trial Chamber has found that civilians abducted by the AFRC/RUF were forced to mine for diamonds at Cyborg Pit in Tongo Field, Kenema District.[2657] Witness TF1-334 testified that the Accused Brima ordered his troops to capture any civilian who looked strong in order to make them part of the troops prior to attacks in Koinadugu and Bombali Districts.[2658] The Trial Chamber has found that abducted civilians were trained to use arms[2659] and were given military training in Rosos, Bombali District.[2660] They were also pressed into forced labour[2661] including being forced to carry equipment and other goods for the troops.[2662]

840. See below: Chapter 7 – AFRC – Trial Judgment – Legal Conclusions – Freetown and Western Area – Kissy Town paras. 1289-1293 [3876], 1297 [3881], 1301-1302 [3882], 1304 [3884], 1309 [3885].

841. para. 1452: The Trial Chamber notes the evidence of Witness TF1-334 who testified that Brima ordered the abduction of civilians from Freetown during the attack in order to attract the attention of the international community.[2663] Similar to child soldiers, while this evidence suggests that a non-military purpose may have also driven the AFRC to abduct civilians in this context, the Trial Chamber is satisfied that this purpose was subordinate given the overwhelming evidence of the abduction of civilians for use as slave labour and/or to strengthen the number of the troops. The Trial Chamber notes its further findings that the Accused Brima told his fighters to force captured civilians to join their forces in order to compensate for those fighters killed by ECOMOG.[2664] The Trial Chamber has also found that civilians captured in Freetown were forced to join the rebel forces, that they accompanied the troops out of Freetown and were forced to carry loads. The Trial Chamber has also found that rebels told the civilians captured in Freetown that they had captured them to use them as human shields.[2665]

842. para. 1453: The Trial Chamber does not discount that the abduction and detention of persons from their homes and their subjection to forced labour under conditions of violence spread terror among the civilian population. However, the Trial Chamber finds this "side-effect" of terror is not sufficient to establish the specific intent element of the crime with regards to these acts.

843. para. 1454: The Trial Chamber finds, therefore, 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. As with evidence of the abduction and use of child soldiers, therefore, 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 Trial Chamber is of the opinion that such acts cannot be considered to have been committed with the primary purpose to terrorise protected persons.

iii. Sexual Slavery

844. para. 1455: The Trial Chamber has found that many women abducted by the AFRC troops were detained for many months, repeatedly raped and forced to do domestic work such as cooking, washing clothes and to carry loads. Many women were told by the perpetrators that they were now their "wives".[2666]

845. para. 1456: Witness TF1-334 testified that at Rosos, civilians were captured by "rebels" from the surrounding villages. Those who tried to escape were executed.[2667] Women - particularly the young and beautiful ones - were placed under the full control of "commanders"; they became their "wives". As their "wives" the women cooked for the rebels and the other soldiers in Kono. They were also "used sexually."[2668] This was an open practice. The Witness testified that he and other soldiers all "had sexual intercourse" with captured women.[2669]

846. para. 1457: Witness TF1-133 testified that all the women who were captured at the same time as her were given to men as their wives which meant that the women had to have sex with the men.[2670] She testified further that in Krubola, the captured women cooked and "had sex" with the rebels and were forced to be their "wives". The Witness stated that when a women was "betrothed" to a man, she became his "wife" which according to the Witness, meant that "whoever you were with would have sex with you." The Witness testified that when the rebels captured women, they would have sex with them before bringing them to where the rebels were based. When the captured women were taken to the base, they would be handed over to a person who would have sex with that woman all the time. The "bosses and stronger guys" all had wives who were captured but the subordinates were not allowed to have wives. The subordinates would be sent to the front and they would always bring back captured civilians, including women.

847. para.1458: The practice of sexual slavery was regulated by the AFRC troops through a system of ownership and punishment for transgressing the rules.[2671] Witness TF1-094 testified that she believed that if she refused to have sex with her captor, she would have been killed.[2672] Some women were transferred as "wives" between two or more different soldiers.[2673]

848. para. 1459: The Trial Chamber therefore finds that in the particular factual circumstances before it, the primary purpose behind commission of sexual slavery was not to spread terror among the civilian population, but rather was committed by the AFRC troops to take advantage of

the spoils of war, by treating women as property and using them to satisfy their sexual desires and to fulfil other conjugal needs. As with evidence of the other enslavement crimes, namely the abduction and use of child soldiers and forced labour therefore, even where sexual slavery occurred simultaneously with other acts of violence examined by this Chamber with regards to the crime of terror, the Trial Chamber is of the opinion that such acts cannot be considered to have been committed with the primary purpose to terrorise the civilian population.

iv. Physical Violence: Amputations

849. para. 1460: The Trial Chamber has found that amputations of civilians were carried out by members of the AFRC in Kono and Koinadugu Districts as well as in the City of Freetown. In Tombodu, Kono District, the Trial Chamber has found amputations were carried out by members of the AFRC in retaliation for alleged civilian killings of AFRC soldiers, as a warning to other civilians, and because civilians did not support the AFRC but supported the government. Civilians whose hands were amputated by members of the AFRC were told to ask President Kabbah for new hands.[2674]

850. See below: Chapter 7 – AFRC – Trial Judgment - Factual Findings - Violence to life, health and physical or mental well-being of persons, in particular cruel treatment - paras . 1192-1242 [4065]

851. para. 1461: The Trial Chamber has found that civilians throughout Freetown, during the January 1999 invasion also had their hands amputated by members of the AFRC and were told to go to President Kabbah and ask him for new hands. During a raid of the PWD areas an AFRC operation was carried out called ‘Operation Cut Hand’ in which civilians were given the cruel choice of having either “short sleeves” or “long sleeves” meaning amputations of the arm at the bicep or of the hand at the wrist. In the Upgun, Ross Road and Fourah Bay area, civilians were “taught a lesson” and had their hands amputated and were hacked to death. Civilians there were told that as they had voted for “Pa Kabbah” they should go to him as he had hands to give them. They were also told to go to “Pa Kabbah” or ECOMOG to complain. Civilians near Shell Company at Old Road had their hands amputated and were told to go to “Pa Kabbah” because they had voted for him and he would give back their hands. At Kissy mental home, civilians had their hands amputated because they were thought to have divulged the location of AFRC troops to ECOMOG. Civilians were amputated at Kissy Mental Home, Fataraman Street, Parsonage Street and told to go to Kabbah. At Parsonage Street, the amputated civilians were told expressly, to tell

Kabbah ‘‘this is what we have done. Go tell him no more politics, no more voting.” This pattern continued until late January or early February when the AFRC were forced to flee Freetown.[2675]

852. para. 1462: The Trial Chamber is satisfied on the basis of the express statements of the perpetrators made at the time many of the amputations were carried out that such amputations were used by the AFRC with the primary purpose to spread terror among the civilian population. The Trial Chamber also notes that such amputations were carried out primarily against unarmed civilians, in or near their homes, villages, and farms, and the Trial Chamber is satisfied that the attacks could not have been primarily for military advantage.

853. para. 1463: The mutilation of individuals in such a manner also carried with it an inherent public message regardless of the explicit statements of the perpetrators. The brutal amputation of civilian limbs served as a visible lifelong sign to all other civilians not to resist the AFRC and not to back President Ahmed Tejan Kabbah or his supporters. The Trial Chamber is also satisfied on this basis that the primary purpose of amputations carried out by members of the AFRC during the conflict in Sierra Leone could only reasonably be inferred to have been to terrorise the civilian population.

854. para. 1464: The Trial Chamber is therefore convinced that amputations carried out by members of the AFRC Trial Chamber throughout the conflict, regardless of the context in which they were committed, were acts of violence committed against protected persons with the primary purpose to terrorise protected persons.

(ii) Kenema District – Crimes

a. Kenema Town – Kenema District - Crimes

855. para. 1470: The Trial Chamber has previously found in its Factual Findings that civilians in Kenema Town were accused of being Kamajors or of supporting the Kamajors and were unlawfully killed or subject to physical violence by members of the AFRC/RUF.

856. para. 1471: In particular, the Trial Chamber relies on its findings that after the Coup in 1997, both “RUF” rebels” and “AFRC Juntas” took over control of Kenema Town and remained in Kenema until February, 1998.[2679]

857. para. 1472: The Trial Chamber also accepts the evidence of Prosecution Witness TFl-122, not previously examined by the Chamber, that later, in December 1997, the AFRC/RUF launched ‘Operation No Living Thing’ in Kenema and that as part of this operation members of the

AFRC/RUF would parade the streets of Kenema Town during the day accusing people of being Kamajors, entering people's homes, harassing them, and looting their property alleging that they had Kamajors in their houses. The Witness testified that members of the AFRC/RUF would "search you in the street, take whatever you have in your pocket and they will allege that you have Kamajor in your pocket" and that the RUF/AFRC "were shooting all over the air."[2680]

858. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings - Kenema District – Kenema Town – para. 829 [1815].

859. para. 1473: The Trial Chamber has found that during this time, "RUF rebels" and "AFRC juntas" were seen dancing around the body of a civilian singing that they would kill all Kamajors. The rebels and juntas then split his abdomen and stretched his intestines across Hangh Road where the body stayed for three days.[2681]

860. para. 1474: The Trial Chamber has previously found that in early February 1998 Sam Bockarie arrested a number of persons on the grounds that they were 'Kamajor supporters'. They were brought to the AFRC Secretariat, physically abused and detained for about three days. They were brought to the police and later rearrested by members of the AFRCIRUF, beaten and killed.[2682]

861. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings - Kenema District – Kenema Town – para. 832 [1818].

(iii) Bo District – Crimes

862. para. 1477: In its Pre-Trial Brief, the Prosecution alleged that after the coup in May 1997, there was significant fighting between CDF/Kamajors and the AFRC/RUF forces in Bo District and civilians were often targeted as being sympathetic or collaborating with either the CDF or the AFRC/RUF. The Prosecution alleged that there were several instances of the AFRC/RUF forces executing civilians perceived to be working or sympathizing with the CDF during the Junta period.[2684]

863. para. 1478: Also in its Pre-Trial Brief, the Prosecution alleged that in the weeks following the coup, there was an offensive launched by the AFRC/RUF from Bo Town against the surrounding villages for their perceived sympathy or assistance to Kamajors in the region. It is alleged by the Prosecution that in approximately June 1997, AFRC/RUF forces attacked five villages in the region, including Tikonko and Gerihun in the region; namely, Sembehun, Tikonko, Mamboma, Gerihun, and Telu. In these attacks, the Prosecution alleged that the AFRC/RUF

intentionally killed many civilians that were remaining in the villages and in most of the attacks, looted and burned houses.[2685]

864. para. 1479: In its Supplemental Pre-Trial Brief, the Prosecution submitted that the crimes committed during attacks on various villages in Bo District where it was perceived that the civilians were supporting and/or harbouring the CDF/Kamajors as well as the burning of civilian property performed as part of many of the attacks is evidence of collective punishment.[2686]

865. para. 1480: In its Final Brief, the Prosecution submitted that it was a policy of the AFRC Government to eliminate all opposition to it and that the AFRC Government ordered, as a matter of policy, attacks on villages like Tikonko which supported the former SLPP Government. The Prosecution submitted that AFRC attacks including the burning of the SLPP building in Bo Town, the attack in Gerihun in which an AFRC delegation said they wanted to join forces with the Kamajors but instead shot civilians, attacked the Vice President's house with an RPG and killed Chief Demby, sent a clear message that was "you are either for us or against us," with elimination being the consequence of resistance.[2687]

866. para. 1481: The Trial Chamber has found that acts of violence were carried out against protected persons in Tikonko (Unlawful Killings) and Gerihun (Unlawful Killings).

867. para. 1482: In relation to the crime of terror, the Trial Chamber will consider evidence of burning of civilian property as an act of violence. The Indictment alleges that AFRC/RUF forces burned an unknown number of civilian homes in Telu, Sembehun, Mamboma and Tikonko. The Trial Chamber has found that the Prosecution conceded that it had not led evidence in respect of Telu, Sembehun and Mamboma.[2688] The Trial Chamber finds there is evidence of burning in Tikonko. This evidence will be evaluated, below.

a. Tikonko – Bo District – Crimes

868. para. 1483: The Trial Chamber has previously found on the evidence of Prosecution Witness TF1-004, that on or around 25 June 1997, AFRC and/or RUF rebels attacked the villages of Tikonko and killed civilians.[2689] In particular the Trial Chamber relies on its previous findings that two groups of attackers came to the village that day. The Trial Chamber has found that the first group came with the intent to kill Kamajors but the second group shot indiscriminately at civilians and Kamajors alike killing five civilians and three Kamajors at Tikonko Junction. During the attack on the village, the Trial Chamber has found a minimum of 18 more civilians were killed but that no evidence was adduced that any other Kamajors were killed. The Trial Chamber also

relies in particular on its findings that the soldiers entering the village were heard to say "the people of Tikonko will know them today"; that three civilian women had their bellies split open, two of whom died from their injuries; that civilians, including a child, were killed in their houses; and that a corpse of a man was mutilated, the skin removed from the forehead.[2690]

869. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings – Bo District – Tikonko – paras. 810-818 [1797].

870. para. 1484: The Trial Chamber also accepts the evidence of Prosecution Witness TF1-004, not previously evaluated by the Chamber, that there was burning in Tikonko. The Witness testified that as he was walking towards his home he noticed that there was a lot of smoke in the town and that houses were burnt. When he reached his own house, he saw that it had been burnt, that items, including rice, had been looted from the house or pulled out in front of the house and burned.[2691] The Witness testified that he did not know of anyone in the village who had petrol available to burn the houses.[2692]

871. para. 1485: The Trial Chamber finds the evidence of Prosecution Witness TF1-004 to be credible and consistent. The evidence of the Witness on burning was not challenged by the Defence. The Trial Chamber is convinced by the circumstantial evidence adduced, namely the burnt remains of houses and other items, and lingering smoke in the village following the attack, that the property of protected persons was burnt by members of the AFRC/RUF who attacked Tikonko that day.

b. Gerihun – Bo District – Crimes

872. para. 1486: The Trial Chamber has found previously in its Factual Findings that civilians were unlawfully killed in Gerihun.[2693] The Trial Chamber relies in particular on its previous findings that during an AFRC/RUF attack on Gerihun on 26 June 1997, Paramount Chief Demby and his caretaker were murdered by soldiers while the Paramount Chief was lying sick in his home.[2694]

873. para. 1487: Relying on the evidence of Witness TF1-054 and TF1-053 set out below and not previously examined in this Judgement, the Trial Chamber finds that the unlawful killing of Paramount Chief Demby was one act of violence committed as part of a series of attacks carried out by members of the AFRC/RUF against civilian and SLPP Government targets in the area.

874. para. 1488: Witness TF1-053 testified that he was in Bo Town on 25 May 1997 where he observed soldiers in uniform shooting in the street, causing people to run away, and hurling insults against persons affiliated with the SLPP. The Witness testified that at this time the SLPP Party Office on Kpondahun Road was burnt down. The Trial Chamber finds it reasonable to infer that the SLPP Party was burnt down by AFRC/RUF soldiers.[2695]

875. para. 1489: Roughly a month later, shortly before the killing of Paramount Chief Demby, Witness TFl-054 testified that he too was present in Bo Town, at the Demby Hotel when armed "soldiers" wearing combat arrived at roughly 1:00 a.m. The soldiers stated that they were looking for Kamajors but the Witness testified that they did not find any at the hotel. The soldiers asked the Witness the whereabouts of Paramount Chief Demby and he told them that he was in his Chiefdom in Gerihun Town. Witness TF1-054 testified that the soldiers harassed and beat civilians staying at the hotel, including wife of Paramount Chief Demby. The soldiers also stole property belonging to the patrons of the hotel.[2696]

876. para. 1490: Witness TF1-053 also testified that he observed "soldiers" launch an RPG into the house of the former vice-president, Mr. Albert Joe Demby (Paramount Chief Demby's brother) during the attack on Gerihun in which Paramount Chief Demby was killed.[2697]

877. para. 1491: However, the Trial Chamber finds that the Prosecution assertion that the attack on Gerihun was preceded by an AFRC delegation which said they wanted to join forces with the Kamajors but instead shot civilians, an incident not previously evaluated by the Trial Chamber in its Factual Findings, mischaracterises the evidence brought before the Court. The Trial Chamber has carefully reviewed the evidence of Witness TF1-054 on this point. The Witness testified that the afternoon prior to the attack on Gerihun at about 3:00 pm, he, together with a group of students and Kamajors, attended a meeting at a school in Gerihun with four persons whom the witness stated had come from Freetown.[2698] The Witness described the persons as a certain Mike Lamin, a certain Mr. Gbao and two others. According to the Witness, the four came to Gerihun to speak with the people there and to request that the Kamajors in Gerihun unite together with the AFRC soldiers. The Witness testified that during the meeting he heard gun fire near the entrance to the town of Gerihun at which point the persons in attendance at the meeting disbursed.[2699] In the absence of any further facts establishing the identities of the persons at the meeting and linking them to the subsequent attack on Gerihun, the Trial Chamber finds the evidence is insufficient to support the conclusions drawn by the Prosecution.

878. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings – Bo District – Gerihun – paras. 821-825 [1808].

(iv) Kailahun District – Crimes

879. para. 1498: In its Pre-Trial Brief, the Prosecution submitted that civilians in Kailahun District were killed by AFRC/RUF forces as part of their campaign of terror and punishment.[2701] The Prosecution submitted that many civilians were deliberately killed on orders from senior AFRC/RUF commanders for their alleged membership or support for civil militia forces, the CDF/Kamajors, including a mass execution that was undertaken in Kailahun Town.[2702] The Prosecution submitted that attacks against civilians also included the abduction of women from other parts of Sierra Leone and their subjection to sexual violence in Kailahun; the capture of men, women and children and their use as forced labour in various locations in Kailahun; and the training of forcibly conscripted men, women and children.[2703]

880. para. 1499: In its Final Brief, the Prosecution argued that "[t]he crimes of physical violence and looting and burning although not specifically charged in the Indictment for Kailahun are relied upon as evidence for the crimes of Terrorism (Count 1) and Collective Punishment (Count 2).[2704]

881. para. 1500: The Trial Chamber has found that acts of violence were carried out against protected persons in Kailahun Town (Unlawful Killings). The Trial Chamber has also found that civilians were enslaved in Kailahun District. As discussed above, the Trial Chamber does not consider that acts of enslavement were acts the primary purpose of which was to spread terror among the civilian population. Evidence on this will not be considered further in this regard.

882. para. 1501: The Indictment does not allege burning in Kailahun District.

a. Kailahun Town – Kailahun District – Crimes

883. para. 1502: The Trial Chamber has previously found that persons in Kailahun Town were abducted, accused of being Kamajors and unlawfully killed. In particular, the Trial Chamber relies on its previous findings that on the orders of Sam Bockarie, 67 persons accused of being Kamajors, were arrested in several villages in Kailahun District and detained at the G5 office in Kailahun Town. Ten of these persons were killed by Sam Bockarie personally, and the rest were shot on his orders. The Trial Chamber has found the persons killed were hors de combat.[2705]

884. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings –Unlawful Killings – Kailahun District – Kailahun Town – paras. 860-863 [1841].

(v) Kono District – Crimes

885. para. 1505: In its Pre-Trial Brief, the Prosecution submitted that widespread and systematic attacks were carried out by AFRC/RUF forces as part of a campaign of terror against the civilian population in order to gain control over Kono District, in particular the diamond mining areas. It was submitted that after the ECOMOG intervention in February 1998, AFRC/RUF forces retreating from Freetown and Makeni regrouped and travelled through Bombali and Koinadugu Districts to Kono District, specifically Koidu Town.[2706]

886. para. 1506: In its Pre-Trial Brief and Supplemental Pre-Trial Brief, the Prosecution submitted that throughout Kono District, AFRC/RUF forces carried out organised amputations of limbs, including the chopping of hands of those accused of voting for President Kabbah. It is submitted that civilians who were present at the scene were forced to laugh or clap during amputations, while victims were told to return to President Kabbah and request their limbs back.[2707]

887. para. 1507: It is submitted by the Prosecution in its Pre-Trial Brief that upon arrival in Koidu Town, AFRC/RUF forces commenced widespread attacks throughout the District demonstrating a pattern of widespread killings, physical and sexual violence, abductions, forced labour and conscription of civilians and widespread looting and destruction of civilian and public properties undertaken by AFRC/RUF forces in Kono throughout 1998. It is submitted that the AFRC/RUF terrorization of the civilian population enabled geographic control of the Kono area, particularly the diamond mining areas, where forced mining by civilians was being undertaken under the supervision of senior AFRC/RUF command.[2708]

888. para. 1508: In its Supplemental Pre-Trial Brief, the Prosecution submits that the burning of civilian property performed as part of the attacks on many villages throughout the District is evidence of collective punishment.[2709]

889. para. 1509: The Trial Chamber has found that acts of violence were carried out against protected persons or their property in Koidu (Unlawful Killings; Enslavement); in Tombodu (Unlawful Killings; Physical Violence; Enslavement; Pillage); in Mortema (Unlawful Killings); in Wondedu (Rape; Enslavement); in Kaima/Kayima (Physical Violence) and in Yardu Sando (Pillage). The Trial Chamber has also found that civilians were pressed into sexual slavery and that child soldiers were abducted and used for military purposes in Kono District. As discussed above, the Trial Chamber does not consider that acts of enslavement, the conscription and use of

child soldiers, nor sexual slavery were acts the primary purpose of which was to spread terror among the civilian population. Evidence on these counts will not be considered further in this regard.

890. para. 1510: In relation to the crime of terror, the Trial Chamber will consider evidence of burning of civilian property as an act of violence. The Indictment alleges that the AFRC/RUF engaged in widespread burning in Tombodu, Foindu and Yardu Sando, where virtually every home in the village was burned.[2710] The Trial Chamber has found that the Prosecution conceded that it had not led evidence on burning in relation to Foindu. Where evidence has been led on burning in the remaining locations which may go the proof of Count 1, the Trial Chamber will examine it below.

a. Koidu Town – Kono District – Crimes

891. para. 1511: The Trial Chamber has previously found that civilians in Koidu Town were targeted by AFRC/RUF soldiers and were killed.[2711]

892. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings – Kono District – Koidu Town – paras. 845-847 [1828].

893. para. 1512: The Trial Chamber accepts the further evidence of witness TFl-334 that Johnny Paul Koroma addressed the commanders in Kono and told them that Kono must be retained as it was a defensive ground for the AFRC/RUF forces. Witness TFl-334 testified that Koroma stated that the civilians in Kono had betrayed them by calling in the Kamajors and therefore, they must not be tolerated any longer in Koidu Town. He stated that in order to secure the area, civilian houses should be completely burnt down so that no civilians would be able to settle there.[2712]

894. para. 1513: Koroma declared Kono a "civilian no-go area" and ordered that civilians who refused to join "the movement" should be executed so that they would not provide information regarding the location of the troops. Issa Sesay, in the presence of a number of other commanders, then reiterated what Johnny Paul Koroma had said, and added that the civilians had proven to be traitors and that this must not be tolerated at all. The witness testified that the orders of Johnny Paul Koroma and Issa Hassan Sesay were immediately carried out. Civilians were driven out of Koidu Town and their houses were burnt down.[2713]

895. para. 1514: The Trial Chamber also accepts the evidence of witness TFl-217, not previously examined by this Chamber in this Judgement, who similarly testified that rebels and juntas burnt buildings in Koidu Town in February or March, 1998 to make Koidu into a "farm". This meant that they did not want any civilians there. The troops were led by Akim Sesay and Lieutenant T.[2714]

896. para. 1515: The Trial Chamber relies on its previous findings that after Johnny Paul Koroma declared Koidu a "no go" area for civilians an unknown number of civilians were killed, although it has been unable to determine beyond reasonable doubt whether these killing are attributable to AFRC and/or RUF forces.

b. Tombodu – Kono District – Crimes

897. para. 1516: The Trial Chamber has found that following an order of Johnny Paul Koroma in March 1998, children were abducted and trained to perform amputations on civilians in areas within Kono District including Tombodu.[2715]

898. See below: Chapter 7 – AFRC – Trial Judgment - Factual Findings - Violence to life, health and physical or mental well-being of persons, in particular cruel treatment - Kono District – Tombodu – para. 1201[4073].

899. para. 1517: The Trial Chamber accepts the evidence of Prosecution witness TFl-334, that in March 1998, 'Savage', the commander in Tombudu, sent a message to 'Bazzy' in Koidu saying that civilians in Tombudu were celebrating because they believed ECOMOG had taken over the area. ECOMOG had not, in fact, taken over the area. Witness TF1-334 testified that, in fact, the civilians had been led to believe this because 'Savage' was wearing a Nigerian ECOMOG uniform. As a result, the Witness, together with a certain 'Colonel Momoh Dorty', went to Tombodu to see the civilians that 'Savage' had said were "jubilating".[2716]

900. para. 1518: The Trial Chamber has found on the basis of the evidence of Witness TF1-072 that in about March 1998, the Witness and thirteen other civilians were captured by "soldiers" and brought before 'Savage' in Tombodu. 'Savage' used a cutlass to slap the witness on his back, accusing him of killing soldiers. He then cut the Witness severely with the cutlass on his upper right calf and on his left calf. Witness TF1-072 was also stabbed by one of Savage's subordinates, 'Small Mosquito', in the left rib area following an order by 'Savage'. The Trial Chamber was able to observe the scars from these incidents.[2717]

901. para. 1519: 'Savage' then announced that he would cut off the hands of the fourteen captives, including witness TF1-072.[2718] The men were forced to lie on ground and were tied together. 'Small Mosquito' urinated on them. He then covered them with a mattress that he set on fire with the men still lying underneath. Witness TF1-072 was burnt on his shoulder before he managed to free himself. On account of his attempted escape 'Savage' flogged the witness on his face so severely that his vision is permanently impaired.[2719] 'Savage' then ordered the witness to place his hand on a nearby tree stump and attempted to amputate his right hand. The witness was so terrified that he defecated. His right hand was not entirely amputated, but permanently disfigured. The Trial Chamber was able to observe that the witness' fingers are mangled. He stated that he is unable to read or write as result of the assault.[2720]

902. para. 1520: The Trial Chamber relies on its previous findings that when witness TF1-334 arrived in Tombodu, he personally observed 'Savage' amputate the hands of about fifteen people.[2721] Witness TF1-334 testified that 'Savage' told the victims that they should tell ECOMOG that 'Savage' was in Tombodu and that this was a warning to the other citizens.[2722] The Trial Chamber has found that 'Savage' locked 15 civilians into a house which he then set ablaze and that none of the civilians escaped, and that 'Savage' and a certain 'Guitar Boy' beheaded 47 and threw their bodies into a diamond pit.[2723]

903. See below: Chapter 6 – AFRC – Trial Judgment - Factual Findings - Violence to life, health and physical or mental well-being of persons, in particular cruel treatment - Kono District – Tombodu – paras. 1206 [4078]; Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings - Kono District – Tombodu – paras. 855 [1837].

904. para. 1521: The Trial Chamber relies on its findings, on the basis of the evidence of witness TF1-033, that the AFRC carried out an unknown number of amputations in March 1998.[2724]

905. para. 1522: The Trial Chamber has found on the basis of the evidence of witness TF1-216 that in April 1998, he and other civilians were taken by members of the AFRC to Tombodu. 'Staff Alhaji' ordered the hands of the witness and five others to be cut off. Their hands were cut off with a cutlass and they were told to go see President Kabbah as he had a container of hands.[2725] The Trial Chamber also relies in particular on its findings with regards to witness TF1-216 that in or about April 1998 on the orders of 'Staff Alhaji Bayo' 53 civilians were burnt alive by "juntas" in a house.[2726]

906. para. 1523: The Trial Chamber accepts the testimony of Prosecution witness TFl-334, not previously examined by the Chamber, that prior to the pull out of the AFRC from Koidu Town in mid-May 1998, Johnny Paul Koroma ordered that houses should be burnt in Kono District and that following this Tombodu was completely burnt down.[2727] The witness testified that he knew this as he was an Operation Commander and monitored orders given to other commanders.[2728] At the time that 'Savage' had informed 'Bazzy' that civilians in Tombodu were celebrating because they believed ECOMOG had overtaken the town, described above, the witness went to Tombodu and personally observed that Tombodu was completely burnt down by a joint SLA and RUF force. The witness testified that Johnny Paul Koroma had given the order to burn the villages so the civilians would not occupy them and that the witness, other operations commanders, soldiers and 'Bazzy' ensured that these orders were carried out.[2729]

c. Yardu Sando – Kono District – Crimes

907. para. 1524: The Trial Chamber relies on its previous findings on the basis of the testimony of Witness TF1-019 that "AFRC soldiers" and "rebels" attacked Yardu Sando on 16 April 1998 and that during the attack soldiers looted valuable property from civilian houses.[2730] The Trial Chamber also accepts the testimony of Witness TF1-019, not previously examined, that during this attack the village was largely burnt down by the AFRC/RUF. The Witness stated that prior to the attack there were approximately 100 houses in the village and that following the burning, only 3 or 4 remained standing.[2731]

908. See below: Chapter 11 – AFRC – Trial Judgment - Factual Findings - Pillage - Kono District – Yardu Sando – paras. 1414 [6134].

(vi) Koinadugu District – Crimes

909. para. 1528: In its Pre-Trial Brief, the Prosecution submitted that from approximately 4 February 1998, after the AFRC/RUF were driven out of Freetown by the ECOMOG intervention force, successive attacks in Koinadugu District involved widespread killings, physical and sexual violence against civilian men, women and children, looting and destruction of property and the abduction and forced labour and/or conscription of men, women and children. The Prosecution submitted that these crimes were committed in furtherance of a campaign of terror and collective punishment during AFRC/RUF troop movements and attacks on towns and villages throughout the entire District, including Fadugu, Heremakono, Kabala, Kamadugu, Katambo, Koinadugu Town, Kumalu, Kuronbola, Kurubonla, Moriya, Seraduya, Serekolia, Sokorola, and Yiffen [sic].[2733]

910. para. 1529: The Prosecution further submits in its Pre-Trial Brief that some acts of physical violence were undertaken by the AFRC/RUF forces in Koinadugu District as collective punishment against the civilian population. It is submitted that AFRC/RUF forces organized amputations of limbs of men, women and children, who were given letters and/or told to go to President Kabbah to ask for their limbs back.[2734]

911. para. 1530: In its Final Brief, the Prosecution asserted, "The attacks on Yiffin and other villages, all in close proximity to each other, were carefully designed and organised by the three Accused, who intended that the crimes charged would occur, or were aware of the substantial likelihood of the occurrence of all of these crimes. Moreover, these acts or threats of violence were committed with the primary purpose of spreading terror amongst civilians and punishing them collectively for their failure to support the AFRC/RUF."[2735]

912. para. 1531: The Trial Chamber has found that acts of violence were committed against protected persons or their property in Kabala (Unlawful Killings, Rape, Physical Violence, Enslavement, Pillage); in Kurubonla (Unlawful Killings); in Koinadugu Town (Unlawful Killings, Rape, Enslavement); in Fadugu (Unlawful Killings, Rape, Enslavement, Pillage); and in Kumala (Enslavement). The Trial Chamber has also found that women were subjected to sexual slavery and that children were abducted for use as child soldiers in Koinadugu District. The Trial Chamber has also found that enslavement, the abduction and use of child soldiers and sexual slavery are acts of violence the primary purpose of which, in the factual circumstances of the conflict in Sierra Leone, was not to spread terror among the civilian population. Evidence on these counts will not be considered further in this regard.

913. para. 1532: In relation to the crime of terror, the Trial Chamber will consider evidence of burning of civilian property as an act of violence. The Indictment alleges that AFRC/RUF forces engaged in widespread looting and burning of civilian homes in Heremakono, Kabala, Kamadugu and Fadugu.[2736] The Trial Chamber has found that the Prosecution conceded that it had not led evidence of burning in Heremakono and Kamadugu.[2737] Where evidence has been led on burning in the remaining locations which may go the proof of Count 1, the Trial Chamber will examine it below.

a. Kabala, Fadugu, Koinadugu Town and Kurubonla – Koinadugu District - Crimes

914. para. 1533: The Trial Chamber has found that a number of acts of violence were committed in Kabala, Fadugu, Koinadugu Town and Kurubonla during the indicted period.

915. para. 1534: The Trial Chamber has found that Kabala Town was attacked by AFRC/RUF forces in mid May 1998 and that the hands of an unknown number of civilians were amputated after the forces had successfully captured the town.[2738] On 27 July 1998 AFRC troops under the command of 'Savage' accompanied by "rebels" attacked Kabala Town for four to five days. Seven loyal SLA soldiers were captured and executed[2739] and the fighters looted civilian property.[2740] The Trial Chamber has found that Kabala was attacked again by 'Savage' and fighters under his command on 17 September 1998 and that fighters looted civilian property from houses.[2741]

916. See below: Chapter 7 – AFRC – Trial Judgment - Factual Findings - Violence to life, health and physical or mental well-being of persons, in particular cruel treatment - Koinadugu District – Kabala – paras. 1217 [4088].

917. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings - Koinadugu District – Kabala – paras. 871 [1851].

918. See below: Chapter 11 – AFRC – Trial Judgment - Factual Findings - Pillage - Koinadugu District – Kabala – paras. 1406-1407 [6128].

919. para. 1535: In Fadugu, the Trial Chamber has found that at a checkpoint on 22 May 1998 eight soldiers belonging to an unidentified faction, captured a civilian they believed to be a member of the CDF. The soldiers beat the man to death, cut open his stomach and removed his intestines. The intestines were displayed openly at the checkpoint. In close vicinity to the checkpoint, a teacher and his younger brother were killed.[2742] The Trial Chamber has also found that during a later attack, on 11 September 1998, there was a second attack on Fadugu by "rebels" in a campaign known as "Operation Die." An unknown number of civilians were killed in the course of this attack, including the local paramount chief of Mabolo who was burnt to death in his house.[2743] Four members of the AFRC or RUF under the command of 'Savage' raped a girl and forced another civilian who happened upon them to watch as it happened. The girl subsequently died from her injuries.[2744]

920. para. 1536: The Trial Chamber has found that Koinadugu Town was attacked by "SLA" and "RUF fighters" under the command of SAJ Musa and Superman respectively in late July 1998 and that at least ten civilians were killed on the orders of 'Superman'. The Trial Chamber has also found that at least one civilian was repeatedly raped.

921. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings - Koinadugu District – Fadugu – paras. 877-878 [1858]; Chapter 4 – AFRC – Trial Judgment - Factual Findings - Pillage - Koinadugu District – Fadugu – paras. 1021 -1025 [2944].

922. para. 1537: The Trial Chamber notes, but does accept, the testimony of Witness TFl-199 with regards to possible evidence of burning in Kabala and Fadugu in 1998.[2745] While the Witness did not give a specific date with regards to his arrival in Kabala, the Witness testified that he was abducted by the AFRC/RUF in Bombali District at Christmas time in 1998 and travelled with the AFRC/RUF to several places before arriving in Kabala.[2746] As such, he could not have been in Kabala prior to 30 September 1998, the end of the indicted period for acts of burning.

(vii) Bombali District - Crimes

923. para. 1542: In its Pre-Trial Brief, the Prosecution submitted that a large contingent of AFRC/RUF returned to Bombali District in April or May 1998 and established a base at Rosos. The Prosecution submitted that they engaged in the forced labour and military training of abducted civilians, including children, and attacked several villages in the area including Karin, Gbendembu, Bonyoyo (or Bornoya), Mayombo, Mafabu, Malama and Mandaha. It submitted that AFRC/RUF forces engaged in wide spread atrocities against civilians during these and other attacks throughout the district including, intentional killing of civilians in Bonyoyo (or Bornoya), Karina, Mafabu, Mataboi, Pendembu, Malama and Gbendembu, acts of sexual violence including rape, sexual slavery and other forms of sexual violence in locations throughout the district including Mandaha and Rosos, mutilations and amputations in several locations throughout the district including Lohondi, Malama, Mamaka, and Rosos, and the burning of houses and looting of property in many locations throughout the district including Karina and Mateboi.[2747]

924. para. 1543: In its Supplemental Pre-Trial Brief, the Prosecution submits that the amputation of limbs by members of the AFRC/RUF in Bombali District where civilians were told to "go to Kabbah" for new hands and that the burning of civilian property performed as part of the attacks on many villages throughout the District is evidence of collective punishment.[2748]

925. para. 1544: In its Final Brief, the Prosecution submitted that "[...] the three Accused themselves gave orders for, and actively encouraged, killings physical and sexual violence and the burning of villages amounting to a campaign of terrorism" in Bombali District.[2749]

926. para. 1545: In its Closing Arguments, the Prosecution argued that the evidence has shown that all the Accused travelled as commanders with their troops through Bombali attacking villages

on the way. The Prosecution argued that their intent was to spread terror and to punish the civilian population for not supporting them and that their ultimate objective was to retain power.[2750]

927. para. 1546: The Trial Chamber has found that acts of violence were committed against protected persons in Bornoya (Unlawful Killings); Karina (Unlawful Killings); Mateboi (Unlawful Killings); Gbendembu (Unlawful Killings); and Rosos (Rape, Physical Violence). The Trial Chamber has also found that incidents of Sexual Slavery and Enslavement occurred in the District. However, as the Trial Chamber has also found that enslavement and sexual slavery are acts of violence the primary purpose of which, in the factual circumstances of the conflict in Sierra Leone, was not to spread terror among the civilian population, evidence on these counts will not be considered further in this regard.

928. para. 1547: The Trial Chamber will consider any evidence of burning in the locations in Bombali District particularised in the Indictment, namely, Karina and Mateboi. The Trial Chamber did not find that any locations were conceded by the Prosecution with regards to Count 14 at the Rule 98 stage.[2751] The evidence of burning in Karina and Mateboi which was adduced by the Prosecution will be examined below.

a. Mansofinia (Koinadugu District) to Camp Rosos (Bombali District) - Crimes

929. para. 1548: The evidence adduced with regards to Bombali District has demonstrated that AFRC troops moved from Mansofinia (Koinadugu District) to Camp Rosos (Bombali District). Specifically, the Trial Chamber has found that the Accused Brima returned to Mansofinia and led his troops to Rosos via the following path: from Mansofinia they first headed south into Kono district and passed Kondea (Kono), Worodu (Kono) and Yarya (Kono). From Yarya, the 'hometown' of the Accused Brima, the troops headed north east, back into Koinadugu district to Yiffin (Koinadugu) and from there eastwards passing Kumala (Koinadugu), Bendugu (Koinadugu) toward the area near Bumbuna (Tonkolili district). From there the troops headed further towards the north east into Bombali district and passed Kamagbengbeh[2752], Bonoya (Bombali), Karina (Bombali), Pendembu[2753] (Bombali), Mateboi (Bombali) and finally Rosos (Bombali).[2754] The Trial Chamber has established beyond a reasonable doubt that the civilian population was routinely targeted and attacked by soldiers and fighters on that route. The troops settled in Rosos and later a village named Major Eddie Town until the arrival of SAJ Musa in October/ November 1998.

930. para. 1549: Although no findings have been made on acts of violence per Counts 3 - 14 in a number of these locations, the evidence demonstrates a consistent pattern of attacks against the civilian population during this time which is indicative of the primary purpose of the attacks.

b. Mansofinia (Koinadugu District) – Crimes

931. para. 1550: In Mansofinia in May 1998, the First Accused Brima, gave orders to attack civilians. Witness TFl-334 testified that during a meeting convened in Mansofinia to plan the trip North to Bombali District, Brima ordered that any civilian who tried to run away should be shot on sight and that if troops were attacked in any village that village should be burnt down. The Witness testified that Brima warned the soldiers "Minus you, plus you" which TF1-334 explained meant that if a soldier should fail to go by those orders the operation would continue without him.[2755]

932. para. 1551: Witness George Johnson gave evidence that he arrived in Mansofinia in April 1998, after the withdrawal of the troops from Kono. On his arrival, Alex Tamba Brima, Santigie Kanu and some other commanders went to meet SAJ Musa at Krubola. Upon their return, Brima and Kanu told Bazzy that the troops should be restructured and that a camp, later Camp Rosos, should be made at the Bombali axis.[2756] A muster parade was called and the fighters were divided into battalions by FAT Sesay and promotions were given by Brima. The Witness was promoted to the rank of Provost-Marshal and given the role of ensuring disciplinary actions were taken against "the fighters" and to ensure that on all operations during the march to Camp Rosos the fighters adhered who broke the laws of ''jungle justice" would be arrested and judged.[2757] These laws included a prohibition against stealing government property, namely arms, ammunition and medical supplies and a prohibition against rape. Fighters who broke these laws would be punished by death or flogging.[2758]

c. Yaya (Kono District) – Crimes

933. para. 1552: The Trial Chamber recalls the evidence of witness TF1-033 that Brima addressed his troops publicly in Yaya[2759] and advocated attacks on civilians.[2760] The Trial Chamber is satisfied that the witness was in fact referring to the speech made by the Accused Brima at Mansofinia and therefore makes no further findings on this evidence.[2761]

d. Kamagbengbeh (Bombali District) – Crimes

934. para. 1553: The Trial Chamber accepts the evidence of Prosecution Witness TFl-334, not previously evaluated by the Chamber, that at Kamagbengbeh in June of 1998, 'Gullit' tried to divide the troops and sent one group to attack Kambai and another to attack Karina. The troops argued against this division and 'Gullit' agreed instead to focus the attack on Karina. TFl-334 testified that 'Gullit' called Karina a strategic point and said that it was the home town of President Ahmed Tejan Kabbah. 'Gullit' told the junta forces that they should demonstrate their power in Karina. He ordered the troops to burn down Karina, to capture strong male civilians, and to amputate civilians. 'Gullit' stated that he wanted the attack on Karina to shock the whole country and the international community. Kamara and Kanu were present during this speech and during the subsequent attack on Karina. There were no ECOMOG or Kamajor troops in Karina at the time.[2762]

e. Bornoya and Mateboi – Crimes

935. para. 1554: In its Opening Statement, the Prosecution submitted that "It is crucial for the Trial Chamber to appreciate that Bornoya, Karina, Mandaha and Mateboi were villages all in extremely close proximity too each other so one attack on one village was followed almost immediately by an attack on one of the other villages."[2763] The Prosecution submitted that the neighbouring villages of Bornoya, Daraya and Mayombo were attacked first, followed by an attack against Karina on the same day.[2764] In its Closing Arguments the Prosecution argued that the attacks on the villages in Bombali are strikingly similar and create a consistent pattern of how the Accused operated against civilians throughout the campaign, namely, attack their village, kill them, amputate them, burn their houses and abduct the strong men and children.[2765]

936. para. 1555: The Trial Chamber has found that Bornoya was attacked in May of 1998 by AFRC troops including 'Gullit', and 'Five-Five' 'and that civilians were targeted and brutally assaulted during the attack. In particular, the Trial Chamber relies on its findings that during the attack, troops split open the stomach of a pregnant woman named 'Isatta' and removed the foetus. The woman died as a result. Two children were burnt to death when they were placed under a mattress which was set on fire. An unspecified number of other civilians were killed during the course of the attack.[2766]

937. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings - Bombali District – Bornoya – paras. 884 [1863].

938. para. 1556: The Trial Chamber relies on its previous findings that at an unspecified time in 1998, the Accused Brima sent an AFRC "advance team" under the command of 'Captain Arthur' to Mateboi, a village close to Camp ROSOS.[2767] Upon return to Camp Rosos, 'Captain Arthur' brought the decapitated head of the chief of Mateboi and handed it over the commanders at headquarters, which included the Accused Brima and Kamara.[2768]

f. Karina - Crimes

939. para. 1557: In its Supplemental Pre-Trial Brief, the Prosecution submitted that the crimes committed during attacks on Mayombo, Bonoyo (or Bonyoyo), Daraya and Karina were carried out in a single day because it was believed that the inhabitants belonged to the Mandingo ethnic group, the same ethnic group as President Kabbah.[2769]

940. para. 1558: In its Final Brief, the Prosecution argued that, "[...] burning down Karina on the basis that it was President Kabbah's home town clearly amounts to punishing people for acts for which they are not responsible."[2770]

941. para. 1559: The Trial Chamber accepts the evidence of Prosecution Witness TFl-157 that after the attack on Karina, he heard rebels say that the town had been attacked because it was the home town of President Kabbah.[2771] The Trial Chamber also accepts the evidence of Witness TF1-033 that he heard 'Gullit' say that Karina was the birthplace of President Ahmed Tejan Kabbah who had caused a lot of suffering against the AFRC and its supporters and that the AFRC should now return the same fate against the people of Karina and Bornoya.[2772] Witness TF1-033 testified that he also heard 'Gullit' give an order that civilian women should be stripped naked and raped during the attack on Karina, and the neighbouring town of Bornoya.[2773] Witness George Johnson also testified that he heard 'Gullit', in the presence of Kamara and Kanu, order that Karina should be burnt down and the civilian inhabitants killed because it was the home town of Tejan Kabbah.[2774]

942. para. 1560: The Trial Chamber has found that following these orders, on or about 8 May 1998, Karina was attacked by AFRC/Junta forces and that a number of such acts of violence were in fact carried out.

943. para. 1561: The Trial Chamber has found that, the Accused Kamara and two other "juntas" locked five young girls into a house and subsequently set it ablaze. The five girls were burnt alive. "Juntas" threw an unspecified number of little children into the flames of burning houses. The children were burnt alive. Soldiers stabbed a pregnant woman to death. A certain Saccoh Kankoh

Fanta was injured during the attack and subsequently died. An unspecified number of children were killed during the attack.[2775]

944. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings - Bombali District – Karina – paras. 886 [1865].

945. para. 1562: 'Cyborg', a security to the Accused Kamara, threw at least four children aged between five and ten years from a two-storey building in Karina; however, it was not established beyond reasonable doubt that these children died as a result.[2776] A certain Eddie Williams, a.k.a. 'Maf', wrapped into an unknown number of people in a carpet inside a house and thereafter set the house on fire. The people were burnt alive.[2777]

946. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings - bombali District – Karina – paras. 889-890 [1868].

947. para. 1563: The Trial Chamber has found that the mosque in Karina was attacked and a number of civilians, including a man leading prayers was killed. The Trial Chamber accepts the evidence of Witness TF1-334 that the Accused Brima was at the mosque and accused the man leading the prayers of supporting President Kabbah. Brima said to him: "You, you are the one that pray for people. You are one of Pa Kabbah's family ... [s]o you are the worst people here." The Trial Chamber has found that civilians were killed on a massive scale in Karina.[2778]

948. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings – Bombali District – Karina – paras. 891 [1870].

g. Gbendembu - Crimes

949. para. 1564: The Trial Chamber has found that in or around August 1998, 'Gullit' ordered two AFRC commanders to attack Gbendembu because there were purportedly ECOMOG and loyal SLA troops there. Witness TF1-033 heard that 25 civilians were killed in the attack and that 'Gullit' commended his men on a 'job well done'.

h. Rosos - Crimes

950. para. 1565: The Trial Chamber accepts the evidence of Prosecution Witness TF1-334 that AFRC troops set up a base at Rosos in June of 1998 and remained there for approximately three months. The Accused Brima ordered that the troops should occupy the surrounding villages and that there should be no civilians within 15 miles of Rosos. He ordered captured civilians be

executed rather than brought back to the camp and that he would take disciplinary action against any soldier who brought a civilian to the camp. He ordered "Operation Clear the Area" according to which the villages surrounding Rosos were burnt down and looted.[2779]

951. para. 1566: The Trial Chamber also accepts the evidence of witness TF1-033 that in June 1998, he heard Brima order soldiers to kill any civilians they came in contact with in Rosos.[2780] The Trial Chamber notes that witness TF1-267 similarly testified that rebels told her that civilians who did not leave Rothung near Rosos would be killed.[2781]

952. para. 1567: The Trial Chamber has found that while the troops were at Camp Rosos, at least three civilians were raped in or near Rosos[2782] and that one was gang-raped and was badly beaten and stabbed during the attack.[2783]

953. See below: Chapter 4 – AFRC – Trial Judgment - Factual Findings - Pillage - Bombali District – Rosos – paras. 1034 [2955].

(viii) Freetown and Western Area – Crimes

954. para. 1574: In its Final Brief, the Prosecution argued that

> [i]n accounting for the crimes in Freetown the Prosecution stresses the great degree of hatred that already existed amongst the SLA faction towards Nigerian ECOMOG, the police, and the civilian population in general as it attacked Freetown.
>
> That hatred, the Prosecution submits, was a motivating factor behind many of the crimes that were committed in Freetown against the civilian population. Such hatred stemmed from ECOMOG and civilians both killing and targeting soldiers and their families during the Intervention, the continuation of this practice whilst the SLAs were in the jungle, the numerous occasions when the civilians had betrayed the SLAs to the Kamajors and ECOMOG whilst they were in the jungle, and the execution of 24 senior AFRC officials in October 1998 by the Kabbah government whose Chief of Defence Staff at that time was Nigerian General Maxwell Khobe, and whose execution was carried out by Nigerian soldiers.
>
> There is also evidence that SAJ Musa himself gave orders that once in Freetown, all police stations should be burnt down and all policemen, Nigerians [sic] soldiers, and SLPP collaborators should be targeted and killed during the attack on Freetown. An order which was endorsed by the First Accused when he assumed command after the death of SAJ Musa.[2785]

955. para. 1575: In its Final Brief, the Prosecution asserted that the Accused" [... J gave orders for, and actively encouraged, killings, mutilations and sexual violence and widespread burning of houses amounting to a campaign ofterrorism."[2786]

956. para. 1576: The Prosecution has argued that the attacks against civilians continued as the AFRC retreated from Freetown. In its Pre-Trial Brief, the Prosecution submitted that the bulk of the AFRC/RUF forces finally were pushed out of the city of Freetown by early February at which time the AFRC/RUF regrouped in Waterloo and coordinated later attacks on Tumbu and Hastings before being completely pushed out of the Western Area.[2787] In its Opening Statement, the Prosecution submitted that as the rebels were forced to withdraw by ECOMOG, they intensified the pace of their killings, amputations, looting and burning particularly in the Kissy area.[2788]

957. para. 1577: The Trial Chamber has found that acts of violence were carried out against protected persons or their property in Freetown (Unlawful Killings, Rape, Physical Violence, Pillage, Enslavement) and that civilians were subjected to sexual slavery in Freetown and Western Area. The Trial Chamber has also found that children were abducted and used for military purposes in Freetown and the Western Area. As discussed above, the Trial Chamber does not consider that acts of enslavement, the abduction and use of child soldiers nor sexual slavery were acts the primary purpose of which was to spread terror among the civilian population. Evidence on these counts will not be considered further in this regard.

958. para. 1578 (corrigendum): The Prosecution has adduced evidence on acts of burning in Freetown. The Trial Chamber will consider this evidence below.

a. State House – Freetown and Western Area - Crimes

959. para. 1579: The Trial Chamber has found that on 6 January 1999, AFRC forces under the command of the Accused Brima, and including the Accused Kamara and Kanu, invaded the city of Freetown. They gained control of Freetown and large parts of the Western Area.[2789]

960. para. 1580: The Trial Chamber accepts the evidence of Prosecution Witness TFl-334 who testified that he was present when 'Gullit' announced that it was time to attack Freetown and that the Sierra Leone People's Party government was responsible for denying the success of the rebel troops. The Witness testified that 'Gullit' ordered that Freetown should be looted and burnt down, that anyone who opposed the troops should be a considered a collaborator and should be killed.[2790] This testimony is corroborated by Witness TF1-033 who heard Gullit order the burning of houses and the murder of civilians during the attack on Freetown.[2791] Witness TF1-157 testified that when the ARFC entered Freetown, they ordered the civilians to sing while they were burning their houses.[2792]

961. para. 1581: The Trial Chamber relies also on its previous findings that during the subsequent attack on Freetown in January 1999, civilians were mutilated and killed by ARFC forces because the AFRC believed the people of Freetown supported President Tejan Kabbah or failed to support the AFRC/RUF.

962. para. 1582: In particular, the Trial Chamber relies upon its findings that a certain "Junior Sheriff' brought a boy to the State House who was from Guinea-Bissau and shot him[2793] and that at least four persons suspected to be Nigerian ECOMOG soldiers were executed, hors de combat by AFRC troops in the State House area. An AFRC commander named Lieutenant Colonel Kido shot and killed approximately six civilians because they had "overlooked" him, meaning that they did not pay sufficient respect to him.[2794]

963. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings - Freetown and Western Area – State House – paras. 904 [1881], 913 [1890].

964. para. 1583: The Trial Chamber has found that 'Gullit' told his fighters to force captured civilians to join the AFRC troops on their retreat, in order to replace those fighters killed by ECOMOG. Civilians who refused to join were shot in the presence of the Accused Brima and their dead bodies were thrown out the back of State House. The Trial Chamber has found that at least thirty civilians were killed. The Trial Chamber has found at least six other civilians were killed by AFRC troops at or near State House.[2795]

965. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings - Freetown and Western Area – State House – paras. 914 [1891].

b. Kingtom – Freetown and Western Area - Crimes

966. para. 1584: The Trial Chamber relies in particular on its findings that an unknown number of civilians in the area of Kingtom were killed by AFRC troops for allegedly collaborating with ECOMOG. The Trial Chamber has found that in the second week of the invasion, during an operation to reclaim Kingtom from ECOMOG soldiers broke civilian houses and killed the civilians inside because they perceived them as 'traitors' who were collaborating with ECOMOG. Witness TF1-334 testified that soldiers would knock on the door of the house and if the door was not opened, they would force it open and "[t]he first person who came out was a dead person."[2796]

967. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings - Freetown and Western Area – Kingtom – paras. 917-918 [1894].

c. Fourah Bay – Freetown and Western Area- Crimes

968. para. 1585: The Trial Chamber has found that during the attack on Freetown, in early January, AFRC troops retaliated against civilians in the Fourah Bay area and punished them for allegedly killing an AFRC soldier.

969. para. 1586: Specifically, the Trial Chamber relies on its findings that after the troops lost State House and Eastern Police, the Accused Brima received information that the people of Fourah Bay had killed one of his soldiers and announced that he would lead the AFRC troops to Fourah Bay to burn houses and kill people in retaliation. The troops attacked Fourah Bay and a large number of civilians were killed including men, women and children burned inside houses. Soldiers shot people who attempted to escape from burning houses. The attack was not limited to Fourah Bay Road but encompassed the entire Fourah Bay area.[2797]

970. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings - Freetown and Western Area – Fourah Bay – paras. 919-921 [1896].

971. para. 1587: The Trial Chamber has found that prior to the attack the Accused Brima ordered a soldier named "Mines" to go to the SLRA to collect cutlasses. "Mines" subsequently returned with cutlasses, which he distributed to the troops with the assistance of one of the battalion commanders 'Changabulanga'.[2798]

972. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings - Freetown and Western Area – Fourah Bay – para. 921 [1898].

973. para. 1588: The Accused Kanu gave a demonstration on amputation of civilians to AFRC troops in the Kissy Old Road area. Kanu demonstrated an amputation on a civilian, explaining to them that a 'long hand' is the amputation of the hand, while a 'short hand' is the amputation of an arm around the bicep area (above the elbow and below the shoulder).[2799]

974. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings - Freetown and Western Area – Fourah Bay – para. 922 [1899].

975. para. 1589: Brima then ordered the soldiers to move to the Upgun roundabout via Kissy Road. Upon arrival at Upgun, the troops were summoned in a muster parade. The Accused Kanu and the Accused Brima held a discussion and then Kanu told the troops that Brima had said that the civilians should be taught a lesson. Kanu then ordered that any civilian the troops saw from

Ross Road until Fourah Bay Road should be amputated and killed and the entire area should be burned down.[2800]

976. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings - Freetown and Western Area – Fourah Bay – para. 919 – 926 [1896].

977. para. 1590: The troops were divided for the attack on Fourah Bay with the Accused Kanu as the commander of one group. After carrying out the orders, the troops were called back to where 'Gullit' was near Kissy Road.[2801] On cross-examination, witness TF1-184 gave more detail about the alleged involvement of the Accused Kamara in burning in Kissy Road, Ross Road and Fourah Bay Road after a muster parade at Upgun, but the evidence was not linked explicitly to the attack involving the retaliatory killing of civilians.

978. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings - Freetown and Western Area – Fourah Bay – paras. 919 – 926 [1896].

979. para. 1591: Following the attack on Fourah Bay, the Accused Kanu gave a further demonstration at Upgun. Kanu announced that it was time for the amputations to begin. He stated that he would carry out the first amputations in order to set an example for the others. Kanu called for two civilians nearby to be brought to him and he amputated both hands of both civilians with a machete at their wrists, explaining the difference between what he referred to as 'short sleeve' and 'long sleeve' amputations. Kanu then told the civilians that since they voted for 'Pa Kabbah' they should go to him and ask him for hands. Ten more civilians were then rounded up, amputated at the elbow and told them to go to 'Pa Kabbah' or ECOMOG to complain.[2802]

980. See below: Chapter 7 – AFRC – Trial Judgment - Factual Findings - Violence to life, health and physical or mental well-being of persons, in particular cruel treatment - Freetown and Western Area – Upgun – para. 1229 [4097].

981. para. 1592: The Trial Chamber has found on the basis of the evidence of Prosecution Witness TF1-153 that while the AFRC headquarters was at PWD, a soldier came from Fourah Bay "with his head bust" reporting that the civilians there had been fighting the soldiers. The witness subsequently heard that 'Bazzy' had raided a WFP warehouse in the nearby area and collected a number of machetes he found there. Later that evening, the witness saw 'Bazzy' and overheard a conversation between him and SAJ Musa's wife. Tina Musa asked 'Bazzy' why his men were holding machetes. According to the witness, 'Bazzy' replied "We are just [returning] from Operation Cut Hand". The witness testified that from this conversation he understood that the machetes from the warehouse had been used to amputate people.[2803]

982. See below: Chapter 7 – AFRC – Trial Judgment - Factual Findings - Violence to life, health and physical or mental well-being of persons, in particular cruel treatment - Freetown and Western Area –Freetown 'Operation Cut Hand' at PWD – paras. 1231 [4099].

d. Kissy - Good Shepherd Hospital – Freetown and Western Area - Crimes

983. para. 1593: The Trial Chamber has found that on 18 January 1999, a group of "juntas" went to the Good Shepherd Hospital in Kissy and accused personnel there of treating ECOMOG and Kamajors. They forced everybody out of the hospital - patients, nurses, staff, and visitors - and beat them with a large stick called a 'coboko', which has a rope tied to it.[2804] .

984. para. 1594: Civilians were taken from the Hospital, to a certain 'Pa Zubay's' house a short distance away. The civilians were made to stand against a wall and the juntas opened fire and began shooting randomly from different directions. Fifteen civilians were killed as a result of the shooting.[2805]

985. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings – Unlawful Killings - Freetown and Western Area – Good Shepherd Hospital – paras. 928-930 [1905].

e. Kissy - Rogbalan Mosque – Freetown and Western Area - Crimes

986. para. 1595: The Trial Chamber has found that AFRC fighters attacked a mosque in Kissy killing a number of civilians who were accused of being "enemies." Witnesses testified that the civilians were targeted because the AFRC fighters believed they were supporting President Kabbah and/or ECOMOG. Witness TFl-334 testified that the Accused Brima told commanders prior to the attack that he had received information that civilians were harbouring ECOMOG forces in mosques. Brima further stated that AFRC troops should shoot and kill people they encounter in mosques, as these people were enemies. The witness stated that while the area had many mosques, Brima referred in particular to a mosque "down towards Shell Old Road, towards the junction" that was housing "collaborators".

987. para. 1596: Witness TF1-021 testified that over fifteen men armed with guns and machetes, stormed into the compound of the mosque. The men asked the civilians if they were praying, to which the civilians responded affirmatively. The witness stated that the men told the civilians "As you are here now, you are people who voted for Tejan Kabbah. We are going to kill

all of you." The civilians collected money and offered it to their assailants so that they would leave. The men took the money and then began firing indiscriminately, killing people throughout the mosque. According to the witness, the men stated that the killings were not their fault, as they came in peace, but that of President Kabbah, since he did not recognise the People's Army.

988. para. 1597: The Trial Chamber has found that at least 70 persons were killed during the attack.[2806]

989. See below: Chapter 2 – AFRC – Trial Judgment - Factual Findings - Violence to life, health and physical or mental well-being of persons, in particular cruel treatment - Freetown and Western Area – Rogbalan Mosque– paras. 934-936 [1911].

f. Kissy - Old Shell Road – Freetown and Western Area – Crimes

990. para. 1598: The Trial Chamber has found that at Old Shell road, immediately prior to the troops' arrival at Kissy Mental Home, Osman Sesay a.k.a. 'Changamulanga' amputated six young civilian men at the elbow. 'Changamulanga' told the men to go to 'Pa Kabbah' and he would give them back their hands because they had voted for him.[2807]

991. See below: Chapter 7 – AFRC – Trial Judgment - Factual Findings - Violence to life, health and physical or mental well-being of persons, in particular cruel treatment - Freetown and Western Area – Old Shell Road– para. 1236 [4104].

g. Kissy - Kissy Mental Home - Freetown and Western Area – Crimes

992. para. 1599: Trial Chamber relies on its findings that one evening in January 1999, on the day that the AFRC troops arrived at Kissy Mental Home during the retreat from Freetown, the Accused Brima, in the presence of commanders including the Accused Kamara and Kanu, ordered troops to go out from the mental home and "clear up" the area. Brima stated that civilians were to be killed and amputated and houses burned as punishment for their support of ECOMOG. Specifically, he ordered the witness, 'Pikin', 'Shrimp', 'Hassim' and others to go as far as they could towards "PWD" killing people.[2808]

993. para. 1600: The witness stated that his group accordingly moved from the Kissy Mental Home, along the Old Road, towards Kissy market, where they heard civilians celebrating. The soldiers began firing machine guns at the civilians, killing an unspecified number of them. The

troops went as far as Fisher Lane and then retreated to Kissy Mental Home, where they reported to 'Gullit' that the mission had been accomplished.[2809]

994. See below: Chapter 7 – AFRC – Trial Judgment - Factual Findings - Violence to life, health and physical or mental well-being of persons, in particular cruel treatment - Freetown and Western Area – Kissy Mental Home– paras. 1237-1241 [4105].

995. para. 1601: The Trial Chamber further found on the evidence of witness George Johnson that on the same day the Accused Kanu ordered the soldiers, in the presence of the Accused: Brima, the Accused Kamara and other commanders, to go to the eastern part of Freetown and amputate up to 200 civilians and send them to Ferry Junction. After the order was given, the witness observed fighters, including Kabila, 'Born Naked', 'Cyborg', and 'SBU Killer', moving towards the eastern part of Freetown. On their return, their machetes were covered with blood and they brought with them many amputated arms.[2810]

996. See below: Chapter 7 – AFRC – Trial Judgment - Factual Findings - Violence to life, health and physical or mental well-being of persons, in particular cruel treatment - Freetown and Western Area – Kissy Mental Home– para. 1237 [4105].

997. para. 1602: The Trial Chamber relies on its findings on the basis of the evidence of Witness TFl-184 that 'Mines' amputated an unknown number of civilians pursuant to an order issued by the Accused Brima. While the troops were at Kissy Mental Home, AFRC soldier Kabila told 'Gullit' that "the civilians are pointing their hands at our own crowd here," implying that the civilians were divulging the troops' position to ECOMOG. In the presence of the witness, 'Gullit' said "that the hand that they are pointing at us, the fingers that are pointing at us, we shall ensure that all their hands are amputated." When asked if anything occurred as a result of the Accused Brima's words, the witness testified that about one and a half hours later, AFRC soldier 'Mines' returned to Kissy Mental Home with a bag full of hands which he showed to 'Gullit' and others, including the witness. Witness TF1-184 also testified that during the period that the troops were at Kissy Mental Home, he observed 'Gullit' amputating a civilian's hand at Shell Company by Old Road.[2811]

h. Kissy - Rowe Street – Freetown and Western Area - Crimes

998. para. 1603: The Trial Chamber has found that at unspecified time in January 1999, at Rowe Street in the Kissy area of Freetown, AFRC fighters or persons associated with them captured eight civilians, lined them up and shot seven of them dead. The rebels put the remaining

civilian's hand on the ground, stood on his chest, stretched out his arms, and intentionally chopped off his hand with an axe.[2812]

999. See below: Chapter 7 – AFRC – Trial Judgment - Factual Findings - Violence to life, health and physical or mental well-being of persons, in particular cruel treatment - Freetown and Western Area – Rowe Street– para. 1232 [4100].

i. Kissy - Fatamaran Street – Freetown and Western Area - Crimes

1000. para. 1604: The Trial Chamber has found that on approximately 18 January 1999 rebels amputated the hands of the seven captured persons. At least one person died as a result of the amputation.[2813]

j. Kissy - Old Road (Locust and Samuels area) – Freetown and Western Area - Crimes

1001. para. 1605: The Trial Chamber has found that on 22 January 1999, on Old Road in the Locust and Samuels area, witness TF1-083 and his family were captured by a group of rebels. The rebel commander told witness TF1-083 and others to lie flat on their backs to be killed or amputated. The rebels took two people to a comer and then returned with bloody knives. The commander ordered the rebels to cut off the hands of the remaining people. He said anyone whose hand is cut should go to Kabbah and ask him for a hand. One rebel stabbed witness TF1-083 with a knife in the left upper arm. The rebels chopped witness TF1-083' s hand off with two blows of an axe. The hand of a man named Pa Sorie was also cut. The rebels cut off the fingers of a man named Mussa. The commander ordered the rebels to cut off the entire hand and when Mussa begged for mercy, the rebels killed him.[2814]

1002. See below: Chapter 7 – AFRC – Trial Judgment - Factual Findings - Violence to life, health and physical or mental well-being of persons, in particular cruel treatment - Freetown and Western Area – Old Road (Locust and Samuels area)– para. 1234 [4102].

k. Kissy - Parsonage Street – Freetown and Western Area - Crimes

1003. para. 1606: The Trial Chamber has found that on 22 January 1999, witness TFl-278 was fleeing from the rebels with his family and some of his tenants with their families when they were

stopped by four persons wearing SLA uniforms and one person wearing civilian clothes near Parsonage Street in Freetown. A soldier named 'Captain Two Hand' ordered the soldiers to cut off the tenant's hands. A rebel in civilian clothes used an axe to cut off both of his hands. The soldiers told the tenant to "go and tell Tejan Kabbah this is what we have done. Go and tell no more politics, no more voting." Soldiers then amputated witness TF1-278's left hand. The witness testified that his child shouted "Hey, soldier, don't cut my father's hand, please. He is working for us." One of the soldiers ordered that the child's hand be amputated. The witness asked the soldier to amputate his right hand in exchange for sparing his child. The rebels amputated his right hand, before releasing the witness and the other civilians, telling them "You are the messenger of Tejan Kabbah. Go and tell Tejan Kabbah that we cut off your hand. Since you did not allow for peace we are saying goodbye to you."

1004. para. 1607: The Trial Chamber has also found that roughly three weeks after the 6 January 1999 invasion of Freetown, Brima, Kamara and Kanu went to PWD Junction to call for reinforcements from the RUF. After a failed attempt to recapture the State House, Brima returned to PWD which became a temporary headquarters. Around that time, Brima ordered the "troops" to abduct civilians in order to attract the attention of the international community. Kamara and Kanu were present also. Civilians, including a number of young girls were then abducted by the rebels and the commanders from Freetown and brought to the headquarters at PWD.

1005. para. 1608: The Trial Chamber finds additionally that civilian property was wilfully burned by members of the AFRC during the retreat from Freetown. The Trial Chamber accepts the evidence of Prosecution Witness Gibril Massaquoi, not previously evaluated by the Chamber, that during the retreat from Freetown the Accused Kanu ordered "the war candle to be put on" meaning that houses in Freetown should be burnt.[2815] The Trial Chamber also accepts the evidence of Prosecution Witness TF1-169 that the Kanu ordered the burning of houses at Goba Water.[2816] Witness TF1-184 testified that Kanu distributed petrol for the burning of Freetown.[2817] Witness TF1-344 testified that the Accused Brima ordered Calaba Town burnt down[2818] and that the Accused Kanu participated in the burnings.[2819]

(ix) Port Loko District - Crimes

1006. para. 1613: In its Final Brief, the Prosecution asserts that Kamara "[...] gave orders for, and actively encouraged, killings, physical and sexual violence and the burning of villages amounting to a campaign of terrorism"[2821] in Port Loko District. It also asserted that, "[i]n a similar manner to attacks against civilians carried out by the Junta in other parts of Sierra Leone,

those conducted by the Westside Boys in Port Loko District were done as part of the modus operandi to terrorise and punish civilians."[2822]

1007. para. 1614: The Trial Chamber has found that acts of violence were carried out by members of the AFRC against protected persons or their property in Manaarma (Unlawful Killings) and in Nonkoba (Unlawful Killings). The Trial Chamber has also found that civilians were forced into sexual slavery in Port Loko District, however, as sexual slavery, in the context of the conflict in Sierra Leone, has not been found to be acts the primary purpose of which was to spread terror among the civilian population, the Trial Chamber makes no further findings in this regard. Burning was not particularised in Port Loko District and thus the Trial Chamber makes no findings on the basis of any evidence of such adduced by the Prosecution.

a. Attacks on the Way to and from Gberi Bana – Port Loko District - Crimes

1008. para. 1615: The Trial Chamber accepts the evidence of Prosecution Witness TFl-334, not previously evaluated by the Chamber, that the troops leaving Freetown went through Benguema (Western Area), Waterloo (Western Area), Newton (Western Area), Mammah (Port Loko District), Mile 38 (Port Loko District), Magbeni (Port Loko District) and ultimately made a camp at a village called Gberi Bana (Port Loko District).2823 This route is largely corroborated by the testimony of Witness George Johnson; however, Witness George Johnson stated that the troops went through Four Mile close to Newton Junction, not through Newton itself. He also did not mention having gone through Magbeni and testified that the troops set up base at "Geribana", also called "West Side" which the Trial Chamber is satisfied is the same location as "Geri Bana"[2824]

1009. para. 1616: During this time, the AFRC troops, under the overall command of the Second Accused Kamara, conducted a series of attacks on the proximate villages.

1010. para. 1617: The Trial Chamber relies in particular on the evidence of Prosecution Witness TF1-334 that after the troops left Newton, in approximately March 1999, they passed through a small village referred to by the Witness as "RDF". There the Accused Kamara, ordered a certain 'Kankada', his personal security officer, to take some men to "decorate" "Mammah" Town. The Witness testified that the Accused Kamara explained that by "decorate" he meant that soldiers should execute any civilians they captured and display them at Mammah Junction. The Witness went to Mammah Town and observed the bodies of 15 persons who had been executed and mutilated. Two of the victims were women, and three were children. The Witness testified that the Accused Kamara congratulated his men on a job well done.[2825] Witness TF1-334 also testified that

'Bazzy' said that Mammah should be set on fire and himself participated in the burning.[2826] Similarly, Witness TF1- 334 testified that 'Bazzy' ordered that Mile 38 should be set on fire and himself participated in the burning.

1011. para. 1618: This evidence is generally corroborated by that of Witness George Johnson who testified that he was with the Accused Kamara in "Mamamah" and that Kamara ordered soldiers to "make the terrain more fearful to slow the movement of the ECOMOG troops." Witness George Johnson testified that by this Kamara meant that people should be killed and put on display. The Witness testified that five men, civilians of Mammah, were killed by 'Cyborg' with a machete and their remains were put on display on the main highway. The Witness also testified that before the troops pulled out of Mammah, Kamara ordered a house burnt down. The Witness testified that were a number of civilians in the house, including some children aged 10 to 15. The Witness was present outside the house when one of the children trapped inside tried to escape. Kamara forced him at gunpoint back into the house and the child was burnt to death.[2827]

1012. para. 1619: This evidence is also generally corroborated by that of Witness TF1-023 that in approximately March of 1999, in Mile 38, he witnessed 'Bazzy' ordered the rebels to attack civilians in Mamama Village in order to spread fear. The Witness stated that 'Bazzy' said that the rebels should kill people and instil fear as ECOMOG was already pushing them out.[2828] The Witness also testified that following the attack, he saw the rebels kill about 20 people. Their heads were cut off and placed on sticks at roadblocks.[2829]

1013. para. 1620: Defence Witness DBK-129 testified that he was at "Mammah" during an SLA battle with ECOMOG during this period. He testified that 'Junior Lion' gave the order to 'Kankada' to make the area "fearful". The Witness testified that civilians were killed and their heads displayed at checkpoints in order to scare the ECOMOG troops.[2830]

1014. para. 1621: Witness TF1-334 testified that after passing through Mile 38, 'Bazzy' and the troops arrived at Magbeni.[2831] There, 'Bazzy' ordered some of his men to cross the river and go to a village called Gberi Bana and make it a "civilian free area". The Witness testified that 'Bazzy' explained that civilians should be executed. The Witness subsequently went to Gberi Bana and saw approximately 15 "chopped" bodies. 'Bazzy' was present and commended his men on a job well done.[2832]

1015. para 1622: Witness TF1-334 testified that from the base in Gberi Bana, 'Bazzy' gave a number of orders to attack villages in the surrounding area. 'Bazzy' said that ECOMOG has taken

over Masiaka and gave an order that those areas where ECOMOG was based should be attacked, burnt down and that any civilian captured should be executed.[2833]

1016. para. 1623: Witness TF1-334 testified that 'Bazzy' called for Port Loko (Town) to be attacked. He also ordered that any village the troops reached on the way should be burnt down and civilians killed. The Witness testified that 'Bazzy' stated that he did not want to see any civilians there other than those who were captured with the troops.[2834]

1017. para. 1624: Witness George Johnson also testified that Kamara, in a meeting at Geri Bana, ordered an attack on Port Loko which was carried out sometime before 27 April 1999 (Independence Day in Sierra Leone)[2835]. However, George Johnson testified that the purpose of the operation was to get arms and ammunition from Malian troops stationed there. George Johnson went on the operation which he described as successful. In unknown villages on the way to Port Loko, witness George Johnson observed civilians who had been killed and amputated. The Witness testified that these acts were committed in part by SLA advance "blocking" troops, who went before him. Witness George Johnson believed 'Cyborg' was responsible for these acts and complained about this to Kamara upon his return to Geri Bana. The Witness testified that he complained because the operation was meant to be purely to attack the Malians not to kill civilians.[2836]

1018. para. 1625: Witness George Johnson testified that during the attack on Port Loko he came across a young woman who had her hands amputated. The Witness instructed a certain 'Sammy', an Intelligence Officer' to write a letter addressed to the Malians and place it around her neck, which he did.[2837]

1019. para. 1626: Witness TFl-334 testified that from the base in Gberi Bana, 'Bazzy' ordered an operation to take place at Makolo. According to the Witness, 'Bazzy' stated that ECOMOG forces have a base there and that the troops should destroy the entire village, burn it down and that if they encountered any civilians they should be executed. The Witness went on this operation and observed that three ECOMOG soldiers were executed and that three young women were chopped to death with an axe.[2838]

1020. para. 1627: Witness George Johnson testified that from the base in Geri Bana, Kamara ordered operations on Newton junction and Mile 38. The witness was the operation commander for both these attacks. Unlike the attacks described by witness TF1-334, witness George Johnson testified that the purpose of these attacks was to find arms and ammunition.[2839]

b. Manaarma – Port Loko District - Crimes

1021. para. 1628: The Trial Chamber has found a group of rebels under the command of 'Junior Lion' attacked Manaarma en route to Port Loko, where they engaged the Malian ECOMOG soldiers in combat at Shelenker/Shelenka secondary school. The Trial Chamber has also found that on an unspecified date, soldiers took an unknown number of women to a house where they were all killed. Witness TF1-253 testified that in April 1999, he saw a pregnant woman whose head had been severed and her stomach opened by the "rebels".

c. Nonkoba – Port Loko District - Crimes

1022. para. 1629: On the morning of28 April 1999, "rebels" attacked the village of Nonkoba. Witness DBK- 111 and other inhabitants of Nonkoba fled to the bush. The witness later learned that 36 villagers were killed in this attack, including his mother-in-law. He observed several dead bodies with severed heads.[2840]

(b) Legal Conclusions

(i) Applicable Law - War Crimes / Violations of Common Article 3

1023. para. 241: Article 3 of the Statute is entitled 'Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II' and 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 recognised as indispensable by civilised peoples; and

h. Threats to commit any of the foregoing acts.

1024. para. 242: The Trial Chamber endorses the following chapeau requirements of Violations of Article 3 Common to the Geneva Convention and of Additional Protocol II pursuant to Article 3 of the Statute, as articulated in its Rule 98 Decision.[468]

a. There must have been an armed conflict whether non-international or international in character at the time the offences were allegedly committed

1025. para. 243: Although Article 3 Common to the Geneva Conventions is expressed to apply to armed conflicts "not of an international character", the distinction between internal armed conflicts and international conflicts 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 conflicts form part of the broader category of crimes during international armed conflict."[469] The Appeals Chamber of the ICTY has ruled that "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."[470] 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 committed or the purpose for which it was committed".[471]

1026. para. 244: The criteria for establishing the existence of an armed conflict are the intensity of the conflict and the degree of organisation of the warring factions.[472] 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".[473]

1027. para. 245: International humanitarian law applies from the initiation 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, until a peaceful settlement is achieved. Until that

moment, international humanitarian law continues to apply on 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.[474]

b. There must be a nexus between the armed conflict and the alleged offence

1028. para. 246: For an offence to fall within the scope of Article 3 of the Statute, the Trial Chamber must establish that a sufficient link between the alleged breach of Common Article 3 or Additional Protocol II and the underlying armed conflict existed.[475] The rationale of the said requirement is to protect the victims of internal armed conflicts, but not from crimes unrelated to the conflict. The nexus is satisfied where the perpetrator acted in furtherance of or under the guise of the armed conflict.[476]

1029. para. 247: The following factors have been considered in the jurisprudence to determine if an act was sufficiently related to the armed conflict: whether the perpetrator was a combatant; whether the victim was a member of the opposing party; whether the act can be said to have served the ultimate goal of a military campaign; and whether the crime was committed as part of or in the context of the perpetrator's official duties.[477]

c. The victims were not directly taking part in the hostilities at the time of the alleged violation

1030. para. 248: Both Common Article 3 and Additional Protocol II protect only those persons who take no active or direct part in the hostilities, and those who have ceased to take part therein and are therefore placed hors de combat by sickness, wounds, detention or any other cause.[478] To fulfil this requirement, the Prosecution must prove the relevant facts of each victim with a view to ascertain whether that person was actively involved in the hostilities at the relevant time.[479]

(ii) War crimes / Violations of Common Article 3 – Findings on general requirements

1031. para. 249: The Trial Chamber finds that at all times relevant to the Indictment, there was an armed conflict in Sierra Leone. The Trial Chamber took judicial notice of the fact that the conflict in Sierra Leone lasted from March 1991 until January 2002 and involved the RUF, AFRC and CDF.[480] The Defence for each of the three Accused admitted the fact that at all times relevant to the Indictment, a state of armed conflict existed throughout the territory of Sierra Leone.[481]

1032. para. 250: In relation to the character of the armed conflict, the Prosecution submitted in their Final Brief that Articles 3 and 4 of the Statute apply to both international and non-international armed conflicts.[482] While the distinction between non-international and international amed conflicts remains of consequence in international humanitarian law, the characterisation of the armed conflict in Sierra Leone was not canvassed at trial and no submissions were made on it by the parties. For this reason, the Trial Chamber confines itself to the following brief observations.

1033. para. 251: The Trial Chamber finds that the armed conflict in Sierra Leone was non-international. This conclusion is derived from the application of the two-pronged test for the internationalisation of non-international armed conflicts developed in the jurisprudence of the ICTY.[483] There is no evidence before the Trial Chamber that proves beyond reasonable doubt that a third State intervened in the conflict, either through its own troops or alternatively by exercising the requisite degree of overall control over some of the conflict's participants to find that they acted on its behalf. Nonetheless, the Trial Chamber reiterates that this finding is immaterial to its jurisdiction as Articles 3 and 4 of the Special Court's Statute apply where an armed conflict was in existence when the crimes were committed, regardless of whether such conflict was non-international or international in character.

1034. para. 252: The Trial Chamber considers it important to acknowledge that the armed conflict throughout Sierra Leone pre-dated the involvement of the AFRC and the May 1997 coup constituted a turning point in this regard. Prior to May 1997, there existed a state of armed conflict between the Kabbah Government and the RUF, which the 1996 Abidjan Peace Accord failed to resolve.[484] After the coup, the armed conflict continued but was now conducted by RUF and former SLA troops, on behalf of the AFRC/RUF government, fighting against ECOMOG and the CDF/Kamajors, on behalf of the Kabbah Government. Documentary evidence establishes that regular armed clashes between the two sides occurred throughout the remainder of 1997.[485]

1035. para. 253: The armed conflict continued along the same lines after the ECOMOG intervention which saw the Kabbah government reinstated.[486] The May 1999 Ceasefire Agreement and the July 1999 Lome Peace Treaty both provided for the cessation of the armed conflict,[487] which did not eventuate.[488] Although these agreements referred only to the RUF, it is apparent from documentary evidence that the AFRC/RUF staged joint attacks periodically throughout 1999.[489] In addition, AFRC and RUF leaders made a joint public statement in October 1999 which referred Seely to the prior state of 'war' and proclaimed their unified commitment to

implementing the Lome Treaty.[490] The Trial Chamber is therefore satisfied that the AFRC remained actively engaged in hostilities until the end of the Indictment period in January 2000.[491]

1036. para. 254: The Trial Chamber finds that the crimes were closely related to this conflict.[492] Unless indicated otherwise in Chapter X of this Judgement, the Facts and Findings, the Trial Chamber is also satisfied that all victims were not directly taking part in the hostilities at the time the crimes occurred.

(iii) Pleading

1037. para. 660: The Prosecution alleges that the Accused committed the crimes set forth in paragraphs 42 to 79 of the Indictment, and charged in Counts 3 to 14, "as part of a campaign to terrorise the civilian population of the Republic of Sierra Leone, and [which] did terrorise that population." Count 1 thus charges the Accused with acts of terrorism, a violation of Common Article 3 and Additional Protocol II, punishable under Article 3(d) of the Statute.[1299]

1038. para. 661: Article 3(d) of the Statute, which is the verbatim reproduction of Article 4(2)(d) of Additional Protocol II, prohibits acts of terrorism. The latter provision is tied to Article 13(2) of Additional Protocol II, which provides that "[a]cts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited."

1039. para. 662: The prohibition and criminalisation of the intentional use of 'terror violence' III armed conflict against a civilian population for strategic purposes is well settled in customary international law.[1300] Such prohibition was first explicitly evoked after the First World War, when a deliberate use of a "system of general terrorisation" of the population to secure control of a region was found to be contrary to the rules of civilised warfare.[l301] Later, the prohibition of terror as a means of warfare was gradually introduced in a number of international conventions as well as in domestic military manuals.[1302]

1040. para. 663: Terror against a civilian population was first referred to as a war crime in a report published in 1919 by the Commission of Responsibilities[1303] While 'terrorism' was not explicitly criminalised by the Nuremberg Charter, evidence of terror violence was considered in the context of murder and mistreatment of the civilian population under Article 6 of the Nuremberg Charter.[1304] Further, post World War II domestic tribunals incorporated the crimes of 'systematic terrorism,[1305] and 'systematic terror,[1306] in their statutes. Finally, provisions criminalising terror against the civilian population as a method of warfare were incorporated into numerous domestic legislations.[1307]

1041. para. 664: In the wake of the Second World War, Article 33 of Geneva Convention IV was adopted. It provides that "all measures of intimidation or of terrorism are prohibited." As Article 33 is applicable only to persons in the hands of a party to the conflict, it was subsequently complemented by Article 51 (2) of Additional Protocol I and Articles 4(2)(d) and 13(2) of Additional Protocol II, to include acts of terrorism committed against the civilian population in international and internal armed conflict, respectively.

1042. para. 665: A provision prohibiting acts of terrorism can be found in Article 4(2) of the ICTR Statute.[1308] Although not expressly included in the ICTY Statute, the infliction of terror upon the civilian population has been adjudicated in a number of cases before that Tribunal.[1309]

1043. para. 666: In light of the foregoing, the Trial Chamber finds that customary international law imposed individual criminal liability for violations of the prohibition of terror against the civilian population at the time relevant to the Indictment.

(iv) Applicable law – Acts of Terrorism

1044. para. 667: In addition to the chapeau requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute, the Trial Chamber adopts the following elements of the crime of acts of terrorism:

> 1. Acts or threats of violence directed against persons or their property;
>
> 2. The perpetrator wilfully made persons or their property the object of those acts and threats of violence; and
>
> 3. The acts or threats of violence were committed with the primary purpose of spreading terror among those persons.[1310]

1045. para. 668: The ICTY Appeals Chamber in the Galic case provided further clarification as to these elements of the crime. With regard to the *actus reus*, it held that

> the crime of acts or threats of violence the primary purpose of which is to spread terror among the civilian population can comprise attacks or threats of attacks against the civilian population. 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. [...] Further, the crime of acts or threats of violence the primary purpose of which it to spread terror among the civilian population is [...] rather a case of "extensive trauma and psychological damage" being caused by "attacks which were designed to keep the inhabitants in a constant state of terror." Such extensive trauma and psychological damage form part of the acts or threats of violence.[1311]

1046. para. 669: Actual terrorisation of the civilian population is not an element of the crime. The requisite *mens rea* is composed of the specific intent to spread terror among the civilian population. In the words of the ICTY Appeals Chamber, [t]he 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, that is from their nature, manner, timing and duration.[1312]

1047. para. 670: The Kanu Defence argues that the crime of acts of terrorism does not encompass acts or threats of violence targeted at protected property but only protected persons.[1313] While the Trial Chamber agrees that it is not the property as such which forms the object of protection from acts of terrorism, the destruction of people's homes or means of livelihood and, in turn, their means of survival, will operate to instil fear and terror. The attacks on, or destruction of, property thus plays an important role in defining the contours of this crime. What places acts of terrorism apart from other crimes directed against property is the specific intent to spread terror among the population. The acts or threats of violence committed in furtherance of such a purpose are innumerable and may well encompass attacks on property through which the perpetrators intend to terrorise the population.[1314]

1048. para. 671: Therefore, this Trial Chamber endorses the finding of Trial Chamber I that the ambit of acts of terrorism "extends beyond acts or threats of violence committed against protected persons to acts directed against installations [...]" where such acts were committed with the primary purpose of spreading terror amongst the civilian population.[l315]

(v) Evidentiary basis

1049. para. 1435: In its Supplemental Pre-Trial and Final Briefs, the Prosecution asserted that the evidentiary basis for the crimes charged in Counts 3 to 14 of the Indictment, taken as a whole, provides the evidentiary basis for the acts of terrorism charged as Count 1 and the collective punishments charged as Count 2.[2638]

1050. para. 1436: The Trial Chamber notes that the *actus reus* of the crime of terror involves "acts or threats of violence directed against protected persons or their property". A plain reading suggests that the factual basis of this element could, in theory, encompass a broader range of facts than those necessary to prove the *actus reus* elements of the crimes charged in Counts 3 to 14 of the Indictment. As set out by this Chamber in the Applicable Law, *supra*, the Galic: Appeals Chamber has confirmed that "the nature of the acts or threats of violence directed at the civilian

population can vary; the primary concern [...] is that those acts or threats of violence can be committed with the specific intent to spread terror among the civilian population. "[2639] This Chamber has held that acts of terrorism are not restricted to violence, or threats of violence, targeted at protected persons but may include threats of attacks on, or destruction of, people's property or means of survival.

1051. para. 1437: The Trial Chamber notes also that some evidence has been adduced by the Prosecution in this case which does not go to the proof of the crimes indicted in Counts 3 - 14. While such evidence might theoretically go to proof of the *actus reus* of the crime of Terror in an abstract consideration, the Trial Chamber does not rely upon it in this case as to do so would place an unfair burden upon the Defence who cannot be said to have been put on notice of such in the Prosecution's case against the Accused. This is similarly the case with any evidence of threats of violence which may have been adduced by the Prosecution, but which have not been expressly pleaded by the Prosecution. The Trial Chamber, therefore, has limited its examination of the evidence adduced in relation to the crime of terror in this case to acts of violence which have been pleaded by the Prosecution as going to crimes laid out in the Indictment.

1052. para. 1438: The Trial Chamber, does however, make an exception to this limitation with regards to evidence which relates to acts of burning civilian property. The Trial Chamber has found that burning, as alleged by the Prosecution, is not inclusive of the crime of pillage.[2640] However, the Trial Chamber is of the opinion that burning, unlike other evidence adduced by the Prosecution which does not go to proof of the crimes alleged, has been sufficiently particularized by the Prosecution in the Indictment under Count 14, and that therefore, the Defence has been put on adequate notice. The Trial Chamber will therefore take into consideration evidence of burning in relation to the *actus reus* of the crime of the crime of terror as an act of violence directed against protected persons or their property.

1053. para. 1439: With regards to the element of the crime of terror that the acts or threats of violence directed against protected persons or their property were committed with the primary purpose of spreading terror among the civilian population, the Trial Chamber may rely on evidence which demonstrates a pattern of similar attacks, the context of the act, or is otherwise indicative of the purpose relative to any acts of violence committed, regardless of the nature of that evidence. The Trial Chamber will therefore examine the whole of the evidentiary record in this regard.

1054. para. 1440: The Trial Chamber therefore adopts a two-step approach to the examination of the crime of terror as follows:

> Were acts of violence particularised in the Indictment wilfully directed against protected persons or their property by members of the AFRC?[2640]
>
> If so, is there evidence which proves beyond a reasonable doubt that these acts were committed with the primary intent of spreading terror among the civilian population2

(vi) Primary purpose

1055. para. 1441: In its Final Brief, the Kanu Defence argues that the intent required for a finding of terror is a special intent, namely, that the Accused must not only be aware of the possibility that terror would result, but that terror was the result that was specifically intended.[2641] The Kanu Defence argues that from the time the AFRC was ousted from Freetown by ECOMOG in February 1998, SAJ Musa was the overall commander of the AFRC and that the overall goal of the AFRC was to reinstate the army in Freetown. As such, the Kanu Defence argues that all crimes allegedly committed during this time were in furtherance of this goal and that the Prosecution did not lead any evidence that Kanu's primary goal was to spread terror.[2642]

1056. 1442. The Appeals Chamber in the *Galic* case held:

> [...] the 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, that is from their nature, manner, timing and duration.[2643]

1057. para. 1443: The Trial Chamber therefore finds as a preliminary observation, that the possibility that another purpose to acts of violence may have existed does not in and of itself disprove that the primary purpose was to spread terror among the civilian population. Whether such a purpose was the primary purpose is a question to be determined in relation to the events outlined below.

1058. para. 1444: The Trial Chamber refers to paragraphs 38 and 39 of the Indictment in which the Prosecution sets out the particulars of Count 1, Terror. It is stated in paragraph 38 that "members of the RUF, AFRC, Junta and/or AFRC/RUF forces (AFRC/RUF) [...] conducted armed attacks throughout the territory of the Republic of Sierra Leone [...]."[2644] Paragraph 39 continues, "These attacks were carried out primarily to terrorize the civilian population, but were also used to punish the population for failing to provide sufficient support to the Kabbah government or pro-government forces."[2645] The alleged attacks to which the Indictment refers occurred in the context of an internal armed conflict in which various parties, each maintaining

their own overall goals, engaged with each other and with the civilian population in a number of encounters. Any given encounter or attack within the context of the overall conflict may have been undertaken for any number of strategic, necessary or other reasons. It is a question of whether any particular attack or series of attacks was waged with the primary purpose to spread terror among the civilian population that the Indictment bids the Trial Chamber to determine. The Trial Chamber finds therefore, that the Kanu Defence submission that all the crimes allegedly committed during this time were in furtherance of the overall goal of SAJ Musa to reinstate the army in Freetown does not address the question before it with regards to Count 1.

(vii) Kenema District – Acts of Terrorism

a. Kenema Town – Kenema District – Acts of Terrorism

1059. para. 1475: On the basis of the circumstances of the attacks, namely that civilians were deliberately targeted on the premise that they supported Kamajors; the sustained duration of attacks of a similar nature, spanning May 1997 through December 1998; and the particularly brutal nature of some of the attacks including the burning of civilians in a house and the grotesque public display of a mutilated body, the Trial Chamber is satisfied that it has been proven beyond reasonable doubt that the primary purpose of the acts of violence described in Kenema Town was to spread terror among the civilian population.

1060. para. 1476: The Trial Chamber is further satisfied that the unlawful killings and subjection to physical violence also served as a punishment against protected persons. No evidence has been adduced to indicate whether the protected persons targeted in these attacks did or did not in fact support the elected government of President Ahmed Tejan Kabbah and factions aligned1with that government, in this instance Kamajors, nor whether the protected persons in fact failed to provide sufficient support to the AFRC/RUF. The Trial Chamber has held that the material element in the *actus reus* of the crime of collective punishment is not whether the acts were actually committed or not by the victims, but whether the perpetrator indiscriminately and collectively punished these individuals for acts that they might or might not have committed.[2683] The Trial Chamber is satisfied, on the basis of the evidence specified above, that protected persons were collectively punished for allegedly being or supporting Kamajors by members of the AFRC/RUF.

(viii) Bo District– Acts of Terrorism

a. Tikonko and Gerihun – Bo District – Acts of Terrorism

1061. para. 1492: The Trial Chamber notes the targeted nature of the attacks against civilians in Tikonko by the second group of soldiers described by Witness TF1-004. Specifically the Trial Chamber notes that the soldiers were not making any selection in their killings which, taken together with the evidence of civilian deaths, the Trial Chamber is satisfied is indicative of the intent of the soldiers to target civilians and Kamajors alike. This inference is supported by the express statement, relayed by Witness TF1-004 that the soldiers were singing that the people of Tikonko will know them today.

1062. para. 1493: The Trial Chamber notes the circumstances of the attack against Tikonko; namely that armed soldiers entered and killed unarmed civilians, including a child, in their houses with no apparent military purpose. The civilians were killed or their bodies mutilated, in some instances in a particularly brutal manner, as for instance the splitting open of the belly of a pregnant women.

1063. para. 1494: The Trial Chamber also notes the close timing between the attacks on Tikonko and the attack in Gerihun, both of which targeted civilians for their supposed support for opposition groups to the AFRC.

1064. para. 1495: The Trial Chamber is satisfied on the basis of this evidence that the acts of violence described in Tikonko and Gerihun were carried out with the primary purpose of spreading terror.

1065. para. 1496: The Trial Chamber is further satisfied that the unlawful killings and burning also served as a punishment against protected persons. No evidence has been adduced to indicate whether the protected persons targeted in these attacks did or did not in fact support the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, in this instance Kamajors or the SLPP party, nor whether in fact the protected persons failed to provide sufficient support to the AFRC/RUF. The Trial Chamber has held that the material element in the *actus reus* of the crime of collective punishment is not whether the acts were actually committed or not by the victims, but whether the perpetrator indiscriminately and collectively punished these individuals for acts that they might or might not have committed.[2700]

1066. para. 1497: The Trial Chamber is satisfied, on the basis of the evidence specified above, that protected persons were collectively punished for allegedly being or supporting Kamajors or members of the SLPP Government by members of the AFRC/RUF.

(ix) Kailahun District – Acts of Terrorism

a. Kailahun Town – Kailahun District – Acts of Terrorism

1067. para. 1503: The Trial Chamber is not satisfied that the evidence establishes beyond reasonable doubt that the persons in Kailahun Town were abducted and killed with the primary purpose of spreading terror among the civilian population.

1068. para. 1504: The Trial Chamber is not satisfied that the evidence establishes beyond reasonable doubt that persons in Kailahun Town were collectively punished for supporting Kamajors.

1069. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Bo, Kemena and Kailahun Districts, see below: Chapter 12 (Article 6.1) – AFRC – Trial Judgment – Findings and Conclusions – Bo, Kenema and Kailahun Districts – paras. 1641-1650 [7991], 1842-1844 [8001], 1847 [8006], 1982-1984 [6843], 1987-1991 [6848].

1070. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Bo, Kenema and Kailahun Districts, see below: Chapter 13 (Article 6.3) – AFRC – Trial Judgment – Findings and Conclusions – Bo, Kenema and Kailahun Districts – paras. 1641-1643 [8837], 1651-1664 [8839], 1842-1844 [8853], 1848-1855 [8854], 1982-1984 [8862], 1992-1996 [8863].

(x) Kono District – Acts of Terrorism

a. Koidu Town, Tombodu and Yardu Sando – Kono District – Acts of Terrorism

1071. para. 1525: The Trial Chamber infers from the circumstances of the attacks against civilians in Koidu Town and Tombodu, namely that civilians were repeatedly targeted and that a great number were deliberately killed; the sustained duration of the attacks; the particularly brutal nature of some of the attacks including civilians who were burnt alive when they were locked in houses which were set on fire; the great number of repeated mutilations of civilians whose missing

hands were left as a grotesque and lingering public reminder of the attacks; the widespread destruction of civilian property in Tombodu; as well as the repeated and express statements of members of the AFRC/RUF that such attacks were committed to intimidate civilians; proves that the primary purpose of the attacks was to spread terror among the civilian population. The Trial Chamber is therefore satisfied that acts of terror were committed in Koidu Town and Tombodu.

1072. para. 1526: However, the Trial Chamber is not satisfied that is has been proven that the acts of looting and burning which took place in Yardu Sando were committed with the primary purpose of spreading terror among the civilian population.

1073. para. 1527: The Trial Chamber is further satisfied that the crimes committed in Koidu Town and Tombodu also served as a punishment against protected persons. No evidence has been adduced to indicate whether the protected persons targeted in these attacks did or did not in fact kill any AFRC/RUF soldiers and therefore whether they in fact did or did not fail to provide sufficient support to the AFRC/RUF. The Trial Chamber has held that the material element in the *actus reus* of the crime of collective punishment is not whether the acts were actually committed or not by the victims, but whether the perpetrator indiscriminately and collectively punished these individuals for acts that they might or might not have committed.[2732] The Trial Chamber is satisfied, on the basis of the evidence specified above, that protected persons were collectively punished for allegedly having killed an AFRC/RUF soldier by members of the AFRC/RUF.

1074. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Kono District, see below: Chapter 12 (Article 6.1) – AFRC – Trial Judgment –Findings and Conclusions – Kono District – paras. 1665-1668 [8017], 1856-1861 [8021], 1997-2000 [8027].

1075. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Kono District, see below: Chapter 13 (Article 6.3) – AFRC – Trial Judgment – Findings and Conclusions – Kono District – paras. 1665 [8868], 1669-1673 [8869], 1856 [8874], 1862-1893 [8875], 1997 [8907], 2001-2005 [8908].

(xi) Koinadugu District – Acts of Terrorism

a. Kabala, Fadugu, Koinadugu Town and Kurubonla – Koinadugu District – Acts of Terrorism

1076. para. 1538: As described above, the Trial Chamber is satisfied that acts of physical violence, specifically amputations such as those carried out in Kabala Town in mid-May 1998, in

the context of the conflict in Sierra Leone, are acts of violence the primary purpose of which was to terrorise the civilian population. However, the Trial Chamber finds the evidence does not prove that the other acts of violence committed during the attacks on Kabala Town were acts the primary purpose of which was to spread terror among the civilian population.

1077. para. 1539: Similarly, the Trial Chamber is satisfied that the grotesque mutilation and public display of the body of a civilian suspected to be a member of the CDF is an act the primary purpose of which is to spread terror among the civilian population. However, the Trial Chamber is not satisfied that it can be determined beyond reasonable doubt that the other acts of violence committed during the attacks on Fadugu were acts the primary purpose of which was to spread terror among the civilian population.

1078. para. 1540: The Trial Chamber finds that no evidence has been adduced that would demonstrate that the acts of violence committed in Koinadugu Town were committed with the primary purpose to spread terror among the civilian population.[1541]. The Trial Chamber is neither satisfied that the elements in relation to Count 2 (Collective Punishment) are established in relation to Koinadugu District.

(xii) Bombali District - Mansofinia (Koinadugu District) to Camp Rosos (Bombali District), Mansofinia (Koinadugu District), Yaya (Kono District), Kamagbengbeh (Bombali District), Bornoya and Mateboi, Karina, Gbendembu and Rosos – Acts of Terrorism

1079. para. 1568: The acts of violence carried out by members of the AFRC against protected persons or their property in Bornoya, Mateboi, Karina, Gbendembu and Rosos were carried out in the context of a series of attacks in which civilians were deliberately targeted for allegedly failing to sufficiently support the AFRC. There is evidence to suggest that these attacks were explicitly ordered by the First Accused in Mansofinia in May 1998 and in Yaya in April 1998. In Kamagbengeh in June of 1998, the First Accused ordered the AFRC troops to attack Karina and to deliberately target civilians in order to "shock the whole country and the international community". In Rosos, in June of 1998, the First Accused ordered that civilians should be cleared from the area within 15 miles from Rosos, that they should be executed rather than brought back to the Camp and that the surrounding villages should be burned and looted.

1080. para. 1569: The Trial Chamber has not been presented with any indication that the civilians in the villages attacked by the AFRC described above were armed. No evidence been adduced to suggest that these villages were military targets in the sense that no discernable

strategic advantage was gained from the attacks leading up to Camp Rosos nor was any territory held by the troops following the attacks. Rather, the troops moved on to the next village, ultimately settling in Camp Rosos. Once the troops arrived in Camp Rosos the attacks continued against civilians in the area.

1081. para. 1570: The Trial Chamber notes the particularly brutal nature of a number of the acts of violence committed against civilians during the attacks including the splitting open of the stomach of a pregnant woman and removal of the foetus and the burning of civilians alive. Similarly the Trial Chamber notes that a number of the acts of violence were carried out against particularly vulnerable persons - children and pregnant women.[1571]. On this basis, the Trial Chamber is satisfied that the acts of violence committed by members of the AFRC against protected persons or the property in Bornoya, Mateboi, Mandaya, Karina, Gebendembu and Rosos can only reasonably be inferred to have been carried out with the primary purpose to spread terror among the civilian population.

1082. para. 1572: The Trial Chamber is further satisfied that the crimes committed also served as a punishment against protected persons. No evidence has been adduced to indicate whether the protected persons targeted in these attacks did or did not in fact support the elected government of President Ahmed Tejan Kabbah or factions aligned with that government. The Trial Chamber has held that the material element in the *actus reus* of the crime of collective punishment is not whether the acts were actually committed or not by the victims, but whether the perpetrator indiscriminately and collectively punished these individuals for acts that they might or might not have committed.[2784]

1083. para. 1573: The Trial Chamber is satisfied, on the basis of the evidence specified above, that protected persons were collectively punished for allegedly supporting the President Ahmed Tejan Kabbah by members of the AFRC/RUF.

1084. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Bombali District, see below: Chapter 12 (Article 6.1) – AFRC – Trial Judgment –Findings and Conclusions – Bombali District - paras. 1700-1720 [8064], 1911-1920 [8085], 2025-2031 [8095].

1085. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Bombali District, see below: Chapter 13 (Article 6.3) – AFRC – Trial Judgment – Findings and Conclusions – Bombali District – paras. 1700 [8949], 1721-1744 [8950], 1911 [8974], 1921-1928 [8975], 2025 [8983], 2032-2044 [8984] .

(xiii) Freetown and Western Area – Acts of Terrorism

a. State House, Kingtom, Fourah Bay, Kissy- Good Shepherd Hospital, Kissy-Rogbalan Mosque, Kissy- Old Shell Road, Kissy- Kissy Mental Home, Kissy- Rowe Street, Kissy- Fatamaran Street, Kissy- Old Road (Locust and Samuels area) and Kissy- Parsonage Street – Freetown and Western Area – Acts of Terrorism

1086. para. 1609: The acts of violence carried out by members of the AFRC against protected persons or their property during the AFRC invasion of Freetown in January 1999, were part of a planned and deliberate attack, ordered or carried out by all three Accused, in which protected persons were specifically targeted. These attacks continued during the AFRC retreat. The Trial Chamber notes the particularly brutal nature of some of the acts of violence. Members of the AFRC repeatedly amputated the hands a great number of protected persons. These mutilations can only be reasonably understood to have served as a grotesque public warning to civilians not to interfere with the AFRC troops. The Trial Chamber notes that a great number of protected persons were deliberately killed by members of the AFRC in targeted attacks or through indiscriminate shooting. The Trial Chamber also notes the repeated and express statements of members of the AFRC that such acts of violence were being committed because the civilian population had allegedly supported opponents of the AFRC, namely President Tejan Kabbah and the ECOMOG forces.

1087. para. 1610: On this basis, the Trial Chamber is satisfied that the acts of violence committed by members of the AFRC against protected persons or property during the AFRC invasion and retreat from Freetown in early 1999 were carried out with the primary purpose to spread terror among the civilian population.

1088. para. 1611: The Trial Chamber is further satisfied that these crimes also served as a punishment against protected persons. No evidence has been adduced to indicate whether the protected persons targeted during the invasion and retreat from Freetown did or did not in fact support the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, in this instance ECOMOG, the Police and Nigerians, nor whether in fact the protected persons failed to provide sufficient support to the AFRC/RUF. The Trial Chamber has held that the material element in the *actus reus* of the crime of collective punishment is not whether the acts were actually committed or not by the victims, but whether the perpetrator

indiscriminately and collectively punished these individuals for acts that they might or might not have committed.[2820]

1089. para. 1612: The Trial Chamber is satisfied, on the basis of the evidence specified above, that protected persons were collectively punished by members of the AFRC/RUF for allegedly supporting President Ahmed Tejan Kabbah, ECOMOG or other factions aligned with the government or for allegedly failing to provide sufficient support to the AFRC/RUF.

1090. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Freetown and Western Area, see below: Chapter 12 (Article 6.1) – AFRC – Trial Judgment – Findings and Conclusions – Freetown and Western Area - paras. 1745-1786 [8102], 1929-1941 [8144], 2045-2064 [8157].

1091. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Freetown and Western Area, see below: Chapter 13 (Article 6.3) – AFRC – Trial Judgment – Findings and Conclusions – Freetown and Western Area – paras. 1745 [8997], 1787-1810 [8998], 1929 [9022], 1942-1950 [9023], 2045 [9032], 2065-2080 [9033].

(xiv) Port Loko District – Acts of Terrorism

a. Attacks on the way to and from Gberi Bana, Manaarma and Nonkoba – Port Loko District – Acts of Terrorism

1092. para. 1630: The Trial Chamber finds there is evidence to suggest that a pattern of attacks against protected persons or their property was conducted with the purpose of terrorising the civilian population. However, given the evidence of witness George Johnson, the Trial Chamber is of the opinion that spreading terror was not the only purpose and in fact, may not have been the primary purpose of the attacks ordered by the Accused Brima or others. Regardless, the Trial Chamber finds that there is insufficient evidence linking the acts of violence found by the Chamber to have occurred in Manaarma, Nonkoba and Tendekum - the only acts of violence which have been established beyond a reasonable doubt by this Chamber and the only acts particularised in the Indictment in which the Defence was put on notice - with the attacks ordered by the Accused Brima.

1093. para. 1631: The Trial Chamber is therefore not satisfied that these acts of violence were committed against protected persons or their property in Manaarma or Nonkoba with the primary purpose of spreading terror among the civilian population.

1094. para. 1632: The Trial Chamber is neither satisfied that the crimes committed in Manaarma and Nonkoba served as punishment against protected persons.

(xv) Finding on Count 1

1095. para. 1633: By virtue of the foregoing and of the Trial Chamber's findings with regards to the Chapeau elements of war crimes, the Trial Chamber is satisfied that the elements in relation to Count 1 (Terror) are established.

3. Appellate Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-A, Judgement, 22 February 2008

(a) Factual Findings

1096. para. 167: The Third Ground of the Prosecution's Appeal alleges both a legal and a factual error on the part of the Trial Chamber in finding that the Prosecution did not adduce any evidence and consequently did not prove that Kamara was individually responsible under Article 6(1) of the Statute for any of the crimes committed in Port Loko District. Most of the arguments presented by the Prosecution concern the Trial Chamber's factual findings in respect of the following crimes that were committed in Port Loko District (hereinafter the "Port Loko District crimes"):

(i) Unlawful killings in Manaarma for which Kamara was found individually responsible under Article 6(3) of the Statute;

(ii) Sexual slavery: and

(iii) Acts of terror and collective punishment in respect of (i) and (ii) above

1097. para. 169: However, as the Appellants have been convicted and sentenced to terms of imprisonment of fifty (50) years and forty-five (45) years for crimes committed under Article 6(1) or Article 6(3) of the Statute in Bombali District and in the Western Area, the Appeals Chamber is of the opinion, taking all the circumstances into consideration, particularly having regard to the length of the sentences imposed, that it becomes an academic exercise and also pointless to adjudicate further on minute details raised in Grounds One and Three of the Prose caution 's Appeal.

(b) Legal Conclusions

1098. para. 171: In its Fifth Ground of Appeal the Prosecution complains in substance that in the particular factual context of the case the Trial Chamber erred in law in holding that the three enslavement crimes were not acts of terrorism and also were not collective punishments.

1099. para. 172: The Appeals Chamber is of the opinion that the Prosecution's attempt to search for further acts of terrorism by adding the three enslavement crimes to this list is an unnecessary exercise since the Appellants have already been convicted of acts of terrorism and an adequate sentence has been imposed.

1100. para. 173: The Appeals Chamber further finds the Prosecution's submissions regarding the crime of collective punishments to be imprecise and without merit The Prosecution failed to demonstrate adequately how the Trial Chamber either erred in law, in validating a decision or erred in fact, occasioning a miscarriage of justice.

1101. para. 174: The Appeals Chamber exercises its discretion not to entertain the Prosecution's Fifth Ground of Appeal and therefore it is dismissed in its entirety.

D. CDF

1. Indictment

The Prosecutor v. Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa, SCSL-03-14-I, Indictment, 4 February 2004

(a) Particulars

(i) Charges

1102. Paragraph 4 through 21 is incorporated by reference.[28]

1103. These actions [para. 23: The CDF, largely Kamajors, engaged the combined RUF/AFRC forces in armed conflict in various parts of Sierra Leone - to include the towns of Tongo Field, Kenema, Bo, Koribondo and surrounding areas and the Districts of Moyamba and Bonthe.] by the CDF, largely Kamajors, which also included looting, destruction of private property, personal injury and the extorting of money from civilians, were intended to threaten and terrorize the

[28] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-2004-14-PT, Indictment, 5 February 2004, para. 22 ("CDF Indictment").

civilian population. Many civilians saw these crimes committed; others returned to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property. Typical CDF actions and the resulting crimes included: [Paragraphs 24.a to 24.f incorporated by reference].[29]

(ii) Count 6-7: Terrorizing the civilian population and Collective Punishment

1104. At all times relevant to this Indictment, the CDF, largely Kamajors, committed the crimes set forth in paragraphs 22 through 27 and charged in counts 1 through 5, including threats to kill, destroy and loot, as part of a campaign to terrorize the civilian populations of those areas and did terrorize those populations. The CDF, largely Kamajors, also committed the crimes to punish the civilian population for their support to, or failure to actively resist, the combined RUF/AFRC forces.[30]

1105. By their acts or omissions in relation to these events, SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA, 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: 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 7: 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.

(iii) Count 5: Looting and Burning

1106. Looting and burning included, between about 1 November 1997 and about 1 April 1998, at various locations including in Kenema District, the towns of Kenema, Tongo Field and surrounding areas, in Bo District, the towns of Bo, Koribondo, and the surrounding areas, in Moyamba district, the towns of Sembehun, Gbangbatoke and surrounding areas, and in Bonthe District, the towns of Talia (Base Zero), Bonthe Town, Mobayeh, and surrounding areas, the unlawful taking and destruction by burning of civilian owned property.[31]

[29] CDF Indictment, para. 24.
[30] CDF Indictment, para. 28.
[31] CDF Indictment, para. 27.

1107. By their acts or ommissions in relation to these events, SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA, pursuant to Article 6.1. and, or alternatively, Article 6.3.ofthe Statute, are individually criminally responsible for the crime alleged below:

> Count 5: Pillage, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.f of the Statute.

2. Trial Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-T, Judgement, 2 August 2007

(a) Factual Findings

1108. See below: Chapter 2 - CDF – Trial Judgment - Murder – Factual Findings; Chapter 7 – CDF – Trial Judgment - Violence to Life, Health and Physical or Mental Well-Being of Persons, in particular, Cruel Treatment; Chapter 11– CDF – Trial Judgment - Pillage.

(b) Legal Conclusions

(i) Pleading

1109. para. 49: The Trial Chamber has also adopted a limited interpretation of Counts 6-7. It will consider, under those Counts, only those crimes which are charged and are found to have been committed under Counts 1-5 in the Indictment. If, for example, the Chamber has made a finding about a specific crime (i.e., a murder in Tongo) under another Count in the Indictment (i.e., as a War Crime under Count 2), it will consider this act in relation to Counts 6-7, but it will not consider other killings which may have occurred elsewhere in relation to these Counts.

(ii) Pleading – Dissent

1110. Separate Concurring and Partially Dissenting Opinion of Justice Thompson, para. 12: Paragraph 28 appears under Counts 6-7 which specifically charge the Accused with the offences of terrorizing the population and collective punishments respectively. As a matter of law, I opine that the legal effect of charging the Accused with the separate and distinct offences of terrorizing the population and collective punishments in separate and distinct counts is to notify the Accused with specificity and precision of the charges against them. This is the basic rule governing specificity as to the form of an indictment.[7]

1111. Separate Concurring and Partially Dissenting Opinion of Justice Thompson, para. 13: Consistent with the foregoing consideration, it is clearly impermissible to charge an accused

person in a general, vague and uncertain manner. The authorities make it clear that where within the count system of charging, allegations are framed in such a way as to create multiplicity, vagueness and uncertainty, the particular count or counts are accordingly defective.[8] A close examination of paragraph 28 discloses a multiplicity of allegations in the particulars of the alleged offences of terrorizing the civilian population and collective punishments. The paragraph charges, by a process of incorporation, the Accused in both Counts 6 and 7 with five additional offences, to wit: (i) Murder, a Crime Against Humanity; (ii) violence to life, health and physical or mental well-being of persons, in particular murder, as a War Crime; (iii) inhumane acts as a Crime Against Humanity; (iv) Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, as a War Crime; and (v) Pillage, as a War Crime.

1112. Separate Concurring and Partially Dissenting Opinion of Justice Thompson, para. 14: Evidently, each of the said additional offences is given two new proscriptive aggravating dimensions, to wit, that each of the said crimes was allegedly committed "as part of a campaign to terrorize the civilian populations of those areas and did terrorize those populations", and "to punish the civilian population for their support to, or failure to actively resist, the combined RUF/AFRC forces", thus making them brand new species of criminality. The difficulty here is that of incorporating in a Particulars of Offence paragraph, references to Counts 1-5 which are separate and distinct offences separately charged.

1113. Separate Concurring and Partially Dissenting Opinion of Justice Thompson, para. 15: Based on the above analysis, the foregoing five additional crimes are, each, separate and distinct offences from the two specific and distinct offences embodied in the Statement of Offences Section of Counts 6 and 7. This is the reason for charging them separately in Counts 1 - 5. In effect, the Indictment in either of Counts 6 and 7 has charged each Accused with six different offences. It clearly proliferates the issues for trial. This is a textbook example of an infringement of the rule governing the form of an indictment technically known as the rule against duplicity, multiplicity:. or uncertainty. The problem is compounded by charging these additional crimes not in separate additional counts, each in its own separate Statement of Offence Section of the Indictment, but in the Particulars of Offence Section to the existing Counts 6 and 7. I opine that this is an unorthodox and convoluted way of laying charges in an indictment. It creates nothing short of a penumbra of uncertainty as to what specific charge or charges the Accused are called upon to answer and defend in respect of Counts 6 and 7. Even where cumulative charging is permissible, it must still not offend the rule against duplicity, multiplicity and uncertainty. In a landmark decision of the Sierra Leone Court of Appeal[9], applying leading English case-law

authorities on duplicity, multiplicity and uncertainty as defects in the form of an indictment, it was authoritatively stated that:

> "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 offences are set out in the same count, separated by the disjunctive 'or' and the conviction should be quashed."[10]

1114. Separate Concurring and Partially Dissenting Opinion of Justice Thompson, para. 16: Based on the foregoing analysis and applying the authorities cited, I come irresistibly to the conclusion that Counts 6 - 7 of the Indictment by incorporating the offences charged separately in Counts 1 - 5 in the said Counts 6 - 7 offend the rule against duplicity, multiplicity and uncertainty, and I so hold. As stated earlier, it should suffice for the purposes of my dissent that these observations are strictly obiter. Hence, I do not propose to take the analysis beyond this limited judicial focus.

(iii) Applicable law - War crimes / Violations of Common Article 3

1115. para. 122: The general requirenents 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;[148]
>
> (iii) The victim was a person not taking direct part in the hostilities at the time of the alleged violation;[149] and
>
> 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.

a. The existence of an armed conflict - Applicable law - War crimes / Violations of Common Article 3

1116. para. 123: 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."[150]

1117. para. 124: Relying on the ICT'T Appeals Chamber in the Tadic case, and as it held in the CDF Rule 98 Decision, the Chamber rules that under Common Article 3, "an armed conflict exists whenever there is a resort to armed foxe between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state".[151]

Therefore, the criteria for establishing the existence of an armed conflict are the intensity of the conflict and the organisation of the parties.[152] These criteria are used "solely for the purpose, as a minimum, of distinguishing an armed cc nflict from banditry, unorganised and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law".[153]

1118. para. 125: The Chamber notes that Additional Protocol II contains a stricter threshold for the establishment of an armed cmflict than Common Article 3. 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 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 therr. to carry out sustained and concerted military operations and to implemtent 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.

1119. para. 126: This Chamber is therefore satisfied that where the Prosecution has alleged an offence 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 organized armed groups; and
>
> The dissident armed forces or other organized 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 inplement Additional Protocol 11.[154]

1120. para. 127: The first requirement that there be an armed conflict, has already been discussed in the context of the Common Article 3 test of armed conflict. The Chamber notes, therefore, that any armed conflict satisfying the higher threshold of the Additional Protocol II test would automatically constitute an armed conflict under Common Article 3. The term "armed forces" is to be defined broadly.[155] The armed forces or groups must be under responsible command which implies a degree of organiziation to enable them "to plan and carry out concerted military operations, and to impose discipline in the name of a de facto authority."[156] They must

also be able to control a part of the territory of the country enabling them "to carry out sustained and concerted military operatiom" and to implement Additional Protocol II.

1121. para. 128: The Chamber also finds that international humanitarian law applies from the beginning of such armed conflicts and extmds beyond the cessation of hostilities until a general conclusion of peace is reached, or, in the ,:ase of internal conflicts, a peaceful settlement is achieved.[157] 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.[158]

b. Nexus – Applicable law – War crimes / Violations of Common Article 3

1122. para. 129: What distinguishes a war crime from a purely domestic crime "is that a war crime is shaped by or dependant upon the erlvironment - the armed conflict - in which it is committed".[159] As to the precise nature of the nexus between the alleged violation and the armed conflict, the Chamber, consistent with thl: decisions of the Appeals Chambers of the ICTY and of the ICTR on this issue, rules that the nexus requirement is fulfilled if the alleged violation was closely related to the armed conflict.[160] When 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".[161] 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 perpdrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed'.[162] The nexus requirement is satisfied where the Accused acted in furtherance of or under the guise of the armed conflict.[163] The expression "under the guise of the armed conflict" does not mean simply "at the same time as an armed conflict and /o r "in any. circumstances created in part by the armed conflict."[164]

1123. para. 130: The Chamber subscribes to the jurisprudence of the Ad Hoc Tribtmals which outlined the following factors in determining whether or not the act in question was sufficiently related to the armed conflict, 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".[165] It has also been stated that the determination of a close relationship between particular offences and an armed conflict will usually require consideration of several factors, not just one.[166]

c. Protected persons - Applicable law - War crimes / Violations of Common Article 3

1124. para. 131: Finally, 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" and Additional Protocol II applies to "all persons who do not take a direct part or who have ceased to take part in hostilities". The Chamber holds that these phrases are so similar that, therefore, they may be treated as synonymous and be categorised as "all persons not taking direct part in the hostilities at the time of the alleged violation".[167]

1125. para. 132: The Chamber notes 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 said offence was directly taking part in the hostilities, "being those hostilities in the context of which the alleged offences are said to have been committed" .[168] If the answer to that question is negative, the victim will be a person protected by Common Article 3 and Additional Protocol 11.[169] Thus, for the purpose of establishing the commission of an offence under Article 3, the Prosecution must also prove that the victim was a person not taking a direct part in the hostilities at the time the offence was committed.[170]

1126. para. 133: Adopting the position taken by the Trial Chamber in the ICTY 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.

1127. para. 134: 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.[171] 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.[172] The Chamber takes the view that the direct participation should be understood to mean "acts which by their nature and purpose, are intended to cause actual harm to the enemy personnel and material."[173]

1128. para. 135: The Chamber is therefore of the opinion that persons Accused of "collaborating" with the government or armed forces would only become legitimate military 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 have qualified as legitimate military targets during the period of their direct participation.[174] 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.[175] 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.[176]

1129. para. 136: 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.[177] This same presumption will not exist for military police or gendarmerie who operate under the control of the military.[178] The Chamber notes that, in accordance with the provisions of the Constitution of 1991[179] and the The Police Act[180] of 1964, the Sierra Leone Police operates under the control of the Minister of Internal Affairs, a civilian authority.

1130. para. 137: The Chamber is of the opinion that the status of police officers in· a time of armed conflict must be determined in light of an analysis of the particular facts of a case. A civilian police force, for example, 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*.

(iv) War crimes / Violations of Common Article 3 - Findings on general requirements

1131. para. 695: As stated in the section on Applicable Law, the general requirements that must be established to prove a War Crime are as follows:

> 1. An armed conflict existed at the time of the alleged violation of Common Article 3 or Additional Protocol II;
>
> 2. There existed a nexus between the alleged violation and the armed conflict;
>
> 3. The victim was a person not taking direct part in the hostilities at the time of the alleged violation; and

4. 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.

1132. para. 696: As regards the first requirement the Chamber recalls that it has taken judicial notice of the fact that the "armed conflict in Sierra Leone occurred from March 1991 until January 2002."[1530]

1133. para. 697: With respect to the other general requirements for war crimes, where findings have been made of murder (Count 2), cruel treatment (Count 4), pillage (Count 5), acts of terrorism (Count 6) or collective punishments (Count 7) as war crimes, the Chamber is satisfied that the perpetrators were aware of the protected status of the victims who were either civilians (a category which includes "collaborators"[1531] and police officers) or captured enemy combatants. Similarly, where such findings have been made the Chamber is satisfied that the alleged crimes were closely related to the armed conflict.

(v) Applicable Law – Acts of Terrorism

1134. para. 167: The Indictment charges the Accused under Count 6 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 charged in Counts 1 through 5, including threats to kill, destroy and loot, as part of a campaign to terrorise the civilian populations in those areas.

1135. para. 168: 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. This prohibition was, in turn, based on Article 33 of the Fourth Geneva Convention which prohibited "all measures of intimidation or of terrorism" of or against protected persons.

1136. para. 169: Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II further prohibit "acts or threats or violence the primary purpose of which is to spread terror among the civilian population". The Chamber concurs with the ICTY Appeals Chamber in *Galic*, where it found 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[213] and that the offence gave rise to individual crimi nal responsibility pursuant to customary international law.[214]

1137. para. 170: In addition to these: general elements, the specific elements of crime of acts of terrorism can be described as follows:

(i) Acts or threat, of violence directed against persons or property;
(ii) The Accusec intended to make persons or property the object of those acts and threats of violence or acted in the reasonable knowledge that this would likely occur; and
(iii) The acts or threats of violence were committed with the primary purpose of spreading terror among persons.

1138. para. 171: The first element relates to the *actus reus* of the offence. In *Galic*, the Appeals Chamber of the ICTY addressed the elements of the crime of acts or threats of violence the primary purpose of which is to spread terror among the civilian population. The Chamber 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.[215]

1139. para. 172: The offence of acts of terrorism under Article 4(2)(d) of Additional Protocol II is very broad. The Chamber is satisfied that this prohibition includes both acts and threats of violence.[216]

1140. para. 173: Indeed, as the Chamber held in the Rule 98 Decision in this case, the offence "extend[s] beyond acts or threats of violence committed against protected persons to 'acts directed against installations which would cause victims terror as a side-effect'".[217] Thus, if attacks on property are carried out with the specific intent of spreading terror among the protected population, this will fall within the proscriptive ambit of the offence of acts of terrorism. The Chamber emphasises that all types of civilian property, including that which belongs to individual civilians, are protected. The focus of the offence is clearly on protecting persons from being subjected to acts of terrorism and the means used to spn ad this terror may include acts or threats of violence against persons or property.

1141. para. 174: The *mens rea* requirement of the offence of the acts of terrorism is found in the next two elements. To satisfy these elements, the Prosecution need only establish that the Accused intended to spread terror and does not need to demonstrate that the protected population actually was terrorised. The argument that actual terrorisation of the civilian population is a required element of the offence was rejected by both the Trial Chamber and the Appeals Chamber of the ICTY in *Galić* based on the rejection of attempts in the *travaux preparatoires* to Additional Protocol I to replace the intent to terrorise with actual terror.[218] The Chamber is persuaded by this reasoning and finds that the actual infliction of terror is not a required element of the offence.

1142. para. 175: As the Chamber has already observed, the defining element of the offence of acts of terrorism is the specific intent to spread terror among the protected population. It is clear that civilian populations are 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 undertaken for the primary purpose of spreading terror in the protected population. Thus, the specific intent to spread terror must be proven as an element of the offence. This is not to say, however, that the intent to spread terror must be established by direct evidence or that it needed to have been the only purpose behind the act or threat.[219]

(vi) Towns of Tongo Field – Acts of Terrorism

a. Fofana – Towns of Tongo Field – Acts of Terrorism

1143. para. 731: With respect to Count 6, the Chamber recalls that for specific intent crimes, the aider and abettor must have knowledge of the specific intent of the perpetrator to commit such crimes. The Chamber finds that while spreading terror may have been Norman's primary purpose in issuing the order to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses, this is not the only reasonable inference that can be drawn from the evidence. As such the Chamber finds that it has not been proved beyond reasonable doubt that Fofana had the requisite knowledge, an essential element of the crime of acts of terrorism.

b. Kondewa – Towns of Tongo Field – Acts of Terrorism

1144. para. 743: With respect to Count 6, the Chamber recalls that for specific intent crimes, the aider and abettor must have knowledge of the specific intent of the perpetrator to commit such crimes. The Chamber finds that while spreading terror may have been Norman's primary purpose in issuing the order to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses, this is not the only reasonable inference that can be drawn from the evidence. As such the Chamber finds that it has not been proved beyond reasonable doubt that Kondewa had the requisite knowledge, an essential element of the crime of acts of terrorism.

(vii) Koribondo – Acts Terrorism

a. Fofana - Koribondo – Acts of Terrorism

i. Article 6.1 – Fofana – Koribondo – Acts of Terrorism

1145. para. 771: On the basis of the foregoing the Chamber now finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment.

ii. Article 6.3 – Fofana – Koribondo – Acts of Terrorism

1146. para. 779: With respect to Count 6, the Chamber finds that it is not the only reasonable inference that Fofana knew or had reasons to know that his subordinates would commit criminal acts in Koribondo with the primary purpose of spreading terror, as the commission of such acts was not explicitly included in Norman's order.

1147. para. 780: Similarly, whille some of the criminal acts which were committed subsequently by the Kamajors in Koribondo might have been committed with the primary purpose of spreading terror, the Chamber finds the evidence adduced has not established beyond reasonable doubt that Fofana knew or had reasons to know that such acts had been committed by his subordinates subsequently.

1148. para. 781: The Chamber recognises that other criminal acts alleged in the Indictment, such as looting, were in fact committed in Koribondo.[1553] However, the Chamber finds that such acts were not included in Norman's order. Therefore, the Chamber finds that it has not been established beyond reasonable doubt that Fofana knew or had reasons to know that these other criminal acts would also be committed by the Kamajors in Koribondo.

(viii) Bo District – Acts of Terrorism

a. Fofana – Bo District – Acts of Terrorism

i. Article 6.3 – Fofana – Bo District – Acts of Terrorism

1149. para. 823: With respect to Count 6, the Chamber finds that it is not the only reasonable inference that Fofana knew or had reasons to know that his subordinates would commit criminal acts in Bo with the primary purpose of spreading terror, as the commission of such acts was not explicitly included in Norman's order.

1150. para. 824: Similarly, while some of the criminal acts which were committed subsequently by the Kamajors in Bo might have been committed with the primary purpose of spreading terror, thenChamber finds the evidence adduced has not established beyond reasonable doubt that Fofana knew or had reasons to know that such acts had been committed by his subordinates subsequently.

1151. para. 825: The Chamber recognises that other criminal acts alleged in the Indictment, such as infliction of mental harm or suffering, were in fact committed in Bo. However, the Chamber finds that such acts were not included in Norman's order. Therefore, the Chamber finds that it has not been established beyond reasonable doubt that Fofana knew or had reasons to know that these other criminal acts would also be committed by the Kamajors in Bo.

(ix) Bonthe District – Acts of Terrorism

a. Kondewa – Article 6.3 – Bonthe District – Acts of Terrorism

1152. para. 879: With respect to Count 6, the Chamber finds, however, that while some of the criminal acts which were committed by the Kamajors in Bonthe Town might have been committed with the primary purpose of spreading terror among the civilian population, the Chamber finds on the totality of the evidence adduced that it has not been established beyond reasonable doubt that Kondewa knew or had reasons to know that such acts had been committed by his subordinates for the primary purpose of spreading terror.

3. Appellate Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-A, Judgment, 28 May 2008

(a) Factual Findings

1153. Not applicable.

(b) Legal Conclusions

(i) Acts of Terrorism

a. Article 6.1 and Article 6.3 Liability – Acts of Terrorism

1154. Regardings Fofana's and Kondewa's individual criminal responsibility in relation to Acts of Terrorism, see below: Chapter 12 (Article 6.1) – CDF – Appellate Judgment - Findings and Conclusions – Acts of Terrorism - paras. 331-337 [8580].

1155. Regardings Fofana's and Kondewa's superior responsibility in relation to Acts of Terrorism, see below: Chapter 13 (Article 6.3) – CDF – Appellate Judgment - Findings and Conclusions – Acts of Terrorism - paras. 338-341 [9366].

b. Applicable Law: Acts of Terrorism

1156. para. 344: Article 3.d. of the Statute, grants the Special Court jurisdiction to prosecute "acts of terrorism" in violation of Article 3 common to the Geneva Conventions and of Additional Protocol II. Additional Protocol II contains two separate articles prohibiting acts of terrorism: Article 4(2)(d) and Article 13(2). Article 4(2)(d) contains a general prohibition of "acts of terrorism" and provides:

> "Without prejudice to the generality of the foregoing, the following acts against . . . [persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted] are and shall remain prohibited at any time and in any place whatsoever: . . . (d) acts of terrorism."

1157. para. 345: Article 3.d. of the Statute which borrows its language from Article 4(2)(d) of Additional Protocol II, therefore, prohibits acts of terrorism in its broad sense.

1158. para. 346: Additional Protocol II also contains a narrower offence prohibiting acts of terrorism. Article 13(2) provides:

> "Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited."

1159. para. 347: As the ICRC Commentary to Additional Protocol II makes clear, Article 13(2) of Additional Protocol II constitutes a "special type of terrorism:"

> "It should be mentioned that acts or threats of violence which are aimed at terrorizing the civilian population, constitute a special type of terrorism and are the object of a specific prohibition in Article 13."[709]

1160. para. 348: Article 13(2) is a narrower derivative of Article 4(2)(d). An offence under Article 13(2) of Additional Protocol II may be charged under Article 3.d. of the Statute. This is because acts of terrorism under Article 4(2)(d) inherently encompass the narrower elements of acts of terrorism prohibited under Article 13(2).

1161. para. 349: The Appeals Chamber notes that Count 6 of the Indictment does not specify which of the above provisions Fofana and Kondewa were charged under. The Appeals Chamber is of the view, however, that after considering the Prosecution's Pre-Trial Brief, the Trial Judgment, and reliance placed upon the ICTY case of *Prosecutor v. Galić* by all parties to establish the elements of the crime, it is clear that the intention and understanding of all parties from the outset of the trial, was to interpret Count 6 as being a charge under Article 13(2) of Additional Protocol II.

1162. para. 350: The Appeals Chamber finds that the elements of the crime of acts of terrorism under Article 13(2) of Additional Protocol II are:

> (i) Acts or threats of violence;
>
> (ii) That the offender wilfully made the civilian population or individual civilians not taking direct part in hostilities the object of those acts or threats of violence; and
>
> (iii) The acts or threats of violence were carried out with the specific intent of spreading terror among the civilian population.[710]

i. Acts or Threats of Violence

1163. para. 351: The actus reus of the crime, acts of terrorism, may be proved by acts or threats of violence. Acts or threats of violence may comprise not only of attacks but also threats of attacks against the civilian population. Consistent with the ICRC Commentary to Additional Protocol II, this "covers not only acts directed against people, but also acts directed against installations which would cause victims as a side-effect."[711] Acts or threats of violence are also not limited to direct

attacks against civilians or threats thereof but include indiscriminate or disproportionate attacks or threats.[712]

1164. para. 352: Acts of terrorism may, therefore, 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. Not every act or threat of violence, however, will be sufficient to satisfy the first element of the crime of "acts of terrorism." The Appeals Chamber is of the view that whilst actual terrorisation of the civilian population is not an element of the crime,[713] the acts or threats of violence alleged must, nonetheless, be such that are at the very least capable of spreading terror. Whether any given act or threat of violence is capable of spreading terror is to be judged on a case-by-case basis within the particular context involved. For this purpose, the Appeals Chamber agrees with the Trial Chamber in *Galić* that "terror" should be understood as the causing of extreme fear.[714]

ii. That the Offender Wilfully Made the Civilian Population or Individual Civilians not Taking Direct Part in Hostilities the Object of Those Acts or Threats of Violence

1165. para. 353: The second element of the crime "acts of terrorism" is that the offender "wilfully" made the civilian population or individual civilians the object of an act or threat of violence.

1166. para. 354: The Appeals Chamber notes that Article 85 of Additional Protocol I and its corresponding commentary[715] define the term "wilfully," in relation to the distinct prohibition of making the civilian population or individual civilians the object of attack. The Appeals Chamber finds, however, that there is no reason why the definition of the term "wilfully"[716] as discussed in relation to Article 85 of Additional Protocol I should not apply to the crime "acts of terrorism."

1167. para. 355: It follows, that for the crime "acts of terrorism" the second element ("wilfully made the civilian population or individual civilians, the object of an act or threat of violence") 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.[717]

iii. Specific Intent to Spread Terror

1168. para. 356: The third element of the crime of "acts of terrorism" is the specific intent to spread terror amongst the civilian population. The Prosecution is required to prove not only that the perpetrators of acts of threats of violence accepted the likelihood that terror would result from their illegal acts or threats, but must prove that that was the result which was specifically intended.[718] The spreading of extreme fear must, therefore, be specifically intended.

1169. para. 357: The specific intent to spread terror need not be the only purpose of the unlawful acts or threats of violence. It is well established that "the fact that other purposes may have coexisted simultaneously with the purpose of spreading terror among the civilian population would not disprove this charge."[719] The existence of a coexisting purpose does not, however, detract from the requirement that what must be proved irrespective of any other coexisting purpose, is the specific intent to spread terror. Whether the specific intent to spread terror is satisfied is determined on a case-by-case basis and may be inferred from the circumstances, the nature of the acts or threats and the manner, timing or duration of acts or threats of violence.[720]

1170. para. 358: The Appeals Chamber will now discuss the four heads of the Prosecution's Sixth Ground of Appeal.

c. The Trial Chamber's Limited Interpretation of Count 6

1171. para. 359: In light of the elements of the offence set out above, the crime "acts of terrorism" may be proved by any act or threat of violence capable of spreading extreme fear amongst the civilian population. The Appeals Chamber, therefore, agrees with the Prosecution that acts of terrorism need not involve acts that are otherwise criminal under international criminal law. The Appeals Chamber further agrees that acts of burning are acts or threats that are potentially capable of spreading terror, notwithstanding the finding that acts of burning do not satisfy the elements of pillage.

1172. para. 360: Whether the Trial Chamber erred in failing to consider conduct not amounting to a crime (acts of burning in this instance), however, raises a separate question that relates to the pleading of the Indictment.

1173. para. 361: Paragraph 28 of the Indictment, charging acts of terrorism under Count 6, states:

> "At all times relevant to the Indictment, the CDF, largely Kamajors, committed the crimes set forth in paragraphs 22 through 27 and charged in counts 1 through 5, including threats to kill, destroy and loot, as part of a campaign to terrorize the civilian populations of those areas and did terrorize those populations. The CDF, largely Kamajors, also committed the crimes to punish the civilian population for their support to, or failure to actively resist, the combined RUF/AFRC forces."

1174. para. 362: The Appeals Chamber finds that the Trial Chamber's statement that it adopted a limited interpretation of Count 6 amounts to a finding that Count 6 of the Indictment was defective to the extent that the Trial Chamber excluded 'threats to kill, destroy and loot' proved under Counts 1-5 in its evaluation of Count 6.

1175. para. 363: In considering whether the Trial Chamber's limited interpretation of Count 6 amounts to an error of law, the Appeals Chamber recalls that the principal function of an Indictment is to provide for a fair trial and to maintain the integrity of proceedings by notifying an accused of the nature and cause of the charge against him.[721] This imposes an obligation on the part of the Prosecution to state the material facts underpinning the charges in an indictment, but does not extend to pleading the evidence by which such material facts are to be proved.[722] An Indictment which fails to notify an accused of the nature and cause of the charge against him may, however, in certain circumstances be cured by timely, clear and consistent information detailing the factual basis underpinning the charges against him or her.[723]

1176. para. 364: The Appeals Chamber finds that paragraph 28 of the Indictment is clear in establishing that the material facts supporting criminal responsibility under Count 6 are the material facts pleaded in relation to Counts 1 to 5 of the Indictment. These include "threats to kill, destroy and loot." The Trial Chamber, therefore, erred in stating it would only consider crimes "charged and found to have been committed under Counts 1-5 in the Indictment."[724] The Trial Chamber should have considered all conduct that was adequately pleaded in the Indictment irrespective of whether such conduct satisfied the elements of any other crimes under Counts 1-5.

1177. para. 365: Whether the Trial Chamber's error invalidates the decision is discussed below as it is dependent on whether the Trial Chamber erred in its determination of the *mens rea* requirement for acts of terrorism. In particular, Fofana's and Kondewa's liability for acts of terrorism under Article 6(1) and Article 6(3) of the Statute depends on whether they had the requisite *mens rea* for liability as aiders and abetters or superiors. Accordingly, the Appeals Chamber will examine whether a reasonable tribunal of fact could have found, as the Trial Chamber did, that neither Fofana nor Kondewa had the requisite *mens rea*.

(ii) Tongo Town – Acts of Terrorism

a. Fofana and Kondewa's Responsibility for Aiding and Abetting Acts of Terrorism in Tongo

1178. para. 366: The Appeals Chamber has previously endorsed the following statement of the *mens rea* for aiding and abetting:

> The *mens rea* required for aiding and abetting is that the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator. However, it is not necessary that the aider and abettor had knowledge of the precise crime that was intended and which was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually committed.[725]

1179. para. 367: The person aiding and abetting a specific intent crime need not possess the principal's intent to commit the crime, but must at least have knowledge of the principal's specific intent.[726]

1180. para. 368: In regard to the acts of terrorism committed in Tongo, the Appeals Chamber is not persuaded by the Prosecution's submission that no reasonable tribunal of fact could have found that Fofana and Kondewa may not have been aware of the specific intent to commit acts of terrorism in Tongo. The Prosecution argues that the Trial Chamber's error resulted from its "exclusive reliance on the instruction given by Norman at the December 1997 Passing Out Parade to determine whether the perpetrators of the proven acts of violence had the specific intent to terrorise the civilian population."[727] Contrary to the Prosecution's assertion, the Trial Chamber used evidence of Norman's statements at the December 1997 Passing Out Parade to determine whether Fofana and Kondewa were aware of his specific intent to spread terror. While the instructions given by Norman are inherently illegal, they are ambiguous with respect to his intent to spread terror, and therefore a reasonable tribunal of fact could have determined that Fofana and Kondewa were not aware of the specific intent with respect to any acts of terrorism in Tongo.

1181. para. 369: The Prosecution further argued that Fofana must have known of the specific intent to commit acts of terrorism because he was aware "that the Kamajors who operated in the towns of Tongo Field had previously engaged in criminal conduct."[728] A similar argument was advanced in relation to Kondewa.[729] However, the Prosecution makes no submission as to how knowledge of past general intent crimes would provide Fofana or Kondewa with knowledge of the principal's specific intent to spread terror.

1182. para. 370: The Prosecution's argument with respect to Fofana's and Kondewa's liability for aiding and abetting acts of terrorism in Tongo must be rejected.

(iii) Koribondo, Bo District, and Kenema District – Acts of Terrorism

a. Fofana Superior Responsibility Under Article 6(3) of the Statute for Acts of Terrorism in Koribondo

1183. para. 373: Although acts of terrorism may have been committed in Koribondo, the Prosecution does not demonstrate that Fofana knew or had reason to know that acts of terrorism would be or were committed there. The Prosecution only points to one finding of fact to suggest that Fofana may have learned, after the fact, that acts of terrorism were committed in Koribondo, however even this finding is far from conclusive. The Prosecution submits that the Trial Chamber found that "Fofana received reports on any military operation, in particular when Nallo was involved."[734] In fact, in the relevant paragraphs, the Trial Chamber found that Fofana "received frontline reports, both written and verbal, from the commanders in the field and passed them on to Norman" and that the strategies for war operations planned by Nallo and Fofana "did not include the killing of innocent civilians, looting of property or raping of women."[735] Neither of these findings points ineluctably to the conclusion that Fofana knew or had reason to know that acts of terrorism were committed in Koribondo.

1184. para. 374: The real strength of the Prosecution's argument that Fofana must have known or had reason to know that acts of terrorism would be committed in Koribondo lies in his knowledge of Norman's orders, but even there the argument must fail. Although Norman's statement at the December 1997 Passing Out Parade contained illegal orders, it did not unambiguously indicate a specific intent to spread terror. In light of this ambiguity, a reasonable tribunal of fact could find that Fofana neither knew nor could have known of the specific intent.

1185. para. 375: The Prosecution's argument with respect to Fofana's superior responsibility for acts of terrorism in Koribondo must be rejected.

b. Kondewa – not considered w/respect to Koribondo

(iv) Bonthe – Acts of Terrorism

a. Kondewa's Superior Responsibility Under Article 6(3) of the Statute for Acts of Terrorism in Bonthe District

1186. para. 376: The Appeals Chamber is not convinced by the Prosecution's submissions that the Trial Chamber erred in not finding that Kondewa knew or had reasons to know that acts of terrorism were about to be or had been committed in Bonthe District. A reasonable tribunal of fact could conclude, as did the Trial Chamber, that instructions given by Norman during the Passing Out Parades in December 1997 and in early January 1998 did not convey the specific intent to spread terror.

1187. para. 377: The additional submissions by the Prosecution also do not render the Trial Chamber's conclusion on Kondewa's lack of *mens rea* unreasonable. As discussed above, and contrary to the Prosecution's submission, the Trial Chamber reasonably concluded that Kondewa was not aware that civilians had been terrorized in Tongo, although it found that he was aware that the Kamajors who operated in the towns of Tongo Field had committed crimes.[736] Further, Kondewa's admission that "he was aware of the atrocities committed by the Kamajors during the attack" on Bonthe[737] does not necessarily demonstrate that he was aware that his subordinates committed acts of terrorism. A reasonable tribunal of fact could have concluded that he had the requisite knowledge that some crimes had been committed in Bonthe, but lacked knowledge of the crime "acts of terrorism."

1188. para. 378: The Prosecution's argument with respect to Kondewa's superior responsibility for acts of terrorism in Bonthe must be rejected.

(v) Summary Finding – Acts of Terrorism

1189. para. 379: The Appeals Chamber, therefore, finds no reason to disturb the Trial Chamber's findings with respect to the criminal responsibility of Fofana and Kondewa for acts of terrorism under Article 6(1) and/or Article 6(3) of the Statute. The Appeals Chamber rejects the Prosecution's Sixth Ground of Appeal in its entirety.

CHAPTER 2 – MURDER

A. CHARLES TAYLOR

1. Indictment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-I, Indictment, 16 March 2006

(a) Particulars

(i) Charges

1190. By his acts or omissions in relation to the below described events, the ACCUSED, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:[32]

(ii) Count 1: Terrorizing the civilian population

1191. Members of the Revolutionary United Front (RUF), Armed Forces Revolutionary Council (AFRC), AFRC/RUF Junta or alliance, and/or Liberian fighters, including members and ex-members of the NPFL (Liberian fighters), assisted or encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, burned civilian property, and committed the crimes set forth below in paragraphs 6 through 31 and charged in Counts 2 through 11, as part of a campaign to terrorize the civilian population of Sierra Leone.[33]

(iii) Counts 2-3: Unlawful killings

> **Count 2: Murder**, a CRIME AGAINST HUMANITY, punishable under Article 2.a. of the Statute
>
> In addition, or in the alternative:
>
> COUNT 3: 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.

1192. Between about 30 November 1996 and 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or Alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED,

[32] Taylor Indictment, Charges, p. 2.
[33] Taylor Indictment, para. 5.

throughout Sierra Leone, unlawfully killed an unknown number of civilians, including the following:[34]

> i. Kenema District: Between about 25 May 1997 and about 31 March 1998, in *various locations*, including Kenema Town and the Tongo Fields area;[35]
>
> ii. Kono District: Between about 1 February 1998 and about 31 January 2000, in *various locations*, including Koidu, Tombodu or Tumbodu, Koidu_Geiya or Koidu Gieya, Koidu Buma, Yengema, Paema or Peyima, Bomboa_fuidu, Bumpe, Nimikoro or Njaimu Nimikoro, and Mortema;[36]
>
> iii. Kailahun District: Between about 1 February 1998 and about 30 June 1998, in various locations, including Kailahun town;[37]
>
> iv. Freetown and Western Area: Between 21 December 1998 and 28 February 1999, in locations throughout Freetown, including the State House, Kissy, Fourah Bay, Upgun, Calaba Town, Allen Town and Tower Hill areas of the city, and Hastings, Wellington, Tumbo, Waterloo, and Benguema in the Western Area.[38]

2. Trial Judgment

The Prosecutor v. *Charles Ghankay Taylor*, SCSL-03-01-T, Judgement, 18 May 2012

(a) Factual Findings

(i) General – Factual Findings

1193. para. 582: The Trial Chamber has, in the Chapter on Preliminary Issues, ruled on evidence falling outside the temporal and/or geographical scope of the Indictment;[1336] locations and criminal acts not specifically pleaded in the Indictment;[1337] as well as timeframes imprecisely pleaded in the Indictment.[1338] The submissions relating to specific Counts in the Indictment are appropriately handled under each Count. The Trial Chamber will now examine the evidence relating to the various Counts in the Indictment. For ease of reference Count I (Acts of terrorism) is examined after the other Counts as it encompasses evidence relating to all the other Counts. In examining the crime-base evidence, the Trial Chamber does not at this stage examine the role if any, played by the Accused or his alleged criminal responsibility for the said crimes, as these are matters more appropriately examined under the Chapter on the Role of the Accused and his

[34] Taylor Indictment, para. 9.
[35] Taylor Indictment, para. 10.
[36] Taylor Indictment, para. 11.
[37] Taylor Indictment, para. 12.
[38] Taylor Indictment, para. 13.

alleged criminal responsibility.[1339] Accordingly, the Trial Chamber's findings in this Chapter are limited to the primary perpetrators.

(ii) Kenema District– Crimes

1194. para.585: The Trial Chamber heard evidence establishing beyond reasonable doubt that after the 25 May 1997 overthrow of the Tejan Kabbah Government by the Junta forces, a large contingent of AFRC/RUF forces were based in Kenema Town[1350] until the ECOMOG Intervention in mid-February 1998 when they were forced to flee the area.[1351] The RUF forces led by Sam Bockarie (a.k.a. Mosquito) were based at the NIC Compound on Dama Road in Kenema Town, while the AFRC forces led by Eddie Kanneh, the Secretary of State East, were based at 14 Hangha Road.[1352] Notwithstanding that the AFRC and RUF forces had separate command structures, the two groups worked in collaboration with each other in Kenema Town during this period.[1353] Other commanders in Kenema Town at this time included Manawa, Morris Kallon, Issa Sesay, Akim[1354] and Massaquoi.[1355] Shortly after the establishment of the Junta Government in Freetown, the AFRC/RUF forces in Kenema Town attempted to have a reconciliation meeting with one Kamoh Brima Bangura, who was the leader of the Civil Defence Force (a.k.a. Kamajors).[1356] When the Kamajor leader refused to cooperate, Col. Eddie Kanneh and Col. Sam Bockarie ordered his arrest, sparking off hostilities between the AFRC/RUF forces on the one hand, and the Kamajors and ECOMOG forces on the other.[1357] After 5 June 1997, the AFRC/RUF forces drove out the Kamajor and ECOMOG forces from Kenema Town.[1358] The said hostilities continued until the Junta forces were driven out of Kenema District in mid-February 1998. During the period May 1997 to February 1998 many civilians in Kenema District suspected of supporting or cooperating with the Civil Defence Force were murdered, and/or had their property looted or destroyed, by the AFRC/RUF forces.[1359]

1195. para. 586: On 11 August 1997, under the command of Issa Sesay, Akim, and Sam Bockarie, the AFRC/RUF forces travelled with heavy armaments from Kenema Town to Tongo Fields[1360] where they took control of the area from the Kamajors and subsequently looted civilian property for three days.[1361] Persons who fled the area reported that the RUF/ AFRC forces captured able-bodied men to forcibly mine diamonds for them and in the process, killed many civilians who refused to cooperate.[1362] During the AFRC/RUF occupation of Tongo Fields, Sam Bockarie was in command and control of the Junta forces.[1363] Other AFRC commanders in Tongo Fields at this time included the PLO-2,[1364] Captain Yamao Kati, Captain lalloh, Sergeant Junior,

Seth Marrah, and Victor;[1365] while other RUF commanders included Captain Eagle (a.k.a. Karmoh Kanneh), Amuyepeh, and Banya.[1366]

1196. para.587: In relation to unlawful killings alleged to have taken place in Kenema District the Trial Chamber has considered the testimony of Prosecution Witnesses Alex Sheku Bao, Adesanya Sanya Hyde, Kannoh Kanneh, Augustine Mallah, Abdul Otonjo Conteh, Isaac Mongor, Samuel Kargbo, protected Prosecution Witnesses TF1-062, TFl-375, TFl-567, TF1-590, Defence Witnesses Issa Sesay, Sam Kolleh, protected Defence Witnesses DCT-068, DCT-146 and Exhibits P-078,[1367] P-173,[1368] P-174,[1369] P-175,[1370] P-178A,[1371] P-278,[1372] P-366,[1373] and D-063.[1374]

a. Kenema Town – Kenema District – Crimes

i. Killing of Mr. Dowei – Kenema Town – Kenema District –Crimes

1197. para. 588: Witness Alex Bao[1375] testified that for the period of nine months from about the end of May 1997 to February 1998 when the AFRC/RUF forces were based in Kenema Town, he was working as a station sergeant based at Kenema Town Police Station.[1376] He stated that "right after the takeover"[1377] in Kenema Town a civilian housewife called Mrs. Dowei filed a comprehensive report with Kenema Police Station to the effect that AFRC/RUF forces had attacked her home, looted all her property and shot her husband in the head and stomach when he intervened to prevent them from taking a deep freezer from his house. Mr Dowei consequently died from the gunshot wounds.[1378] In his prior testimony, Bao stated that although he was not present when Mrs Dowei made her statement to the Kenema Police, he subsequently went to Mrs Dowei's house to investigate the incident and saw the corpse of Mr Dowei with two bullet wounds. However, he could not conduct a proper investigation as "the area was tense and there was shooting all over the place".[1379]

ii. Killing of three civilians near Mambu Street – Kenema Town – Kenema District – Crimes

1198. para. 590: In his prior testimony, Alex Bao further stated that during the entire Junta period,[1380] both the RUF rebels and AFRC juntas looted excessively in Kenema Town. On one occasion they went to Mambu Street to loot, and for the rest of the day were shooting in the area.[1381] Later, Bao saw the RUF/AFRC fighters. including Commanders Akim and Bockarie, with looted property, singing that "they had driven the Kamajors out of the area".[1382] That evening

Bao went to a house on Mambu Street that belonged to one Pa Mansaray. When he arrived, the house was on tire.[1383] Bao testified that the house had supposedly been occupied by Kamajors, but by the time he went there, there were no Kamajors at the house.[1384] On cross-examination in this trial, Bao clarified that the AFRC and RUF fighters burned down Pa Mansaray's house because the Kamajors were using it as a base.[1385] Bao testified that he went down to the swamp behind Pa Mansaray's house where he saw three dead bodies lying in the street.[1386] He described the bodies as two elderly men and one young man, all wearing "civilian plain cloth".[1387] Bao testified that the attack on Mambu Street was planned by AFRC and RUF fighters including Sam Bockarie and Akim, and that he had seen Akim riding around Kenema Town that day on the bonnet of a Mercedes with an AK-47 rifle in his hand.[1388]

iii. Killing of Bonnie Wailer and other suspected burglars – Kenema Town – Kenema District – Crimes

1199. para. 592: Alex Bao further testified that one morning in late June 1997,[1389] upon his arrival at the Police station, he found a man whom he knew well called Bonnie Wailer who had been taken into custody for alleged "house-breaking and larceny".[1390] Bao described Wailer as wearing "combat trousers and plain cloth" at the time of his detention.[1391] When Bao asked Wailer why he was dressed in combat trousers, Wailer explained that he and his colleagues "went to run a mission" but he ran out of luck and was caught, beaten and then taken to the Police Station.[1392] Bao further testified that later on that day, RUF Commander Sam Bockarie accompanied by an AFRC Lieutenant and several RUF and AFRC men came to the Police Station and took away Bonnie Wailer, supposedly for him to show them where they could find Wailer's "colleagues". The group returned two hours later with Wailer and two other men.[1393] Bao knew one of the two men to be a "notorious criminal" but did not know the other one.[1394] Bonnie Wailer and the two men were lined up in front of the police officers and many civilians who had gathered and Bao heard Sam Bockarie order his men to kill the three suspects.[1395] The AFRC juntas publicly executed the three suspects and left their bodies on display for the rest of the day.[l396] Later on at night, the three corpses were loaded onto a military pickup vehicle and taken away.[l397]

1200. para. 593: Adesanya Hyde,[1398] a colleague of Alex Bao's who was a police officer and the second-in-command at the Kenema District Criminal Investigation Department in 1997 and 1998 1399, also gave evidence regarding these killings. He stated in his prior testimony[l400] that in the first week of the coup in May 1997,[1401] Bonnie Wailer, Sydney Cole, Mr Bangura, and an unknown man were brought to the police station by civilians on suspicion of "burglary and larceny" charges.[1402] Hyde stated that he was one of the police officers who escorted Wailer to

look for the other suspects. According to Hyde, the four men had impersonated the AFRC/RUF rebels by dressing up in military uniform and robbing civilians at gun point. Hyde testified that the AFRC/RUF fighters who arrested the suspects shot each suspect "more than ten times" in the legs before taking them to the police station.[1403]

1201. para. 594: According to Hyde, the AFRC/RUF rebels were upset because "the suspects were impersonating the juntas by wearing military fatigues and robbing civilians. As the revolution was in its early stages, the rebels did not want this incident to tarnish the Junta's image".[1404] After arresting the four suspects, the AFRC/RUF fighters sent word to the citizens of Kenema Town that they should come to the Police compound to witness the public executions.[1405] The AFRC hierarchy including Eddie Kanneh and Massaquoi were also present to witness the executions.[1406] Hyde stated that the four suspects were made to lie down on the floor of the Police station and an RUF man shot each of the men at close range on the orders of an AFRC officer.[1407] Hyde stated that he left the scene after the first shooting as he was too traumatised to watch and instead observed the scene from the safety of his office window.[1408]

iv. Killing of a farmer at the NIC building – Kenema Town – Kenema District – Crimes

1202. para. 598: In his prior testimony, Alex Bao testified that at the end of the rainy season in 1997, which is in September,[1409] a group of RUF rebels caught a civilian man whQ was "brushing aswamp" which is a colloquial way to describe preparing a field for farming.[1410] Bao first saw the man when the RUF rebels were marching him up Maxwell Khobe Street in Kenema Town.[1411] The man was wearing a "working cloth", had mud all over his body and was carrying a cutlass in his hand.[1412] Based on the man's appearance, Bao concluded that he was a farmer who had been apprehended by his captors while he was working on his fields in the swamp.[1413] The rebels were dancing and singing that they had "captured a Kamajor, and that they would take him to Sam Bockarie".[1414] Bao followed them out of curiosity[1415] but before he could catch up with them, he heard two gunshots from a pistol as he was approaching the NIC building. On arrival at the scene he saw Sam Bockarie brandishing a pistol in the air, standing over the farmer's body which had bullet wounds in the head and stomach.[1416] The other onlookers confirmed to Bao that Bockarie had shot the farmer.[1417] Bao heard Bockarie say that he "must finish all of them", meaning Kamajors, and ordering his "boys" to dump the farmer's body into a hole behind the NIC building.[1418]

v. Killing of Santos and an alleged thief – Kenema Town – Kenema District – Crimes

1203. para. 601: In his prior testimony, Alex Bao testified that during the rainy season in November 1997,[1419] an NGO[1420] filed a report with Kenema Police Station that thieves had broken into the NGO's warehouse and stolen a large quantity of expensive drugs.[1421] No sooner had the police started investigating the complaint than Sam Bockarie came to the police station asking how far the investigation had gone. Bockarie told the police officers, including Bao, that he had information about the suspects and that he was going to "help the Police by looking for the suspects". Bao stated that shortly thereafter there was a widespread rumour that Bockarie had arrested and killed the alleged thief and a boy named Santos in front of Capital Cinema, where Santos worked.[1422] Bao stated that he knew Santos very well. Bao stated that the corpses of the two people were left in front of his house, opposite the Cinema tor three days before Sam Bockarie and "his boys" loaded the bodies onto their vehicle and took them away.[1423]

vi. Killing of an alleged "Kamajor Boss" on Hangha Road – Kenema Town – Kenema District – Crimes

1204. para. 604: In his prior testimony, Alex Bao testified that in late December 1997, AFRC/RUF fighters launched an attack against the residents of Kenema Town which they named "Operation No Living Thing".[1424] One morning during that operation, Bao saw the body of "a fat man dressed in plain clothes and not Kamajor uniform" lying motionless along Hangha Road by the Sierra Leone Telecommunications building in Kenema Town.[1425] Bao saw the RUF/AFRC juntas dancing and singing aloud that "they had captured and killed the Kamajor boss".[1426] Bao saw one of the rebels split open the dead man's belly with a bayonet, remove the intestines and stretch them across the street, using it as a checkpoint.[1427] The disembowelled body of the man remained at the "checkpoint" which was manned by the AFRC/RUF fighters, for three days after which the AFRC/RUF fighters took the corpse away.[1428] During cross-examination in this trial, Bao testified that "[t]he man is no Kamajor. When they want to kill innocent people, they brand you as a Kamajor. That man was just a peaceful citizen".[1429]

vii. Killing of Mohamed Fityia – Kenema Town – Kenema District – Crimes

1205. para. 607: Witness Karmoh Kanneh (a.k.a. Captain Eagle) a former civilian captured and enlisted as a fighter by the RUF in 1991[1430] stated that his RUF contingent led by Sam Bockarie

was based at the NIC compound in Kenema Town for three to four months before the ECOMOG Intervention took place in Freetown,[1431] from where the RUF routinely conducted operations, including the capture of Tongo Fields.[1432] When Kanneh was in Kenema Town, members of the RUF and AFRC were looting civilian property. This led to Sam Bockarie issuing an order to put the looting under control.[1433] During the looting outbreak Kanneh investigated an allegation by a Mandingo man that Mohamed Fityia, a businessman, had driven soldiers in his car to loot the Mandingo man's house.[1434] Kanneh found out that Fityia had only offered to drive his car hoping that the soldiers would not steal it.[1435] Kanneh told this to Bockarie, but the latter did not believe the story and became very angry with Kanneh. Bockarie then shot and killed Fityia in front of Kanneh.[1436]

1206. para. 608: Another witness, Alex Sheku Bao, testified in this trial regarding what he had heard about the death of one businessman called Fityia in Kenema Town. Although Bao had said nothing about Fityia's death in his prior testimony in the AFRC and RUF trials, Bao testified in cross-examination in this trial, that sometime between 25 May 1997 and January 1998 he heard from people in Kenema that a businessman called Fityia hired two AFRC and two RUF fighters to rob a large amount of money from one Shekuna, a Lebanese diamond dealer in Kenema Town.[1437] Bao later heard rumours that Bockarie had killed Fityia because he was suspected of this crime.[1438] He went to the scene to investigate and found Fityia's dead body lying on Sombo Street.[1439] When asked by the Defence why his version of events differed from that given by Karmoh Kanneh. Bao admitted that his version of events based on hearsay was not as accurate as Kanneh's direct evidence, but that he had seen Fityia's body lying in Sombo Street.

viii. Killing of Brima S. Massaquoi and others – Kenema Town – Kenema District – Crimes

1207. para. 611: In his prior testimony, Witness Alex Bao provides the most detailed account on the circumstances surrounding the killing of Brima S. Massaquoi, the Chairman of Kenema Town Council and other prominent residents in January 1998. Bao testified that in late January 1998, six prominent individuals, namely, Brima S. Massaquoi, the Chairman of Kenema Town Council,[1440] Brima Kpaka a prominent businessman in Kenema,[1441] Andrew Quee, a civil servant,[1442] Issa Ansumana, Abdulai Bockarie and John Swanay were arrested by the AFRC/RUF forces in Kenema Town and detained at the AFRC Secretariat located at 14 Hangha Road, on suspicion of being "Kamajor supporters".[1443] Bao visited the AFRC Secretariat and saw the prisoners lying on a wet floor with their hands tied tightly behind their backs and with bruises on their bodies. The ropes had "eaten" into their flesh.[1444] Bao saw the RUF commander Sam Bockarie (a.k.a.

Mosquito) brandishing his pistol in the air and heard him say that the detainees were "supporters of Kamajors and he was going to kill all of them". The AFRC Lieutenant in charge of the Secretariat was also present.[1445] After being detained at the AFRC Secretariat for three or four days, the prisoners were on 28 January 1998[1446] transferred to the Kenema Police Station where Bao was deployed to be investigated on charges that they were supporting the Kamajors against the AFRC/RUF.[1447]

1208. para. 612: Bao stated that the Police found no evidence supporting the allegations that any of the six men were Kamajor collaborators and released them on bail.[1448] Three or four days later, when Bockarie learned that the six suspects had been released, he openly threatened the Police Commissioner with death if the men were not returned within two hours.[1449] As a result five of the suspects were re-arrested and detained at the Kenema Police Station[1450] on the orders of the Police Commissioner, with the exception of Brima Kpaka who had been admitted to the Kenema hospital for treatment.[1451] On 6 February 1998[1452] a lot of armed AFRC/RUF forces led by AFRC Lieutenant A.B. Turay came to Kenema Police Station in two military vehicles and took away five of the prisoners, namely, B.S. Massaquoi, Andrew Quee, lssa Ansumana, Abdulai Bockarie and John Swanay.[1453] Bao heard Lt. Turay tell the police that he was taking the prisoners to the AFRC Brigade headquarters on orders of the Secretary of State East.[1454]

1209. para. 613: Bao further stated that two days after the AFRC/RUF had taken the five prisoners into custody,[1455] there were widespread rumours in Kenema Town that the AFRC/RUF forces had killed the five prisoners and dumped their bodies in a river.[1456] Bao searched in vain for the five prisoners at the AFRC Brigade headquarters and Guinea Base.[1457] He found the dead bodies of the five prisoners lying in a stream at Dorwala, on the outskirts of Kenema Town.[1458] Bao described the bodies as having gunshot wounds all over. Also there was large cement block lying on Massaquoi's head.[1459]

1210. para. 614: Bao's testimony is to a large extent, corroborated by that of Adesanya Sanya Hyde who was a police officer, and the second in command at the Kenema District Criminal investigation Department in 1997 and 1998. Hyde testified that close to the time of the Intervention, the "AFRC hierarchy", including Eddie Kanneh and Sam Bockarie, ordered the arrest of seven suspected Kamajor collaborators including B.S. Massaquoi, the Chairman of the Kenema Town Council, Brima Kpaka, a prominent businessman, and Andrew Quee.[1460] Hyde stated that the prisoners were detained at the AFRC Secretariat for six days, and then transferred to the Kenema Town Police station for further investigation.[1461]

1211. para. 615: As the Police could not find any evidence to support charges against the men, and klbecause of their injuries, the Chief of Police received permission from Eddie Kanneh to release the suspects on bail, and BS Massaquoi and Brima Kpaka were released.[1462] However, shortly after the ECOMOG Intervention, Sam Bockarie ordered that they be rearrested.[1463] Kpaka was not taken back as he had been admitted to the hospital, but B.S.Massaquoi was returned to the station.[1464]

1212. para. 616: The next morning there was a rum our that the Kamajors and ECOMOG were five miles away from Kenema.[1465] At 6.30am the same day the AFRC forces, led by Lieutenant A.B. Turay, removed the suspects from the Police Station and took them to the AFRC Brigade Headquarters.[1466] Hyde later heard from other residents of Kenema that Sam Bockarie and his men had killed the suspects and that BS Massaquoi had been beheaded and that his head had been tied to a wooden pole and paraded around Kenema.[1467] Hyde testified however, that he never saw the dead bodies of any of the deceased.[1468]

1213. para. 617: Another witness, Karmoh Kanneh, (a.k.a. Captain Eagle)[1469] testified that Sam Bockarie arrested B.S. Massaquoi, the City Council Chairman, Ibrahim Gbacka, a motorspares dealer, and Dr Momoh, a medical doctor, and detained them at the Secretariat, accusing them of collaborating with the Kamajors.[1470] Kanneh and his colleague Manowai visited the suspects in detention and observed that they were badly beaten and bruised. Gbacka, who hailed from the same region as Kanneh, confirmed to the latter that they had been severely tortured.[1471] Kanneh persuaded Bockarie to allow him to transfer Gbacka and Dr Momoh to the hospital for treatment and while there, he assisted the two men to escape and hide because he was concerned for their safety. Kanneh stated that as ECOMOG advanced towards Kenema, Kanneh heard Bockarie say that "if the situations went out of control the prisoners would not be spared".[1472] Upon learning that two of the prisoners had escaped while in the hospital, Bockarie ordered that B.S. Massaquoi be put under "tight custody".[1473]

1214. para. 618: Kanneh testified that on the day that ECOMOG forces entered Kenema Town and as the AFRC retreated,[1474] he saw Bockarie put B.S. Massaquoi into a car and heard Bockarie say he was going to execute Massaquoi.[1475] Karmoh Kanneh and others including Eddi Kanneh, followed Bockarie as he took Massaquoi to the Government reservation. While there Kanneh saw Bockarie's securities take Massaquoi out of the car and shoot him.[1476] Kanneh stated that after Massaquoi died, all of the men followed Bockarie back to the brigade but were not happy with him for having carried out the killings.[1477]

1215. para. 619: A number of other Prosecution and Defence witnesses testified of hearing of the death of B.S. Massaquoi as he was a key figure in Kenema Town. Prosecution Witness TF1-590 heard that Sam Bockarie and his men arrested and killed B.S. Massaquoi.[1478] However, TF1-590 did not see the corpse of B.S. Massaquoi, but only referred to the "widespread rumour" that Massaquoi's body was lying in Hangha Road.[1479] Defence witness Issa Sesay testified that he heard from Major Gua and others that Sam Bockarie had, prior to the RUF retreat from Kenema Town, arrested and killed B.S. Massaquoi and others on suspicion of sending ammunition and food to the Kamajors.[1480] Defence Witness Sam Kolleh (DCT-102), a commanding officer in the RUF who was stationed in Kenema in February 1998,[1481] also heard that Sam Bockarie had arrested B.S. Massaquoi and killed him on the day after the ECOMOG Intervention.[1482]

1216. para. 620: In addition to witness testimony, the Trial Chamber admitted into evidence two independent reports on the unlawful killings that took place in Sierra Leone in the year 1998. An Amnesty International report states:

> [O]n 13 and 14 January 1998 several prominent members of the community in Kenema were arrested by members of the RUF under the supervision of Sam Bockarie. They included B.S. Massaquoi, the chairman of the Town Council, Dr P.B. Momoh, a medical doctor, Paramount Chief Moinama Karmor, a traditional leader and Ibrahim Kpaka. A businessman. They were arrested at a time of fierce tighting between the Kamajors and the AFRC and RUF forces around Kenema and were accused of supporting the Kamajors. They were held at the AFRC Secretariat building in Kenema. which had been the local SLPP headquarters. and some were later moved to the police station and army brigade headquarters. They were stripped and repeatedly beaten with sticks, electric cables and strips of tyres and were threatened with death. Their arms were tied tightly behind them. One of those detained sustained a serious head wound and injury to his eye after being beaten on his head with a gun. At least one of those detained died as a result of beatings. Some of those arrested were released on 26 January 1998 and escaped to safety. B.S. Massaquoi, however, was among those who remained held at army brigade headquarters. He was killed by members of the RUF on 8 February 1998 as news arrived of ECOMOG's offensive on Freetown and as Kamajors entered Kenema. Dozens of other people were also reported to have been killed. The mutilated body of B.S. Massaquoi and 35 other people were reported to have been found In mass grave near Kenema on 23 March 1998.[1483]

1217. para. 621: A 1998 Human Rights report on Sierra Leone states:

> [T]hroughout the year, AFRC and RUF rebels committed numerous egregious abuses, including brutal killings, severe mutilations and deliberate dismemberments, in a widespread campaign of terror against the civilian population known as "Operation No Living Thing" .... Many of the hundreds, if not thousands, of civilians killed by AFRC and RUF insurgent forces in the contlict were executed deliberately for political motives. In March RUF leader Sam Bockarie summarily executed 10 prominent residents of Kenema, including

former cabinet minister Bockarie S. Massaquoi and Paramount Chief Momoh Tarawalie, for opposing the rebels.[1484]

b. Tongo Fields – Kenema District – Crimes

i. Killing of three persons in residential house – Tongo Fields – Kenema District – Crimes

1218. para. 625: In his prior testimony from the AFRC trial admitted m this trial as Prosecution Exhibit P-278, TF1-062 testified that he was a trader and a diamond miner living in a town called Tongo Fields in Lower Bambara Chiefdom about 27 miles from Kenema Town when anned AFRC/RUF rebels[l486] led by Sam Bockarie[1487] took control of the area on 11 August 1997.[1488] Upon their arrival in Tongo Fields, the AFRC/RUF rebels carried out widespread looting and indiscriminate attacks against the civilian population for three days.[1489]

1219. para. 626: TF1-062 testified that one morning during this three day period, he was sitting in his house in Tongo Fields when armed soldiers came to a residential house opposite his.[1490] The soldiers ordered the occupants of the house to open the door. When the occupants declined to do so, the soldiers broke down the door and started shooting randomly into the room, killing the three occupants.[1491] The witness heard the soldiers refer to the deceased as Kamajors. The witness however, did not believe this as he knew that there were no Kamajors in Tongo Fields at that time.[1492] After the soldiers left the scene TF1-062 helped some civilians to take corpses away.[1493]

ii. Killing of 15 civilians at Bumpe near Tongo Fields around September 1997 – Tongo Fields – Kenema District – Crimes

1220. para. 628: Abdul Otonjo Conteh (TF 1-060), who was a Secondary School teacher, part-time miner and resident of Lalehun[1494] in Tongo Fields testified that the AFRC/RUF Junta forces under Eddie Kanneh and Sam Bockarie arrived in Kenema Town three days after the 25 May 1997 coup[1495] and entered Tongo Fields on 11 August 1997 amid heavy shooting and rampant looting of civilian property.[1496] Abdul Conteh testified that in the days following the arrival of the AFRC/RUF forces in Tongo, the paramount Chief of Lower Bambara Chiefdom appointed a 13 man Committee known as the Lower Bambara Advisory Committee, to oversee the welfare of the citizens of the Chiefdom. The mandate of this committee was to receive reports from the citizens regarding any problems encountered and in tum to relay these complaints to the Paramount Chief

and the AFRC/RUF administration.[1497] Conteh was appointed Secretary of that Committee and was resident in Tongo Fields from II August to 10 November 1997.[1498]

1221. para. 629: Conteh testified that in his capacity as committee member, he received a report from some citizens of Bumpe on 16 September 1997,[1499] that fifteen people had been killed at Bumpe, located about one mile on the outskirts of Tongo.[1500] He went to Bumpe to investigate and saw fifteen corpses of both men and women in civilian clothes, including two girls aged 14 and 18 years, respectively, lying in the open. All the bodies bore bullet wounds.1501 Bumpe was deserted as everyone had run away. Conteh testified that some of the survivors of Bumpe told him that RUF fighters went to fight the Kamajors in Dodo Chiefdom on 16 September 1997 and lost. Out of frustration the returning RUF fighters killed whoever crossed their path during their retreat.[1502] Those reportedly killed by the RUF included the fifteen civilians at Bumpe; Chief Vandi Sei and a retired Policeman called John Dakowah at Panguma.[1503] Conteh further testified that the civilians who returned to their home from the bush were harassed, beaten or raped by the AFRC/RUF fighters who accused them of being "relatives of the Kamajors".[1504]

1222. para. 630: In addition, the Trial Chamber admitted into evidence several reports authored by Abdul Conteh as "Secretary General of the Lower Bambara Care-Taking Committee".[1505] According to one of the reports, Col. Sam Bockarie (a.k.a. Mosquito) on 8 September 1997 led a group of about 300 RUF/AFRC combatants to Dodo Chiefdom to confront Kamajors. The group suffered heavy casualties and the survivors, on their return to Tongo Fields, killed a retired Policeman called John Dakowa claiming that he was a Kamajor.[1506] According to another report, on 16 September 1997 the O/C Secretariat Tongo[1507] led a group of about 800 RUF/AFRC combatants to Dodo Chiefdom to confront Kamajors. The RUF/AFRC combatants suffered heavy casualties and only 100 returned to Tongo. On their way back, the RUF/AFRC combatants killed 15 civilians at Bumpe including one Saffa Balie, aprominent youth leader, and Pa Vandi Sei, the Town Chief of Panguma. The Lower Bambara Care-Taking Committee reported these deaths to the O/C Secretariat Tongo who dismissed the report remarking that "all those killed were either Kamajors or collaborators of Kamajors" and threatening to kill anyone found in Bumpe trying to bury the dead.[1508]

iii. Killing of civilians engaged in mining at Pandembu, Sandeyeima and Wuima in Tongo Fields Area – Tongo Fields – Kenema District – Crimes

1223. para. 633: Witness Abdul Conteh testified that during the Junta period, the RUF/AFRC fighters forbade civilians to carry out any private or personal mining of diamonds in Tongo Fields and that any civilian caught mining for himself was severely punished. He also stated that the RUF/AFRC fighters would abduct civilians and force them to mine diamonds for the Junta Government.[1510] Conteh further testified that while serving on the Lower Bambara Care-Taking Committee, he received a report[1511] that Sam Bockarie sent RUF child combatants[1512] to Pandembu, a village in the Tongo Fields area,[1513] with orders to kill civilians who were carrying out personal mining instead of mining for the AFRC/RUF Government.[1514] The child soldiers shot and killed three civilians who were mining by a church in Pandembu.[1515] Conteh and the other Caretaker Committee members went to investigate, and saw the three bullet-riddled corpses of the civilians as well as other people who had sustained bullet wounds.[1516]

1224. para. 634: Abdul Conteh testified that he received another report that RUF child soldiers killed two civilians who were doing private mining at Sandeyeima and wounded several others.[1517] He further testified that he received yet another report that RUF child soldiers killed three civilians who were doing private mining at Wuima and wounded several others. The Caretaker Committee reported these three incidents to Lieutenant Sekou Kunnateh, the O/C of the AFRC Secretariat in Tongo, who responded that "he was not going to take any action as he had confinned that the child combatants were acting in accordance with Sam Bockarie's orders", and that "no civilian was allowed to mine privately in Lower Bambara Chiefdom except for the AFRC Govemment".[1518]

iv. Killing of civilian miners at Cyborg Pit – Tongo Fields – Kenema District – Crimes

1225. para. 637: In his prior testimony admitted as an exhibit in this trial,[1520] protected Prosecution Witness TF1-062 testified that he was living in Tongo Fields, Lower Bambara chiefdom during the AFRC/RUF Junta's occupation of Tongo Fields. He and his family had been carrying on private mining of diamonds in Tongo Fields for 20 years before the AFRC/RUF forces arrived.[1521] After the AFRC/RUF forces took over control of Tongo Fields, the witness and other civilians were forced to mine for the AFRC/RUF forces using his equipment and employees. Although he himself would not physically mine, he always made sure that he personally supervised his workers on a daily basis and that any diamonds found were surrendered to the

AFRC/RUF commanders.[1522] The AFRC/RUF forces referred to this forced mining as "Government work" but civilians were never compensated for work done or diamonds produced.[1523] TF1-062 testified that Sam Bockarie assigned an ex-SLA soldier called Set Marah to oversee the mining activities of the AFRC/RUF forces in Tongo Fields and that civilians were not allowed to mine without the permission of this commander.[1524] TF1-062 also testified that any diamonds retrieved by the civilians were supposed to be handed to the AFRC/RUF commanders who in tum would hand them over to Sam Bockarie. Civilians who disobeyed this practice were severely punished or even killed. TF1-062 witnessed a number of civilian miners killed for this reason by the AFRC/RUF soldiers at Cyborg Pit, a mining area operated by the AFRC/RUF forces.[1525]

1226. para. 638: TF1-062 testified that on one occasion he was standing by watching his workers mining at Cyborg Pit when he saw an AFRC/RUF soldier try to take a bag of gravel, by force, from a child miner. The child was preparing to "wash" the gravel in order to sort out any diamonds therein. However, when the child refused to tum over his bag of gravel to the soldier, the latter became angry and shot and killed the child.[1526] On another occasion at Cyborg Pit, an AFRC/RUF soldier who was guarding the civilian miners temporarily left his bag of gravel by the river side where the civilians used to "wash" their own gravel. When the soldier returned he found the bag missing and was very angry vowing that he would set an example by killing a civilian.[1527] The soldier then randomly fired into the crowd where TF1-062 was, killing one civilian in the process.[1528]

1227. para. 639: TF1-062 further testified that on many occasions when he went to supervise his workers as they were mining, he would see two to three corpses of dead miners who were brought out of the pit to the surface where he was standing. TF1-062 observed that the corpses were always "oozing blood".[1529] TF1-062 concluded that the victims must have been shot and killed by the AFRC/RUF fighters guarding the miners Cyborg Pit, as they were the only people who were armed.[1530]

(iii) Kono District – Crimes

1228. para. 645: The Trial Chamber heard the following evidence, namely, that after the ECOMG Intervention in Freetown in February 1998, the AFRC/RUF forces that were driven out of Freetown fled northwards, trekking through a number of locations including Tombo, Fogbo and Newton,[1536] Masiaka, Lunsar, Makeni, Magbonkineh, Binkolo, Kabala, Matotoka, Makali, and Sewafe and were finally based in Kono District. Senior AFRC commanders in this group included Johnny Paul Koroma, Chairman of the AFRC, SAJ Musa, SFY Koroma, Col. Foday, Ibrahim

Bazzy Kamara (a.k.a. Bazzy), Capt. Akim Turay, Moses Kabia (a.k.a. CSO Rambo),[1537] Santigie Borbor Kanu (a.k.a. Five-Five), Col. Avivo Kamara and Hassan Papa Bangura (a.k.a. Bomb_blast).[1538] Senior RUF commanders in this group included Issa Sesay, Denis Mingo (a.k.a. Superman), Morris Kallon, Mike Lamin and S.O. Williams.[1539] Other AFRC commanders that were involved in military operations in Kono District during this period included Colonels Foday Kallay, Franklyn Conteh a.k.a. "Woyoh", Idrissa Kamara (a.k:a. Leatherboot), Idrissa Kamara (a.k.a. Rambo Red Goat), Ibrahim Bioh Sesay, Abdul Sesay, Momoh Bangura (a.k.a. Dorty) and Adams, and Lieutenants Tito, Amara Kallay, Mohamed Savage (a.k.a. Changa-Bulanga), Mosquito,[1540] Junior, Staff Alhaji,[1541] and Alex Tamba Brima (a.k.a. Gullit).[1542] Other RUF commanders involved in military operations within Kono District during this period included Emmanuel Williams (a.k.a. Rocky), Isaac Mongor, Komba Gbundema.[1543] Gogomeh, RUF Rambo a.k.a. "Premo,"[1544] and Gibril Massaquoi.[1545]

1229. para. 646: The Trial Chamber heard further evidence that as the AFRC/RUF forces trekked towards Kono District they were under the overall command of Johnny Paul Koroma.[1546] Along the way, SAJ Musa addressed the AFRC/RUF forces at Kabala and ordered them to recapture Kono District and to establish a new base there. He said '"Kono would serve as a strong base, since it was a diamondiferous area, and we will serve as a force to reckon with by the Government of Sierra Leone and the international community".[1547] This order was endorsed and reinforced by Johnny Paul Koroma at Magbonkineh[1548] and at Makeni[1549] where he told the AFRC/RUF forces to '"capture the able bodied civilians in Kono and to execute the rest". Issa Sesay of the RUF also endorsed the order, remarking that "civilians were very dangerous to the Junta forces and the only way to ensure that they don't base in Kono is to bum down their houses and execute them".[1550] Sam Bockarie (a.k.a. Mosquito) of the RUF also endorsed this order amongst his forces and sent messages to all RUF bases to "make Kono District Fearful so that ECOMOG would not base there".[1551] Making an area fearful one witness explained, entailed "destruction of life and property, where there will be killings, amputations. burning of houses, destruction of bridges, setting up road blocks. All those things would happen and that will have made the area fearful".[1552] After this order the AFRC troops led by Hassan Papa Bangura and the RUF forces led by Superman, reorganised themselves into a single fighting force to attack Kono.[1553] On arrival in Kono District around early March 1998, the AFRC/RUF forces captured a village called Sewafe and burnt down all civilian houses on the orders of Johnny Paul Koroma who called Sewafe "a Kamajor stronghold".[1554] Thereafter, AFRC/RUF forces led by Superman captured Koidu Town, the provincial capital of Kono District and executed the orders of their commanders.[1555]

1230. para. 647: While in Koidu, Johnny Paul Koroma reiterated his earlier order to the forces to establish a strong Junta base there and declared Kono a "civilian no go area". He also reiterated his orders to bum down any civilian homes so as to discourage civilians returning to live there, and to kill any civilians that attempted to return to the area, accusing them of being Kamajor supporters.[1556] After Johnny Paul Koroma and his wife left Kono District and went to Kailahun, the junta forces that remained in Koidu Town reorganised themselves.[1557] Ibrahim Bazzy Kamara (a.k.a. Bazzy) was the commander of the AFRC/RUF forces that went towards Bumpe, Yengema, Tombudu and Sewafe along the Masingbi Road axis while Hassan Papa Bangura (a.k.a. Bomb-Blast) was the Deputy Commander and Operations Commander.[1558]

1231. para. 648: In relation to unlawful killings alleged to have taken place in Kono District between 1 February 1998 and 31 January 2000, the Trial Chamber has considered the testimony of Prosecution witnesses Finda Gbamanja, Isaac Mongor, Alhaji Tejan Cole, Alimamy Bobson Sesay, Tamba Yomba Nbekia, Mustapha Mansaray, Emmanuel Bull; protected Prosecution Witnesses TF1-189, TF1-375, TF1-371; and Exhibit P-366,[1559] Exhibit P-077 and Exhibit P-078.[1560]

a. Koidu Town – Kono District – Crimes

i. Killing of civilians at Yardo Road, Hill Station and Superman Ground in February/March 1998 – Koidu Town – Kono District – Crimes

1232. para. 649: Alimamy Bobson Sesay[1561] testified that after the 25 May 1997 coup, he joined the AFRC and was assigned as Military Transport Officer and security to Hassan Papa Bangura (a.k.a. Bomb-Blast), a member of the AFRC Supreme Council.[1562] Bobson Sesay stated that after the ECOMOG Intervention in February 1998, he along with Hassan Papa Bangura and the AFRC/RUF forces fled Freetown and trekked towards Kono District where they were to establish a new Junta base.[1563] As the AFRC/RUF forces approached Kono District around March 1998, a number of Junta commanders including Johnny Paul Koroma the AFRC Chairman, SAJ Musa and Issa Sesay, ordered the forces to recapture Kono as it was "a diamondiferous area", to abduct able-bodied civilians who would assist the forces and serve as recruits, to bum down all civilian houses in order to discourage civilians moving back into the area, to establish a strong Junta base in Kono against any Kamajor or ECOMOG attacks and to execute any civilians that attempted to return to the area.[1564]

1233. para. 650: Bobson Sesay testified that after receiving the orders, he and the AFRC forces under Hassan Papa Bangura together with RUF forces under Denis Mingo (a.k.a. Superman), captured Koidu Town.[1565] Bobson Sesay told the court that in execution of the said orders, he together with Hassan Papa Bangura and the RUF forces went to Yardo Road where they met a group of civilians coming towards them. The AFRC/RUF forces opened fire on the civilians and killed all of them. Sesay testified that in order to comply with the orders given by their commanders to make the area "fearful", the AFRC/RUF forces displayed the corpses of the civilians at the various junctions around Yardo Road in order to frighten off any other civilians that might have wanted to come to or remain in Koidu Town.[1566] Sesay did not recall how many civilians were killed at Yardo Road.[1567]

1234. para. 651: Another Prosecution witness, Isaac Mongor, testified about the operations of the AFRC/RUF forces in Koidu Town after the ECOMOG Intervention in February 1998.[1568] Mongor stated that he was part of the retreating RUF forces that advanced from Sewafe to Koidu Town, and that as they approached Koidu Town, they found many houses already burnt down.[1569] Mongor stated that he spoke to Morris Kallon who explained that Sam Bockarie had ordered the RUF forces "to burn down Koidu Town so that ECOMOG would not be able to enter there and occupy the town".[1570] Mongor explained that the RUF in Kono District adopted a policy of "making the area fearful" which meant that "they would kill, burn down houses so that they make sure that the people who were living in the areas when there was those things going on they would be afraid and that even the enemies against whom they were fighting would also be afraid".[1571] Morris Kallon and other RUF forces that carned out this order were promoted by Sam Bockarie as a reward.[1572] Mongor further testified that he went around Koidu Town and saw many houses that were burnt, and on looking inside the houses he saw property and an unspecified number of corpses of people that were burnt inside those houses.[1573]

1235. para. 652: Mongor testified that soon after the AFRC/RUF forces captured Koidu Town, an RUF commander called Denis Mingo (a.k.a. Superman) arrested a group of 13 civilians. Mongor stated that this group was composed of men, women and children and came from the direction of the Guinea border, the same direction that the Kamajors had fled to prior to the AFRC/RUF capturing Koidu Town.[1574] The children amongst the group carried loads on their heads.[1575] Mongor stated that on seeing the civilians coming from the same direction that the Kamajors had retreated, the AFRC/RUF forces suspected the civilians of being enemy spies, and Superman shot all 13 civilians to death. Mongor was present when the executions took place at a location called Hill Station.[1576]

1236. para. 653: Prosecution Witness TF1-189 testified that after the ECOMOG Intervention in February 1998, she and her whole family along with hundreds of other civilians, fled from Yengema[1577] and sought refuge at a location in Kono District.[1578] In March 1998 while at this location, TF1-189 heard gunshots and suddenly saw the community centre on fire.[1579] AFRC/RUF rebel forces gathered all the civilians in one location at which the civilians were held prisoner for a number of days. TF1-189 testified that rebels would routinely rape the women and young girls at this location. On one occasion in early March 1998, the witness saw the rebels light a candle and put it under an old man's scrotum. The old man screamed with pain and died later that day.[1580]

1237. para. 654: TF1-189 further testified that on 12 March 1998 the AFRC/RUF rebel forces who had captured her brought her to a location they called "Superman's compound" in Koidu Town.[1581] The rebels first offered her as a "wife" to CO Superman but the latter remarked that "he did not want a wite". TF1-189 testified that she was taken into a big house or hall filled with other captured civilians.[1582] The witness heard one of the rebels saying that "since Superman doesn't want any wife, they are going to kill all of us".[1583] One of the rebels took a woman from amongst the group, put her against the wall and shot her to death in the presence of the witness and the other people.[1584] TF1-189 stated that she managed to escape from captivity but that all the other civilians at Superman's compound were killed by the AFRC/RUF rebels.[1585]

1238. para. 655: Prosecution Witness TF1-375, who was a security to RUF commander Denis Mingo (a.k.a. Superman), and who took part in the attack on Koidu Town by the AFRC/RUF forces during this period, also described the attack.[1586] According to this witness, the first junta forces to attack Koidu Town led by Isaac Mongor and RUF Rambo were repelled by the Kamajors.[1587] The AFRC/RUF forces then planned a second attack led by Superman, which succeeded. AFRC Commanders involved in this joint attack included Gullit, Bazzy, Adams and Savage.[1588] After taking control of Koidu Town the AFRC/RUF forces burnt houses, looted private property and captured and raped women and girls.[1589] TF1-375 explained that the forces burnt houses where they suspected that Kamajors were hiding and stated that "when we set the houses on fire, we would hear people shouting inside, screaming, "Oh we are inside. We are inside" and sometimes the houses would bum down and we would see their skulls and their bones".[1590]

1239. para. 656: The Trial Chamber also considered the following documentary evidence. A Human Rights Report (Exhibit P-366) states:

> [I]n March 1998. RUF forces executed 32 youths in Koidu for supporting Kamajor CDF forces that previously had taken the town".[1591]

1240. para. 657: A report by Amnesty International (Exhibit P-078) states:

> [Ijn the days immediately after their removal from power by ECOMOG. AFRC and RUF forces indiscriminately killed unarmed civilians. looted and burned houses both in Freetown and other towns. As the rebel forces were pursued eastwards by ECOMOG forces through towns such as 80 in Southern Province. Kenema and Koidu in Eastern Province. and Makeni in Northern Province during February. March and April 1998. they were responsible for widespread killings. torture and ill treatment, including rape and other forms of sexual assault and abduction. Villages and towns were burnt to the ground, destroying thousands of homes. Koidu, a major town in the diamond-rich Kono District. was almost totally destroyed by AFRC and RUF forces and villages between Njaiama-Sewafe and Koidu repeatedly attacked.[1592]

ii. Killing of civilians in and around Koidu Town between April and May 1998 – Koidu Town – Kono District – Crimes

1241. para. 664: Witness Alex Tamba Teh, a church minister resident in Koidu Town, testified that in April 1998 fighting broke out between the Civil Defence Forces (a.k.a. Kamajors) and AFRC/RUF rebels,[1593] forcing the witness, his family and large numbers of civilians to flee to Tongoro bush.[1594] While in hiding, Teh, along with 250 civilians including men, women and children, were captured by a group of 5 armed AFRCIRUF rebels[1595] and taken to Sunna Mosque in Koidu Town.[1596] At Sunna Mosque three other rebels singled out one Aiah Abu amongst the civilian abductees and immediately shot him to death, remarking that the deceased had "escaped from them before".[1597]

1242. para. 665: Teh further testified that at Sunna Mosque, AFRC/RUF rebels,[1598] pretending to be ECOMOG soldiers tricked the captives into "cheering and welcoming ECOMOG for saving the civilians from the rebels".[1599] The rebels then led the civilians to a sec! uded place called "the Igbaleh" on Kamachende Street.[1600] On the way, Teh counted "up to 50" corpses.[1601] At the Igbaleh, Emmanuel Williams (a.k.a. Rocky) ordered the rebels to separate the captured men from the women and children.[1602] Teh heard Rocky saying to the civilians, "Today those of you who were saying thanks to us and you were saying thanks to the ECOMOG, now I want to tell you that we are not ECOMOG. We are the junta rebels, we are here .... " After this, Rocky singled Teh out of the crowd because he was a pastor, and told him to pray for everybody.[1603] Rocky then asked one of the rebels to bring out his big gun called "Bargege" and shot all the civilian men to death.[1604] Afterwards, the deceased were all decapitated by the SBUs on orders of commander Rocky.[1605] Later, Teh was taken back to Sunna Mosque, where he heard Rocky tell Rambo that he had killed 101 men.[1606]

1243. para. 666: Teh further testified that while at the Igbaleh. he saw a young boy who was killed by the SBUs after they amputated his arms and legs and then threw him in a pit latrine. The young boy was screaming and pleading with the SBUs asking them why they were doing this to him.[1607]

1244. para. 667: Another Prosecution witness, Isaac Mongor testified that in April 1998 after ECOMOG pushed the AFRC/RUF forces out of Koidu Town, the latter occupied a place code-named "Superman Ground" from where they carried out their operations. One such operation was the attack on Kissy Town, behind Koidu Town on the road leading towards the Guinea border.[1608] Mongor told the court that the rebel group to which he belonged went to attack the Kamajors in Kissy Town and in the process also killed all the civilians that they found there because they suspected everybody to be a Kamajor. Amongst those killed were men, women and children.[1609]

1245. para. 668: Confidential Exhibit P-077, a report documenting rebel actions from May 1998 to January 1999 states:

> [A] teenage boy described an attack close to Koidu. in early May by "'junta". He had gone there with his family because they thought that ECOMG had arrived. They were wrong and instead encountered rebels. The boy reported that he was the only survivor in a group of 50. He had a deep laceration to the foot which doctors said was a clear case of a failed amputation. The boy was taken to Makeni by ECOMOG.[1610]

1246. para. 669: Exhibit P-078, a report by Amnesty International states:

> [A]n even more grotesque pattern of killing, rape and mutilation became evident in April 1998 and the numbers of victims increased dramatically. Rebel forces called their campaign of terror against civilians "Operation no living thing". As fighting continued between ECOMOG and rebel forces around Koidu, attacks on civilians in villages in the area persisted and then spread west and north .... Unanned civilians who were taking no active part in the conflict were killed, their homes burned and their villages destroyed .... More than 650 bodies. many of them women and children, were reported to have been buried following fighting in the area around Koidu in mid-June 1998.[1611]
>
> An Amnesty international delegation which visited Sierra Leone in May 1998 met some of the victims of these atrocities at Connaught Hospital.... Another victim, a 15-year-old schoolboy from Koidu who had arrived at Connaught Hospital on 10 May 1998, had suffered severe lacerations to his right ankle in an attempted amputation. He and his family- his parents and six brothers and sisters- had been hiding in the bush for more than twomonths after being driven from Koidu after it was attacked by rebel forces. They had no food throughout that time other than bananas. On I May 1998 the family had heard reports that ECOMOG had arrived in Koidu and they went to enter the eastern part of the town. They and those with them were attacked by rebel forces who accused them of supporting President

Kabbah. Almost 50 people were kiIled. The young boy stayed for four days in a house without food or treatment of his severely injured leg".[1612]

iii. Other killings around Koidu Town between December 1999 and the disarmament – Koidu Town – Kono District – Crimes

1247. para. 673: In his prior testimony,[1615] Prosecution Witness TF1-077 testified that in early 1998 in a month he does not recall, the whole of Kono District was attacked and he and his family moved from Tombodu to the Guinea border for refuge. He described the attack on Kono District at that time as "Operation No Living Thing".[1616] The witness said he and his family stayed at the Guinea border "for a little while" and then they heard that ECOMOG had arrived in Kono District.[1617] The witness testified that following the ECOMOG Intervention and on hearing that ECOMOG had "cleared Koidu Town", he left the Guinea border "in the dry season,[1618] in 1998 and returned to Koidu Town.[1619] The witness further testified that on 16 December 1999 after he had returned to Koidu Town,[1620] as he was sleeping he heard heavy gunfire. The gunfire went on for a long time. He went outside and heard shouting and wailing. He ran and hid behind his house until daybreak. At dawn, he saw many corpses of people that had been killed, including three children one of whom was his own child.[1621] The witness further told the court that an armed RUF man dressed in military uniform[1622] captured the witness and other civilians totalling 50 people in number and marched them to Tombodu with loads of looted property on their heads.[1623] On the way to Tombudu, the armed captors dressed in combat uniforms told the witness "We are the RUF. You are now in our control. You are no longer in ECOMOG control".[1624] In Tombudu Town the captives met other RUF commanders including Officer Med, Colonel Gibbo and Major Tactical who told the captives that Issa Sesay had ordered that the abductees be taken to Tombudu Bridge to mine.[1625] The witness testified that subsequently, he and many other civilians were forced to mine diamonds for the RUF at Tombudu Bridge "until the disarmament".[1626] The witness testified that throughout this period, civilians forced to mine were heavily guarded by RUF child soldiers known as SBUs, mistreated and often died from disease for lack of medical treatment or were killed for refusing to mine for the RUF.[1627] The witness saw one S.E. Sogbeh who was summarily executed by an SBU for refusing to work and whose body was thrown into the river with a warning from the RUF that "anybody who refused to do this work, this will be your end".[1628]

b. Bumpe – Kono District – Crimes

i. Killings in Bumpe between March and June 1998 – Bumpe – Kono District – Crimes

1248. para. 676: Alimamy Bobson Sesay testitied that the AFRC/RUF continued their campaign of terror against the citizens of Kono District from March right through to June 1998 when he and Commander Hassan Papa Bangura (a.k.a. Bomb Blast) withdrew from Kono. He stated that the junta forces continued routinely attacking civilian homes and burning houses in Bumpe even when there was no enemy in sight, with the aim of discouraging civilians and ECOMOG from staying in or returning to Bumpe.[1629] Apart from the area where the battalion occupied, the whole of Bumpe was burnt down.[1630] Sesay further told the court that during the attack on Bumpe in March or April 1998, the SLA battalion commander at Bumpe,[1631] Lt. Amara Kallay and the AFRC/RUF troops that were present, decapitated several captured civilians, put their heads on sticks and fixed the sticks on guard posts.[1632] The witness stated that this was done to create fear amongst the civilians and ECOMOG.[1633] Bobson Sesay also told the court that this display of human heads on sticks at checkpoints was routinely done by the AFRC/RUF forces in other locations within Kono District including Tombodu,[1634] Njaiama Sewafe,[1635] and Yengema.[1636]

1249. para. 677: Bobson Sesay further testified that AFRC/RUF forces engaged in burning houses in Bumpe would lock and set houses on fire with civilians inside. Despite the cries, the Junta forces would guard the burning buildings at gun point to prevent anyone escaping. After the building was completely destroyed, the Junta forces "would not bother. .. to go and watch whether anything was in there because we knew the houses were completely burnt down".[1637]

1250. para. 678: Alimamy Bobson Sesay's account is corroborated by the hearsay evidence of Alice Pyne, a former radio operator for the RUF forces, who testified that she heard from Foday Lansana on the radio that the AFRC/RUF forces that attacked Bumpe killed many civilians in the process.[1638]

1251. para. 679: In addition Prosecution Witness TF1-375 who took part in the AFRC/RUF attack on Bumpe testified that the junta forces asked the civilians to leave Bumpe so that the junta forces would be based there and that those civilians who resisted were shot dead. The witness himself admitted that he participated in the killing of these civilians and in decapitating their heads and displaying them on sticks at various check points. He explained that this was done in accordance with the orders of their commanders to "make the area fearful"' in order to scare off

ECOMOG and other civilians.[1639] The witness also explained that the RUF slogan that "civilians have no blood" meant that the lives of civilians did not matter to the junta forces.[1640]

1252. para. 680: Another witness who was a victim of the rebel attacks in Bumpe after the ECOMOG Intervention is TF1-218.[1641] TF1-218 narrated how after the ECOMOG Intervention of February 1998,[1642] four rebels[1643] dressed in combat uniforms and black boots and armed with guns and knives[1644] attacked her home in Bumpe at night. She stated that the rebels captured her and locked her in a house at Cookery junction with other captured civilians.[1645] The witness described how two rebels stripped her naked and raped her.[1646] She testified that she managed to escape from the house after a rebel had threatened to kill all the civilians with an axe and shot the witness's left hand.[1647] She later returned to the house to look for her son the next morning and found her son alive but covered in blood.[1648] TF1-218 testified that her son, who was present during the attack, told her that all of the civilians she left in the house were killed in the room from which TF 1-218 had escaped the night before.[1649] Her son explained to the witness that he escaped death only because "as the rebels were shooting these people, he was lying flat on the ground and most of the people who were shot fell on top of him".[1650]

1253. para. 681: Perry Kamara, a radio operator who was based at Superman ground after the ECOMOG Intervention in 1998, told the court that sometime before June 1998,[1651] the RUF forces under the command of Sam Bockarie, Morris Kallon and CO Rocky attacked Bumpe and its surrounding areas. Upon their return to Superman Ground after the operation, the RUF forces reported that they had killed civilians, amputated others and burnt most of the town in accordance with Bockarie's orders to "make the area fearful".[1652]

c. Tombodu – Kono District – Crimes

i. Massacre of more than 20 civilians in Tombodu around March or April 1998 – Tombodu – Kono District – Crimes

1254. para. 685: Alimamy Bobson Sesay testified that he participated in an attack on Tombodu around March or April 1998[1653] along with other RUF forces and commanders Bomb Blast and Savage.[1654] The witness explained that when the AFRC/RUF forces first arrived in Tombodu, they were dressed in military uniforms and arrived in vehicles. Pretending to be government forces that had come to rescue the citizens, the AFRC/RUF forces gestured to the fleeing civilians to stop running and to approach the fighters, saying "we are government troops. We have come to reinforce and protect you".[1655] The civilians stopped running and as soon as the civilians

approached within firing range, the AFRC/RUF forces opened fire on the civilians, killing over 20 of them.[1656]

ii. Second Massacre at Tombudu involving 77-78 civilians around April 1998 – Tombodu – Kono District – Crimes

1255. para. 688: Alimamy Bobson Sesay testified that Tombodu was attacked again one month after Savage was based there as battalion commander.[1657] After capturing about 77-78 civilians, Savage sent a message to Masingbi headquarters inviting commanders Bomb-Blast, Bazzy and Alimamy Bobson Sesay to come and meet the "civilian visitors".[1658] Savage explained to the commanders and the witness that he had tricked the civilians into believing that ECOMOG had come to save them. The civilians had rejoiced at the news only to be captured by Savage.[1659] The witness described how Savage assembled and paraded the 78 civilians before the commanders and the witness.[1660] Fifteen of these civilians were locked up in a building by Savage and burned alive.[1661] The witness heard them scream and saw their charred skeletons afterwards. Another 15 civilians were amputated by Savage and his subordinates including Guitar Boy and Staff Alhaji and some SBUS.[1662] The witness heard Savage telling the amputees to "go and tell ECOMOG that Savage was now the battalion commander in Tombodu",[1663] The rest of the civilians were decapitated by Savage and their bodies thrown into a pit known as the "Savage pit".[1664] Alimamy Bobson Sesay testified that after this incident, Commander Savage was nick-named "Changa Bulanga" because he was "very good at using machete. He was very good at amputating people".[1665] Bobson Sesay further testified that Superman came to Tombodu just after this incident had taken place and that Savage showed Superman the decapitated bodies in the pit as well as the charred bodies of the civilians that he had burnt. Superman was reportedly shocked and warned Savage that what he had done amounted to crimes against humanity. However. Superman did not punish Savage and instead joined everybody in drinking palm wine to celebrate the incident.[1666]

1256. para. 689: Prosecution Witness TFI -375, a subordinate of Superman during this period. told the court that Savage led an attack on Tombodu.[1667] The witness travelled to Tombodu shortly after this attack and accompanied Superman whom Savage had invited to drink palm wine.[1668] On arrival, Savage showed Superman and the witness a big pit where he had dumped the corpses of executed civilians.[1669] TF1-375 described the pit as a former diamond mining pit where he saw corpses of old people, young people and children and severed limbs.[1670]

1257. para. 690: Perry Kamara, a radio operator with the RUF at Superman's headquarters known as Superman Ground, confirmed in his testimony that he received reports in 1998 that Savage had killed more than 30 civilians in Tombodu.[1671]

iii. Third Massacre of over 53 civilians in Tombudu in April 1998 – Tombodu – Kono District – Crimes

1258. para. 693: Mustapha Mansaray and Ibrahim Fofana, two civilians that were captured by the AFRC/RUF forces and taken together to Tombudu around April 1998, testified before the Trial Chamber. Mustapha Mansaray was captured by "rebels and soldiers",[1672] from Wordu Sandor,[1673] while Ibrahim Fofana was captured by soldiers wearing military uniforms in Paema.[1674] Both men walked for three days carrying looted goods belonging to the captors and were taken to Tombodu where they met 53 other civilians that were also captured by the Junta forces.[1675] Mansaray, Fofana and the other captured persons were taken to Staff Alhaji's headquarters[1676] where they were stripped naked and forced to sit on the ground.[1677] Staff Alhaji, who the witness was told was the rebel commander, asked for a mortar to be brought and amputated the hands of six men including Mansaray and Fofana.[1678] Staff Alhaji told the amputees that "now they would never be able to vote for President Kabbah again and that they should keep their hands out of politics".[1679] Mansaray told the court that four of the amputees later died from their wounds and that only he and Fofana survived.[1680]

1259. para. 694: Mansaray testified that Staff Alhaji ordered the rebels to lock the 53 civilians in a building and to burn them alive. After locking the 53 civilians in a building, the rebels sprinkled petrol on the building and set it alight burning everyone inside to death.[1681] Mansaray heard the people inside, including women and children, crying.[1682] Mansaray explained that the people inside the building could not escape because the doors and windows were locked with nails and soldiers stood guard with guns.[1683] Mansaray andF of ana left before the house finished burning.[1684]

1260. para. 695: Witness Ibrahim Fofana was captured by soldiers wearing military uniforms in Paema.[1685] He testified that he was with five persons who carried loads for the captors to Tombodu at gunpoint.[1686] All five persons reached Tombodu on 5 April 1998[1687] and were taken to a person called Staff Alhaji. Fofana stated that while he and the others were tied to an orange tree in the compound, the rebel soldiers brought 53 other captives from a village called Masundu and locked them in a big house.[1688] Fofana heard a soldier report to Staff Alhaji that the 53 civilians had been captured and Staff Alhaji gave an order that they be locked up in a house and

the house be set on fire.[1689] The rebels locked the 53 civilians in the house, sprinkled petrol on it and set it on fire.[1690] Fofana testified that he heard people screaming until the house burned down completely.[1691]

1261. para. 696: Fofima said that after the house had been completely burnt, that he and the others in the group of five had their hands amputated by Rambo who was dressed in a military uniform.[1692] Fofana testified that only he and Mustapha Mansaray survived the amputations,[1693] as the other three were elderly and were bleeding profusely.[1694] The three fell down somewhere on the way to Lebanon and died.[1695]

iv. Killings of civilians in and around Tombodu between March and May 1998 – Tombodu – Kono District – Crimes

1262. para. 699: The Trial Chamber heard evidence of other killings of civilians in Tombodu during the period April to May 1998. Prosecution Witness TF1-064 testified that '"during the dry season",[1697] while residing in Foendor, Kono District, civilians who fled from Koidu and Tombodu came and told her that "rebels have started killing people".[1698] The witness and her family hid in the bush outside of Foendor. While in hiding, rebels[1699] claiming to be "ECOMOG soldiers", including one she knew before named Tamba Joe,[1700] captured a group of civilians including the witness and her family members, and took them back to Foendor Town.[1701] Once in Foendor Town, the rebels killed all of the civilians including her family and her young children.[1702] TF1-064 testified that only she and a Temne man survived. The rebels forced her and the Temne man to carry a bag containing human heads to Tombodu.[1703] On the way, the rebels ordered the witness to laugh as she carried the bag dripping with blood. TF1-064 testified that when they arrived at Tombodu, the bag was emptied and she saw the heads of her children.[1704] In Tombudu, TF1-064 saw a commander called Capay cut the Temne man's throat, killing him.[1705] The Temne man's corpse was taken to a pit of water.[1706] The witness escaped from the rebels at night and went to Kokuima where ECOMOG was stationed.[1707]

1263. para. 700: Another Prosecution witness Sahr Bindi testified that AFRC/RUF forces first came to Tombodu sometime "between the rainy and dry seasons".[1708] After addressing the citizens and telling them that the AFRC and RUF were in Koidu and that the civilians should not be afraid, the juntas returned to Koidu.[1709] Less than a month later, the rebels returned to Tombodu amidst heavy gunfire.[1710] Bindi said that some of the men had red cloth tied around their heads.[1711] The witness fled and hid in the bush.[1712] The shooting did not subside until almost evening.[1713] When

Bindi returned from the bush, he saw two corpses of men who had been shot.[1714] One man was wearing civilian clothing.[1715] The other man was known to the witness to be a civilian.[1716]

1264. para. 701: After this incident Sahr Bindi fled to Guinea with his family and only returned to Tombodu a month later when they heard on the radio that ECOMOG had come to Kono District.[1717] On his way back from Guinea, Bindi was captured by RUF/AFRC fighters[1718] and taken to their commander called Staff Alhaji in Tombodu.[1719] Staff Alhaji ordered his men to lock up the witness and his brother saying that the group would be killed the next day.[1720] Towards the evening, Bindi heard people being beaten and pleading on the veranda not to be killed[1721] but at some point the screaming and pleading subsided.[1722] When the witness came out of the cell, he saw three corpses lying on the ground with ropes tied around their waists and rocks attached to the ropes.[1723] The corpses were dressed in civilian clothing and appeared to have been beaten.[1724] Bindi and the others taken out of the cell were told to carry the bodies and dump them in an old mining pit that had a large quantity of water in it.[1725] Bindi later learnt that the pit was called "Savage pit".[1726] The witness managed to escape from captivity in the night.[1727]

d. Koidu Geiya or Koidu Gieya – Kono District – Crimes

i. Killings of civilians at Koidu Geiya around May to June 1998 – Koidu Geiya or Koidu Gieya – Kono District – Crimes

1265. para. 705: The Trial Chamber heard the evidence of several witnesses regarding the killing of civilians in Koidu Geiya around the period of May to June 1998. These witnesses include Alimamy Bobson Sesay, Alice Pyne and Prosecution Witness TF1-375.

1266. para. 706: Witness Alimamy Bobson Sesay testified that the AFRC/RUF forces based in Gandorhun attacked Koidu Geiya around Mayor June 1998 and successfully captured it from Kamajors.[1729] Sesay testified that these forces comprising RUF and SLA members were commanded by an RUF commander called Rambo.[1730] In Koidu Geiya, the AFRC/RUF forces captured two Kamajors. Sesay testified that one of the AFRC/RUF forces called Ahchebe slit open one of the Kamajor's stomach, removed the heart and ate it raw.[1731] Because of this, the other AFRC/RUF forces nicknamed Ahchebe "Charma-Raw", a Krio word meaning "one who eats raw meat". Sesay told the court that this was done in the presence of Commanders Hassan Papa Bangura, Denis Mingo (a.k.a. Superman) and two other senior commanders, none of whom reprimanded Ahchebe for the killing of the Kamajor. Mingo merely reprimanded Charma-raw for cannibalism but not for killing the Kamajor.[1732]

1267. para. 707: TF 1-375 confirmed that during the period May/June 1998, the AFRC/RUF forces fought against the Kamajors in Koidu Geiya and overpowered them.[1733] According to TF1-375, the AFRC/RUF forces needed to take control of Koidu Geiya from the Kamajors in order to enable Johnny Paul Koroma to cross through this area on his way to Kailahun.[1734] After defeating the Kamajors and taking control of the area, Superman designated an RUF commander called Rambo to be based in Koidu Geiya. TF1-375 told the court that Rambo ordered his troops to burn down civilian homes, kill civilians and amputate others in order to "make the area fearful".[1735] TF1-375 was not present when the civilians were allegedly killed, but he learnt of Rambo's orders being carried out from some of Rambo's bodyguards including CO Bakarr and one of the AFRC commanders, who came from "Rambo's ground".[1736] Soon afterwards, Superman sent the witness to Koidu Geiya to take ammunition to Rambo and that is when TF1-375 saw corpses of civilians, burnt houses and cars and a lot of destruction in Koidu Geiya.[1737]

1268. para. 708: Alice Pyne, a radio operator working for the RUF throughout the conflict testified that the RUF used to carry out attacks on civilians, especially in areas where ECOMOG troops were based and where the civilians thought they were safe. When the RUF attacked, the civilians were unable to escape as quickly as ECOMOG.[1738] Pyne told the court that Koidu Geiya was a location where the RUF would run such an operation in 1998 "while the witness was at PC ground and before the death of Sani Abacha".[1739] Pyne further told the court that the RUF sent a message to her to the effect that they attacked Koidu Geiya, but the message made no mention of any civilian deaths.[1740] Pyne told the court that the attack was led by RUF commanders Rambo and Banya because they were the commanders in Gandorhun from where the radio message came.[1741] Pyne stated that later she heard from Claris, another radio operator based in Gandorhun where the attacking RUF forces had come from, that the forces had indiscriminately killed a lot of civilians in Koidu Geiya, including children.[1742]

e. Koidu Buma – Kono District – Crimes

i. Killings of civilians at Koidu Buma around May to June 1998 – Koidu Buma – Kono District – Crimes

1269. para. 711: Alimamy Bobson Sesay testified that in Mayor June 1998[1743] the AFRC/RUF forces in Kono District heard on the radio that ECOMOG forces were in Makeni and were coming to recapture Kono.[1744] Immediately after this the AFRC forces under the command of Hassan Papa Bangura and Bazzy travelled from Masingbi and joined Superman's RUF forces at Dabundeh Street. The combined AFRC/RUF forces took the Gandorhun route to go to Koidu Geiya to attack

the town.[1745] On the way to Koidu Gieya. the group met RUF Rambo, the Deputy Commander of Operations in Koidu Buma.[1746] Alimamy Bobson Sesay testified that he saw the corpses of 15 civilians who had been "hacked to death" by RUF Rambo, but he did not witness the actual killings.[1747] The witness explained that RUF Rambo had gone ahead of the other fighters and was waiting for them at Koidu Buma.[1748] RUF Rambo explained to the witness and the other commanders including Hassan Papa Bangura and Superman, that he killed the civilians and displayed their bodies in the street in order "to create fear so that no civilians would come to that area".[1749]

f. Yengema – Kono District – Crimes

i. Killings of civilians at Yengema around March/April 1998 – Yengema – Kono District – Crimes

1270. para. 714: Witness Alimamy Bobson Sesay testified that in March or April 1998[1750] AFRC/RUF forces led by a commander called Tito attacked Yengema and completely burned the town down, killed every civilian they found there, and displayed the corpses and human heads on sticks at various checkpoints.[1751] Alimamy Bobson Sesay testified that he learned of the attack and killings while on patrol in Yengema with Commander Bomb Blast.[1752] Commander Tito explained to the Witness and Bomb Blast that some civilians escaped and had their houses set on fire, while others were captured and those amongst the captives who were "not strong enough" were killed.[1753] The witness also told the court that whenever he would go on patrol with this commander throughout Kono District, the AFRC/RUF forces would tell them that the burning of houses and killing of civilians was "a daily affair" and "an organised command".[1754]

ii. Killing of civilians at the Yengema Training base between December 1998 and January 2000 – Yengema – Kono District – Crimes

1271. para. 717: Prosecution Witness TF1-362, testified that the more than 100 trainees at the Yengema Base comprised civilian recruits transferred from the Bunumbu base as well as civilians captured by Superman, Morris Kallon and Rambo around Koidu Town.[1755] Other commanders at the Yengema Base included Issa Sesay, Denis Mingo, Richard Cooper, David Kanneh and a "Black guard" called Mohammed.[1756] TFI-362 told the court that civilian deaths were a regular occurrence at the base and that reports of the deaths were regularly made to General Issa Sesay, usually through radio communication and written records thereof kept.[1757] Recruits of all ages died

during the rigorous physical training known as "halaka",[1758] or "crawling" and other recruits who attempted to escape from the training base were captured and either killed or had the letters "RUF" carved on their foreheads or chests using a knife or broken bottle.[1759] TF1-362 explained that Issa Sesay gave the order that any civilian recruit attempting to escape should be killed in order to deter the others from escaping.[1760] She further explained that recruits were "marked" with the letters "RUF" so that wherever they went, they would be easily identified, and also to scare off others from attempting to escape.[1761]

1272. para. 718: TF1-362 testified that on one occasion when General Issa Sesay was the over all commander of the RUF, six recruits including a child soldier or SBU, were caught attempting to escape from Yengema base. Upon receiving the witness's report of the attempted escape, Issa Sesay ordered the witness to kill all six recruits but the witness hesitated, pleading that the younger ones amongst them should be spared. The Black Guards at the training base reported the witness to Issa Sesay who took her to task for disobeying his orders. Issa Sesay's bodyguards summarily executed three of the errant recruits and the Black Guards killed the other two. One child soldier (SBU) was spared because of his tender age. After this incident, the SBU was nicknamed "Long life".[1762]

1273. para. 719: TFI-362 also testified that the RUF forces at Yengema Training base would go on "food-finding missions" in surrounding villages whereby they would attack civilians and rob them of their food. Civilians who would resist were shot or beaten to death and their food taken.[1763]

1274. para. 720: Mustapha Mansaray, a member of the Internal Defence Unit of the RUF from 1994 to 1999, testified that while serving at Ngaiya in Kono District,[1764] he heard from miners who used to go to Yengema that Issa Sesay killed recruits at the Yengema training base.[1765] Mansaray stated that his colleague, Pa Kosia, a general security officer for the RUF,[1766] investigated the allegations and asked Issa Sesay about the deaths of recruits at Yengema. Pa Kosia told Mansaray that Issa Sesay told him that if he pursued the questioning then he too would be punished.[1767] Mansaray also testified that Pa Kosia told Mansaray that the training commander at Yengema training base confirmed to Pa Kosia that Issa Sesay came to the base and killed several recruits and that his bodyguards also shot some of the recruits.[1768]

g. Paema or Peyima – Kono District – Crimes

i. Killings of civilians in Paema around March/April 1998 – Paema or Peyima - Kono District – Crimes

1275. para. 723: Witness Ibrahim Fofana lived with his family in Paema Town, Kono District in February 1998.[1769] Fofana testified that a "squad of soldiers"[1770] arrived in Paema Town in February 1998 and forcibly took people's property, in what the soldiers called "Operation Pay Yourself".[1771] Fofana stated that the "soldiers" left Paema for Sefadu for an unspecified period of time and later returned.[1772] When the soldiers[1773] returned, Fofana heard them say "Today there will not be any living thing". He heard the soldiers refer to "Operation No Living Thing".[1774] The witness stated that the soldiers killed three civilians whom he knew well, namely, Ali Bangali, Sori and Pa Janneh.[1775] Fofana testified that Ali Bangali was a farmer and that he was shot dead while making bricks for his house because he refused to give the soldier money or diamonds.[1776]

1276. para. 724: After the burial of Ali Bangali, Fofana heard a gunshot from the market area[1777] and when he went to check, he found the body of Sori, a caterpillar operator, lying in a pool of blood.[1778] Fofana testified that as he and his family were fleeing from Paema, he saw the corpse of Pa Janneh, a security man who used to guard the caterpillar, on the road going to Sandor.[1779] Fofana helped to bury all three "useful civilians" after the assailants had left the Town.[1780]

1277. para. 725: Fofana further told the court that after the death of the three civilians, he fled with his family towards the Guinea border where they took refuge for about a month and a half.[1781] He returned with his family to Paema on hearing over the BBC that ECOMOG forces had overcome the fighters and were calling all citizens of Paema to return and to take care of their property.[1782] Fofana stated that when they returned to Paema, they were ambushed by soldiers wearing military unifonns.[1783] Fofana and four other men were captured by soldiers and taken to Tombodu.[1784] Fofana's children,[1785] his Aunt Isatu Bangura, and his mother called Mammy Isatu were also captured and burnt alive by the soldiers.[1786]

1278. para. 726: In cross-examination, the Defence tendered into evidence a video tilmed at Connaught Hospital in Freetown in 1998 wherein Ibrahim Fofana was interviewed about his experience during the war.[1787] In the interview, when asked by the interviewer what happened to his wife and children, Fofana answered that he "left them in the bush when those guys went and attacked us".[1788] He did not mention his children or his aunt having been burnt alive.[1789] Explaining this apparent inconsistency in cross-examination, Fofana stated that he forgot to

mention the fate of his family because "he was not in a good state of mind when he was being interviewed for the video".[1790]

1279. para. 727: Ibrahim Fofana was also featured in Exhibit P-014, an excerpt from the documentary "Blood Diamonds". In this second interview, Fofana did say that his wife and children were burnt alive, but indicated that he had learned this later.[1791]

1280. para. 728: The Trial Chamber has also taken into consideration the Amnesty International Report Exhibit P-078 which describes "Operation No Living Thing".[1792]

h. Bomboa Fuidu – Kono District – Crimes

i. Killings of civilians in Bomboa Fuidu around March/April 1998 – Bomboa Fuidu – Kono District – Crimes

1281. para. 731: Prosecution witness Musa Koroma was living in Bomboafuidu, Kono District at the start of the rainy season of 1998.[1793] He testified that during the remainder of the rainy season he and other civilians from Bomboafuidu hid in the bush after being warned that rebels were approaching the village.[1794] The warning was delivered by one Gbessey Sesay who had just had one of his hands amputated by the rebels.[1795] After spending two months in hiding,[1796] Koroma and about 20 other civilians went back to Bomboafuidu to "clear the road for ECOMOG". While sleeping at night, the witness and his friend Sheku Mansaray were awakened by two armed men, one of whom wore a combat uniform and the other, native Kamajor dress. The two men described themselves as "saviours who had come to save the civilians of Bomboafuidu".[1797] The rebels, numbering about 50, gathered a number of civilians including the witness on the veranda of a house belonging to one Alhaji Tejan Cole and told the civilians that they were "going to perform a sacrifice for the civilians".[1798]

1282. para. 732: Koroma testified that he and the other civilians were forced to watch as three rebels laid a Limba woman on the floor, held her down and slit her throat until she died.[1799] Koroma testified that the Limba woman was "aged" and that he had known her for a long time because they had lived together in the same village.[1800] He further testified that before the rebels left, they ordered the civilians to strip naked and forced the men to have sexual intercourse with the women as the rebels watched. The rebels then flogged the women and amputated or mutilated approximately 20 civilians, including the witness. The rebels told the amputees to "go and tell

President Tejan Kabbah to give them new hands and feet".[1801] The rebels also told the civilians to leave the village and that "if they come back next time and meet us in the village. they will kill all of US".[1802] Koroma told the court that as he and the other amputees walked on foot for several days to Njiama Sewafe to seek medical help from ECOMOG, two of the amputees died along the way from their injuries.[1803]

1283. para. 733: The Trial Chamber also admitted in evidence the transcript of the testimony of Alhaji Tejan Cole from the AFRC trial.[1804] In his prior testimony Cole. who was a resident of Bomboafuidu in April 1998, confirmed that he was present during the events described by Musa Koroma. His prior testimony corroborates that of Koroma in all material respects. At the veranda of his father's house the rebels gathered the civilians on the night of Saturday, 12 April 1998.[1805] He testified that the rebels, numbered over 200,[1806] were armed with guns and RPGs and had boxes of ammunition carried by civilians for them.[1807] Some rebels wore full combat uniform, while others wore a mixture of combat trousers and a civilian polo".[1808] The rebels spoke in a variety of languages including Krio, Mende and "Liberian accents".[1809] They also had several child soldiers amongst their ranks.[1810]

1284. para. 734: Alhaji Tejan Cole confirmed how the rebels killed an old Limba woman calling it "a sacrifice",[1811] how the rebels forced seven civilian men to have sex with seven civilian women,[1812] and how the rebels amputated several civilians including the witness, Musa, Mohammed, Sheku, Musa Marrah, Adama, Alfa Kabia, Ibrahim, Mohamed Kanu, Abdul Kargbo, Pa Osman, Abdul Rahan, Sahr Aruna, Sahr Lebbie and Idrissa Gborie.[1813] He also confirmed that the rebels told the amputees to "go and tell President Tejan Kabbah to give them new hands",[1814] Cole testified that when the events occurred Cole stated that during the amputations, a civilian named Pa Saiyo resisted and was immediately killed by the rebels.[1815]

i. Njaima Nimikoro or Nimikoro – Kono District – Crimes

i. Killing of civilians in Nimikoro between February and June 1998 – Njaima Nimikoro or Nimikoro – Kono District – Crimes

1285. para. 737: The Trial Chamber considered the following evidence of civilian killings in Nimikoro. Witness Perry Kamara, an RUF radio operator was with the RUF forces based at "Superman ground"[1816] in Kono District from where they launched an attack on Nimikoro and surrounding areas "sometime in 1998 before the death of President Sani Abacha of Nigeria".[1817] Kamara testitled that while he was based at Superman ground, he attended a parade where Morris

Kallon addressed the RUF forces and gave them a message from Sam Bockarie that "they should try and make Kono District fearful to ECOMOG so that they could not base there".[1818] Morris Kallon also appointed CO Rocky as commander over the attack. Kamara explained that "making the area fearful" entailed "destruction of life and property, where there will be killings, amputations, burning of houses, destruction of bridges, setting up road blocks. All those things would happen and that will have made the area fearful".[1819] He further explained that the amputated civilians were to be sent to ECOMOG with a message to "keep their hands off the war".[1820] Kamara testified that the RUF forces that attacked Nimikoro and its surrounding areas reported that they had killed civilians, amputated others and burnt most of the town in accordance with Bockarie's orders.[1821] Kamara also testified that the RUF forces were based in Nimikoro "for some time".[1822]

1286. para. 738: In April 1998,[1823] Emmanuel Bull was abducted with other members of his family, including his father, by members of the AFRC/RUF and taken to Njaima Nimikoro where he stayed for approximately one week.[1824] In Njaima Nimikoro, the AFRC/RUF set up a kind of headquarters at the home of Emmanuel Bull's grandfather[1825] and reported to a commander called Bai Bureh.[1826] One morning, the AFRC/RUF declared that they "did not want any grandpa or old person at their headquarters and that everybody around must be active".[1827] The AFRC/RUF assembled the old men and women amongst the captured civilians, stating that they were going to take them to Bumpe.[1828] Bull learned from an AFRC/RUF member named Esther Koroma, who he had befriended, that this was a false plan and that, in reality, the AFRC/RUF forces were going to kill the older civilians including the witness's father.[1829] Esther helped Bull's father escape from the group.[1830] About five AFRC/RUF members, including Cobra and Bobby, took about six or seven of the older men, including Pa Mansaray, a friend of Bull's father, away in the direction opposite to Bumpe.[1831] After approximately three to five minutes, Bull heard two gun shots and approximately five minutes later, Bobby and Cobra returned.[1832] The older men were never seen again.[1833] Later the witness heard Cobra and Bobby bragging that they had lined the old men in two straight lines and used a single bullet to shoot through each line.[1834]

j. Mortema – Kono District – Crimes

i. Killing of civilians in Mortema (or Motema) between February and June 1998 – Mortema – Kono District – Crimes

1287. para. 741: The Trial Chamber has considered the following evidence relating to killings in Mortema. Prosecution Witness TF1-375 estimates that it was about three months after the

ECOMOG Intervention in Freetown that the AFRC/RUF forces attacked Mortema.[1835] The witness told the court that the attack on Mortema was led by a commander called "Short Bai Bureh" and that before the attack he was given orders by senior officers in Kono at that time, including Superman, Gullit, rsaac Mongor and others[l836] to "go and make the area fearful".[l837] The witness explained that to the RUF, making an area "fearful" meant "to kill civilians, burn houses and to instil fear into ECOMOG, or any other opposing troop that would want to get into that area easily".[1838] The witness testified that when the AFRC/RUF attacked Mortema, there were only civilians there and no opposing force.[1839]

1288. para. 742: Although he himself did not participate in the Mortema attack, TF1-375 testified that after the AFRC/RUF forces returned from Mortema, Short Bai Bureh directly called Supennan over the RUF radio and gave him a report of the destruction that they had carried out on Mortema. The witness was present in the radio room with Supennan and heard the report.[1840] The witness further told the court that when the RUF forces returned from Mortema, some of his friends amongst them told the witness what had happened there and even brought some girls with them as their "wives".[1841] rn his testimony, TF1-375 did not specifically attest to civilian killings in Mortema.

1289. para. 743: Another Prosecution witness, Samuel Bull, was in Mortema on 21 April 1998 when the AFRC/RUF or "People's Army" attacked.[1842] The witness and his family hid in Fakoyia bush for almost two months.[1843] On 5 May 1998 the witness and his family returned to Mortema after hearing on the BBC Radio that ECOMOG had taken control of the area including Njaiama Nimikoro, Sewafe and Mortema. The witness found a lot of houses burnt in Mortema except one big building on the main Masingbi Highway where the witness and his family settled along with approximately 50 civilians.[1844] On the night of 12 June 1998, "rebels" attacked Mortema again.[1845] Samuel Bull observed fighting between ECOMOG troops and the rebels from the window of the house, and saw that the ECOMOG forces had begun to retreat.[1846] An RUF fighter entered the house where Bull was and shot dead an old woman called Ma Gbojo.[1847] The witness escaped through the window and hid in a banana plantation approximately 45 feet from the house.[1848] From the banana plantation, Samuel Bull saw the rebels gather all the other civilians who had remained in the house, line them outside and shoot them.[1849] The witness testified that in the morning he saw the bodies of 21 civilians killed in his neighbourhood including 17 who were killed at his house.[1850] Amongst the dead were six of his family members.[1851] The witness participated in burying the 21 civilians in a mass grave after ECOMOG arrived and drove away the rebels.[1852] The witness later learned that the rebel commander who led the attack in which the 21 civilians were killed was called Lt. Col. Fixo Bio.[1853]

1290. para. 744: The testimony of Samuel Bull is corroborated by that of Tamba Mondeh, one of many civilians who took refuge at Samuel Bull's house. Tamba Mondeh initially fled his home village of Mortema and hid in the bush with his family[1854] on hearing reports from various villages in Kono District that "rebels were killing and mutilating people".[1855] While in hiding he heard that "ECOMOG had gone to Freetown and they've come again to Nimikoro up to Motema and from Motema they went to Yengema and from there they also captured Koidu and were in Njaiama Nimikoro".[1856] Encouraged by these reports, the witness and his family returned to Mortema.[1857] On arrival, the witness stayed in a storeyed building that was incomplete and that belonged to one Samuel Bull.[1858] He explained that many other civilians including Samuel Bull (the owner's son) were staying in that house.[1859]

1291. para. 745: One night while everyone was asleep, rebels wearing uniforms and carrying guns surrounded the storeyed house and told the occupants to gather outside, saying "You people do not want us. You said that you want ECOMOG. You will know what will happen to you. When our boss passes the command, we will kill all of you".[1860] The witness told the court that when he went outside he met the rebel "boss" face to face and recognised him to be Fixo Bio, a person he knew before.[1861] One rebel entered the house and fired several shots in order to force out the civilians. The shots killed a man called Aiah with his daughter and injured the witness's chin.[1862] The rebels asked the civilians to queue in front of the house and shot at them, killing several and wounding others. The witness hid in a nearby bush until ECOMOG rescued him. Mondeh later learnt from Samuel Bull that the rebels killed 25 people during this incident and that the dead were buried in mass graves.[1863]

k. Alleged unlawful killings in Other Locations in Kono District not pleaded in the Indictment

1292. para. 748: The Trial Chamber received credible evidence of the murder of civilians in a number of locations within Kono District not specifically pleaded in the Indictment including, Baima,[1864] Goldtown,[1865] Yekeyor,[1366] Kondeya,[1867] Mambona,[1868] and others.[1869] As previously held, this evidence is only taken into account in relation to the chapeau requirements of the alleged crimes and not for proofofguilt.[1870]

(iv) Kailahun District – Crimes

1293. para. 751: The Trial Chamber has considered the evidence of Prosecution witnesses Vannuyan Sherif, Mohamed Kabbah, Augustine Mallah and TF1-168; Defence witnesses Fayia Musa, Issa Sesay, DCT-292 and DCT-068 as well as Exhibits P-277 and P-601B.

a. Kailahun Town – Kailahun District – Crimes

i. Massacre of around 60-65 civilians in Kailahun Town in February 1998 – Kailahun Town – Kailahun District – Crimes

1294. para. 752: Augustine Mallah a member of the RUF I874 testified that in February 1998, after ECOMOG had dislodged the AFRC/RUF Juntas from Freetown, Sam Bockarie (a.k.a. Mosquito) the RUF leader, assembled most of the RUF commanders in Daru and told them, "This is Kailahun District, we are not going to let it be occupied by anybody else, be you ECOMOG or Kamajors. You might resort to killing all of us, but we will not leave Kailahun for anybody. We had been in Kailahun here when the soldiers plotted a coup against Kabbah. They invited us, we went and joined them. Being that we have now returned to Kailahun, we should defend the place".[1875] Mallah stated that after this speech he travelled from Daru to Kailahun Town with Mosquito and over 100 ARFC and RUF soldiers whom Bockarie had instructed to "go and defend Kailahun District".[1876]

1295. para. 753: On their arrival in Kailahun Town, Mosquito went to Augustine Gbao[1877] to check on the fate of 65 civilians who Mosquito had arrested and sent to Gbao for "investigation" because he suspected them of betraying the RUF by surrendering to the Government.[1878] On arrival in Kailahun Town, Mosquito asked Gbao how the investigations went. Mallah heard Gbao report to Mosquito that "Those people are all in the cell. They were about 65 in number. With all the investigations we have conducted we have realised that these people are Kamajors. They are not fit to live amongst us here as long as we are not satisfied with them and with the present circumstances".[1879] On hearing Gbao's report, Mosquito ordered Joe Fatoma[1880] to bring out the 65 civilians. Mosquito personally shot three of the civilians, remarking that "We need to kill these people". Mallah told the court that up to 100 AFRC and RUF including Mallah himself, participated in the summary execution of those civilians and that he counted 45 bodies.[1881] Mallah also told the court that after the killing had started, he saw "a Liberian commander" talking to Mosquito. Mallah explained that he met this commander and his three bodyguards in Kailahun

and that the commander did not participate in the killing of the Kamajors.[1882] The Liberian commander left for Buedu in a convoy with Sam Bockarie.[1883]

1296. para. 754: Augustine Mallah further told the court that after the massacre of the 65 civilians, he travelled with Sam Bockarie from Buedu to Daru, and they passed through Kailahun Town again because "Mosquito wanted to ensure whether the order that he had given was complied with"[1884] Describing the atmosphere as they drove through Kailahun Town. Mallah told the court that it was obvious that people had been killed in the town because there were several human heads and skulls displayed on sticks on both sides of the road to Pendembu.[1885] Mallah told the court that on this occasion, Augustine Gbao and Joe Fatoma told Bockarie that they had accomplished the mission by killing all the civilians as Bockarie had ordered.[1886]

1297. para. 755: Witness Varmuyan Sherif testified that he arrived in Kailahun Town in February 1998 bearing a message for Mosquito "'then leader of the RUF",[1887] from President Charles Taylor.[1888] On arrival in Kailahun Town, Sherif spoke to Bockarie's bodyguards who pointed out Sam Bockarie and asked Sherif to wait until Bockarie had finished "talking to some Kamajors".[1889] Sherif testified that he saw Sam Bockarie taking people out of a building and heard him saying "these people are Kamajors and we are going to finish them". Sherif testiied that he saw Bockarie personally shoot five of the men with a gun.[1890] Sherif further told the court that after executing the five people, Sam Bockarie said "I am moving now. Before I come back, the remaining people, I want all of them dead",[1891] whereupon Bockarie drove away to Buedu in a convoy of three cars. Sherif followed the convoy to Kai lahun and did not see what happened to the remaining people.[1892]

1298. para. 756: In cross-examination, the Defence confronted Sherif with a record of his first interview with members of the Prosecution on 23 February 2005 in which he did not mention Bockarie's execution of civilians. In this interview, Sherif is recorded as stating that when he went to Kailahun Town, he arrived at night after Sam Bockarie had already left and proceeded to Buedu.[1893] Sherif explained that the incident described in the interview took place in Pendembu and that in this tirst interview, he was afraid and did not trust the investigators.[1894] Sherif insisted however, that in subsequent interviews with the Prosecution investigators, he did talk about Boackarie executing five persons.[1895] The Defence also confronted Sherif with a second interview with Prosecution investigators which took place on 29 and 30 November 2006 and 4 December 2006.[1896] In this interview Sherif is recorded as meeting Sam Bockarie in Kailahun Town upon the instruction of Charles Taylor and seeing Sam Bockarie shoot prisoners one at a time.[1897]

1299. para. 757: Witness Mohamed Kabbah[1898] was the RUF regional commander in charge of communications in Kailahun from the AFRC coup in May 1997 to the ECOMOG Intervention in February 1998.[1899] Part of his duties entailed receiving and dispatching radio messages between the front lines and other assignment areas and Sam Bockarie, the overall commander.[1900] Kabbah testitied that he was present in Kailahun Town on the day of the killings.[1901] He testified that ECOMOG had pushed RUF fighters out of Daru and that they had regrouped in Kailahun Town.[1902] Sam Bockarie arrived in Kailahun Town with his bodyguards including a tall Liberian called Senegalese.[1903] On the evening of their arrival, an ECOMOG jet flew over Kailahun Town and caused damage.[1904] Kabbah testified that at this time, 60 male "civilians who were Kamajors but who were not carrying arms" were held in custody by the RUF at the MP prison in Kailahun Town.[1905]

1300. para. 758: Kabbah testified that after the jet passed, Sam Bockarie ordered five of the Kamajor prisoners to be brought to the roundabout so that "he may set an example of them".[1906] A visibly distressed Kabbah told the court that when the prisoners were brought to the roundabout in the centre of Kailahun Town, Bockarie shot two of the prisoners in the forehead and ordered Issa to execute the remaining three, and that Issa shot the remaining three prisoners with his pistol.[1907] Kabbah was approximately 7 to 8 metres away when he saw the prisoners killed.[1908] Kabbah stated that after the first five prisoners were killed, Issa, his bodyguards and Bockarie's bodyguards went behind the police station and executed the remaining 55 prisoners.[1909] Kabbah did not see these persons killed, but heard about it from "some boys."[1910]

1301. para. 759: Explaining how the 60 civilians had come to be detained by the RUF, Kabbah told the court that before the Intervention, Kamajors used to attack some of the RUF positions and this created panic within the RUF controlled areas. During that period, the RUF interrogated a civilian from Jojoima whom they said was sent to spy on RUF positions. Based on that information. Bockarie had sent a radio message to all military police within the Kailahun District to escort all those civilians that entered the RUF-controlled territory to Kailahun Town and to assemble them in Kailahun Town "so that they could be screened in order for the RUF to know who was a Kamajor or who was a genuine civilian".[1911] This is how these 60 civilians came to be detained and later executed by the RUF in Kailahun Town. Kabbah told the court however, that the Kamajor suspects fell into two categories, namely, those who confessed to having been Kamajors in the past but had disarmed; and those that bore Kamajor markings on their bodies. Kabbah stated however. that none of the 60 suspects were armed or actively fighting when they were arrested.[1912]

1302. para. 760: Prosecution Witness TF1-168, a prominent member of the RUF gave a vivid account of the Kailahun massacre. TF1-168 testified that he and six other colleagues were held in detention by senior RUF commanders[l913] for 30 months[1914] on suspicion of "betraying Foday Sankoh to the Nigerians", and that while in detention they were tortured and moved around several prisons within Kailahun District.[1915] TF1-168 testified that he and his fellow-detainees were moved to a detention facility in the centre of Kailahun Town around the end of December 1997, and that on 19 February 1998 they were transferred to the town police station in Kailahun Town.[1916] At the police station the detainees were guarded by RUF MP John Duawo and his deputy Joe Fatoma. Augustine Gbao was the overall commander in charge of Kailahun Town.[1917] TF 1-168 told the court that there were 65 other civilian detainees in detention at the police station who told him that they were citizens of Luawa Chiefdom in Kailahun District who were being held by the RUF leadership.[1918] The detainees had fled Kailahun District before the 25 May 1997 coup d'etat but after the coup had been persuaded by Sam Bockarie to return to their homes. Upon their return to Kailahun District, these civilians had been arrested and detained by the RUF on suspicion of being Kamajors.[1919]

1303. para. 761: TF 1-168 told the court that on the afternoon of 19 February 1998 John Duawo told all the detainees to go back inside their cells because Sam Bockarie had arrived and did not want to see anyone outside their cells. The witness returned to his cell from where he observed through a window what was going on outside. The witness told the court that he saw Duawo remove 10 of the Kamajor prisoners from their cells and take them outside towards the roundabout.[1920] TF 1-168 testified that the prisoners were brought outside towards the roundabout and that not too long after, he heard gunfire.[1921] The witness stated that from his vantage point, he could see them fa11.[1922] TF 1-168 later learned from the military police that it was General Sam Bockarie (a.k.a. Mosquito) who had fired the first shot.[1923]

1304. para. 762: TF1-168 said that MP guards took the remaining Kamajor suspects from their cells in groups of four and five and took them towards the valley where they shot them to death.[1924] TF1-168 stated that as he was awaiting his own fate in his cell, he heard the guards saying "bring out the remaining five prisoners", and thought that they were referring to him. TF1-168 learnt from the MPs the following day that 64 of the prisoners, all males, were killed during this incident and that one person was saved.[1925]

1305. para. 763: TF1-168 stated that he had the opportunity to speak with some of the Kamajor suspects before they were killed and that they explained that although some of them belonged to the Kamajor society and bore Kamajor markings on their bodies, they never participated in the

fighting against the AFRC/RUF.[1926] Others explained to the witness that they were civilians that had simply volunteered to carry loads for the Kamajor fighters but they did not participate in the fighting.[1927] TF1-168 told the court that he and his colleagues were transferred to Kangama on 21 February 1998 because the Kailahun Police station was filled with the stench of the decomposing bodies.[1928]

1306. para. 764: The Trial Chamber has also examined confidential Prosecution Exhibit P-277, which in the Trial Chamber's view, corroborates the testimony of TF1-168.

1307. para. 765: Issa Sesay, a fonner RUF commander and Defence witness in this case, testified that he was in Gandorhun when he heard from one Major Gua that 60 suspected Kamajors had been arrested and executed in Kailahun Town on the orders of Sam Bockarie.[1929] Sesay stated that upon travelling to Kailahun Town shortly thereafter, he saw 10 corpses which had been moved from the roundabout to the roadside, but did not see corpses behind the MP office because he did not go there.[1930] Sesay estimated that from the way the bodies were starting to decompose, he must have arrived about five to six days after the killings had taken place.[1931] In cross-examination, Sesay ruled out the possibility of his own involvement in the Kailahun massacre, stating that "these people were killed before he arrived in Kailahun".[1932] He also told the court that Sam Bockarie gave orders that the corpses of the people who were killed should not be buried and that is why there was such a stench in the air.[1933]

1308. para. 766: Witness Fayia Musa another prominent member of the RUF, confirmed to the court that he and six other colleagues were held in detention by senior RUF commanders[1934] for 30 months[1935] on suspicion of '"betraying Foday Sankoh to President Kabbah and the Nigerians" and that while in detention they were tortured and moved around several prisons within Kailahun District.[1936] Fayia told the court that he and his fellow prisoners were transferred from Kangama to Kailahun Town "after the ECOMOG intervention" and remained in detention there until 29 March 1998. Fayia testified that in the same Kailahun Police station, the RUF had detained 69 civilians from Daru and some SLA soldiers who were arrested and brought to the prison in Kailahun Town.[1937] On 28 March 1998 Sam Bockarie came to Kailahun to check on the prisoners.[1938] The witness who was in another cell, stated that an SLA soldier called Kaioko and nine of the 69 prisoners were taken out of the cell on the order of Sam Bockarie and around five to ten minutes later he heard gunshots.[1939] Bockarie also ordered that the remaining prisoners be brought out in groups of five, with younger people being killed first.[1940] Fayia and his colleagues were terrified as they thought they too were going to die, but they were spared. Fayia told the court that he was told 68 of the other prisoners were shot or hacked to death, that their bodies were "scattered all

over the place", and that only one escaped.[1941] On 29 March 1998, the witness and his colleagues were transferred to Buedu where they remained until their release in August 1999.[1942]

1309. para. 767: The Trial Chamber also considered the evidence of Protected Defence Witnesses DCT-068, DCT-292 and DCT-102, all of whom gave hearsay accounts of the Kailahun Town massacre.[1943] These hearsay accounts accord with the direct evidence of the witnesses cited above and confirm the fact that the AFRC/RUF forces acting under the orders of Sam Bockarie massacred over 60 un-armed civilians in Kailahun Town.

(v) Freetown and the Western Area – Crimes

1310. para. 772: The Trial Chamber received the following credible documentary evidence[1947] regarding the situation in Freetown and the Western Area during the period December 1998 to February 1999. One report records:

> [I]n the early hours of January 6. 1999. rebels of the Revolutionary United Front (RUF) launched an offensive against the Sierra Leonean capital. Freetown. capturing it from government troops and the soldiers of the Nigerian-led peace keeping force known as ECOMOG .... The battle for Freetown and the ensuing three week rebel occupation of the capital was characterised by the systematic and widespread perpetration of all classes of atrocities against the civilian population of over one million inhabitants. and marked the most intensive and concentrated period of human rights violations in Sierra Leone's eightyear civil war. As the rebels took control of street after street. they turned their weapons on the civilian population. By the end of January. both government and independent sources estimated that several thousands of civilians had been killed ....
>
> In December 1998. following the capture of Kono District and Makeni, thousands of RUF fighters started moving towards Freetown and that by early January 1999 they had reached the peninsular on which Freetown is located and gathered less than 20 miles west of the capital. On 6 January 1999 the rebels broke through the highly stretched and poorly manned ECOMOG defences, and proceeded to march through the eastern suburbs and straight into the city centre .... While the rebels were only able to occupy the city center for less than one week. it took ECOMOG forces over three weeks to flush them from the three densely populated eastern suburbs of Kissy. Wellington and Calaba Town. It was in these three suburbs, particularly towards the end of the occupation that the vast majority of atrocities occurred.
>
> The rebels made little distinction between civilian 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.. .. The largest number of killings took place within the context of attacks on civilians gathered in houses. compounds and places of refuge such as churches or mosques .... Human Rights Watch took testimonies from scores of witnesses to such atrocities including a January 6 attack on a family in which all but one of their seven children were

killed: a January 19 attack on the church of the Brotherhood of the Cross and Star in Wellington. in which twelve people were gunned down: a January 21 attack on a compound in Kissy in which seventeen people were murdered and later burned; and a January 22 attack on the Rogbalan Mosque in Kissy. in which sixty-six people were massacred .... There were also frequent accounts of people being burned alive in their houses. often having been wounded. Children and the elderely were particularly vulnerable. Witnesses described rebels throwing civilians, sometimes children. into burning houses and shooting at those trying to escape. Family members trying to rescue their children or other relatives from a burning house were threatened with death and forced to abandon them to the lire .... While most victims were seemingly chosen at random. the rebels directly targeted a few groups, namely Nigerian nationals. unarmed Policemen and journalists. At least sixty-three Nigerians, most of whom were traders or businessmen, were hunted down and murdered in particularly brutal ways. The rebels also killed at least 85 unarmed Police officers, and several local and one international journalist.... The Catholic archbishop. Four Xavierian fathers, and six Sisters of Charity were abducted and held for over ten days. The rebels later killed four of the sisters and wounded one Xavierian father.[1948]

1311. para. 773: Another report records:

> [R]ebel fighters belonging to the Armed Forces Revolutionary Council (AFRC) and Revolutionary United Front (RUF) attacked Freetown on 6 January 1999. The rebels attacked the city from the east and penetrated as far as the centre. which they held tor four days before being torced to withdraw by a counterattack. The fighting resulted in the deaths of between 3000 and 5000 persons, including rebel fighters, soldiers of the Economic Community of West African States Monitoring Group (ECOMOG). members of the Civil Defence Force (CDF) militia who were defending the capital and large numbers of civilian inhabitants ....
>
> In late January and early February. UNOMSIL human rights officers visited Freetown to conduct an assessment of the situation there. The assessment team travelled extensively within the city and interviewed numerous people, including victims of mutilations and other human rights violations .... The team found that the ultimate responsibility tor the fighting, for most of the civilian casualties and for the related humanitarian emergency in Freetown rested with the rebel forces. Though it was impossible to state with precision the actual number of civilian casualties, most estimates put the total casualty figure at between 3000 and 5000, including rebel fighters. ECOMOG and CDF combatants. It is feared that at least 2000 of those casualties were civilian inhabitants of Freetown. Many civilians were killed while being used by rebels as human shields in combat, or because they reportedly refused to come out on the streets to demonstrate in favour of the rebels. Many were killed while trying to protect family members from death or rape, or while trying to protect their property from looting and destruction.
>
> Much of the killing seems to have been arbitrary and to have been carried out by child fighters or rebel fighters under the influence of drugs or alcohol. However, there is also evidence that some of the murders were targeted, including, reportedly, the murder of 200 Police personnel. The Solicitor general was killed during the fighting, as were the resident Minister for the North, an adviser to President Kabbah and at least two journalists. Other victims who appear to have been deliberately targeted include senior officials of the Sierra Leone National

> Commission tor Democracy and Human Rights. the Council of Churches and the National Commission tor Rehabilitation. Reconstruction and Reintegration, as well as Nigerian Nationals.[1949]

1312. para. 774: An Expert Report that was admitted into evidence as Confidential Prosecution Exhibit P-077 stated the following concerning the killing of civilians in Freetown and the Western area during the period January-February 1999:

> [R]ebel forces advancing into and through the city on 6 and 7 January. frequently forced civilians into the streets for use as human shields. People who refused to comply were killing of persons who refused to obey instructions to dance and make music on the streets. A number of interviewees describe the execution of the entire populations of residential compounds for such misdemeanours. There are reports of compounds housing up to 50 people being targeted in this manner. Similar reports indicate that then and later. People were executed because of their efforts to deter looting and to protect family members from assault or rape. Persons caught attempting to escape from rebel custody. were frequently killed. One witness saw 6 children killed at Wellington in mid-January in one such incident.
>
> Much of the killing also appears to have been entirely arbitrary. Witnesses report such killings of men. women and children by rebel fighters. including an instance in which the perpetrator is stated to have been about 10 years old, and another implicating an eight-year old boy. It is frequently stated that the perpetrators of such acts were under the influence of cocaine and other drugs, including alcohol. Killing occasionally occurred in the context of games in which people were lined up and the executioners teasingly chose who to kill and who to spare. In one such incident at Fourah Bay Road, around 21 January, three children were executed and their three sisters had limbs amputated or mutilated. One man has described how he was ordered to choose between the execution of his entire family and the surrender of his daughter to a rebel fighter.
>
> Some of those who were burned to death in their homes had been locked in or first been disabled by gunshots. A number of elderly people and intimts also died in this manner. Others died while attempting to escape. One five-year-old girl survived being thrown into a fire, at Blackhall Road, on 28 January. A six-year-old girl was executed together with her mother on 23 January at Wellington.
>
> Rebel forces targeted many individuals and categories of persons for execution. It is reported that over 200 Police officers were killed. either at home or at their barracks in such locations as cm Headquarters. Kingtom and Kissy. The means of execution included knives. machete and gunshot. One incident on January 6 at the city center Cotton Tree. involved the killing by stabbing of II Policemen. A number of prison officials appear to have been killed during and after the assault on Pademba Road Prison on 6 January. An escapee from Pademba Road Prison is reported to have allegedly led an attack on the Solicitor General who was killed and decapitated. Two senior Government officials, the Resident Minister for the North and an Advisor to the President, were captured and killed. At least 2 journalists were sought out and killed (while other journalists, including foreign nationals, though not specifically targeted, were killed, injured or abducted.)

> A senior member of the human rights monitoring committee of the National Commission for Democracy and Human Rights (NCDHR) was killed together with her husband ... Executed senior officers of the Council of Churches and the NCRRR may have been targeted on the basis of their positions .... Nigerian nationals also appear to have been targeted. One witness. on 8 January, observed 2 Nigerian traders whose throats were cut apparently on the basis of their nationality...".[1950]

1313. para. 775: The Trial Chamber heard the evidence of many witnesses that gave first-hand accounts of civilian killings in Freetown and the Western Area during the period December 1998 to about 28 February 1999. The Chamber took into account the following evidence which is corroborated by the documentary evidence referred to above.

1314. para. 776: Alimamy Bobson Sesay, a combatant who took part in the Freetown invasion of January 1999, testified that a group of about 1000 troops made up of members of the AFRC, RUF,[1951] 30 Special Task Force (STF) members[1952] and 20 other "Liberian fighters",[1953] captured Benguema from ECOMOG around Christmas of 1998 and while based there. reorganised themselves into seven "battalions"[1954] in preparation for a final assault on Freetown.[1955] Alex Tamba Brima (a.k.a. Gullit) was the overall commander of the brigade after SAJ Musa died at Benguema. Other AFRC commanders included Ibrahim Bazzy Kamaral[1956] (a.k.a. Bazzy), Santigie Borbor Kanul[1957] (a.k.a. Five-Five), Franklin Conteh Woyoh,[1958] Hassan Papa Bangura[1959] (a.k.a. Bomb Blast), Col. "O-Five",[1960] Lt. Col. "Papa- 17",[1961] FAT Sesay,[1962] Junior Sherrif,[1963] Major Tito,[1964] Foday Bah Marah[1965] (a.k.a. Bulldoze), Major Arthur,[1966] Junior George Johnson[1967] (a.k.a. Junior Lion), Lt. Col. Saidu Kambolai (a.k.a. Basky),[1968] Col. Lamin Sidique (a.k.a. Terminator or NPFL),[1969] Med Bajehjeh,[1970] Col. Foyoh,[1971] Lt. Col. Konjor,[1972] "Roadblock",[1973] Adamu (a.k.a. Chicken Soup), Adama "Cut Hand",[1974] Tarrawali (a.k.a. Gold Teeth),[1975] Idrissa Kamara (a.k.a. Rambo Red Goat),[1976] and Amidu Kamara Keforkeh. Bobson Sesay explained that he was in the 5th Battalion and served as Intelligence Officer.[1977] Amongst the RUF that came to reinforce the Freetown invasion were Captain Stagger, Washington, King Perry, Alfred Brown, and Dukulay.[1978] The evidence relating to the composition of these forces is corroborated by that of Perry Kamara, an RUF radio operator that travelled with the group to Freetown.[1979]

1315. para. 777: Bobson Sesay further testified that prior to the invasion of Freetown, while at Benguema, Gullit communicated on radio with Sam Bockarie informing him that the troops were ready to advance on Freetown but that they needed manpower reinforcement from Bockarie.[1980] Bockarie responded saying that reinforcement was on its way from Kono, Kailahun and Daru but that the reinforcing troops under Issa Sesay and Superman needed to weaken the ECOMOG forces

in Kono and Segbwema before they could arrive to reinforce the invading troops. Bobson Sesay further told the court that the invasion of Freetown was planned jointly between the AFRC and RUF, with three flanks planning to attack jointly. One flank led by Issa Sesay, Morris Kallon, RUF Rambo, Akim Turay and Isaac Mongor would come from Kailahun and attack from the eastern part around Kono area, and after capturing Kono and Makeni from ECOMOG they would proceed to reinforce the forces invading Freetown.[1981] The second flank led by Gullit, Bazzy and Five-Five would attack from the north. The third flank led by Denis Mingo a.k.a. Superman and Brigadier Mani would attack from the Kailahun-Daru axis and assist in capturing Makeni from ECOMOG, after which they too would proceed to reinforce the forces invading Freetown.[1982] Bobson Sesay learnt of this plan by monitoring conversations between the AFRC and RUF High Command in the areas that the SLA and RUF occupied.[1983]

1316. para. 778: Bobson Sesay further told the court that as the rebel troops were waiting on the outskirts of Freetown[1984] for reinforcement, they came under heavy bombardment by the ECOMOG jets and this caused Gullit to order the rebel troops to start the Freetown invasion without waiting for reinforcement.[1985] In the witness's presence, Gullit instructed the invading rebel troops to "ensure that they burn down all Police Stations; open the central prisons and free the prisoners including Foday Sankoh; kill all collaborators of the Government and ECOMOG and opponents of the AFRC/RUF forces; loot any valuables from the civilian population and kill any civilians that resist the looting; and capture a good number of civilians to use as human shields if the troops encountered any resistance".[1986] Sesay further testified that the over 1000 rebel troops who entered Freetown were "wellarmed with support propelled grenades (SPGs), 60 millimetre commando mortars; 81 millimetre motars; rocket propelled grenades (RPGs); light automatic rifles (LARs); submachine guns (SMGs); AK-47 and machetes".[1987]

1317. para. 779: Bobson Sesay further testified that on 6 January 1999, the whole Brigade comprised of AFRC, RUF, STF and Liberian fighters moved from Allen Town and commenced their attack on Freetown.[1988] The invading rebel troops spent three and a half weeks in Freetown before they were repelled by ECOMOG forces.[1989]

1318. para. 780: The Trial Chamber heard the following evidence of civilian killings in Freetown and the Western Area.

a. Killing of civilians and ECOMOG soldiers around State House in Freetown – Freetown and the Western Area – Crimes

1319. para. 781: Alimamy Bobson Sesay testified that the rebel forces led by Gullit captured "Statehouse" or the Office of the President at 6.00 a.m. on 6 January 1999.[1990] Sesay told the court that on that morning Major Tito captured 20 Nigerian ECOMOG soldiers and brought them to Gullit for instruction as to what to do with them.[1991] Gullit ordered Tito to have them summarily executed. The witness was present when Tito took the soldiers who were hors de combat to the washing bay behind State House and shot them all to death.[1992] Bobson Sesay explained that the invading rebel troops had a policy that required the civilians to show respect for the rebels and that any civilian perceived to "overlook" (i.e. disrespect) the rebels would be summarily shot".[1993] Bobson Sesay testified that he saw "so many corpses of civilians littered around the State House axis" and counted over 20 dead bodies of civilians on 6 January 1999, all of whom had been shot dead by the invading rebel troops for simply "overlooking the rebels".[1994]

1320. para. 782: Perry Kamara, an RUF radio operator[1995] with the rebel troops that invaded Freetown, testified that when the troops entered Freetown they would either kill ECOMOG soldiers on the front line or capture them and present them to Gullit who was the commander in charge at State House.[1996] Kamara testified that Gullit consulted Sam Bockarie by radio as to what to do with these prisoners of war and that Bockarie responded that "he had no prison for ECOMOG".[1997] Kamara testified that as a result of that response, the rebel forces never spared any ECOMOG soldiers and that a total of 10-15 captured ECOMOG soldiers were shot and killed under the Cotton Tree,[1998] which was 100 metres from State House.[1999] In his evidence, Kamara also refers to "massive killings around Cotton Tree" next to State House on 6 January 1999.

1321. para. 783: The Trial Chamber admitted into evidence the prior testimony of Abu Bakarr Mansaray.[2000] Mansaray, a mechanical engineer testified that while living on Waterloo Street in Freetown,[2001] he was abducted by three "rebel boys" dressed in ECOMOG uniforms on 8 January 1999[2002] and forcibly taken to State House where Gullit was in command.[2003] Mansaray explained that by the term "rebel" he meant a mixed group of RUF rebels and AFRC soldiers. The three rebels were anned with AK-47 rifles and spoke Krio with "a Liberian accent".[2004]

1322. para. 784: At State House, on the orders of Gullit, the rebels tried in vain to force Mansaray and 50 other civilian captives to join them in fighting against ECOMOG.[2005] Mansaray and the 50 civilians refused to join the rebels as requested and were locked up in the kitchen of State House for four days. From the kitchen window Mansaray observed the rebels at State House gunning down about 35 civilians for refusing to join the rebels. He testified that the rebels shot

and killed three women and two men in his presence, and thereafter shot and killed 30 of the 50 civilians that were with Mansaray.[2006] The rebels threw the bodies of the civilians over the State House wall and also into the Paramount Hotel's compound.[2007]

b. Unlawful killing of civilians in Kissy area around January 1999 – Freetown and the Western area – Crimes

1323. para. 789: Mohamed Sesay, a petty trader living on Falcon Street in the Kissy Shell Company area testified that on 6 January 1999 he heard a lot of shooting in the night and in the morning and when he woke up he saw rebels everywhere.[2008] He and his family stayed indoors for five or six days after the rebels had taken over Freetown[2009] and then went with other civilians to buy food at the Marbela market in the eastern part of Freetown.[2010] On the way back they came to a checkpoint manned by the "rebels and SLAs" at PWD, which is near Ferry Junction.[2011] There were many people gathered at the checkpoint, including the former President Momoh who was being carried in a hammock.[2012] The rebels ordered the civilians to sit down and then took two men from the civilians saying they were going to offer them as "a sacrifice".[2013] In the witness's presence, the rebels shot and killed one of the men and stabbed the other one to death after which they collected the latter man's blood into a bowl.[2014] Sesay and the other civilians at the checkpoint were then allowed to pass through and he returned home.[2015]

1324. para. 790: Mohamed Sesay further testified that two or three days later he was sitting under a mango tree behind his house on Falcon Street with other civilians when five armed "rebels and SLAs" joined them including an RUF rebel called Issa Conteh that the witness previously knew.[2016] As they sat under the tree, two other "rebels" approached the witness.[2017] One of the rebels was a woman dressed in trousers, a T-shirt and boots but did not carry a gun. She also spoke "Liberian language". The other rebel was a man who wore "full unifonn" but no boots.[2018] The woman fighter told the fighters sitting under the tree that "because they refused to fight, Pa Kabbah had sent ECOMOG to fight against them, so now she was ordering them to begin Operation No Living Thing".[2019] Sesay testified that he saw Issa Conteh shoot and kill an old woman that was passing by.[2020] Sesay also saw an old man who was passing fall down and die, but he did not see the person who shot him.[2021]

1325. para. 791: Mohamed Sesay further testified that two days later "rebels" carrying fuel in a container came and set fire to his home. The witness was in the house when it caught fire but escaped to hide first in the house of one Pa Bobodin, and later sought refuge in the house of one Mr Abass.[2022] There were more than 50 civilians, including old men and women, who had also

sought refuge at Mr Abass' house, which house had also been burnt.[2023] Sesay testified that on 19 January 1999[2024] he was on the veranda at Mr Abass' house when he saw seven "rebels" arrive, including a "commando" who was giving the other rebels orders.[2025] The witness testified that the commando carried a pistol, one rebel carried a machete, another rebel carried an axe and four others carried guns.[2026] The commando ordered the fighters to select the young men out of the house. The rebels selected 24 young men from the house, including the witness, and took them to the junction where they asked them to queue up in preparation for having their arms amputated on a log which had been placed in front of them.[2027] The commando ordered the first man in the line to put his arm down to be amputated, and when he pleaded with him not to, the commando shot the man in the face. killing him.[2028] When the second man in line pleaded with the commando not to amputate him, the commando shot him in the chest, killing him as well.[2029] When the third man pleaded with the commando not to amputate him, the commando used rapid fire to shoot and and kill six of the men in the queue.[2030]

1326. para. 792: Mohamed Sesay further testified that after the commando had shot the first eight men, he ordered the fighters to split open the heads of the remaining young men in the queue with axes and machetes instead, saying "he was not going to waste his bullets anymore".[2031] Sesay told the court that after the rebels had smoked marijuana, they used an axe and machete to split open the heads of five of the men and killed them.[2032] Although the witness wanted to look away because he was frightened, the rebels forced him and the other civilians to watch the gruesome executions[2033] Mohamed Sesay further testified that after the rebels killed the civilians, they proceeded to amputate both his hands, and that the rebel that actually did this was barely 13 years o1d.[2034]

1327. para. 793: The Trial Chamber admitted in evidence the transcript of testimony Prosecution Witness TFI-098 from the AFRC trial.[2035] TFI-098 testified that on 18 January 1999, "rebels", whom the witness identified as members of the SLA,[2036] came to the house on Manfred Lane near Kissy road where he was hiding with his younger brother, cousins and other civilians and led them by gunpoint to a primary school on Fataraman Street.[2037] While there a Krio-speaking rebel named Tommy, who was from the Freetown area and who wore a combat uniform, amputated the witness's left hand and the hands of 6 other civilians with an axe and told them ·'to go and tell Pa Kabbah that they were in control, and not ECOMOG".[2038] One of the seven amputees who was related to the witness, died from the amputation.[2039] In cross-examination, TF 1-098 explained that Tommy belonged to the same group as "Captain Blood".[2040]

1328. para. 794: Alimamy Bobson Sesay testified that in the third week of January 1999,[2041] as the rebel troops were retreating from the ECOMOG forces in Freetown, they hid in the hills overlooking the east of Freetown from where they observed "civilians singing and dancing as they welcomed the ECOMOG forces".[2042] The witness heard Gullit remarking, "Now the people in Freetown have changed their song, the song which they were singing: that they were our brothers, we want peace. Now the people are singing it otherwise: That our brothers have come, they have come to steal. So now we should move to Ferry Junction. So wherever we meet people singing that song... those people were betraying us, we should kill them".[2043] After this remark, Gullit reorganised the rebel troops and sent them to Ferry Junction, Low Cost area and Kissy, instructing them to "burn all the remaining houses and kill all the civilians".[2044]

1329. para. 795: Bobson Sesay testified that upon receiving Gullit's orders, his group which included Rambo Red Goat and Bajehjeh went to Kissy Market where they saw civilians singing "They are our brothers". Immediately the rebels, including the witness, went and shot all the civilians. They even shot civilians who were in their homes.[2045] The witness said that while he used his gun to shoot the civilians, some of his colleagues used machetes to kill the civilians while others burnt civilians alive in their homes.[2046] The witness could not estimate the actual number of casualties but stated that they were many. The witness further testified that the rebel group that attacked Low Cost area came back afterwards and reported that they too had carried out burnings and amputated and killed civilians there. The witness explained that this second group was led by commander "Changa Bulanga".[2047]

1330. para. 796: Bobson Sesay further testified that the day after the operations in Kissy Market and Low-Cost areas, Gullit informed the fighters that he had heard that civilians were hiding ECOMOG forces in the mosque on Old Shell Road by having them take off their uniforms and pose as civilians.[2048] Gullit then ordered "Five-Five" to lead a group of fighters to the mosque and to kill everyone there.[2049] The witness was in this group of fighters which was made up of over 100 AFRC, RUF, STF, and Liberian fighters, including "Rambo Red Goat" and Med "Bajehjeh".[2050] Bobson Sesay testified that upon reaching the mosque, they saw that the mosque was full of people, they did not search and they just started shooting randomly into the crowd. The rebels killed everyone who was not able to escape, including people he believed to be ECOMOG officers, men, children, nursing mothers, and old women.[2051] Bobson Sesay estimated that his group killed more than 20 people in this attack.[2052] Bobson Sesay further testified that after the Lome Peace Accord his uncle informed him that two of his female cousins were among the victims of the attack.[2053] Bobson Sesay testified that as they withdrew from the mosque they met

Commander Gullit at Crazy Yard, and "Five-Five" reported to Gullit that they had destabilized the mosque and killed the people.[2054]

1331. para. 797: Bobson Sesay further testified that after the killings at Rogbalan Mosque, Gullit ordered Foday Bah Marrah (a.k.a. Bulldoze) to execute four white nuns they had captured when they were withdrawing from Eastern Police and that Bobson Sesay saw Bulldoze shoot and kill the four nuns at a location called "Crazy Yard".[2055] The nuns had been captured along with a Bishop Ganda and a Father Mario, both of whom had managed to escape.[2056] Gullit gave the order to execute the four nuns saying "he did not want them to escape like Bishop Ganda and Father Mario as that would not be good for the rebel troops The murder of four white nuns is corroborated by documentary evidence in Exhibit P-328 which describes the nuns as "Sisters of Charity".

1332. para. 798: The Trial Chamber admitted in evidence pursuant to Rule 92*quater* the transcripts and confidential witness statement of TF1-021 from the AFRC and RUF trials.[2057] He was not cross-examined in the present trial regarding his prior testimony as he is now deceased. In his prior testimony, TF1-021 testified that he was leading prayers at the Rogbalan Mosque at about 12:30pm on a Friday in January 1999 when he saw more than 15 men armed with guns and machetes jumping over the fence and into the compound.[2058] They had disguised themselves in different ways, some wearing plastic bags on their heads, and some with their faces and/or bodies painted with blue, charcoal or white substances[2059] Some of the men were wearing black polo shirts and long trousers or shorts.[2060] The mosque was overflowing with men, women and children, as people were there not only to pray but also to seek refuge.[2061]

1333. para. 799: Some of the armed men approached TF1-021 and told him that they were going to kill everyone in the mosque.[2062] TF1-021 tried to stop them by giving them 80,000 Leones collected from people at the mosque, but after taking the money the armed men said that they would still kill all the civilians in the mosque.[2063] TF1-021 then accepted his fate. telling the armed men that "it would happen if it was God's will".[2064] The armed men taunted the civilians for believing in God and then began shooting randomly at the crowd inside the mosque.[2065] As the armed men were shooting, they said it was not their fault, but the fault of Tejan Kabbah, who refused to have peace talks with them.[2066] When the shooting ceased, TF1-021 counted 71 dead people inside and around the outside of the mosque.[2067]

1334. para. 800: The Trial Chamber also admitted in evidence pursuant to Rule 92quater the transcript of the testimony of TF1-083 from the AFRC trial.[2068] He too was not cross-examined in the present trial regarding his prior testimony as he is now deceased. In his prior testimony, the

witness stated that in January 1999 he was living in Kissy. Freetown.[2069] On 22 January 1999,[2070] he went to the Rogbalan Mosque to seek shelter after his hand was amputated.[2071] When he arrived at the mosque he saw what he estimated to be 70 corpses wearing civilian clothes outside of the fence surrounding the compound, inside the compound gates, and inside the mosque.[2072] Among the dead were children, old persons, men, and women.[2073] Inside the mosque he also saw tripods, spoons, and clothes spread about.[2074] He testified that he stayed in the mosque from after his hand was cut-off at about 12:00 pm until about 6:00 pm that evening.[2075]

1335. para. 801: Witness Corinne Dutka,[2076] a senior researcher for the African Division of Human Rights Watch,[2077] testified that she reported on a massacre of 60 individuals at the Rogbalan Mosque on 22 January 1999.[2078] Dutka interviewed 10 witnesses to the massacre who told her that the rebels gave the people in the mosque two days advance warning that they would come to kill them, but the people inside the mosque stayed because they had nowhere else to go.[2079] Witnesses to the attack told Dutka that when the rebels came, one group went inside and randomly shot at the civilians in the women's and men's sections, while the other stayed outside and shot at people as they ran outside to escape.[2080]

1336. para. 802: Prosecution Witness Ibrahim Wai testified that rebels attacked his home village of Tombudu around 23 December 1998 and he fled to Kissy and took refuge at the home of his brother-in-law called Brima, in Kissy[2081] While there in January 1999 a rebel commander that the witness previously knew very well, called Mohammed (a.k.a. Captain Blood)[2082] came to the house with his bodyguards and attacked the witness and his brother-in-law's family. Wai immediately recognised this same Captain Blood as the rebel that had attacked Ibrahim Wai's home in Tombudu on 23 December 1998. Captain Blood asked the witness for money and electronics and when the latter said he had nothing to give, Captain Blood amputated Wai's hand with a machete and told him to "go to Pa Kabbah who had brought many hands for the civilians".[2083] As Wai ran to hide inside a toilet, the rebels also amputated the hands of his brother-in-law's younger brother.[2084] Wai further testified that later on that night, the rebels set his brother-in-law's house on fire and his brother-in-law called Brima, who was trapped inside the house, was burnt to death.[2085]

1337. para. 803: Exhibit P-328 documents the 22 January 1999 attack of Rogbalan Mosque in which 66 people were killed, as one of the events in a section describing mass killings and massacres.[2086]

1338. para. 804: TF1-104 gave evidence in another trial and the Trial Chamber admitted the transcript of his prior testimony as evidence in the present trial.[2087] In his prior testimony, the

witness told the Court that he was working as a nurse at the Good Shepherd Hospital in Kissy in January 1999.[2088] On 15 January 1999, while at the hospital, he saw a group of RUF/AFRC Juntas shoot a civilian man in the nearby cemetery. The civilian was from Fourah Bay and sustained serious gunshot wounds to the stomach from which he later died in the hospital.[2089] On 18 January 1999 a group of "RUF and juntas" went to search the Good Shepherd hospital accusing the staff there of "treating ECOMOG and Kamajors". The Juntas forced every body out of the hospital, including staff, patients and visitors, and started beating them with a stick called a "coboko".[2090] The juntas took TF1-104 along with 200 other civilians[2091] to one Pa Zubay's house located a short distance from the hospital. On the way to this house, the AFRC/RUF fighters shot to death a Nigerian businessman called Ike who had been admitted for treatment of his gunshot wounds in the Good Shepherd hospital.[2092] A number of Junta commanders had gathered at Pa Zubay's house including one "Captain Shepherd" whom the witness had previously met and one "Captain Blood". The civilians were made to stand against a wall and the Juntas opened fire, shooting randomly at the civilians. The witness testified that 15 civilians were shot to death as a result, and that he was lucky to escape with bullet wounds on his elbow, knee and hip.[2093]

c. Unlawful killings of civilians in Fourah Bay in late January 1999 – Freetown and the Western Area – Crimes

1339. para. 809: Alimamy Bobson Sesay testified that in the second week of January, ECOMOG forces dislodged the rebel forces from State House and the latter retreated to Eastern Police where they stopped to wait for reinforcement that had arrived and was waiting at Allen Town.[2094] While there, the rebel troops ambushed and captured a Government delegation consisting of one Doctor Daboe and two Ministers. The rebels sent the captives to Ferry Junction where Gullit was situated. Gullit ordered the summary execution of the three Government officials saying "they were collaborators and they were the people who fought against us that led us to go into the bush". Bobson Sesay testified that the three Government officials were executed at Ferry Junction and their bodies displayed there.[2095]

1340. para. 810: Bobson Sesay further testified that sometime after the third week of January 1999, when the rebel troops had been reinforced by a group of 50 SLAs and RUF members led by Rambo Red Goat and had recaptured State House,[2096] they heard on BBC radio that Sam Bockarie (a.k.a. Mosquito) had rejected a ceasefire and peace talks with the Government. Thereafter, Mosquito called Gullit on the radio set, and after warning the latter that the Government was "just trying to reorganise themselves to flush us out of Freetown", Mosquito instructed Gullit "to kill civilians and burn down strategic areas so that there would be no government and there would be

no one for the government to rule".[2097] After this message, Gullit ordered his senior commanders to distribute fuel to the forces in Freetown, who started burning buildings as they withdrew from State House where ECOMOG had attacked them.[2098]

1341. para. 811: Bobson Sesay was with the advance team of the rebels during the withdrawal that moved from State House to Eastern Police and then Mountain Cut.[2099] GuIlit, Five-Five, and Bazzy met them near Savage Square[2100] and told them that civilians had challenged them by killing an AFRC fighter in Fourah Bay.[2101] In response, Gullit ordered Sesay and some other men, including the witness, Bazzy and Five-Five, to burn down Fourah Bay and kill the people there[2102] Bobson Sesay, who participated in this operation, stated that on arrival at Fourah Bay the rebels burnt a lot of houses and killed a lot of civilians by either burning them alive inside of their homes, or by forcing them outside of their homes and killing them.[2103] Explaining how the rebels attempted to burn all of the houses down and kill all of the civilians in Fourah Bay, the witness stated, "Whenever we went on such a mission we would always make sure that nobody escapes and even there we did not allow anybody to escape .... we would not just set fire to a house and move. We will stand there until we see that everything was burnt to the ground".[2104] The witness testified that the whole team including Gull it, Bazzy and Five-Five participated in the Fourah Bay operation, in vengeance for the death of one of the rebels.[2105]

1342. para. 812: The Trial Chamber also considered Exhibit P-077. In the context of describing arbitrary attacks by the retreating rebels against civilians in Freetown in January 1999, Exhibit P-077 referred to an incident around 21 January 1999 at Fourah Bay Road where three children were executed and the limbs of their three sisters were amputated or mutilated.[2106]

d. Unlawful killing of civilians in Calaba Town in the third week of January 1999 – Freetown and the Western Area – Crimes

1343. para. 815: Alimamy Bobson Sesay testified that after the rebel troops had withdrawn from Rogbalan Mosque and killed the nuns, Gullit told them that he had received information that the Guinean ECOMOG forces were moving from Kambia to Waterloo in pursuit of the rebels. Consequently, Gullit ordered the rebel troops to withdraw from PWD to Allen Town in order to escape the advancing ECOMOG forces and "to burn as many buildings and capture as many civilians as possible along the way in order to force the Government to recognise them".[2107] Bobson Sesay explained that en route, the rebel forces[2108] went through\ Kissy Mess Mess, the Porty Market area, Brewery, Calaba Town and Allen Town, engaging ECOMOG forces, burning buildings, amputating and/or capturing many civilians as they went.[2109]

1344. para. 816: On this initial retreat from Kissy, Bobson Sesay testified that they passed through Calaba Town without stopping because there was an attack around the area, and then stopped in the hills of Allen Town.[2110] Although there were civilians in the hills of Calaba Town when the fighters went through, Gullit ordered the rebel troops to advance at once to Allen Town.[2111]

1345. para. 817: Describing the rebel withdrawal at this time, Bobson Sesay told the Court, '"When we were moving we were like wounded lions, because the way we withdrew we were so desperate that we were burning along the way whilst we were coming. Taking civilians from out of their houses, those that we saw were not fit enough we would execute them and we advanced because it was a mass withdrawal"[2112] Bobson Sesay testified that they captured many civilians as they withdrew from Freetown, including men, women and children and guarded them well so they could not escape, while executing those that were not fit enough to move with the rebel troops.[2113] When asked whether the houses they burnt had people in them, he testified that "Some were empty, some had people in them, but we were moving. Because the brigade was very long, so while the fighting force was ahead we would attack and burn and the other fighting forces on the back would do the same. Some would capture civilians and other would be executing them whilst we would be advancing and withdrawing from the area".[2114] Bobson Sesay further testified that when they set fire to a house with people inside, that the "people were screaming and they died".[2115]

1346. para. 818: Bobson Sesay told the Court that the retreating rebel forces met resistance from ECOMOG at Calaba Town and quickly proceeded to Allen Town. However, once they arrived at Allen Town, Gullit ordered Hassan Papa Bangura to organise fighters to go back to Cabala Town to attack the ECOMOG forces and to ensure that "anywhere civilians were and houses were they should burn down the area so that Freetown becomes ungovernable".[2116]

1347. para. 819: Bobson Sesay testified that a team of more than 200 fighters, including members of the RUF, AFRC, STF and former NPFL fighters led by Hassan Papa Bangura (a.k.a. Bomb Blast), Rambo Red Goat, Med Bejehjeh and the witness, attacked Calaba Town but did not see any ECOMOG forces there.[2117] Instead the rebel fighters set about burning buildings and killing civilians as ordered by Gullit. They shot and killed most of the civilians, but some of them were hacked to death in order to preserve bullets, and some burned to death inside their homes, which had been set on fire.[2118] Bobson Sesay testified that the rebel troops killed an unknown number of civilians and that "We all killed, let me tell you that. I myself, I killed. Other men killed".[2119] After this mission ended they again withdrew to Allen Town.[2120]

1348. para. 820: The Trial Chamber admitted in evidence the transcript of testimony of Prosecution Witness TF1-029 given in the RUF trial.[2121] In her prior testimony, TF1-029 testified that after she and 50 other civilians were captured in Wellington by RUF and AFRC fighters including the SLA soldier Major Arif on 22 January 1999, they all travelled en masse together to Calaba Town, where they stayed for two weeks.[2122] On the way from Wellington to Calaba Town TF1-029 saw the rebels burning houses and killing civilians.[2123] During the two weeks that TF1-029 stayed in Calaba Town she also testified that the rebels cut off the head of an ECOMOG fighter, and that an AFRC fighter named Colonel Tito shot and killed one nun and shot two other nuns in their hands.[2124] The body of the dead nun was buried near the kola tree.[2125]

1349. para. 821: While TF1-029 testified consistently concerning this event in both the RUF trial and this trial, the Defence did question TF1-029 regarding Prosecution interview notes from 24 November 2003 wherein she purportedly stated that all three nuns were killed by Colonel Tito. TF1-029 testified that the interviewer recorded her words incorrectly and that only one nun had died and the other two were injured.[2126]

1350. para. 822: Osman Jalloh testified that he was in Calaba Town in January 1999.[2127] Jalloh further told the Court that in the second or third week of January 1999, rebels travelled through Calaba Town into the hills with loads on their heads, but warned the residents of Calaba Town that they would be back to "disturb" them.[2128] Jalloh had heard that ECOMOG had driven these rebels from Freetown, Wellington and Kissy.[2129] Jalloh testified that two to three hours after the rebels had gone into the hills he heard gunshots and went to the compound of his neighbour, Mr Jalloh, to hide.[2130] The witness and ten others, including elderly people and suckling children, hid in a little tin shack for six days, until an armed man wearing civilian clothes and a goat hom on his head knocked on the door asking for money.[213l]

1351. para. 823: The man searched the witness's pockets and took 2,000 Leones that he found there.[2132] When the armed man did not find any money on the other civilians he put them back into the tin shack, set the straw mattress inside on fire, and left them there for about five minutes before allowing them to come out.[2133] The anned man then said that even though the other civilians did not have money, they should give him something else if they did not want to be burnt alive.[2134] Otick, the owner of the compound, told the anned man that he would give him 86 bags of rice.2I35 The armed man opened the compound door and about 100 rebels dressed in civilian clothes came into the compound, taking the bags of rice.[2136] The rebels left and the civilians remained in the compound.[2137]

1352. para. 824: The following day a tall rebel came to the house and took the civilians to Sayinoh Junction, which was between Calaba Town and Wellington.[2138] The rebel said that it was "for their safety because if another group of rebels came the civilians would have nothing to give them, and would be killed".[2139] Jalloh testified that as they walked from Calaba Town to Sayinoh Junction he saw "a lot of corpses lying by the road".[2140] Jalloh further testified that he could not identify the corpses lying in the street, but that he assumed that they were civilians because they were wearing civilian clothing and not military uniforms[2141] There were old people, women and children among the corpses[2142] Jalloh estimated that there were approximately 100 corpses over a 200 yard stretch of road, and testified that there were so many that they had to walk in a "zigzag" to avoid stepping on them[2143] The only place he stopped seeing corpses was "the culvert" between Calaba Town and Wellington.[2144]

1353. para. 825: Jalloh testified that when they arrived at Sayinoh Junction, there were over 100 armed rebels there dressed in civilian clothes who spoke in bad Krio and sitting on the floor of one Mr Okabia's house.[2145] The Commander was the only person seated in the house on a chair.[2146] Children around the age of 10 years old were 50 yards away from the house packing stones on the highway to prevent ECOMOG from coming through.[2147] The rebels ordered the captives to go to the top floor of the two story house, and to warn the rebels whenever the ECOMOG helicopter referred to by the rebels as the Alpha Jet or "Wowo Boy", was going to come to attack them. The rebels warned the civilians that if they failed to warn the rebels as ordered, they would punish the civilians by amputating their hands.[2148] Jalloh told the court that when the Alpha Jet came and shot at them, the rebels ran outside and hid.[2149]

1354. para. 826: When the Alpha Jet had left, the rebels started amputating the hands of civilians. Otick refused to place his hand on the mortar two times, and the rebel then chopped him two times in the head with a cutlass.[2150] Jalloh testified that blood spilled out all over and that Otick fell to the ground. Jalloh testified that the rebels told him to place his hands on the mortar block and they chopped them both off, one at a time.[2151] The rebels then told Jalloh "to tell Pa Kabbah and the ECOMOG that if they came to meet the fighters that they would be chopped in the same way".[2152] Jalloh left the house and walked until he came upon ECOMOG soldiers who took him to Connaught Hospital.[2153] Jalloh saw Otick again at the Connaught Hospital, and testified that Otick died there three days later.[2154]

1355. para. 827: At Connaught Hospital Jalloh was also told that Ya Sampa, who was his neighbor and who had been with him at the house when his hands were amputated. had been "chopped up" and subsequently died.[2155] However he did not see her corpse, nor did the others

that made their way to the hospital from the scene of the criminal event.[2156] Jalloh testified that he believed that his hand was amputated on 28 January 1999 because this was the date he was told it was when he was admitted to Connaught Hospital.[2157]

1356. para. 828: Paul Conteh[2158] testified that on 19 January 1999 he was in Calaba Town.[2159] At this time the fighting between ECOMOG and the "rebels" was "so immense" that he decided to flee to Jui by way of Allen Town.[2160] On the main road to Allen Town he was forced to turn back two days later because the ECOMOG were "shedding bombs" and there were civilians moving toward Allen Town.[2161] On his way back to Calaba Town, as he was passing through Thomas Place, he saw approximately 40 civilian corpses dressed in "plain cloth".[2162] He testified however, that he did not know how they had died.[2163]

1357. para. 829: In his prior testimony, Prosecution Witness TFI-098[2164] testified that on 6 January 1999 he was near the East End Police and Mountain Cut area of Freetown when the rebels attacked.[2165] During this time he observed civilians, Kamajors, and ECOMOG soldiers coming from Calaba Town to the East End Police area.[2166] Two days later, TF1-098 left to attempt to find his mother in Calaba Town.[2167] From Ferry Junction he used the Old Road to travel to Calaba Town, and testified that he saw many corpses of men, women and children along the way.[2168] After locating her there, he returned back to the East End Police area using the New Road, and testified that he again saw many corpses of civilians.[2169]

e. Unlawful killing of civilians in Kingtom, Allen Town and Tower Hill areas – Freetown and the Western Area – Crimes

1358. para. 832: Alimamy Bobson Sesay testified that around the second week of January 1999, while the rebel forces still occupied State House, Gullit received information that ECOMOG forces were poised in Kingtom, a suburb of Freetown, and were preparing to attack the rebel forces at State House. Gullit remarked that "it was the civilians who went and called on the ECOMOG to go and base in Kingtom".[2170] Consequently, Gullit declared the area from Siaka Stevens Street, Kingtom Road, the Cotton Tree Area through to Pademba Road area, up to Tower Hill, a "killing zone wherein anybody who came around that area was considered an enemy and that person should die".[2171] Gullit ordered his commanders including Basky to go to Kingtom "to repel the ECOMOG forces and put the situation under control". Bobson Sesay testified that he was part of the group of 150 rebels comprising members of the AFRC/RUF/STF and Liberian fighters that attacked Kingtom on Gullit's orders.[2172] Sesay further testified that in Kingtom, the rebels attacked ECOMOG but also killed many civilians and burnt buildings before withdrawing

back to State House.[2173] Sesay told the Court that the civilians in Kingtom were killed "because they had gone and called ECOMOG to base in there", and that they were either pulled out of their houses and shot to death or burnt alive in their homes.[2174]

1359. para. 833: Bobson Sesay testified that other Commanders who killed civilians in this ""killing zone" during the second week of January 1999 included Junior Lion, who told the witness that "he went on patrol in the Tower Hill area and had captured and executed some civilians"[2175] and "Captain Blood"[2176] who captured and beheaded seven young men in Guard Street for "'collaborating with the Nigerians".[2177] Bobson Sesay also testified that while the rebel troops were temporarily based for two days at Allen Town awaiting further orders from Gullit, they would go out into the surrounding areas looking for food, and that any civilians they found on the way were killed because the rebels "did not want any civilian in that area for them to go and tell ECOMOG that we were based around that area. So when we met them we killed them".[2178]

1360. para. 834: Akiatu Tholley testified that she was at home with her family in Wellington on 5 January 1999 when she heard that rebels had attacked Wellington.[2179] She and her family were hiding inside their house when a group of armed rebels dressed in black T-shirts[2180] and black jeans with bandanas or mufflers on their heads[2181] forced their way into the witness's house. Three of these men dragged Tholley out of the house while kicking and whipping her with belts. The rebels also amputated the hand of a three-year-old child they found hiding in the witness's house and threatened to amputate the witness's mother.[2182] The witness stated that when the rebels dragged her outside, she "saw rebels killing and burning down houses".[2183] However, she did not specity who she saw killed in Wellington.

1361. para. 835: Tholley testified that rebels came for a second time to her house at night and wanted to rape her, but her mother pleaded with them[2184] The rebels stayed with their wives at Tholley's house for two days.[2185] An STF rebel named James[2186] captured the witness and took her and many other civilian captives (including men and women) from Wellington to Allen Town. The witness and other civilian male and female captives were forced by the rebels to carry ammunition.[2187] Although Tholley's condition was not feeling well from the beatings she had sutIered, she forced herself to carry the ammunition because she "had seen people killed for refusing to carry loads".[2188] The witness did not however, specity where she saw people killed in this way. Tholley further testified that as the group moved from Wellington to Allen Town she saw the rebels killing people, burning down houses, amputating people, and looting people's property.[2189]

1362. para. 836: The witness further testified that when they reached Allen Town, she and a group of the civilians decided to drop the boxes of ammunition because they were tired of carrying them.[2190] Rebels (referred to by the witness as "James's boys") stripped the witness and her companions naked and pushed them to the ground, threatening to hack them to death for refusing to carry the loads of ammunition.[2191] At that moment, fighter jets came and flew over them, and everybody ran to hide.[2192] Tholley hid in the house of a woman named Fatmata who was one of James's wives. Fatmata gave the witness clothes to wear.[2193] James found Tholley in Fatmata's house, and took her to Mammy Dumbuya's church.[2194] In the church Tholley saw the beating and raping of many "small girls" who were "not even adult"' and the killing of some of them.[2195] Tholley testified that the fighters were killing the girls who refused to be raped by stabbing them with their bayonets.[2196]

1363. para. 837: Tholley further testified that while she was in the church, James raped her and she became unconscious.[2197] Tholley told the Court that she herself was a virgin and "had not yet begun her menses" at the time of capture.[2198] She regained consciousness in a small hut in "a place after Allen Town" where an old woman was tending to Tholley's wounds with medicine in order to stop her bleeding.[2199] The old woman told Tholley that some people had brought the witness to her for treatment.[2200] Later, the rebel called James came to the hut and killed the old woman by shooting her in the forehead as Tholley was pleading to him stop,[2201] and then forcefully took Tholley with him on the way to Waterloo.[2202]

1364. para. 838: In cross-examination the Defence questioned Tholley as to inconsistencies between her pre-trial statements and her testimony concerning how many times she had been forced by the fighters to eat human hearts. In particular, in 2003 she had told the Prosecution that James had forced her to eat the heart of the old woman in the hut after he had killed her.[2203] Tholley insisted on cross-examination that she had not been forced to eat the heart of the old woman, but she did not explain the discrepancy. The witness was also confronted with her prior statement where she told the OTP investigators that in her presence, rebels killed her uncle and aunt and raped her cousin to death in the jungle.[2204] The witness made no mention of these alleged murders in her evidence in-chief. While admitting that she gave the said statement to the OTP investigators, the witness testified that the deaths of her uncle, aunt and cousin did not in fact take place "in her presence" and that instead it was her mother who had told her about the alleged deaths.[2205]

f. Unlawful killing of civilians in Tumbo – Freetown and the Western Area – Crimes

1365. para. 842: The Trial Chamber has considered the evidence of Prosecution Witness Ibrahim Wai in relation to the unlawful killings alleged to have taken place during this time period in Turnbo. Ibrahim Wai was a fisherman living in Turnbo in December 1998.[2206] He testified that on 23 December 1998, at 3:00 a.m. in the morning, AFRC and RUF soldiers attacked Turnbo by burning houses and killing people.[2207] The attack was led by a man dressed in full combat uniform called Captain Mohamed, also known as "Captain Blood",[2208] who had been a friend of the witness.[2209] During the attack Wai hid in the hills, and then returned toTurnbo the next morning.[2210] As he walked toward Krio Town he saw the three dead bodies of Pa Pratt's children lying next to a burnt down house.[2211] One of the dead children was named Eku and the other two were twins.[2212] He also testified that the rebels killed Bai Usu's IO-year-old son, whose head had been "shattered, probably by a bullet";[2213] a man named Joseph who had been shot,[2214] and one other man that he did not identify,[2215] and that he saw their corpses. Wai testified that Captain Blood subsequently met him again in Kissy and amputated Wai's hand, telling him to "go to Pa Kabbah who had brought many hands for the civilians".[2116]

g. Unlawful killing of civilians in Waterloo – Freetown and the Western Area – Crimes

1366. para. 845: The Trial Chamber has considered the oral evidence of Prosecution Witnesses TF 1-028 and TF 1-026, Witness Patrick Sheriff, as well as documentary evidence contained in Prosecution Exhibits P-308, P-341 A, and P-341 B admitted pursuant to Rule 92*bis*, in relation to the unlawful killings alleged to have taken place at Waterloo by rebels during their advance towards, and withdrawal from, Freetown between late December 1998 and early January 1999.

1367. para. 846: Exhibit P-308 is a UN Security Council. Special Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone (UNOMSIL) S/1999/20, dated 7 January 1999. It reported that on 22 December 1998, rebels in the Western area attacked Waterloo, resulting in heavy casualties among the civilian population,[2217] and the looting and burning of property, and the displacement of around 12,000 persons that fled from Waterloo to Freetown.[2218]

1368. para. 847: Exhibits 341A and 341B are an audio clip and its accompanying transcript, respectively, of a BBC "Focus on Africa" interview that took place on 22 December 1998 between Kwabena Mensah, a BBC reporter and Abubakar Sesay, a forest guard for the Waterloo

district.[2219] In the interview Mensah reported that an ECOMOG commander had confirmed that the RUF had attacked Waterloo in the early hours of the morning.[2220] Abubakar Sesay explained to Mensah that "collaborators of the AFRC and RUF juntas in an extension of Waterloo called Lumpa had secretly brought approximately 50 fighters into their homes two nights previously".[2221] At 3:00 a.m. the rebels began their attack, which lasted for two hours until ECOMOG, who had initially retreated, returned with ammo tanks and drove them out.[2222] Sesay stated that during the two-hour attack there was a lot of shooting and that the rebels burnt some houses and killed some civilians, including Mr Whenzle, the Secretary-General of the YWCA.[2223] Sesay reported that the rebels were fighting because they wanted their leader released and stated that "they are just bandits, going around villages, stealing people's goods, and ... killing innocent people .... Their target is ... civilian targets - that's what they do".[2224] Sesay did not witness the attack, as he was in a different section ofWaterloo.[2225]

1369. para. 848: Prosecution Witness TF 1-028 testified that she was captured in Karina, Bombali District by AFRC and RUF fighters around the time of the ECOMOG Intervention in Freetown.[2226] She lived in captivity in Rosos for six months and then was moved to a location called Tufayim or Eddie Town.[2227] The witness testified that Commanders at Eddie Town included Gullit, Five-Five, Woyoh, Col. Eddie, FAT and Leather Boot. and that Commanders Tito, Alabama, and RUF Mohammed all brought troops to reinforce the ones in Eddie Town. The witness stated that RUF Superman also sent troops and ammunition from Kurubonla to reinforce the rebel troops at Eddie Town, as they prepared to invade Freetown.[2228] The witness told the Trial Chamber that the RUF group that came from Kurubonla were led by Mohammed Bajehjeh, and comprised about 100 men, some of whom were Liberians and were called the "Red Lion" group.[2229] A week after the arrival of the reinforcements, the rebel troops left Eddie Town and trekked to Freetown, taking the witness and other captured civilians with them.[2230]

1370. para. 849: On the way to Freetown they passed through Port Loko Road, Freetown Highway, Four Mile and stopped at Waterloo, where she saw the rebel fighters burning houses and killing people.[2231] She saw the corpses of women and children in civilian clothes lying in the streets.[2232] From Waterloo, the rebel troops moved through Benguema, Tumbo, Grafton, Calaba Town and then into Freetown.[2233]

1371. para. 850: Prosecution Witness TF 1-026 was also captured by RUF rebels led by a commander called CO Rocky[2234] on 6 January 1999, from her home in Wellington at the age of 14 years. She and 50 other civilian captives from her village travelled for several days with the rebels from Wellington through Calaba Town, Waterloo and then to Makeni.[2235] The witness testified

that when the rebel troops and captured civilians arrived in Waterloo, the residents of Waterloo were frightened of the rebels and started running away. The witness saw the rebels shooting and killing the civilians as the latter tried to tlee.[2236] The witness told the Trial Chamber that the rebels stayed in Waterloo for about one week under the command of one RUF commander called CO Rambo[2237] before moving to Makeni.[2238]

1372. para. 851: Patrick Sheriff testified that in December 1998 he was living in Lumpa[2239] in the Waterloo Rural District.[2240] He testified that on 17 December 1998 rebels attacked Lumpa with guns at about 4.00 a.m.[2241] Sheriff hid in the bush for five days before being captured and whipped by the rebels. During the five days, the rebels burnt hundreds of civilian homes in Lumpa and Waterloo Town, in what appeared to the witness to be a coordinated campaign. The witness described the rebel operations stating "When they came they distributed themselves into various groups, Lumpa, Waterloo and all other villages around, and they set a time. And at any time they were doing something at a particular place, the other groups in the other areas were doing similar things in the other places. It was like simultaneous exercise".[2242] After he was captured by rebels dressed in "black polo shirts with the inscription 'Tupac, All Eyes on Me" and "short trousers", Sheriff witnessed the rebels shoot and kill three civilian captives who had been told to lie on the ground.[2243] Sheriff himself narrowly escaped death but the rebel commander ordered that he be given 150 whip lashes, which the rebels carried out.

1373. para. 852: Sheriff further testified that on 10 January 1999 he was living in Malambay, about half an hours walk from Lumpa,[2244] when he learnt that rebels had burnt down Lumpa village and Waterloo Town for the second time. The rebels also announced that they would kill any civilian found hiding in the bush around Lumpa.[2245] Sheriff moved back to Lumpa and was staying at the Mannor Connor section of the village of Lumpa which was under the control of a rebel commander named Peleto, who was also known as "Friday" because he was known to go on killing sprees of civilians every Friday of the week around Lumpa.[2246] One early Friday morning in February 1999[2247] Sheriff saw Peleto shoot and kill a man named Mr Kai who had been reading his Bible and a Limba man who had been eating rice in a pot.[2248] Both victims were close neighbours of Sheriff.[2249] Sheriff saw Peleto coming toward his house and before running into the bush to hide he told an old woman who was staying there to flee.[2250] She could not run and went to hide in her room instead.[2251] Shortly after leaving the house, Sheriff heard a gunshot, and that evening when he returned to town he found the dead body of the woman in the house lying in a pool of blood.[2252] Sheriff had heard of Peleto before these killings, but was able to identity him at the time because after he killed Kai and before he killed the Limba man the people in the area were very afraid of this commander and were yelling '"Peleto is coming".[2253]

h. Unlawful killing of civilians in Wellington – Freetown and the Western Area – Crimes

1374. para. 855: Prosecution Witness TF1-026, referred to above,[2254] told the Trial Chamber that nine armed RUF rebels attacked her house in Wellington on 6 January 1999.[2255] The rebels ordered the whole family to go outside on the veranda but the witness's sister kept crying out of fear. The rebels shot TF1-026's sister to death because they said "she was causing noise".[2256] TF1-026 further testified that as she was held in captivity by RUF rebels in Wellington, she saw the rebels amputating a lot of civilians and burning a lot of houses.[2257] The witness heard the rebels tell one man whose hands they amputated to "go and tell the people that the rebels were coming". The amputated civilian fell down and died from his wounds.[2258] TF1-026 also saw the rebels set a house on tire in which Mr Wilson, a crippled teacher, was burnt to death.[2259] The witness also testified that she saw the rebels shoot and kill' another civilian man on the way to Calaba Town.[2260]

1375. para. 856: The Trial Chamber admitted in evidence the transcript of the testimony of Prosecution Witness TFI-023 given in another trial.[2261] In her prior testimony, TF1-023 testified that she was a captive of the AFRC from 22 January 1999 until August 1999.[2262] She testified that at one point during this time, on the way to being taken to Waterloo, she heard, but did not see, that the rebels killed some nuns.[2263] However, the Defence confronted TF1-023 with a previous written statement that she gave to Prosecution investigators wherein she stated that "she had seen the nuns, and then had not seen them again", and that she "had not seen the rebels commit abuses during the walk to Waterloo but many civilians and rebels were killed by the Alpha Jets".[2264] The witness confirmed that she had made these statements and that they were truthful.[2265]

1376. para. 857: Witness Sarah Koroma was living in Loko Town, Wellington with her husband and six children on 6 January 1999.[2266] The witness and her family ran and hid in the bush for a week, on hearing that rebels anned with guns and knives had attacked Wellington.[2267] The witness stated that when the rebels arrived, they were dressed in combat unifonns and found no civilians in Wellington as everybody had run away. The rebels then sent a message telling all the civilians to return to their homes and that anyone found in the bush thereafter would be considered an enemy.[2268] The witness and her family left the bush to return home but on the way, the rebels captured them and hacked her husband to death.[2269]

1377. para. 858: The rebels abducted the witness along with many other civilians. While in captivity, she saw them hack to death a six-year-old child whose mother had attempted to escape. In addition, the rebels amputated the witness's left hand and sent her to "go and tell President

Kabbah that they want peace". They also tried to amputate her right hand but it was not severed[2270] On her way to the hospital, the witness ran into a group of drunken rebels who made fun of her injuries and accused her of being "Tejan Kabbah's mother".[2271] The witness fell in a gutter where the rebels repeatedly kicked her, pelted her with empty beer bottles and stole her money. She finally made it to Conaught Hospital alive.

i. Unlawful killing of civilians in Hastings – Freetown and the Western Area – Crimes

1378. para. 861: Alimamy Bobson Sesay testified that he was part of the rebel troops led by commanders Basky, Junior Lion and others that attacked Hastings on 3 January 1999, on the orders of Gullit,[2272] in order to fight the ECOMOG troops that were based there. Bobson Sesay told the Court that during the attack, the rebels captured three Nigerian soldiers and shot them to death.[2273]

j. Unlawful killing of civilians in Benguema – Freetown and the Western Area – Factual Findings

1379. para. 863: Prosecution Witness TF1-143 was 12 years old[2274] when he and 50 other boys and girls were captured by RUF rebels in September 1998 in Konkoba. The rebels turned him into a child soldier after carving the letters "RUF" on his chest.[2275] TF1-143 testified that when he was with the fighters in Colonel Eddie Town[2276] that his direct superior, Kabila, told him that SAJ Musa had ordered them to go to Freetown to overthrow the Government.[2277] Kabila said that SAl Musa had further ordered that when they arrived in Freetown they should not kill any civilian or bum any houses.[2278] The witness heard Commander Kabila state that SAI Musa's order would not work, and that instead the rebel troops would carry out an earlier order from O-Five called "Operation Spare No Soul", which meant that "even humans, ants, goats, all should be killed".[2279]

1380. para. 864: TF1-143 further testified that when his group of rebel fighters reached Benguema on their way to Freetown, SAJ Musa was injured when a bomb exploded in the weapons stock room and died.[2280] Kabila told TF1-143 that after SAl Musa had died, "a priest prayed on the corpse and O-Five and Gullit gave an order for a sacrifice for us to perform so we would go to Freetown and succeed, the mission would be successful, that we should bury the corpse together with a fair complexion lady and the lady should be buried alongside Sal Musa alive"[2281] According to Kabila, they tied a woman's legs up and buried her alive with SAJ Musa's body.[2282]

1381. para. 865: TF1-029[2283] referred to above[2284] testified that after she and 50 other civilians were captured in Wellington by RUF and AFRC fighters led by Major Arif on 22 January 1999, they all travelled together to Calaba Town and then to Benguema.[2285] TF1-029 further testified that as they travelled from Calaba Town to Benguema, the rebels were attacked by ECOMOG and Kamajors in a battle that involved a lot of civilian deaths.[2286] The rebels killed babies that were travelling with them because "they did not want them to make noise".[2287] TFI-029 testified that when the group reached Benguema, a rebel called Colonel "Coal Boot" killed a civilian woman prior to them leaving Benguema on l0 March 1999.[2288]

1382. para. 866: Paul Conteh,[2289] who was captured on 23 January 1999 by AFRC soldiers, including Colonel Bastard, testified that one night while he was a captive under the control of a rebel called Lt. Gunboot at Benguema, Conteh heard a 16 year-old girl crying next door. Conteh knew this girl as she used to pass by his residence to fetch water. Conteh said that although he could not see what happened, the apartment that he was staying in was close enough to Gunboot's apartment that he could hear the young woman crying and asking him "to leave her alone".[2290] One of Gunboot's "boys" confirmed to Conteh that Gunboot had killed the young woman with an axe.[2291] Conteh did not see the young woman again after this incident.[2292]

(b) Legal Conclusions

(i) Applicable law - Crimes Against Humanity ("CAH")

1383. para. 504: Article 2 of the Statute is entitled 'Crimes against humanity' and provides as follows:

> The Special Court shall have power to prosecute persons who committed the following
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> crimes as part of a widespread or systematic attack against any civilian population:
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> a. Murder;
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> 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.

1384. para. 505: In order for liability to be established under Article 2 of the Statute, the acts of the accused must have formed part of a widespread or systematic attack against any civilian population. Five chapeau (or general) requirements for crimes against humanity must be proved beyond reasonable doubt.

a. Attack – Applicable law – CAH

1385. para. 506: An 'attack' may be defined as a campaign, operation or course of conduct.[1186] It is not limited to the use of armed force but may encompass any mistreatment of any civilian population.[1187] 'Attack' is a concept different from that of "armed conflict" and need not be part of it.[1188]

b. Directed against any civilian population – Applicable law – CAH

1386. para. 507: Therefore, it must be established that a civilian population was the primary object of the attack.[1189] A population is considered a "civilian population" if it is predominantly civilian in nature.[1190] There is no requirement that the victims of the underlying crimes be "civilians," as long as the attack is directed against the civilian population.[1191] It is not required that the entire population be subjected to the attack. The Trial Chamber must, however, be satisfied that the attack was in fact directed against a civilian "population", rather than against a limited and randomly selected number of individuals.[1192]

1387. para. 508: It is an agreed fact between the Defence and the Prosecution that the terms "civilian" and "civilian population" throughout the Indictment refer to "persons who took no active part in the hostilities, or who were no longer taking an active part in the hostilities, including combatants rendered *hors de combat* by virtue of injury or wounds, capture or surrender".[1193]

1388. para. 509: With regards to alleged crimes against humanity under Article 2 of the Statute, the Trial Chamber finds that this definition of "civilian" agreed to by the parties is overly broad and inconsistent with customary international law.[1194] Referring to principles of international humanitarian law, the ICTY Appeals Chamber has distinguished between a person *hors de combat* and a civilian:

> Persons *hors de combat* are certainly protected in armed conflicts through Common Article 3 of the Geneva Conventions. This reflects a principle of customary international law. Even *hors de combat*, however, they would still be members of the armed forces of a party to the contlict and therefore fall under the category of persons referred to in Article 4(A)(I) of the Third Geneva Convention; as such, they are not civilians in the context of Article 50, paragraph 1 of Additional Protocol I. Common Article 3 of the Geneva Convention supports this conclusion in referring 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".[1195]

1389. para. 510: The Trial Chamber therefore holds that the term "civilian" must be more narrowly defined in order to ensure a distinction in an armed conflict between civilians and combatants no longer participating in hostilities. The fact that the persons are *hors de combat* during the commission of a crime, does not render them "civilian" or part of the "civilian population" for the purposes of Article 2 of the Statute. This distinction is particularly important in a case where the Prosecution alleges that crimes against humanity were committed in a situation of armed conflict.[1196]

c. Widespread or systematic – Applicable law – CAH

1390. para. 511: This requirement that an attack must be either widespread or systematic is disjunctive, so that once either condition is met, it is not necessary to consider whether the alternative is also satisfied.[1197] The tenn 'widespread' refers to the large-scale nature of the attack and the number of targeted persons, while the term 'systematic' refers to the organised nature of the acts of violence and the improbability of their random occurrence.[1198] The existence of a plan need not be proved.[1199]

d. The acts of the perpetrator must form part of the attack – Applicable law – CAH

1391. para. 512: In order for the offence to amount to a crime against humanity, there must be a sufficient nexus between the unlawful acts of the perpetrator and the attack.[1200] Although this nexus depends on the factual circumstances of each case, reliable indicia of a nexus include the

similarities between the perpetrator's acts and the acts occurring within the attack; the nature of the events and circumstances surrounding the perpetrator's acts; the temporal and geographic proximity of the perpetrator's acts with the attack; and the nature and extent of the perpetrator's knowledge of the attack when he commits the acts.[1201]

1392. para. 513: It does not suffice that an accused knowingly took the risk of participating in the implementation of a policy, plan or ideology.[1202] Nevertheless, the accused need not know the details of the attack or approve of the context in which his or her acts occur;[1203] the accused merely needs to understand the overall context in which his or her acts took place.[1204] The motives for the accused's participation in the attack are irrelevant; the accused need only know that his or her acts are parts thereof.[1205]

1393. para. 514: Findings related to this requirement are addressed in the Findings on the Crimes section of this Judgement.

e. *Mens rea* – Applicable law – CAH

1394. para. 515: The mens rea or mental requisite for crimes against humanity is that the perpetrator of the offence must be aware that a widespread or systematic attack on the civilian population is taking place and that his action is part of this attack.[1206] Evidence of knowledge depends on the facts of a particular case; thus the manner in which this legal element may be proved may vary from case to case.[1207] However, the perpetrator need not have been aware of the details of the pre-conceived plan or policy when he committed the offence and need not have intended to support the regime carrying out the attack on the civil ian population.[1208] Findings related to this requirement are addressed in the Findings on the Crimes section of this Judgement.

(ii) CAH – Findings

a. Attack directed against any civilian population – CAH – Findings

1395. para. 547: The evidence shows that starting in the pre-indictment period, the RUF committed crimes against civilians in Sierra Leone and that this pattern of crimes continued into the indictment period. From November 1996 until May 1997, the mistreatment of civilians was concentrated in Kailahun District, where the RUF subjected civilians to forced labour, sexual slavery and forced marriage.

1396. para. 548: During the junta period, civilian leaders were targeted by the AFRC/RUF fighters, as were civilians generally, particularly women and children. Civilians were the victims of killings, physical violence, rape, sexual slavery, torture and arbitrary detention perpetrated by RUF and AFRC fighters. During this time, the evidence demonstrated that there were large numbers of civilian victims and that attacks were widespread and occurred in the areas that were under control of the AFRC/RUF junta forces.[1307] This mistreatment of civilians during junta rule demonstrates that the RUF and AFRC specifically targeted the civilian population in order to minimise any resistance or opposition to the regime. The pattern of crimes by the RUF and AFRC which were directed against civilians persisted and intensified during this period.

1397. para. 549: From February 1998 to December 1998, civilians were further victimised. During operations such as 'Operation No Living Thing', 'Operation Spare No Soul' and 'Operation Pay Yourself, AFRC and/or RUF fighters were explicitly ordered to kill civilians by commanders, burn their settlements and take their property, demonstrating a clear intention to direct attacks against civilians and to terrorise the population. The latter is demonstrated by the pattern of conduct of the attacks that were conducted with the aim of spreading fear amongst the population in order to control them and with the aim to cail on the attention of the international community. During the operations fighters carried out orders by killing, mutilating, raping and abducting civilians throughout Sierra Leone.

1398. para. 550: From January 1999 until December 1999, the evidence shows that the RUF and AFRC continued to commit crimes against civilians. While these crimes took place in the context of an armed conflict, attacks were particularly directed against civilians. Women and children were amongst the victims of the attacks and attacks continued to be directed against civilian settlements. The brutality and the vengeful nature of the attacks further indicate a specific focus on the civilian population.

1399. para. 551: The mistreatment of civilians continued into the later stages of the conflict. The RUF in Kono District continued to forcibly use civilian labour for mining. While active hostilities occurred in some areas of Sierra Leone, such as in Kambia and Makeni Districts, civilians were forcibly abducted to participate in the RUF's war effort. Civilians continued to be intentionally targeted as sources of labour and fighters.

1400. para. 552: Based on the above, the Trial Chamber finds beyond reasonable doubt that at all times relevant to the indictment an attack was directed against the civilian population of Sierra Leone by the RUF and/or RUF/AFRC.

b. Widespread or systematic attack – CAH – Findings

1401. para. 553: The RUF's use of forced civilian labour and physical violence in Kailahun District from 1996 until 2000 was continuous, organized and structured. From 1994 to 1998, rebels repeatedly abducted civilians from the war front and used them for labour or trained them to fight. They used abducted women as "wives". The pattern of mistreatment shows that crimes were not isolated or random, but rather formed part of a continuous campaign directed against civilians in communities that the RUF controlled. This pattern of civilian mistreatment remained a feature of the RUF regime throughout the conflict, and resulted in large numbers of civilian being mistreated, through abductions, forced labour and sexual enslavement, in various towns and villages throughout Kailahun District.

1402. para. 554: During the junta phase, the number of civilian subjected to severe mistreatment increased as the conflict spread throughout the territory of Sierra Leone.

1403. para. 555: From February 1998 to December 1998, human rights abuses intensified, leaving thousands of civilians killed or mutilated by RUF and AFRC fighters. Hundreds of civilians were abducted, raped and the burning of houses and looting continued to occur.

1404. para. 556: In 1999, the evidence shows that thousands of civilians were killed during the attack on Freetown and the subsequent retreat through Kissy, Upgun, Calaba Town, Allen Town, Hastings, Wellington, Waterloo and Benguema and that thousands of others were abducted, burnt, beaten, mutilated and/or sexually abused. Further violence was directed towards civilians in Masiaka, Port Loko, and the Occra Hills.

1405. para. 557: Attacks continued to occur against the civilian population at all times relevant to the Indictment, affecting large numbers of civilians throughout the north and east of Sierra Leone, e.g. Kailahun, Kambia and Kono Districts. Civilians continued to be abducted by rebels in Makeni and Kambia Districts and a large number of civilians continued to be captured and brought to mining sites in Kono District.

1406. para. 558: Based on the large number of victims and the geographic scope of the crimes throughout the indictment period, the Trial Chamber finds that at all times relevant to the indictment the Prosecution has proven beyond reasonable doubt that the RUF, AFRC and/or the RUF/AFRC directed a widespread attack against the civilian population of Sierra Leone. Moreover, based on the pattern and organisation of the violence the evidence demonstrates beyond reasonable doubt that the attack was also systematic.

c. Conclusion on the *Chapeau* Requirements – CAH – Findings

1407. para. 559: The Trial Chamber accordingly finds that at all times relevant to the Indictment the Prosecution has proven beyond reasonable doubt that the RUF and/or AFRC directed a widespread or systematic attack against the civilian population; resulting in the following crimes against humanity having been committed: murder (Count 2), rape (Count 4), sexual slavery (Count 5), other inhumane acts (Count 8) and enslavement (Count 10).

(iii) Unlawful killings – Applicable law

1408. para. 411: In Count 2, the Indictment charges the Accused with murder as a crime against humanity, punishable under Article 2(a) of the Statute.[1012] In addition, or in the alternative, Count 3 charges the Accused with 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.[1013]

1409. para. 412: The elements defining murder are identical regardless of the provision under which it is charged.[1014] Thus, in addition to the chapeau requirements of Crimes against Humanity pursuant to Article 2 of the Statute (for Count 2) and the chapeau requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute (for Count 3), the following elements of the crime of murder must be proved beyond reasonable doubt:

> i. The perpetrator by his acts or omission caused the death of a person or persons;
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> and
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> ii. The perpetrator had the intention to kill or to cause serious bodily harm in the
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> reasonable knowledge that it would likely result in death.[1015]

1410. para. 413: For the physical elements of murder to be satisfied, the Prosecution is required to establish beyond reasonable doubt that the perpetrator's conduct substantially contributed to the death of the person.[1016] The death of the victim may be demonstrated through circumstantial evidence, provided it is the only inference that may reasonably be drawn from the acts or omissions of the perpetrator.[1017] Therefore it is not necessary to require proof that the dead body of that person has been recovered.[1018]

(iv) General – Legal Conclusions

1411. para. 582: The Trial Chamber has, in the Chapter on Preliminary Issues, ruled on evidence falling outside the temporal and/or geographical scope of the Indictment;[1336] locations and criminal acts not specifically pleaded in the Indictment;[1337] as well as timeframes imprecisely pleaded in the Indictment.[1338] The submissions relating to specific Counts in the Indictment are appropriately handled under each Count. The Trial Chamber will now examine the evidence relating to the various Counts in the Indictment. For ease of reference Count I (Acts of terrorism) is examined after the other Counts as it encompasses evidence relating to all the other Counts. In examining the crime-base evidence, the Trial Chamber does not at this stage examine the role if any, played by the Accused or his alleged criminal responsibility for the said crimes, as these are matters more appropriately examined under the Chapter on the Role of the Accused and his alleged criminal responsibility.[1339] Accordingly, the Trial Chamber's findings in this Chapter are limited to the primary perpetrators.

(v) Kenema District – Unlawful killings

a. Kenema Town – Kenema District – Unlawful killings

i. Killing of Mr. Dowie – Kenema Town – Kenema District – Unlawful killings

1412. para. 589: The Trial Chamber finds Bao's account of this killing in the three trials, namely, the RUF, AFRC and the current trial, to be consistent and credible. His testimony is based on an official complaint filed by Mrs. Dowei, an eye witness to the killing. Although he could not carry out a thorough investigation due to the shooting going on in the area, Bao visited the Dowei residence and saw the body of the deceased bearing two bullet wounds as described by Mrs. Dowei in her Police Statement. The Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that the AFRC/RUF forces, intentionally shot and killed Mr Dowei, a civilian taking no active part in the hostilities, in order to steal his property. Given that Mr Dowei was killed while trying to protect his property from being looted, the Trial Chamber finds beyond reasonable doubt that the perpetrators carried out this killing with the primary purpose of instilling terror in other civilians who would similarly attempt to resist the looting.

ii. Killing of three civilians near Mambu Street – Kenema Town – Kenema District – Unlawful killings

1413. para. 591: Bao's testimony regarding his discovery of three corpses behind the house of Pa Mansaray is circumstantial and uncorroborated. Bao did not witness the actual killing of the three persons and is therefore unaware of the specific circumstances of their death. He merely assumed that the three victims were killed by the AFRC/RUF forces that were engaged in the looting of civilian property. The Prosecution did not adduce any evidence connecting those deaths in any way to the looting spree that had been taking place earlier that day or to the burning of Pa Mansaray's house. Given Bao's testimony that fighting between the AFRC/RUF fighters and the Kamajors was ongoing around the area and that Pa Mansaray's house was being used as a base for the Kamajors, it is possible that the three people could have been killed in the cross fire by either group. In the circumstances, the Trial Chamber finds that the Prosecution has not proved beyond reasonable doubt that the death of the three persons behind Pa Mansaray's house was unlawfully caused by the AFRC/RUF as alleged.

iii. Killing of Bonnie Wailer and other suspected burglars – Kenema Town – Kenema District – Unlawful killings

1414. para. 595: Although there are differences between the accounts of Bao and Hyde regarding the number of suspects arrested and as to the person that pulled the trigger, their accounts corroborate each other in many important respects. First, both witnesses testified that the event happened soon after the coup of May 1997. Second, both witnesses stated that the suspects were arrested by a combined team of AFRC/RUF fighters on allegations of burglary and theft. Third, they both described at least one of the suspects as being a "notorious criminal". Fourth, both witnesses stated that the execution of the suspects was public and witnessed by the citizens of Kenema Town. Fifth, both witnesses stated that although Bonnie Wailer was dressed in combat uniform he was, in fact, a civilian who was impersonating the rebels. Sixth, according to both witnesses, the suspects had not officially been charged in a court of law when they were executed. Lastly, the suspects were shot dead by one of the AFRC/RUF fighters present on the orders of a superior commander.

1415. para. 596: Given that Hyde was traumatised and left the scene soon after the first shot, the Trial Chamber relies more on the evidence of Bao who stayed and who testified that he heard Sam Bockarie give the order to shoot the suspects. Accordingly, based on the above evidence, the Trial Chamber tinds that the Prosecution has proved beyond reasonable doubt that in late Mayor June

1997 at Kenema Town Police Station, a group of AFRC/RUF fighters acting under the orders of Sam Bockarie and in the presence of senior AFRC commander Eddie Kanneh, intentionally killed three persons. Bao testified that it was three persons suspected of burglary, including Bonnie Wailer, Sydney Cole and Bangura, all civilians who were not taking an active part in hostilities.

1416. para. 597: In this instance, the evidence establishes that the AFRC/RUF commanders, including Sam Bockarie and Eddie Kanneh, gathered the citizens of Kenema Town whom they specitically wanted to witness the punishment meted out to civilians who would dare to impersonate the rebels or bring their name into disrepute. These executions took place at the police station and in full view of the police personnel and members of the public, and the bodies were left at the scene on display for the rest of the day as an example to the residents of Kenema Town. The Trial Chamber accordingly finds beyond reasonable doubt that the perpetrators wilfully made the victims the object of such violence with the primary purpose of instilling terror in the civilian population in Kenema.

iv. Killing of a farmer at the NIC building – Kenema Town – Kenema District – Unlawful killings

1417. para. 599: The Trial Chamber finds Bao's account of this killing in the three trials, namely, the RUF trial, AFRC trial and the current trial, to be detailed, consistent and credible. Based on that evidence, the Trial Chamber finds that the victim was a civilian farmer taking no active part in the hostilities when he met his death. Although Bao's account of who actually shot the farmer is based partly on circumstantial evidence and partly on hearsay from the bystanders, the Trial Chamber finds that the circumstances relating to the arrest and shooting of the victim, including: 1) the rebels dancing and singing while referring to the victim as "a Kamajor, that they had captured and would take to Sam Bockarie"; 2) the statements Sam Bockarie made at the scene of crime that he must finish all the Kamajors and his brandishing of the smoking gun over the victim's body; and 3) the statements of bystanders implicating Bockarie in the killing, all lead to one reasonable inference that Sam Bockarie intentionally shot and killed a captured farmer in cold blood because he suspected that he was a Kamajor. The Trial Chamber accordingly finds that the Prosecution has proved beyond reasonable doubt that around September 1997 in front of the NIC building then housing the RUF rebels, Sam Bockarie intentionally shot and killed a farmer that was not taking an active part in hostilities.

1418. para. 600: In this instance, the AFRC/RUF fighters accused the farmer of being a Kamajor (i.e. a perceived enemy of the Junta forces) prior to handing him over to Bockarie. After killing

the farmer in full view of the public, Bockarie announced that he would do the same to all Kamajors, thereby sending a clear and unequivocal message to the civilian population not to associate with the Junta's enemies. The Trial Chamber finds beyond reasonable doubt that Sam Bockarie wilfully made the victim the object of such violence with the primary purpose of instilling terror in the civilian population of Kenema Town.

v. Killing of Santos and an alleged thief – Kenema Town – Kenema District – Unlawful killings

1419. para. 602: The Trial Chamber finds Bao's account of these killings in the three trials, namely, the RUF, AFRC and the current trial, to be consistent and credible. Although Bao's evidence as to who killed the two people is partly circumstantial and partly based on hearsay or "widespread rumour", the Trial Chamber finds that the circumstances surrounding these deaths, including the inquiry by Sam Bockarie about the progress of the police investigation into the alleged theft, his unsolicited offer to help the police by looking for the suspects, and his collection of the bodies from the scene of crime three days later, all lead to one reasonable inference that Sam Bockarie intentionally killed these two people, neither of whom had properly been tried by a court of law. This circumstantial evidence corroborates the hearsay evidence implicating Sam Bockarie in these killings. Accordingly, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that in November 1997 in front of Capital Cinema in Kenema Town, Sam Bockarie intentionally shot and killed two civilians, including one Santos, that were not taking an active part in hostilities.

1420. para. 603: Given that perpetrators summarily executed the civilian suspects without trial and left their bodies lying in full public view for three days before taking them away, the Trial Chamber finds beyond reasonable doubt that Sam Bockarie wilfully made the victim the object of such violence with the primary purpose of the killings to instil terror in the civilian population in Kenema Town.

vi. Killing of an alleged "Kamajor Boss" on Hangha Road – Kenema Town – Kenema District – Unlawful killings

1421. para. 605: The Trial Chamber finds Bao's account of this killing in the three trials, namely, the RUF, AFRC and the current trial, to be consistent and credible. Based on that evidence, the Trial Chamber is satisfied beyond reasonable doubt that the man described by the witness as "a peaceful citizen" and as wearing "plain clothes and not a Kamajor uniform" was a

civilian not taking an active part in the hostilities when he was killed. Although Bao's evidence as to who killed this man is circumstantial, the Trial Chamber finds that the circumstances surrounding that death, including the bizarre conduct of the AFRC/RUF fighters in dancing and singing aloud that "they had captured and killed the Kamajor boss", and disembowelling his body and using the entrails as a "check point", all reasonably lead to one inference that the AFRC/RUF fighters intentionally killed this civilian suspecting him of being a member of the Civil Defence Force, a perceived enemy of the AFRC/RUF forces. Accordingly, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that in December 1997 on Hangha Street near the Sierra Leone Telecommunication house, the AFRC/RUF fighters intentionally killed a civilian that was not taking an active part in hostilities.

1422. para. 606: Given that this killing was part of the operation code-named "Operation No living thing", the AFRC/RUF fighters' bizarre conduct in disembowelling the man's body and using the entrails as a "check point", and in leaving his body on public display for three days before removing it, the Trial Chamber finds beyond reasonable doubt that the perpetrators wilfully made the victim the object of such violence with the primary purpose of the killing to instil terror in the civilian population in Kenema Town.

vii. Killing of Mohamed Fityia – Kenema Town – Kenema District – Unlawful killings

1423. para. 609: The Trial Chamber finds Karmoh Kanneh's eyewitness account of the killing of Fityia credible and consistent. Kanneh was based at the RUF base at the NIC compound in Kenema Town and was personally involved in investigating the complaint against Fityia. He was also present when Sam Bockarie shot Fityia. The Trial Chamber accepts Bao's evidence that he saw Fityia's body lying in Sombo Street but finds his evidence as to Fityia's alleged involvement in the robbery of a Lebanese diamond dealer unreliable as it is based on uncorroborated hearsay. Accordingly, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that a few months before the ECOMOG intervention, in Sombo Street, Kenema Town, Sam Bockarie intentionally shot and killed Mohamed Fityia, a civilian not taking active part in the hostilities.

1424. para. 610: Given the summary execution of a civilian suspect without trial, including Bockarie's conduct in publicly exhibiting the corpse on Sombo Street, the Trial Chamber finds beyond reasonable doubt that Sam Bockarie wilfully made the victim the object of such violence with primary purpose of this killing to instil terror in the civilian population in Kenema Town.

viii. Killing of Brima S. Massaquoi and others – Kenema Town – Kenema District – Unlawful killings

1425. para. 622: The Trial Chamber finds the evidence of the two policemen, Alex Bao and Adesanya Sanya Hyde regarding the circumstances surrounding the death of B.S. Massaquoi, Andrew Quee, Issa Ansumana, Abdulai Bockarie and John Swanay, credible and reliable. Both witnesses were deployed as policemen at Kenema Police Station during the period of May 1997-February 1998 when the arrests, detention and killing of the prisoners took place, Their testimony is corroborated by the Kenema Police Diary documenting the arrest, detention and release of the prisoners by the police into the custody of the AFRC/RUF, which information was not challenged. Although the evidence of these two witnesses as to who killed the prisoners is partly circumstantial and partly based on hearsay or "widespread rumour", the Trial Chamber finds that the circumstances surrounding these deaths, including the initial arrest, detention and torture of the prisoners by the AFRC/RUF fighters in Kenema; the unsubstantiated accusations by Sam Bockarie that the prisoners were "Kamajor supporters" and his threat to execute them; Bockarie's furious conduct upon learning that the police had released the prisoners and his ordering their re-detention and repeated threat to execute them immediately prior to the ECOMOG Intervention; and the dumping of the prisoners' bullet-riddled bodies in a river, all lead to one reasonable inference that the AFRC/RUF juntas led by Sam Bockarie intentionally killed the prisoners on suspicion that they were Kamajor supporters.

1426. para. 623: Furthermore, the Trial Chamber has considered the evidence of Karmoh Kanneh an RUF insider closely associated with Sam Bockarie and based at the RUF headquarters in Kenema Town at the material time, and finds it credible. His evidence relating to the arrest detention and torture of the prisoners on the orders of Sam Bockarie, is consistent with other Prosecution evidence. More importantly, his eye-witness account of the killing of Massaquoi by Bockarie's security men corroborates the earlier circumstantial evidence discussed above. The hearsay evidence of other Prosecution and Defence witnesses referred to above and the content of the two reports quoted above are further corroboration of these killings. Although there are variations in the names of the prisoners as given by the various witnesses, the Trial Chamber is of the view that a number of prominent civilians were executed on this occasion but that most witnesses recall the most prominent of the deceased persons, namely B.S. Massaquoi. Other witnesses including Kanneh recall particular prisoners like Dr Momoh and Ibrahim Gbacka having known them before. The Trial Chamber also finds the timing of the arrest, detention and killing of these civilians relevant. These events took place immediately after the AFRC/RUF forces had been driven out of Freetown by the ECOMOG forces and at a time when the AFRC/RUF forces in

Kenema were anticipating a similar attack and defeat by ECOMOG and Kamajor forces in Kenema. The victims, suspected or perceived by the AFRC/RUF forces in Kenema to have been supporters of "the enemy forces" (albeit without proof), were thus killed in revenge or reprisal for perceived support of the Junta's enemies.

1427. para. 624: Based on the above oral and documentary evidence, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that in early February 1998 in Kenema Town, AFRC/RUF forces led by Sam Bockarie intentionally killed a number of civilians not taking an active part in hostilities, including B.S. Massaquoi, Andrew Quee, Issa Ansumana, Abdulai Bockarie and John Swanay. Given the timing and circumstances of these deaths described above, the Trial Chamber further finds beyond reasonable doubt that Bockarie wilfully made the victims the object of such violence with the primary purpose of these killings to instil terror in the civilian population.

b. Tongo Fields – Kenema District – Unlawful killings

i. Killing of three persons in residential house – Tongo Fields – Kenema District – Unlawful killings

1428. para. 627: The Trial Chamber finds the eye-witness account of TF1-062 credible. The evidence establishes beyond reasonable doubt that the perpetrators carried out these killings in reprisal against persons they perceived or suspected to be enemies of the Junta forces. Based on that evidence, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that in August 1997 in Tongo Fields, RUF/AFRC fighters intentionally shot to death three civilians that were not taking an active part in the hostilities. Given that the perpetrators accused the victims of being "Kamajors" at a time when the AFRC/RUF forces were under threat of attack from ECOMOG and the Kamajors, the Trial Chamber further finds beyond reasonable doubt that the perpetrators wilfully made the victims the object of such violence with primary purpose of these killings to instil terror in the civilian population by making an example of would-be enemies of the Junta forces, thereby guaranteeing civilian loyalty.

ii. Killing of 15 civilians at Bumpe near Tongo Fields around September 1997 – Tongo Fields – Kenema District – Unlawful killings

1429. para. 631: The Trial Chamber finds Conteh's testimony credible. As a prominent member of the Lower Bambara Care-Taking Committee that was charged with overseeing the welfare of

the citizens of the Chiefdom, he was privy to vital information regarding the treatment of these citizens by the AFRC/RUF administration. Oftentimes he not only documented the complaints received but also personally investigated some of them. The reports cited above corroborate his oral testimony with regard to the 15 deaths in Bumpe and the two deaths in Panguma. Based on that evidence the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that around 8 September 1997, at Bumpe on the outskirts of Tongo Fields, AFRC/RUF fighters retreating from battle intentionally shot and killed 15 civilians including one Saffa Balie, who were not taking an active part in the hostilities. In addition, the Trial Chamber tinds that the Prosecution has proved beyond reasonable doubt that around 16 September 1997 at Panguma, AFRC/RUF fighters retreating from battle intentionally shot and killed Pa Vandi Sei, the Town Chief and John Dakowah, a retired Policeman, both of whom were civilians not taking an active part in the hostilities. However since the Prosecution did not specifically plead Panguma as a crime base in the Indictment, the evidence in relation to the two deaths at Panguma serves only to prove the Chapeau requirements of murder within Kenema District.[1509]

1430. para. 632: The above evidence establishes that the AFRC/RUF forces carried out revenge killings after suffering heavy casualties during a previous military operation against the Kamajors Civil Defence force. In this instance, the perpetrators, including Lt. Sekou Kunnateh, the O/C of the AFRC Secretariat at Tongo, justified the killing of innocent civilians by branding them "Kamajors or Kamajor collaborators" and preventing the other civilians from burying the dead by threatening them with death. The Trial Chamber finds beyond reasonable doubt that the perpetrators wilfully made the victims the object of such violence with the primary purpose of these killings to instil terror in the civilian population, thereby guaranteeing their loyalty.

iii. Killing of civilians engaged in mining at Pandembu, Sandeyeima and Wuima in Tongo Fields Area – Tongo Fields – Kenema District – Unlawful killings

1431. para. 635: Conteh's evidence, although partly circumstantial, and partly based on the reports that he received from citizens of Tongo in his capacity as a member of the Care-Taker Committee, is credible. He and other members of the Lower Bambara Care-Taking Committee visited the scene of the shooting at Pandembu and saw the bullet riddled corpses as well as the wounded survivors. Although Conteh did not see the child combatants in action and was merely told about it, the response of Lt. Sekou Kunnateh, the O/C of the AFRC Secretariat in Tongo confinns the report that Conteh received, namely, that Sam Bockarie sent the child combatants to kill those civilians that were mining diamonds for themselves. The Trial Chamber therefore finds

that the Prosecution has proved beyond reasonable doubt that during the Junta's occupation of Tongo Fields,[1519] AFRC/RUF child combatants acting under the orders of Sam Bockarie and with the approval of Lt. Sekou Kunnateh, intentionally shot and killed three civilians at Pandembu, two civilians at Sandeyeima and three civilians at Wuima, all of whom were not taking an active part in hostilities.

1432. para. 636: Given the slave-like conditions under which the AFRC/RUF Junta forced civilians to mine for them and forbade them from mining for personal benefit, the Trial Chamber finds beyond reasonable doubt that the perpetrators wilfully made the victims the object of such violence with the primary purpose of the killing of the civilian miners in Tongo Fields to instil terror in the civilian population, thereby guaranteeing their continued servitude and continuing to control the mining activities in the District.

iv. Killing of civilian miners at Cyborg Pit – Tongo Fields – Kenema District – Unlawful killings

1433. para. 640: The testimony of TF1-062 regarding the various killings at Cyborg Pit is an eyewitness account. His role as supervisor of his miners accorded him a rare opportunity to observe the manner in which the AFRC/RUF commanders and guards were treating the civilian miners on site. His testimony in relation to the death of the child miner and that of the civilian killed by an angry soldier are therefore credible and reliable. As regards the two or three corpses that he observed being brought out of the pit on a regular basis, the witness's account is based on circumstantial evidence. Although he could not say whether the oozing of blood on these corpses was the result of bullet wounds or knife stabbings, nor attest to hearing any gunshots inside the pit, the Trial Chamber is of the view that these miners did not die from natural causes and must have met their death violently inside the pit. Secondly, since the only people armed at Cyborg Pit were the AFRC/RUF guards and since they were at liberty to mete out punishment or even death to disobedient or uncooperative miners, the only reasonable inference is that these civilians were killed by these guards. Accordingly, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between 11 August 1997 and January 1998 at Cyborg Pit in the Tongo Fields area, RUF/AFRC guards intentionally killed an unknown number of civilian miners including a child, all of whom were not taking an active part in the hostilities.

1434. para. 641: Given the slave-like conditions under which the AFRC/RUF Junta forced civilians to mine for them and forbade them from mining for personal benefit, the Trial Chamber finds beyond reasonable doubt that the perpetrators wilfully made the victims the object of such

violence with the primary purpose of the killing of the civilian miners at Cyborg Pit to instil terror in the civilian population, thereby guaranteeing their continued servitude and continuing to control the mining activities in the District.

c. Alleged unlawful killings in locations in Kenema District not pleaded in the Indictment

1435. para. 642: The Trial Chamber received credible evidence of murder of civilians in a number of locations within Kenema District not specifically pleaded in the Indictment including, Mendekelema, Neama and Sandaru.[1531] As previously held, this evidence will only be taken into account in relation to the chapeau requirements of the alleged crimes and not for proof of guilt.[1532]

d. Conclusion – Unlawful Killings – Kenema District

1436. para. 643: In conclusion, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between about 25 May 1997 and about 31 March 1998, in various locations in Kenema District including Kenema Town and the Tongo Fields area, members of the AFRC/RUF murdered an unknown number of civilians in Kenema District, as charged in the Indictment[1533] and as shown in the above evidence.

1437. para. 644: The Trial Chamber recalls that the Prosecution has established beyond reasonable doubt that at all times relevant to the Indictment, the RUF and/or AFRC forces directed a widespread or systematic attack against the civilian population of Sierra Leone.[1534] The Trial Chamber is satisfied that each of the killings proved by the Prosecution in respect of Kenema District formed part of the said attack and that the perpetrators were aware of this fact. The Trial Chamber also recalls that the Prosecution has proved beyond reasonable doubt that there was an armed conflict in Sierra Leone at all times relevant to the Indictment, involving among others, members of the RUF, AFRC and CDF.[1535] The Trial Chamber is satisfied that for all of the aforementioned killings in Kenema District there was a nexus between the killings and the armed conflict, that each of the victims was not taking an active part in the hostilities at the time of death, and that the perpetrators knew this fact. Therefore, the Trial Chamber is satisfied that the aforementioned killings in Kenema District constitute murder as both a crime against humanity under Article 2 of the Statute and a war crime under Article 3 of the Statute.

(vi) Kono District – Unlawful killings

a. Koidu Town – Kono District – Unlawful killings

i. Killing of civilians at Yardo Road, Hill Station and Superman Ground in February/March 1998 – Koidu Town – Kono District – Unlawful killings

1438. para. 658: Alimamy Bobson Sesay was part of the AFRC forces that fled from Freetown after the February 1998 ECOMOG Intervention who were based in Koidu Town. He not only participated in the meetings at which certain operational orders were given by senior commanders but he also participated in the carrying out of those orders. The Trial Chamber finds Bobson Sesay's above evidence reliable and credible. Isaac Mongor was also part of the RUF forces that were based in Koidu Town after the ECOMOG Intervention. Like Bobson Sesay, Mongor too was privy to operational orders that were issued by senior RUF or AFRC commanders. The Trial Chamber finds his above evidence credible and reliable, and that it corroborates the account of Bobson Sesay. TF1-189 was captured by the AFRC/RUF rebels and her testimony is based on her experience in captivity and on what she saw and heard. The Trial Chamber finds her above evidence reliable and credible. The Trial Chamber also finds the evidence of TF1-375 reliable and credible. His eye-witness account is based on his participation in the operations of the AFRC/RUF forces that captured Koidu Town. Furthermore, the Trial Chamber finds that the accounts related by each of the four witnesses relating to the attacks by the AFRC/RUF on civilians in Koidu Town in the months following the ECOMOG Intervention, are consistent and accord with the documentary evidence contained in Exhibits P-366 and P-078.

1439. para. 659: Based on the evidence of Alimamy Bobson Sesay, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that in early March 1998 at Yardo Road in Koidu Town, AFRC/RUF forces acting on the orders of SAJ Musa, Johnny Paul Koroma and Issa Sesay, intentionally shot and killed an unknown number of civilians, all of whom were not taking an active part in the hostilities.

1440. para. 660: Based on the evidence oflsaac Mongor, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that in early March 1998 at Hill Station in Koidu Town, an RUF commander called Denis Mingo (a.k.a. Superman) intentionally shot and killed 13 civilians including men, women and children, all of whom were not taking an active part in the hostilities.

1441. para. 661: Based on the evidence of Prosecution Witness TF1-189, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that in early March 1998 at a location named "Superman compound" in Koidu Town, AFRC/RUF forces acting under the orders of Superman, intentionally shot and killed a woman; tortured to death an elderly man, and executed an unknown number of abducted civilians, all of whom were not taking an active part in the hostilities.

1442. para. 662: Based on the evidence of TF1-375 and the documentary evidence above, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that in early March 1998 AFRC/RUF forces acting under the command of Denis Mingo (a.k.a. Superman), deliberately burned to death an unknown number of civilians who were hiding in their houses and who were not taking an active part in the hostilities.

1443. para. 663: The above oral and documentary evidence clearly establishes that the perpetrators acting in accordance with orders given by their commanders, deliberately targeted civilians in Koidu Town in order to prevent them from staying in or returning to Koidu Town and in order to maintain the diamond-rich Kono District as a strong Junta base from which the AFRC/RUF fighters would finance and mount further attacks upon their enemies including ECOMOG and the CDF or Kamajors. In light of that evidence, the Trial Chamber finds beyond reasonable doubt that the perpetrators wilfully made the victims the object of such violence and the primary purpose of these killings to instil terror in the civilian population.

ii. Killing of civilians in and around Koidu Town between April and May 1998 – Koidu Town – Kono District – Unlawful killings

1444. para. 670: Teh spent some time with the AFRC/RUF forces while in captivity and witnessed some of their activities first hand. His evidence is based on an eye-witness account of what he saw and heard. The Trial Chamber finds his evidence in relation to the killing of civilians in Koidu Town between March and April 1998, reliable and credible. His evidence of how civilians were sometimes tricked by the AFRC/RUF forces into believing that the latter were ECOMOG, only to be killed by the rebels, is corroborated by the account given in Exhibit P-078 and confidential Exhibit P-077. Based on the above evidence, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between April and May 1998 during an attack on Koidu Town: 1) AFRC/RUF forces intentionally shot and killed one Aiah Abu at Sunna Mosque in Koidu Town; 2) an RUF Commander Emmanuel Williams a.k.a. "Rocky" acting under the orders of an AFRC Brigade commander called "Rambo", intentionally executed 101 captured

men and had their bodies decapitated at a place called the Igbaleh in Koidu Town, and 3) child soldiers known as SBUs acting under the orders of Commander Emmanuel Williams a.k.a. "Rocky" intentionally dismembered and killed a young boy and threw his body in a pit latrine at the Igbaleh in Koidu Town. The Trial Chamber further finds that all the victims of the above-mentioned killings were civilians not taking an active part in the hostilities.

1445. para. 671: However, in relation to the 50 corpses that Teh saw on his way to Igbaleh, the Prosecution did not provide evidence as to whether the victims were active combatants or civilians, nor of who had killed them. Given Teh's testimony that heavy fighting was reportedly going on between ECOMOG and the Junta forces in the area at the time,[1613] the Trial Chamber is unable to make a conclusive finding as to who these 50 people were or how they died.

1446. para. 672: The above oral and documentary evidence clearly establishes that the perpetrators, acting in accordance with orders given by their commanders, deliberately targeted civilians in Koidu Town in order to prevent them from staying in or returning to Koidu Town. The deliberate tricking of civilians into showing their support for ECOMOG followed by mass execution of those civilians by the AFRC/RUF forces underlines the campaign of reprisal against the civilian population. The Trial Chamber finds beyond reasonable doubt that the perpetrators wilfully made the victims the object of such violence and the primary purpose of these killings was to instil terror in the civilian population.

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iii. Other killings around Koidu Town between December 1999 and the disarmament – Koidu Town – Kono District – Unlawful killings

1447. para. 674: The account by TF1-077 of civilian deaths, including that of one of his children, is based on circumstantial evidence. From his evidence it is clear that there was exchange of fire between ECOMOG and the RUF forces the previous night. He was fortunate enough to survive by hiding behind his house, but the presence of many corpses the next morning is proof that a lot of civilians died during this exchange. His own child was amongst the casualties. Based on this evidence however, the Trial Chamber cannot rule out the possibility that the civilians were accidentally caught in the cross fire, nor can the Trial Chamber rule out the possibility that some were killed by ECOMOG forces. The Trial Chamber however, finds the witness's evidence regarding the death of civilians forced by the RUF to mine at Tombudu Bridge, credible. Based on

that evidence, the Trial Chamber finds that the Prosecution has proved that from December 1999 until the disarmament, RUF forces intentionally killed an unknown number of civilians who refused to mine for the AFRC/RUF at Tombudu Bridge or who were denied medical treatment.

1448. para. 675: Given the slave-like conditions under which the AFRC/RUF Junta forced civilians to mine for them and forbade them from mining for personal benefit, the Trial Chamber tinds beyond reasonable doubt that the perpetrators wilfully made the victims the object of such violence and the primary purpose of the killing of the civilians who refused to carry out forced mining at Tombodu Bridge was to instil terror in the civilian population and thereby to continue controlling the mining activities in Kono District.

b. Bumpe – Kono District – Unlawful killings

i. Killings in Bumpe between March and June 1998 – Bumpe – Kono District – Unlawful killings

1449. para. 682: Based on his aforesaid position within the AFRC/RUF and his participation in their operations in Kono District, the Trial Chamber finds Bobson Sesay's above evidence reliable and credible. The Trial Chamber also tlnds that Sesay's evidence is amply corroborated by the evidence of Alice Pyne and TF1-375. Further, the Trial Chamber finds the account given by TF1-218 credible. Although her account of the civilian deaths is based partly on her ordeal while in captivity and partly on the report by her son who witnessed the killings, the Trial Chamber finds the evidence compelling and draws the one reasonable inference that the rebels shot and killed many civilians in this house at Cookery Junction. The Trial Chamber also found the evidence of Perry Kamara credible and reliable, given his position within the RUF at that time. His description of the orders by the various RUF commanders to "make Kono District fearful" is consistent with the evidence of Bobson Sesay.

1450. para. 683: Thus while the actual number of civilian deaths in Bumpe is unknown, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between March and June 1998, during an attack on Bumpe, the AFRC/RUF forces acting under the orders of several commanders including Lt. Amara Kallay, Hassan Papa Bangura, Superman, Sam Bockarie, Morris Kallon, CO Rocky and others, intentionally killed an unknown number of civilians, all of whom were not taking an active part in the hostilities.

1451. para. 684: The above evidence clearly establishes that the perpetrators acting in accordance with orders given by their commanders to "make Kono fearful", deliberately targeted civilians in Bumpe in order to prevent them from staying in or returning to Bumpe. That campaign of terror entailed not only murders but also the burning down of homes; mass amputations and the bizarre display of human heads on sticks at various checkpoints. The Trial Chamber finds beyond reasonable doubt that the perpetrators wilfully made the victims the object of such violence and the primary purpose of these killings was to instil terror in the civilian population.

c. Tombodu – Kono District – Unlawful killings

i. Massacre of more than 20 civilians in Tombodu around March or April 1998 – Tombodu – Kono District – Unlawful killings

1452. para. 686: The Trial Chamber finds the evidence of Alimamy Bobson Sesay, a participant in this attack, credible and reliable. The Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that around March or April 1998 the AFRC/RUF forces that attacked Tombodu intentionally massacred more than 20 civilians in Tombodu, all of whom were not taking an active part in the hostilities.

1453. para. 687: The above evidence clearly establishes that the perpetrators, acting in accordance with orders given by their commanders to "make Kono fearful", deliberately targeted civilians in Tombudu in order to prevent them from staying in or returning to Tombodu. The deliberate tricking of civilians into showing their support for what they believed were "Government forces", followed by mass execution of those civilians by the AFRC/RUF forces, demonstrates the Juntas' reprisal against the civilian population. The Trial Chamber finds beyond reasonable doubt that the perpetrators wilfully made the victims the object of such violence and the primary purpose of these killings was to instil terror in the civilian population.

ii. Second Massacre at Tombudu involving 77-78 civilians around April 1998 – Tombodu – Kono District – Unlawful killings

1454. para. 691: The Trial Chamber finds the evidence of Alimamy Bobson Sesay credible as he was an eye-witness to the killings. Furthennore, his evidence is corroborated by that of TF1-375, who saw the large pit containing bodies of civilians and severed limbs, and of Perry Kamara who received reports of the civilian killings. Based on the above evidence, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that around April 1998, AFRC/RUF forces

led by Savage, and with the approval of commanders Superman and Bomb Blast, intentionally killed about 63 civilians in Tombodu, that were not taking an active part in the hostilities.

1455. para. 692: The evidence establishes that the AFRC/RUF Juntas acting in accordance with orders earlier given by their commanders to "make Kono fearful", deliberately targeted the civilian population in order to prevent them from staying in or returning to Tombodu. Furthermore, the circumstances surrounding these killings, including the deliberate tricking of civilians into believing that the rebels were ECOMOG forces that had come to their rescue only to then massacre those civilians; the indiscriminate amputations accompanied by sarcastic messages to the ruling Government; as well as the public disposal of numerous dead bodies into an open pit, demonstrate the rebel campaign of reprisal and terror against the civilian population. The Trial Chamber finds beyond reasonable doubt that the perpetrators wilfully made the victims the object of such violence and the primary purpose of these killings was to instil terror in the civilian population.

iii. Third Massacre of over 53 civilians in Tombudu in April 1998 – Tombodu – Kono District – Unlawful killings

1456. para. 697: The Trial Chamber finds the evidence of both Mustapha Mansaray and Ibrahim Fofana reliable and credible. Although Mansaray's account of the events differs in a number of respects from that of Fofana,[1696] the Trial Chamber finds that their story is consistent and corroborated and is satisfied that the discrepancies in the witnesses' testimonies can be reasonably accounted for by the passage of time and the physical and emotional trauma suffered by both witnesses. Based on the evidence, the Trial Chamber finds that the Prosecution has proved beyond a reasonable doubt that in April 1998, AFRC/RUF forces under the orders of Staff Alhaji intentionally caused the deaths of 56 civilians in Tombodu, including 53 who were burned inside a building and 3 who subsequently died from amputations.

1457. para. 698: The circumstances under which the AFRC/RUF forces captured and collected in a single place such a large number of civilians, as well as the cruel manner in which their death was executed, demonstrate the campaign of terror unleashed by the Junta forces. The Trial Chamber further finds that the perpetrators wilfully made the victims the object of such violence and the primary purpose of these killings was to instil terror in the civilian population.

iv. Killings of civilians in and around Tombodu between March and May 1998 – Tombodu – Kono District – Unlawful killings

1458. para. 702: The Trial Chamber finds the evidence of both witnesses above credible and reliable as they each give an eye-witness account of what they saw and heard. Based on the evidence of TF 1-064, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between April and May 1998 in Foendor near Tombodu. AFRC/RUF fighters pretending to be ECOMOG, beheaded an unknown number of civilians including two of the witnesses' children and that soon thereafter an AFRC/RUF fighter named Capay intentionally killed a Temne man in Tombodu by slitting his throat. The Trial Chamber also finds that all the civilians murdered were not taking an active part in the hostilities. The Trial Chamber notes however, that since Foender is a location not pleaded in the Indictment, the evidence relating to the civilian deaths there can only be used to prove the chapeau requirements of the crime of murder and not for guilt.[1728]

1459. para. 703: Although Bindi's account of the death of three civilians at Staff Alhaji's veranda is based on circumstantial evidence, the Trial Chamber finds, based on the screams and pleading that B indi heard; the threats of death made against him; the state of the corpses and the method of their disposal; that the only reasonable inference is that these civilians were murdered by the AFRC/RUF forces under the command of Staff Alhaji, who as the Trial Chamber has noted above, routinely killed civilians and threw their bodies into a pit named the "Savage pit". Accordingly, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between April and May 1998 in Tombodu, AFRC/RUF forces under the command of Staff Alhaji, intentionally killed three civilians who were not taking an active part in the hostilities.

1460. para. 704: The above evidence further illustrates the campaign of terror waged by the AFRC/RUF forces in carrying out indiscriminate abductions and killings of innocent civilians in Kono District around this time. The bizarre practice of beheading victims and forcing civilians to carry the heads in a bag from one place to another, as well as the cruelty of forcing a mother to "laugh" at her own children's beheading, are acts that demonstrate the brutality of the AFRC/RUF forces. The Trial Chamber finds beyond reasonable doubt that the perpetrators wilfully made the victims the object of such violence and the primary purpose of these killings was to instil terror in the civilian population.

d. Koidu Geiya or Koidu Gieya – Kono District – Unlawful killings

i. Killings of civilians at Koidu Geiya around May to June 1998 – Koidu Geiya or Koidu Gieya – Kono District – Unlawful killings

1461. para. 709: The Trial Chamber finds the testimony of Alimamy Bobson Sesay more reliable with regard to the attack on Koidu Gieya as it is based on first-hand knowledge of the attack. The testimony of TF1-375 although based partly on hearsay and partly on circumstantial evidence, is also credible and reliable given his aforesaid position in the RUF at that time. Moreover, the destruction of Koidu Geiya that he described seeing, including corpses of civilians, accords with evidence that the Trial Chamber has considered above of the campaign of terror that the AFRC/RUF routinely carried out whenever they wanted to scare off the civilian population. The irresistible inference to be drawn is that the RUF forces that had carried out the attack on Koidu Geiya had deliberately killed these civilians. Pyne's evidence although based largely on hearsay, is corroborated by that of Bobson Sesay and TF 1-375. Accordingly, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that during their attack on Koidu Geiya around MaylJune 1998, AFRC/RUF fighters intentionally caused the deaths of an unknown number of civilians including children and one Kamajor, all of whom were not taking an active part in the hostilities.

1462. para. 710: The evidence establishes that consistent with the rebel Commanders' orders to "make the area fearful", the rebel perpetrators targeted civilians by burning their homes, killing many indiscriminately and amputating others in Koidu Geiya. The bizarre act by one of the rebels ("Charma-Raw") of publicly eating a raw human heart demonstrates the campaign of terror that served as a warning to the civilian population not to oppose the Junta forces. The Trial Chamber finds that the perpetrators wilfully made the victims the object of such violence and the primary purpose of the killings in Koidu Geiya was to instil terror in the civilian population there.

e. Koidu Buma – Kono District – Unlawful killings

i. Killings of civilians at Koidu Buma around May to June 1998 – Koidu Buma – Kono District – Unlawful killings

1463. para. 712: The Trial Chamber finds the evidence of Al imamy Bobson Sesay regarding the deaths of the 15 civilians in Koidu Burna, credible and reliable, as it is based on the corpses of

civilians he saw and the explanation given by Rambo. The Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that in May/June 1998, and with the approval of Commanders Hassan Papa Bangura, Bazzy and Superman, RUF Rambo intentionally caused the death of 15 civilians during an attack on Koidu Burna, all of whom were not taking an active part in the hostilities.

1464. para. 713: The evidence establishes that, consistent with the rebel commanders'orders to "make the area fearful", the aim of the rebel commander known as RUF Rambo in targeting these 15 civilians and displaying their corpses in the street was "to create fear so that no civilian would come to that area". The Trial Chamber finds that the perpetrator wilfully made the victims the object of such violence and the primary purpose of the killings in Koidu Burna was to instil terror in the civilian population there.

f. Yengema – Kono District – Unlawful killings

i. Killings of civilians at Yengema around March/April 1998 – Yengema – Kono District – Unlawful killings

1465. para. 715: Based on his aforesaid position within the AFRC/RUF forces; what he was told during the patrols and the explanation he was given by Commander Tito, the Trial Chamber finds the evidence of Alimamy Bobson Sesay credible and reliable. The Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that in March/April 1998 during an attack on Yengema, AFRC/RUF forces under the command of Tito and with the approval of patrol commander Hassan Papa Bangura (a.k.a. Bomb Blast), intentionally caused the death of an unknown number of civilians, all of whom were not taking an active part in the hostilities.

1466. para. 716: The evidence establishes that consistent with the orders of their superior commanders to "make the area fearful", the AFRC/RUF forces routinely mounted attacks upon civilians in many towns within Kono District including Yen gem a, which attacks involved burning of houses and killing of civilians, and the macabre practice of displaying dead bodies and human heads on sticks was an integral part of these attacks. The Trial Chamber finds that the perpetrators wilfully made the victims the object of such violence and the primary purpose of the killings in Yengema was to instil terror in the civilian population there.

ii. Killing of civilians at the Yengema Training base between December 1998 and January 2000 – Yengema – Kono District – Unlawful killings

1467. para. 721: Based on her position in the RUF and particularly at Yengema training base, the Trial Chamber finds the evidence of TF1-362 relating to the mistreatment and killing of civilians at the training base, credible and reliable. That evidence establishes that civilian recruits of all ages were regularly mistreated by the RUF trainers at the Yengema base and that many died in the course of training as a result of this mistreatment. The evidence of Mustapha Mansaray, although based on hearsay, confirms the account of TF1-362, who was present at Yengema training base when five civilian recruits were shot to death for attempting to escape. Accordingly, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between the end of 1998 and the disarmament in 2000 at Yengema training base, Issa Sesay and his body guards intentionally executed five civilians. The Trial Chamber further finds that the Prosecution has proved beyond reasonable doubt that RUF forces under the command of Issa Sesay and Sam Bockarie regularly intentionally killed civilian recruits at Yengema training base as a form of punishment for attempting to escape or during food finding missions. The Trial Chamber also finds that these civilians were not taking an active part in the hostilities.

1468. para. 722: Furthermore, the evidence shows that the execution of civilians caught trying to escape from the training base, or those trying to protect their food from being looted by the fighters, served as a warning to those who would dare to disobey the RUF fighters. The Trial Chamber finds that the perpetrators wilfully made the victims the object of such violence and the purpose of the killings at the Yengema Training base was to instil terror amongst the civilian population, thereby ensuring the continued loyalty of the abducted trainees.

g. Paema or Peyima – Kono District – Unlawful killings

i. Killings of civilians in Paema around March/April 1998 – Paema or Peyima - Kono District – Unlawful killings

1469. para. 729: Ibrahim Fofana is a witness who suffered much physical and emotional trauma during the conflict, arising from the double amputations he sustained and the loss of his mother and children, amongst others. The Trial Chamber finds his evidence credible and compelling, notwithstanding the inconsistencies therein raised by the Defence. Those inconsistencies were well explained by the witness in cross-examination. Fofana's description of "Operation No Living

Thing" is corroborated by the account given by Amnesty International in their report cited previously. Based on that testimony, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that around March/April 1998, rebel soldiers of the AFRC/RUF who attacked Paema intentionally killed a number of civilians including Ali Bangali, Sori, Pa Janneh, Mammy Isatu, Isatu Bangura, Kadiatu Fofana, Mohammed Fofana and Dauda Fofana, all of whom were not taking an active part in the hostilities.

1470. para. 730: The above evidence establishes that the perpetrators went on a rampage in the villages, indiscriminately looting civilian property and killing innocent civilians, in accordance with superior orders by rebel commanders to leave "no living thing" in the area. The Trial Chamber accordingly finds that the perpetrators wilfully made the victims the object of such violence and the primary purpose of the murder of civilians at Paema was to instil terror in the civilian population there.

h. Bomboa Foidu – Kono District – Unlawful killings

i. Killings of civilians in Bomboa Fuidu around March/April 1998 – Bomboa Fuidu – Kono District – Unlawful killings

1471. para. 735: The Trial Chamber finds the evidence of witnesses Musa Koroma and Alhaji Tejan Cole credible and reliable. The witnesses corroborate each other in all material respects. That evidence shows that the rebels deliberately targeted and killed a number of civilians including an old Limba woman, one Pa Saiyo and two amputees who died on their way to seek help, The Trial Chamber also finds that the victims were not taking an active part in the hostilities. Based on the evidence of the manner of dress and languages spoken by the rebels, the Trial Chamber finds that the perpetrators were a mixed group of AFRC/RUF rebels. Accordingly, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that in April 1998 during an attack on Bomboa Fuidu, AFRC/RUF rebels intentionally caused the death of several civilians including an old Limba woman, one Pa Saiyo and two amputees, all of whom were not taking an active part in hostilities.

1472. para. 736: The Trial Chamber further finds that the manner of the rebel attack, often surprising civilians at night when they were asleep in their homes; the indiscriminate killings, including the ritualistic murder of a helpless old woman; and the indiscriminate amputation of innocent civilians accompanied by sarcastic messages to "President Kabbah to give them new arms", are all acts that demonstrate the campaign of terror waged by the rebel forces against the

civilian population. The Trial Chamber finds that the perpetrators wilfully made the victims the object of such violence and the primary purpose of the murders in Bomboa Fuidu was to instil terror in the civilian population there.

i. Njaima Nimikoro or Nimikoro – Kono District – Unlawful killings

i. Killing of civilians in Nimikoro between February and June 1998 – Njaima Nimikoro or Nimikoro – Kono District – Unlawful killings

1473. para. 739: The Trial Chamber is of the view that by virtue of his position as radio operator, Perry Mohammed was in a position to receive regular reports on the activities of the RUF forces that were based in Kono District after the ECOMOG Intervention. Thus although his evidence is based on reports and messages that he received from the fighters rather than on his own participation in the RUF operations in Nimikoro, the Trial Chamber finds that evidence credible and reliable. That evidence shows that the RUF forces in Nimikoro, like their colleagues elsewhere in Kono District, carried out a terror campaign against the civilian population in Nimikoro which involved the killing of civilians. The Trial Chamber also finds the evidence of Emmanuel Bull regarding the murder of seven old persons by the AFRC/RUF forces at Njaima Nimikoro, also credible and reliable. Although essentially circumstantial, his account leads to one reasonable conclusion that the seven senior citizens were murdered. Based on this evidence, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that members of the AFRC/RUF that attacked Njaima Nimikoro around April 1998, acting in accordance with the orders of their commanders including Sam Bockarie, Morris Kallon, CO Rocky, Cobra and Bobby, intentionally killed an unknown number of civilians, including seven senior citizens, all of whom were not taking an active part in the hostilities.

1474. para. 740: The Trial Chamber further finds that in wantonly murdering innocent civilians, carrying out amputations and destroying civilian property in Nimikoro, the perpetrators were carrying out the orders of their superior commanders to "make the area fearful". The Trial Chamber finds that the perpetrators wilfully made the victims the object of such violence and the primary purpose of the murder of civilians at Nimikoro or Njaima Nimikoro was to instil terror in the civilian population there.

j. Mortema – Kono District – Unlawful killings

i. Killing of civilians in Mortema (or Motema) between February and June 1998 – Mortema – Kono District – Unlawful killings

1475. para. 746: The Trial Chamber finds both Samuel Bull and Tamba Mondeh to be credible witnesses. Their accounts are consistent, although at times diverged in details based on their different vantage points. Although Mondeh was, due to illiteracy, unable to give the date of the attack on Mortema, he made it clear that it was sometime after the ECOMOG Intervention. Samuel Bull however, placed the time of this attack around at 12 June 1998. The evidence also shows that these were reprisal killings against the civilians whom the rebels perceived to support ECOMOG. Based on the evidence of these two witnesses the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that around 12 June 1998, AFRC/RUF rebels led by "Fixo Bio" intentionally executed 17-25 civilians at the Bull residence in Mortema, all of whom were not taking an active part in the hostilities.

1476. para. 747: The evidence further shows that the perpetrators. in preying upon sleeping civilians at night and wantonly shooting them. were carrying out the orders of their superior commanders to "make the area fearful". Accordingly the Trial Chamber finds that the perpetrators wilfully made the victims the object of such violence and the primary purpose of the murder of civilians in Mortema was to instil terror in the civilian population there.

k. Alleged unlawful killings in Other Locations in Kono District not pleaded in the Indictment

1477. para. 748: The Trial Chamber received credible evidence of the murder of civilians in a number of locations within Kono District not specifically pleaded in the Indictment including, Baima,[1864] Goldtown,[1865] Yekeyor,[1366] Kondeya,[1867] Mambona,[1868] and others.[1869] As previously held, this evidence is only taken into account in relation to the chapeau requirements of the alleged crimes and not for proofofguilt.[1870]

l. Conclusion – Unlawful killings – Kono District

1478. para. 749: In conclusion, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between about 1 February 1998 and about 31 January 2000, in various locations in Kono District including Koidu Town, Tombudu, Koidu Geiya, Koidu Buma,

Yengema, Paema or Peyima, Bomboafuidu, Nimikoro or Njaiama Nimikoro and Mortema, members of the AFRC/RUF murdered an unknown number of civilians, as charged in the Indictmentl871 and as shown by the evidence.

1479. para. 750: The Trial Chamber recalls that the Prosecution has established beyond reasonable doubt that at all times relevant to the Indictment, the RUF and/or AFRC forces directed a widespread or systematic attack against the civilian population of Sierra Leone.[1872] The Trial Chamber is satisfied that each of the killings proved by the Prosecution in respect of Kono District formed part of the said attack and that the perpetrators were aware of this fact. The Trial Chamber also recalls that the Prosecution has proved beyond reasonable doubt that there was an armed conflict in Sierra Leone at all times relevant to the Indictment, involving among others, members of the RUF, AFRC and CDF.[1873] The Trial Chamber is satisfied that for all of the aforementioned killings in Kono District there was a nexus between the killings and the armed conflict, that each of the victims was not taking an active part in the hostilities at the time of death, and that the perpetrators knew this fact. Therefore, the Trial Chamber is satisfied that the aforementioned killings in Kono District constitute murder as both a crime against humanity under Article 2 of the Statute and a war crime under Article 3 of the Statute.

(vii) Kailahun District – Unlawful killings

a. Kailahun Town – Kailahun District – Unlawful killings

i. Massacre of around 60-65 civilians in Kailahun Town in February 1998 – Kailahun Town – Kailahun District – Unlawful killings

1480. para. 768: The Trial Chamber finds the above evidence consistent. In particular the evidence proves that after the ECOMOG Intervention of February 1998, AFRC/RUF Junta forces fled to Kailahun District where they were temporarily based. While there, Sam Bockarie, the RUF leader issued orders to the senior AFRC/RUF commanders to "defend Kailahun District" against their perceived enemies including ECOMOG and the Kamajors. The evidence further proves Sam Bockarie's distrust of the civilians from the Luawa and Bambara Chiefdoms, many of whom had fled their villages before the 25 May 1997 coup, but who had since returned to their homes having been encouraged by Bockarie to do so. Additionally, the evidence proves that around 60-65 unarmed male civilians from these two chiefdoms were arrested on suspicion of being Kamajors or Kamajor collaborators, on Bockarie's orders and interrogated by Augustine Gbao. The evidence

further proves that Gbao's verdict against these civilians was based on mere suspicion and/or speculation that they were Kamajors or Kamajor collaborators and not as a result of due process. Moreover, the evidence proves that the executions in about mid to late February 1998 at the Kailahun Town roundabout and Military Police prison, were clearly reprisal killings by Sam Bockarie and AFRC/RUF forces acting under his orders, against unanned civilians that were perceived to be enemies of the AFRC/RUF. The Trial Chamber accordingly finds that the Prosecution has proved beyond reasonable doubt that in about mid to late February 1998, the RUF forces under the command of Sam Bockarie intentionally killed around 60-65 civilians in Kailahun Town, all of whom were not taking an active part in the hostilities.

1481. para. 769: The Trial Chamber further finds in view of the above evidence that the perpetrators wilfully made the victims the object of such violence and the primary purpose of the Kailahun massacre, including the bizarre public display of human heads and rotting corpses of the victims, was to instil terror in the civilian population in Kailahun.

b. Conclusion – Unlawful killings – Kailahun District

1482. para. 770: In conclusion, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between about I February 1998 and about 30 June 1998, in various locations in Kailahun District including Kailahun Town, members of the AFRC/RUF murdered an unknown number of civilians, as charged in the Indictment l944 and as shown by the evidence.

1483. para. 771: The Trial Chamber recalls that the Prosecution has established beyond reasonable doubt that at all times relevant to the Indictment, the RUF and/or AFRC forces directed a widespread or systematic attack against the civilian population of Sierra Leone.[1945] The Trial Chamber is satisfied that each of the killings proved by the Prosecution in respect of Kailahun District fonned part of the said attack and that the perpetrators were aware of this fact. The Trial Chamber also recalls that the Prosecution has proved beyond reasonable doubt that there was an anned conflict in Sierra Leone at all times relevant to the Indictment, involving among others, members of the RUF, AFRC and CDF.[1946] The Trial Chamber is satisfied that for all of the aforementioned killings in Kailahun District there was a nexus between the killings and the armed connict, that each of the victims was not taking an active part in the hostilities at the time of death, and that the perpetrators knew this fact. Therefore, the Trial Chamber is satisfied that the aforementioned killings in Kailahun District constitute murder as both a crime against humanity under Article 2 of the Statute and a war crime under Article 3 of the Statute.

(viii) Freetown and the Western Area – Unlawful killings

a. Killing of civilians and ECOMOG soldiers around State House in Freetown – Freetown and the Western Area – Unlawful killings

1484. para. 785: The Trial Chamber finds the evidence of Alimamy Bobson Sesay and Perry Kamara credible. Each of these witnesses took part in the Freetown invasion of 6 January 1999 and given their unique position among the invading forces, each was privy to the preparations that took place amongst the rebel troops immediately prior to that invasion. In particular each of them was present at State House during the first crucial hours after the take-over of power by the rebels and had a first-hand observation of what went on there. Bobson Sesay's testimony proves that on 6 January 1999 at the State House washing bay in Freetown, a rebel commander called Major Tito acting on the orders of Commander Alex Tamba Brima a.k.a. Gullit, intentionally killed 20 Nigerian soldiers who were hors de combat. The evidence further proves that on the same day at State House, rebel forces made of the AFRC/RUF/STF and Liberian fighters intentionally killed over 20 civilians that were not taking an active part in the hostilities, as punishment for "disrespecting" the rebel forces. The evidence of Perry Kamara, which largely corroborates that of Bobson Sesay, proves beyond reasonable doubt that on 6 January 1999 at the Cotton Tree near State House, rebel forces made of the AFRC/RUF/STF and Liberian fighters acting on the orders of Gullit and Sam Bockarie intentionally killed at least 10-15 Nigerian soldiers who were hors de combat and an unknown number of civilians that were not taking an active part in the hostilities.

1485. para. 786: The Trial Chamber further finds the first-hand account of Abu Bakarr Mansaray to be credible. His evidence, which also corroborates that of Sesay and Kamara, proves that on 8 January 1999 at State House, rebels including members of the AFRC/RUF intentionally killed at least 35 civilians who were not taking an active part in the hostilities.

1486. para. 787: The Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between 6 and 8 January 1999 at State House in Freetown, rebel forces including members of the AFRC/RUF/STF and Liberian fighters intentionally killed (i) at least 35 Nigerian soldiers who were *hors de combat* at the time of death; and (ii) at least 55 civilians that were not taking an active part in the hostilities.

1487. para. 788: The Trial Chamber finds that the perpetrators were acting in accordance with the orders of the top Commander Alex Tamba Brima (a.k.a. Gullit) to carry out indiscriminate killings, mass abductions and raping of civilians, and burning and destruction of civilian and public property in Freetown during this period as part of the campaign of terror waged against the

civilian population. The Trial Chamber finds that the perpetrators wilfully made the victims the object of such violence and the primary purpose of the killings at State House was to instil terror in the civilian population.

b. Unlawful killing of civilians in Kissy area around January 1999 – Freetown and the Western area

1488. para. 805: The Trial Chamber finds, based on the reliable and credible evidence of Mohamed Sesay, that the Prosecution proved that (i) around 12 January 1999 at PWD near Ferry Junction, two civilian men were intentionally killed in a ritualistic murder by the invading rebel forces described by the witness as "rebels and SLAs"; (ii) that around 15 January 1999 at Falcon Street, an RUF rebel called Issa Conteh intentionally killed an old civilian woman as part of "Operation No Living Thing"; (iii) that around 18 January 1999 at the house of one Abbas, a rebel called "Commando" intentionally shot and killed 8 young civilian men who had refused to surrender their hands to him for amputation; (iv) and that on the same occasion rebels acting under the orders of "Commando" intentionally hacked to death 5 other civilian men who had similarly refused to surrender their hands to him for amputation. The Trial Chamber also finds based on the credible evidence of TF1-098 that (v) on 18 January 1999 a rebel called Tommy intentionally amputated and caused the death of one civilian at Fataraman Street in Kissy. Additionally, the Trial Chamber finds based on the credible evidence of Ibrahim Wai that (vi) in January 1999, rebels led by a commander called Captain Blood intentionally killed a civilian named Brima who was set ablaze in his house at Kissy. The Trial Chamber further finds based on the credible evidence of TF1-104 that (vii) in January 1999, at the Good Shepherd Hospital in Kissy, AFRC/RUF junta forces under the command of Captain Blood intentionally executed 17 civilians including Ike the Nigerian businessman and another civilian shot at a nearby cemetery. The Trial Chamber further finds that none of the civilian victims in the above instances was taking an active part in the hostilities at the time of death.

1489. para. 806: The Trial Chamber further finds, based on the reliable and credible evidence of Alimamy Bobson Sesay (viii) that in the third week of January 1999, rebels comprising members of the AFRC, RUF, STF and other Liberian fighters acting on the orders of Commanders Gullit, Rambo Red Goat and Bajehjeh, intentionally killed an unknown number of civilians at Kissy Market and Low Cost area in Kissy whom they suspected of supporting ECOMOG; and (ix) that on 22 January 1999 after the massacre at Rogbalan mosque, a rebel called Foday Bah Marrah (a.k.a. Bulldoze) acting on the orders of Gullit, intentionally shot and killed four white nuns. The

Trial Chamber finds that none of the civilians in the above instances were taking an active part in the hostilities at the time of death.

1490. para. 807: The Trial Chamber further finds, based on the reliable and credible evidence of Alimamy Bobson Sesay as corroborated by Witnesses TF1-021; TF1-083; Corinne Dufka and Exhibit P-328 that (x) on 22 January 1999 at Rogbalan Mosque in Kissy, rebels including members of the AFRC, RUF, STF and Liberian fighters under the command of Gullit, Five-Five, Rambo Red Goat and Bajehjeh, intentionally killed over 60 civilians who had taken refuge in the mosque, on suspicion that they were harbouring ECOMOG forces. The Trial Chamber also finds that none of the civilians in this instance was taking an active part in the hostilities at the time of death.

1491. para. 808: Further the Trial Chamber takes note of evidence relating to comments by rebel commander Gullit inciting the rebel forces to "burn all the houses and kill all the remaining civilians" in Kissy, all of whom he perceived to have "betrayed the AFRC/RUF". The Trial Chamber particularly takes note of the indiscriminate killing of innocent civilians including Catholic nuns, women and children seeking refuge in places of worship like the Rogbalan Mosque. The Trial Chamber also takes particular note of the public or ritualistic execution of the civilians often by gruesome means as hacking by axe or machete, and the declaration of "Operation No Living Thing" as means by which the rebels terrified the civilian population. The Trial Chamber accordingly finds that the perpetrators wilfully made the victims the object of such violence and the primary purpose of the murders in Kissy was to instil terror in the civilian population.

c. Unlawful killings of civilians in Fourah Bay in late January 1999 – Freetown and the Western Area

1492. para. 813: The Trial Chamber further finds, based on the reliable and credible evidence of Alimamy Bobson Sesay (i) that in the second week of January 1999, three civilian Government officials including Dr Daboe and two Ministers, were intentionally killed at Ferry Junction on the orders of Gullit as punishment for being "collaborators" of the Government; and (ii) that in the third week of January 1999, rebels comprising members of the AFRC, RUF, STF and other Liberian fighters acting on the orders of Commanders Gullit, Bazzy and Five-Five intentionally killed an unknown number of civilian in Fourah Bay area by either burning them alive inside of their homes, or by forcing them outside of their homes and killing them, in revenge for an AFRC fighter that had been killed in the area. The Trial Chamber further finds based on the documentary

evidence in Exhibit P-077 (iii) that around 21 January 1999 at Fourah Bay Road, retreating rebels intentionally killed three civilian children. The Trial Chamber also finds that none of the civilians in the above instances was taking an active part in the hostilities at the time of death.

1493. para. 814: Further the Trial Chamber finds based on the above evidence that the civilian killings in Fourah Bay area were part of the reprisal killings by the rebel forces as they fled Freetown. In this regard, the Trial Chamber takes note of comments by rebel commanders that the captured Government officials were "collaborators" who deserved to die and that the civilians of Fourah Bay also deserved to die for killing an AFRC fighter. The Trial Chamber particularly takes note of the public display of the bodies of the three Government officials at Ferry Junction and the random burnings and amputations that accompanied the civilian killings, as means by which the rebels terrified the civilian population. The Trial Chamber finds, based on the above oral and documentary evidence that the perpetrators wilfully made the victims the object of such violence and the primary purpose of the murders in Fourah Bay was to instil terror in the civilian population.

d. Unlawful killing of civilians in Calaba Town in the third week of January 1999 – Freetown and the Western Area

1494. para. 830: The Trial Chamber finds the above first-hand evidence credible and reliable. While Bobson Sesay participated in the Calaba Town attack, the other witnesses were civilian victims of the attack and gave first-hand accounts of their experiences. Based on the above evidence the Trial Chamber finds that the evidence proves that around 18 to 22 January 1999, on the orders of commanders Gullit, Bazzy and Five-Five, members of the RUF, AFRC, STF and former NPFL fighters led by Hassan Papa Bangura (a.k.a. Bomb Blast), Rambo Red Goat, Med Bejehjeh and the witness, intentionally massacred hundreds of civilians at Calaba Town by shooting, burning or hacking them to death including (i) a civilian nun who was intentionally shot dead by an AFRC commander called Tito, (ii) Otick and Ya Sampa who were civilians who were intentionally hacked to death with machetes and (iii) an ECOMOG soldier who was *hors de combat* was intentionally beheaded. The Trial Chamber finds that none of the victims in the above instances was taking an active part in the hostilities at the time of death.

1495. para. 831: Further the Trial Chamber is satisfied based on the above evidence that the civilian killings in Calaba Town were in reprisal for the defeat that the retreating Junta forces had suffered in Freetown. In this regard, the Trial Chamber takes note of the large numbers of Junta forces that participated in this attack, the mass abduction of civilians by the retreating rebel forces,

the orders issued by rebel commanders Gullit "to burn as many buildings and capture as many civilians as possible along the way in order to force the Government to recognise them" and the comments by the rebels as they amputated Osman Jalloh and sent him "to tell Pa Kabbah and the ECOMOG that if they came to meet the fighters that they would be chopped in the same way". The Trial Chamber also takes note of the public display of the hundreds of corpses of men, women and children left strewn along the highway in the area. The Chamber finds that the perpetrators wilfully made the victims the object of such violence and the primary purpose of the murders committed in Calaba Town was to instil terror in the civilian population.

e. Unlawful killing of civilians in Kingtom, Allen Town and Tower Hill areas – Freetown and the Western Area

1496. para. 839: The Trial Chamber finds the evidence of Akiatu Tholley relating to the deaths she witnessed in Wellington too general and unreliable. Consequently, The Trial Chamber has not relied on her evidence in relation to the killings that took place in Wellington. The Trial Chamber however, finds her testimony credible in relation to (i) the killing of civilians she saw on the way from Wellington to Allen Town; (ii) the young girls she saw killed in a church for resisting rape and (iii) the death of the old woman shot in the forehead by a rebel called James. The Trial Chamber finds on the basis of the above evidence that the Prosecution has proved beyond reasonable doubt that members of the AFRC/RUF/STF intentionally killed an unknown number of civilians in the vicinity of Wellington and Allen Town in January 1999.

1497. para. 840: The Trial Chamber further finds the first-hand evidence of Alimamy Bobson Sesay who took part in the rebel attacks, credible. That evidence proves that in the second and third weeks of January 1999, on the orders of Gullit, (i) rebels comprising members of the AFRC/RUF/STF and Liberian fighters intentionally killed an unknown number of civilians suspected of collaborating with ECOMOG forces, in Kingtom, Allen Town and Tower Hill, an area referred to by the perpetrators as a "killing zone"; (ii) a rebel commander called Junior Lion intentionally executed several civilians in Tower Hill and, (iii) a rebel called "Captain Blood" intentionally beheaded seven young civilian men suspected of collaborating with ECOMOG, in Guard Street. The Trial Chamber finds on the basis of the above evidence that the Prosecution has proved beyond reasonable doubt that in the second and third weeks of January 1999, members of the AFRC/RUF/STF and Liberian fighters intentionally killed an unknown number of civilians in Kingtom, Allen Town and Tower hill areas.

1498. para. 841: Further the Trial Chamber is satisfied based on the above evidence that the civilian killings in Kingtom, Allen Town and Tower Hill, were in reprisal for the humiliating defeat suffered by the retreating Junta forces at the hands of the ECOMOG troops. In this regard, the Trial Chamber takes note of the large number of rebels that participated in this attack, the orders issued by rebel commander Gullit declaring this particular area a "killing zone wherein anybody who came around that area was considered an enemy and that person should die" because in his view, the civilians "had gone and called ECOMOG to base there". The Trial Chamber also notes that the civilian killings were often coupled with rampant amputations and burning of buildings in these areas as part of a deliberate plan to terrorise the civilians whom the Junta forces perceived to support their enemies including the Government, ECOMOG and the Kamajors. The Trial Chamber finds that the perpetrators wilfully made the victims the object of such violence and the primary purpose of the murders in Kingtom, Allen Town and Tower Hill, was to instil terror in the civilian population.

f. Unlawful killing of civilians in Tumbo – Freetown and the Western Area

1499. para. 843: The Trial Chamber finds the evidence of Ibrahim Wai credible. Although his evidence relating to the deaths in Turnbo is circumstantial in that he only saw the dead bodies of the six civilians when he came out of hiding and did not see the killers, the fact that AFRC and RUF rebels had attacked Turnbo the previous night looting, shooting and burning a lot of houses, points to one reasonable conclusion that these rebels were the cause of death of the three children of Pa Pratt as well as the death of three other civilians including Bai Usu's son. The Trial Chamber accordingly finds that the Prosecution has proved beyond reasonable doubt that AFRC/RUF fighters led by Commander Mohammed (a.k.a. Captain Blood), intentionally killed six civilians including a 10 year-old boy, in Turnbo on 23 December 1998.

1500. para. 844: The Trial Chamber is satisfied that the killings in Turnbo or Tombo were part of the campaign of reprisal and terror waged by the retreating Junta forces against the civilians of Freetown and the Western Area. In this regard, the Trial Chamber notes that the widespread burnings, amputations and killings that occurred in Turnbo as the rebels advanced towards Freetown, the fact that these atrocities involved innocent civilians including children, and that one child's head was shattered by a bullet. The Trial Chamber also notes the rebel instructions to amputees to "go to Pa Kabbah who had brought many hands for the civilians", as indicative of the reprisals that civilians were subjected to for supposedly supporting President Kabbah's government or ECOMOG. Accordingly the Trial Chamber finds that the perpetrators wilfully

made the victims the object of such violence and the primary purpose of the murders in Turnbo was to instil terror in the civilian population.

g. Unlawful killing of civilians in Waterloo – Freetown and the Western Area

1501. para. 853: The Trial Chamber finds the evidence of Witnesses TF1-028 and TF1-026 credible. They each spent a long time with the rebel forces in captivity during the rebel invasion of Freetown and moved with them during the withdrawal from Freetown. Their first hand evidence of civilians being indiscriminately killed by rebels in Waterloo is corroborated by the documentary evidence in Exhibits P-308, P-341A, and P-341B. Furthermore, the Trial Chamber also finds the evidence of Patrick Sheriff, who was a victim of rebel attacks on his village of Lumpa in Waterloo, credible. His evidence relating to the coordination of rebel attacks in Waterloo is corroborated by the description provided by Abubakar Sesay in Exhibits P-341 A and P-341 B. Based on the above oral and documentary evidence, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between late December 1998 and February 1999 rebels, including members of the AFRC/RUF/STF and Liberian fighters, attacked Waterloo and intentionally killed an unknown number of civilian men, women, children including (i) Mr Whenzle, the Secretary-General of the YWCA; (ii) Mr Kai, a Limba man and an old woman, who were summarily executed by Commander Peleto in Lumpa Village in Waterloo. The Trial Chamber finds that none of the victims in the above incidents were taking an active part in the hostilities.

1502. para. 854: The Trial Chamber is satisfied that the evidence of such callous indifference to human life by the rebels clearly indicates that the killings in Waterloo were part of the campaign of reprisal and terror waged by the retreating Junta forces against the civilians of Freetown and the Western Area. In this regard, the Trial Chamber notes the evidence of Sheriff referring to the fact that the rebels would attack in the early hours of the morning while civilians were sleeping in their homes, and that Commander Peleto, who used to go on regular killing rampages "every Friday", was greatly feared by the civilians. The Trial Chamber also notes the vindictive manner in which the rebels carried out massive burnings and afterwards lured back civilians who had fled the area, pretending to protect those civilians, only to harm or kill them. The Trial Chamber finds that the perpetrators willfully made the victims the object of such violence and the primary purpose of the murders in Waterloo was to instil terror in the civilian population.

h. Unlawful killing of civilians in Wellington – Freetown and the Western Area

1503. para. 859: Given the major inconsistency in the evidence of TF1-023 relating to any alleged killings that she might have or have not seen committed in Wellington, the Trial Chamber cannot rely on that evidence. The Trial Chamber however, finds the evidence of TF1-026 reliable and credible. Based on that evidence the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between late December 1998 and February 1999 rebels, including members of the AFRC/RUF/STF and Liberian fighters, attacked Wellington and intentionally killed an unknown number of civilians including (i) the sister of TF1-026 who was shot and killed simply because she was crying; (ii) Mr Wilson, a crippled teacher who was burnt to death in his house; and (iii) another man who was shot to death on the way to Calaba Town. Based on the evidence of Sarah Koroma, the Trial Chamber also finds that the Prosecution has proved beyond reasonable doubt that around mid-January 1999, AFRC/RUF rebels in Loko Town, Wellington, intentionally killed her husband and a six-year old girl, both civilians, by hacking them with machetes. The Trial Chamber finds that the victims were not taking an active part in the hostilities.

1504. para. 860: The Trial Chamber is satisfied that the killings in Wellington were part of a campaign of reprisal and terror directed against the civilians of Freetown and the Western Area by the retreating Junta forces. In this regard, the Trial Chamber notes the widespread burnings and amputations that accompanied the indiscriminate killing of innocent civilians in Wellington and the callous comments by rebels to amputees to "go and tell the people that the rebels were coming", or "tell Kabbah that they want peace" which comments coupled with the amputation were intended to instil fear in the civilian population perceived by the rebels to have voted Kabbah's Government into power. The Trial Chamber finds that the perpetrators wilfully made the victims the object of sllch violence and the primary purpose of the murders in Wellington was to instil terror in the civilian population.

i. Unlawful killing of civilians in Hastings – Freetown and the Western Area

1505. para. 862: The Trial Chamber finds beyond reasonable doubt that on 3 January 1999 at Hastings, rebel forces comprising of members of the AFRC/RUF/STF and Liberian fighters, intentionally killed three Nigerian ECOMOG soldiers who were hors de combat at the time of death.

j. Unlawful killing of civilians in Benguema – Freetown and the Western Area

1506. para. 867: The Trial Chamber finds the evidence of Witnesses TF1-143, TF1-029 and Paul Conteh credible. Based on that evidence, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between December 1998 and February 1999 at Benguema, rebels including members of the AFRC/RUF intentionally killed an unknown number of civilians, including (i) a woman who was buried alive with the body of SAJ Musa as a sacrifice, (ii) a young woman killed by a rebel called "Coal Boot" or "Gun Boot", and (iii) babies travelling with the fighters were also killed because they were "making noise". The Trial Chamber finds that none of the victims in the above incidences was taking an active part in the hostilities at the time of death.

1507. para. 868: The Trial Chamber is satisfied that the killings at Benguema were part of a wider campaign of terror waged against the citizens of Freetown and the Western Area by AFRC/RUF forces. The Trial Chamber notes in this regard, the fact that civilians, including the said witnesses were captured and kept by the rebels against their will and often tortured, including TF1-143 who was at a young age branded with the letters "RUF" on his chest and sent out to fight, as well as the female victims of rape. The Trial Chamber finds that the perpetrators wilfully made the victims the object of such violence and the primary purpose of the murders in Benguema was to instil terror in the civilian population.

k. Conclusion – Unlawful killings – Freetown and the Western Area

1508. para. 869: In conclusion, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between about 21 December 1998 and 28 February 1999, in various locations in Freetown and the Western Area including State House, Kissy, Fourah Bay, Upgun, Calaba Town, Allen Town, Tower Hill, Hastings, Wellington, Tumbo, Waterloo and Benguema, members of the AFRC, RUF, STF and Liberian fighters murdered an unknown number of civilians, as charged in the Indictment[2293] and shown in the evidence above.

1509. para. 870: The Trial Chamber recalls that the Prosecution has established beyond reasonable doubt that at all times relevant to the Indictment, the RUF and/or AFRC forces directed a widespread or systematic attack against the civilian population of Sierra Leone.[2294] The Trial Chamber is satisfied that each of the killings proved by the Prosecution in respect of Freetown and the Western Area formed part of the said attack and that the perpetrators were aware of this fact. The Trial Chamber also recalls that the Prosecution has proved beyond reasonable doubt that there

was an armed conflict in Sierra Leone at all times relevant to the Indictment, involving among others, members of the RUF, AFRC and CDF.[2295] The Trial Chamber is satisfied that for all of the aforementioned killings in Freetown and the Western Area there was a nexus between the killings and the armed conflict, that each of the victims was not taking an active part in the hostilities at the time of death, and that the perpetrators knew this fact. Therefore, the Trial Chamber is satisfied that the aforementioned killings in Freetown and the Western Area constitute murder as both a crime against humanity under Article 2 of the Statute and a war crime under Article 3 of the Statute.

1510. Regarding Taylor's individual criminal responsibility (Aiding and Abetting), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Aiding and Abetting - paras. 6904-6906 [6351], 6910-6915 [6354], 6918-6924 [6360], 6927-6937 [6367], 6940-6946 [6378], 6947-6952 [6385], 6953 [6391].

1511. Regarding Taylor's individual criminal responsibility (Planning), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Planning - paras. 6957 [6392], 6958-6968 [6393], 6969-6970 [6404], 6971 [6406].

1512. Regarding Taylor's individual criminal responsibility (Instigating), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Instigating - para. 6972 [6407].

1513. Regarding Taylor's individual criminal responsibility (Ordering), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Ordering - para. 6973 [6408].

1514. Regarding Taylor's superior responsibility, see below: Chapter 13 (Article 6.3 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.3 of the Statute - Superior Responsibility - paras. 6977 – 6986 [8613].

3. Appellate Judgment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-A, Judgment, 26 September 2013

(a) Factual Findings

1515. para. 253: The Trial Chamber found that the RUF/AFRC's operational strategy was characterised by a campaign of crimes against the Sierra Leonean population, including the crimes charged in all 11 Counts of the Indictment,[578] which were inextricably linked to the strategy of the military operations themselves. This strategy entailed a campaign of terror against civilians as a primary *modus operandi*, to achieve military gains at any civilian cost and political gains in order to attract the attention of the international community and improve the RUF/AFRC's negotiating stance with the Sierra Leonean government (the "Operational Strategy").[579]

1516. para. 254: In assessing Taylor's alleged criminal liability, the Trial Chamber found that Taylor, by his acts and conduct, was "critical in enabling" the RUF/AFRC's Operational Strategy, "supported, sustained and enhanced" the functioning of the RUF/AFRC and its capacity to implement its Operational Strategy, planned an attack of terror as the *modus operandi* of the attack on Freetown and had a substantial effect on the crimes committed by the RUF/AFRC.[580] It further found that Taylor knew of the RUF/AFRC's Operational Strategy, knew that his acts and conduct assisted the commission of crimes in the implementation of that Operational Strategy and knew the essential elements of the crimes in which he was participating.[581]

1517. Regarding the RUF/AFRC's Operational Strategy, see below: Chapter 12 (Article 6.1. Liability) -Taylor - Appellate Judgment - Findings and Conclusions - The RUF/AFRC's Operational Strategy - paras. 257-302 [6411].

1518. para. 303: The Appeals Chamber has reviewed the Trial Chamber's assessment of the evidence and affirmed the findings in the Judgment.[821] It has further affirmed the Trial Chamber's finding that the RUF/AFRC leadership pursued an Operational Strategy to commit the crimes charged in Counts 1-11 of the Indictment.[822]

1519. Regarding Taylor's Acts, Conduct and Mental State, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Acts, Conduct and Mental State - paras. 303 - 343 [6457].

(b) Legal Conclusions

1520. See below: Annex B encompasses the discussion of the evaluation of evidence relating to all the crimes [Annex B].

1521. Regarding Taylor's Criminal Liability, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Criminal Liability - paras. 497-595 [6630].

B. RUF

1. Indictment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-2004-15-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

1522. Paragraph 19 through 39 are incorporated by reference.[39]

1523. These attacks [para. 41: 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] were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property.[40]

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

1524. Members of the AFRC/RUF subordinate to and/or acting in concert with Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, committed crimes set forth below in paragraphs 45 through 82, and charged in counts 3 through 14, as part of a campaign to terrorize the civilian population. The AFRC/RUF also committed the crimes to punish the civilian population or

[39] RUF Indictment, para. 40.
[40] RUF Indictment, para. 42.

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.[41]

(iii) Counts 3-5: Unlawful killings

1525. Victims were routinely shot, hacked to death and burned to death. Unlawful killings included the following:[42]

i. Bo District: Between about 1 June 1997 and 30 June 1997, AFRC/RUF attacked Tikonko, Telu, Sembehun, Gerihun, Mamboma, unlawfully killing an unknown number of civilians;[43]

ii. Kenema District: Between 25 May 1997 and about 19 February 1998, in locations including Kenema town, members of AFRC/RUF unlawfully killed an unknown of civilians;[44]

iii. Kono District: About Mid-February 1998, AFRC/RUF fleeing from Freetown arrived in Kono District. Between 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;[45]

iv. Kailahun District: Between about 14 February 1998 and 30 September 1998, in locations including Kailahun town, members of AFRC/RUF unlawfully killed an unknown number of civilians;[46]

v. Koinadugu District: 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;[47]

vi. Bombali District: 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 Gbendembu or Pendembu), members of AFRC/RUF unlawfully killed an unknown number of civilians;[48]

vii. Freetown and Western Area: 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

[41] RUF Indictment, para. 44.
[42] RUF Indictment, para. 45.
[43] RUF Indictment, para. 46.
[44] RUF Indictment, para. 47.
[45] RUF Indictment, para. 48.
[46] RUF Indictment, para. 49.
[47] RUF Indictment, para. 50.
[48] RUF Indictment, para. 51.

men, women, and children at locations throughout the city and the Western Area, including Kissy, Wellington, and Calaba Town;[49]

Port Loko: 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.[50]

1526. 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 3.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.[51]

2. Trial Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-T, Judgement, 2 March 2009

(a) Factual Findings

(i) Kono District – Crimes

a. Background to Kono District – Kono District - Crimes

1527. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Background to Kono District – paras. 1136 – 1139 [208].

[49] RUF Indictment, para. 52.

b. Koidu Town – Kono District - Crimes

1528. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Koidu Town – Killings during attack on Koidu – para. 1146 [218].

1529. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Koidu Town – Killing of civilians by Rocky and his men – paras. 1147 – 1151 [219].

c. Tombodu – Kono District - Crimes

1530. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Tombodu - Killings by Savage and Staff Alhaji – paras. 1165 – 1169 [237].

1531. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Tombodu – Killing of Chief Sogbeh – para. 1170 [242].

d. Wendedu – Kono District - Crimes

1532. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Wendedu - Killing of female Nigerian civilian – paras. 1174 -1175 [246].

1533. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Wendedu - Killing of Sata Sesay's family – para. 1176 [248].

e. Yardu – Kono District - Crimes

1534. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Yardu – Killings and amputations – paras. 1186 - 1187 [258].

f. PC Ground – Kono District - Crimes

1535. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – PC Ground – Killings – paras. 1188- 1189 [260].

[50] RUF Indictment, para. 53.
[51] RUF Indictment, para. 53.

g. Penduma – Kono District - Crimes

1536. See above: Chatper 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Penduma – Rapes, killings and amputations – paras. 1191 – 1196 [263].

h. Koidu Buma – Kono District – Crimes

1537. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Koidu Buma – Killing of 15 civilians – para. 1204 [273].

i. RUF Camps – Kono District - Crimes

1538. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Treatment of civilians in RUF Camps – para. 1233 [302].

j. Yengema – Kono District - Crimes

1539. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Forced military training at Yengema (Dec 1998 to Jan 2000) – para. 1264 [333].

(ii) Kenema District – Crimes

a. Background to Kenema District – Kenema District – Crimes

1540. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Background to Kenema District - paras. 1042 -1044 [335].

b. Kenema Town – Kenema District - Crimes

1541. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - para. 1045 [338].

1542. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - Three corpses at Mambu Street – para. 1057 [350].

1543. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - Killing of a suspected Kamajor at the NIC building – paras. 1058 - 1059 [351].

1544. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - Killing of Mr. Dowi – para. 1060 [353].

1545. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - Killing of Bonnie Wailer and two others – paras. 1061 – 1063 [354].

1546. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - Killing of two alleged thieves – para. 1064 [357].

1547. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - Killing of an alleged Kamajor boss – para. 1065 [358].

1548. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - Beating and killing of B.S Massaquoi and others – paras. 1072 – 1079 [365].

c. Tongo Field – Kenema District – Crimes

1549. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Tongo Field - Killing at Lamin Street – para. 1080 [373].

1550. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Tongo Field - Killing of Limba man for his palm wine – para. 1081 [374].

1551. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Tongo Field - Killings at Cyborg Pit – paras. 1082 – 1087 [375].

1552. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Tongo Field - Forced mining at Tongo Field and Cyborg Pit – para. 1095 [388].

(iii) Bo District – Crimes

a. Background to Bo District – Bo District - Crimes

1553. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bo District – Crimes – Background to Bo District - paras. 991- 992 [389].

b. Tikonko – Bo District – Crimes

1554. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bo District – Crimes – Tikonko - Second Attack on Tikonko – paras. 995 – 1005 [393].

c. Sembehun – Bo District – Crimes

1555. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bo District – Crimes – Sembehun – paras. 1006- 1007 [404].

d. Gerihun – Bo Ditsrict – Crimes

1556. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bo District – Crimes – Gerihun – para. 1014 [412].

(iv) Kailahun District – Crimes

a. Background to Kailahun District – Kailahun District – Crimes

1557. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Background to Kailahun District – paras. 1380 – 1385 [413].

1558. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Killings – para. 1386 [419].

i. Killing of suspected Kamajors in Kailahun Town – Kailahun District – Crimes

1559. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Killings – Killing of suspected Kamajors in Kailahun Town – paras. 1387 – 1397 [420].

ii. Killing of Fonti Kanu in Pendembu – Kailahun District – Crimes

1560. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Killings – Killing of Fonti Kanu in Pendembu – paras. 1398-1399 [431].

iii. Killing of Foday Kallon in Buedu – Kailahun District – Crimes

1561. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Killings – Killing of Foday Kallon in Buedu – paras. 1400 – 1402 [433].

iv. Killing of Dr. Kamara– Kailahun District – Crimes

1562. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Killings – Killing of Dr. Kamara – paras. 1403- 1404 [436].

(v) Freetown and the Western Area – Crimes

a. Background to Freetown and the Western Area – Freetown and the Western Area – Crimes

1563. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area – para. 1512 [479].

1564. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Perpetrators of the Attack on Freetown – paras. 1511 – 1515 [478].

1565. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Targeting of the civilian population in Freetown – paras. 1516 – 1520 [483], 1522 [489].

b. State House – Freetown and the Western Area – Crimes

1566. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – State House – para. 1523 [490].

c. Kingtom – Freetown and the Western Area – Crimes

1567. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kingtom – para. 1524 [491].

d. Guard Street – Freetown and the Western Area – Crimes

1568. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Guard Street – para. 1525 [492].

e. Upgun and Fourah Bay – Freetown and the Western Area – Crimes

1569. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Upgun and Fourah Bay – para. 1526 – 1529 [493].

f. Wellington – Freetown and the Western Area – Crimes

1570. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Wellington - Killing and Looting of TF1-235 and his family – paras. 1531 – 1535 [498].

1571. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Wellington - Killings and Amputations at Loko Town – para. 1536 [503].

1572. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Wellington - Killing, Looting and Abduction at a clinic – para. 1538 [505].

g. Kissy – Freetown and the Western Area – Crimes

1573. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings at Kissy Police Station – para. 1541 [508].

1574. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings and Beatings at a clinic – paras. 1542 – 1545 [509].

1575. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings and Amputations of TF1-101 and others - paras. 1546 – 1548 [513].

1576. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings at Rogbalan Mosque – paras. 1550 – 1552 [517].

1577. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings, Amputations and Looting of TF1-022 and others – para. 1553 [520].

h. Allan Town, Calaba Town and Benguema – Freetown and the Western Area – Crimes

1578. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes - Allan Town, Calaba Town and Benguema - 'Forced Marriage' of TF1-029 – paras. 1562- 1564 [529].

(vi) Koinadugu District – Crimes

1579. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 – 1505 [533].

(vii) Bombali District – Crimes

1580. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 – 1509 [543].

(viii) Port Loko District – Crimes

1581. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras. 1609 – 1613 [547].

(b) Legal Conclusions

(i) Applicable law – Crimes against humanity ("CAH")

a. Introduction

1582. para. 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.

1583. para. 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.

b. Attack – Applicable law - CAH

1584. para. 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]

c. Widespread or systematic – Applicable law - CAH

1585. para. 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 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]

1586. para. 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]

d. Directed against any civilian population – Applicable law - CAH

1587. para. 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 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]

1588. para. 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]

1589. para. 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.

1590. para. 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 not alter its civilian nature.[169]

1591. para. 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]

1592. para. 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]

1593. para. 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 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]

1594. para. 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.

1595. para. 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 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*.

e. The acts of the Accused must be part of the attack – Applicable law - CAH

1596. para. 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]

f. *Mens rea* – Applicable law - CAH

1597. para. 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 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]

(ii) CAH – Findings on general requirements

a. Introduction

1598. para. 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]

b. General requirements for the proof of crimes against humanity

1599. para. 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]

c. Attack directed against civilian population of Sierra Leone - CAH – Findings on general requirements

1600. para. 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 Indictment period.

1601. para. 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]

1602. para. 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]

1603. para. 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.

1604. para. 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.

1605. para. 949: In relation to each of the three stages identified, the Chamber is cognisant that the 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]

1606. para. 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]

1607. para. 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.

d. Widespread or systematic attack - CAH – Findings on general requirements

1608. para.952: The Chamber will analyse the nature of the attack in each of the three stages identified above.

i. Nov 1996 – May 1997

1609. para. 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.

1610. para. 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]

1611. para. 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.

ii. May 1997 – Feb 1998 (the Junta Period)

1612. para. 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, 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.

1613. para. 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]

1614. para. 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, characterized by arrests of multiple victims who were often prominent community members, sham "investigations" and then public executions.[1869] Church workers, journalists and students were also frequently targeted suspected members of the opposition.[1870]

iii. The ECOMOG intervention to end January 2000

1615. para. 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]

1616. para. 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 houses.[1883]

1617. para. 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]

1618. para. 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.

1619. para. 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.

(iii) Applicable law - Murder

1620. para. 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 serious violation of Common Article 3 and Additional Protocol II will be dealt with separately.

1621. para. 137: The Chamber observes that the crime of murder as a crime against humanity is a wellrecognised and defined crime under customary international law that entails individual criminal responsibility.[267]

1622. para. 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]

1623. para. 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]

1624. para. 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 be satisfied by recklessness, but not by proof of negligence or gross negligence.[272] Proof of premeditation is not required.[273]

(iv) Pleading

a. Criminal acts and events - Pleading

1625. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Criminal acts and events – paras. 412 [605], 418- 419 [611].

b. Locations – Pleading

1626. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Locations – paras. 420 – 422 [613].

c. Timeframes – Pleading

1627. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Timeframes – paras. 423 – 432 [616].

d. CAH – Pleading

1628. para. 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]

1629. para. 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 Defence here are misconceived.

(v) Kono District - Unlawful killings

1630. para. 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).

1631. para. 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.

1632. para. 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 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]

a. Koidu Town – Kono District – Unlawful killings

i. Killings in attack on Koidu Town – Koidu Town – Kono District – Unlawful killings

1633. para. 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]

1634. para. 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.

ii. Killing of civilians by Rocky and his men – Koidu Town – Kono District – Unlawful killings

1635. para. 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.

1636. para. 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.

b. Tombodu – Kono District – Unlawful killings

i. Killings by Savage and Staff Alhaji – Tombodu – Kono District – Unlawful killings

1637. para. 1273: The Chamber recalls its findings that in Tombodu between February and 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

1638. para. 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.

1639. para. 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.

ii. Killing of Chief Sogbeh – Tombodu – Kono District – Unlawful killings

1640. para. 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.

c. Wendedu – Kono District – Unlawful killings

1641. para. 1277: The Chamber finds that the killings of Waiyoh the Nigerian woman and eight family 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]

d. Penduma – Kono District – Unlawful killings

1642. para. 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]

e. Yardu – Kono District – Unlawful killings

1643. para. 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]

f. Koidu Buma – Kono District – Unlawful killings

1644. para. 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.

g. Killings near PC Ground – Kono District – Unlawful killings

1645. para. 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.

1646. para. 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.

(vi) Kenema District – Unlawful killings

a. Introduction

1647. para. 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]

1648. para. 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.

1649. para. 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 number of civilians.[2138]

b. Kenema Town – Kenema District – Unlawful killings

i. Killing of B.S Massaquoi, Andrew Quee and four others - Kenema Town – Kenema District – Unlawful killings

1650. para. 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.

ii. Killing of Mr Dowi - Kenema Town – Kenema District – Unlawful killings

1651. para. 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.

iii. Killings of suspected Kamajors - Kenema Town – Kenema District – Unlawful killings

1652. para. 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."[214]

1653. para. 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 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.

iv. Killing of civilians accused of larceny - Kenema Town – Kenema District – Unlawful killings

1654. para. 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]

1655. para. 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.

c. Tongo Field – Kenema District – Unlawful killings

i. Killing of civilian at Lamin Street and killing of Limba man - Tongo Field – Kenema District – Unlawful killings

1656. para. 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.

ii. Killings of civilians at Cyborg Pit - Tongo Field – Kenema District – Unlawful killings

1657. para. 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 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.

1658. para. 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.

1659. para. 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]

(vii) Bo District – Unlawful killings

1660. para. 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).

1661. para. 1016: The Chamber is satisfied that each of the acts described in the following paragraph was 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.

1662. para. 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]

a. Tikonko – Bo District – Unlawful killings

1663. para. 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.

1664. para. 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.

1665. para. 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.

1666. para. 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.

1667. para. 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.

b. Sembehun – Bo District – Unlawful killings

1668. para. 1023: The Chamber is not satisfied from the evidence that Sheriff died as a result of his 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.

c. Gerihun – Bo District – Unlawful killings

1669. para. 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]

1670. para. 1025: The Chamber therefore finds that many civilians were unlawfully killed by AFRC fighters in Gerihun and that these acts constitute murder as charged in Counts 4 and 5 of the Indictment.

(viii) Kailahun District – Unlawful killings

1671. para. 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).

1672. para. 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.

1673. para. 1446: The Prosecution alleges that "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."[2749]

a. Kailahun Town - Killing of 63 suspected Kamajors and one AFRC fighter hors de combat – Kailahun District – Unlawful killings

1674. para. 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]

1675. para. 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.

1676. para. 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.

b. Killing of Fonti Kanu – Kailahun District – Unlawful killings

1677. para. 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 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.

c. The Killing of Foday Kallon – Kailahun District – Unlawful killings

1678. para. 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.

1679. para. 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.

d. The Killing of Dr. Kamara – Kailahun District – Unlawful killings

1680. para. 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.

(ix) Freetown and the Western Area – Unlawful killings

1681. para. 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).

1682. para. 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.

1683. para. 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]

1684. para. 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]

(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 rebelsretreating 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]

1685. para. 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.

1686. para. 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 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.

1687. para. 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]

1688. para. 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.

(x) Koindugu District – Unlawful killings

1689. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 – 1505 [533].

(xi) Bombali District – Unlawful killings

1690. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 – 1509 [543].

(xii) Port Loko District – Unlawful killings

1691. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras. 1609 – 1613 [547].

3. Appellate Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-A, Judgment, 26 October 2009

(a) Factual Findings

(i) Kono District

1692. See above: Chapter 1 – RUF – Appellate Judgment – Factual Findings – Kono District – para. 428 [712].

(b) Legal Conclusions

(i) Pleading

1693. para. 492: The Appeals Chamber holds that so long as Gbao agreed to the Common Criminal Purpose and was, therefore, a member of the JCE as the Trial Chamber found,[1256] he is responsible for all crimes that he either intended, or were naturally foreseeable would be committed by members of the JCE or persons under their control. This is consistent with the pleading of the crimes in the Indictment (which must be read in its entirety) and which pleaded each of the crimes in Count 1 to 14 as either within the JCE or as a reasonably foreseeable consequence of the JCE.[1257]

1694. para. 826: The Trial Chamber found that Waiyoh, a Nigerian female who resided in the civilian camp at Wendedu and had lived in Kono District for twenty years was killed on the orders of Rocky, an RUF Commander in May 1998.[2169] It found that this crime constituted an unlawful

killing as charged in Counts 4 and 5 of the Indictment.[2170] It further found that Kallon was liable under Article 6 (1) of the Statute for its instigation.[2171] The Trial Chamber found that although Wendedu was not named as a location of murder in the Indictment, the pleading of locations in Counts 4 and 5 was nonexhaustive and sufficiently specific in light of the cataclysmic nature of the alleged crimes.[2172]

1695. para. 828: The Indictment particularises the charge of murder under Counts 4 and 5 in relation to Kono District as follows:

> 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.[2175]

1696. para. 829: The relevant question on appeal is whether the pleading of locations of murder in Kono District as "*various locations* in Kono District, including Koidu, Tombodu, Foindu, Willifeh, Mortema and Biaya" without naming *Wendedu*, is sufficiently specific to allow Kallon to prepare his defence to the charge of instigating murder in *Wendedu*.

1697. para. 830: As a general matter, the location of the crimes alleged to have been committed should be specified in an indictment.[2176] However, the degree of specificity required will depend on the nature of the Prosecution's case.[2177] The specificity required for the pleading of the location of an alleged crime will depend on factors such as: the form of accused's participation in the crime;[2178] the proximity of the accused person to the events at the location for which he is alleged to be criminally responsible;[2179] the nature of the crime itself, such as whether the crime is characterized by the movement of the victim; whether the victim's identity provides specificity; and whether the crime was committed at numerous locations within a defined geographic area that was pleaded.

1698. para. 831: As the form of the accused's participation in the crime is relevant to the specificity required, the material facts to be pleaded will vary according to the particular form of Article 6(1) liability averred. For example, the Appeals Chamber has indicated that the material facts for pleading personal commission are distinct from those pleaded for JCE liability.[2180] As stated by the ICTR Appeals Chamber, there may well be "situations in which the specific location of criminal activities cannot be listed, such as where the accused is charged as having effective control over several armed groups that committed crimes in numerous locations. In cases concerning physical acts of violence perpetrated by the accused personally, however, location can be very important."[2181]

1699. para. 832: This distinction between the specificity requirements for the pleading of locations in relation to different modes of liability is consistent with our holding in the *Brima et al.* Appeal Judgment. There, we held that the Trial Chamber's decision to reconsider an earlier form of indictment decision was a proper exercise of its discretion in the interests of justice.[2182] The *Brima et al.* Trial Chamber held that the indictment had not pleaded locations with sufficient specificity and they therefore declined to find the accused liable for crimes committed at unnamed locations. Similar to Kallon's present conviction, the accused in *Brima et al.* were not convicted pursuant to their participation in a JCE, but rather they were convicted of more direct forms of participation, such as, *inter alia*, personal commission and instigation.

1700. para. 833: An accused's proximity to the events at the location for which he is alleged to be criminally responsible is also a factor in determining the pleading specificity required. In the present case, Kallon's liability for instigating the murder of Waiyoh in Wendedu stems directly from his conduct in Wendedu. In May 1998, Waiyoh was being held at an RUF civilian camp in Wendedu. Kallon visited the camp and questioned CO Rocky about Waiyoh, "stating that he considered her a threat."[2183] On a subsequent visit to the camp in Wendedu, Kallon asked CO Rocky if he was "still keeping 'enemies' of the RUF in the camp."[2184] Kallon's bodyguards later visited the camp to enquire about Waiyoh again and Rocky then ordered that she be killed.[2185]

1701. para. 834: In view of the mode of Kallon's liability for the crime and that his culpable conduct occurred at the location, the location of the murder as having occurred at Wendedu was a material fact that must have been pleaded in the Indictment to inform Kallon clearly of the charges against him so that he could prepare a defence.[2186]

1702. para. 835: The Prosecution's failure to plead Wendedu as a location in the Indictment rendered the Indictment defective with respect to the pleading of Kallon's instigation of murder at Wendedu. As Kallon objected at trial to the pleading of a nonexhaustive list of locations,[2187] the Prosecution bears the burden of showing on appeal that the defect in the Indictment did not prejudice Kallon's ability to prepare his defence. The Prosecution has not offered any submissions that Kallon had notice of the charge as a result of timely, clear and consistent information detailing the factual underpinnings of the charge.[2188]

1703. para. 836: The Appeals Chamber, therefore, finds that Kallon was not put on notice of the charge that he instigated murder at Wendedu. The trial against Kallon was thereby rendered unfair, and as a result he should not have been found responsible for the killing of Waiyoh.

(ii) Pleading – Dissents

a. Justice Fisher:

1704. para. 20 (p.517): The primary justification suggested by the Majority for its radical departure from customary international law is that its conflation of JCE 1 and JCE 3 *mens rea* standards "is consistent with the pleading of the crimes in the Indictment."[33] That an Indictment may plead in the alternative does not establish that there is no distinction between the forms of liability so pled. Also, whether the Indictment permissibly pleaded JCE is irrelevant as an evidentiary matter.

1705. para. 22 (p.518): Finally, in a perplexingly contradictory and unexplained pronouncement, the Majority expresses its agreement with the Prosecution's position at the Appeal Hearing that Gbao "shared the intent for the crimes to be committed in Kailahun District, so he was a participant in the joint criminal enterprise."[37] As an initial matter, this position is contrary to the Majority's own reasoning, as it envisages a common criminal purpose different from that found by the Trial Chamber and confirmed unanimously on appeal. That different "subsidiary" common criminal purpose is limited solely to Kailahun District and excludes acts of pillage (Count 14), as no such crimes were committed there.

1706. para. 23 (p.518): If in fact the Majority accepts the position of the Prosecution that the shared intent for commission of the crimes committed in Kailahun describes the common criminal purpose of the JCE, then Gbao would presumably have been liable under JCE 1 for the crimes in Kailahun District, and liable under JCE 3 for the crimes in other Districts. However, such a limited, "subsidiary" JCE was neither sufficiently pleaded in the Indictment nor found by the Trial Chamber. Nor did the Trial Chamber make any findings that the crimes in Bo, Kenema and **Kono** were reasonably foreseeable by Gbao as a consequence of the implementation of that "subsidiary" JCE, (as opposed to the country-wide JCE found by the Trial Chamber.) This theory therefore finds no support in the pleadings or the evidence.

1707. para. 24 (p.518-519): The only JCE pleaded, established and upheld in this case had as its Common Criminal Purpose to control the territory of Sierra Leone through the commission of the crimes charged under Counts 1 to 14.[38] Gbao either shared the intent of this criminal purpose – both in terms of the type of crimes and the geographical scope it encompassed – or he did not.

(iii) Crimes charged as criminal means of furthering Common Criminal Purpose - Murder

1708. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 333-348 [751].

1709. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 377 - 378 [754].

(iv) Crimes charged and JCE *mens rea* (short review) - Murder

1710. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged and JCE *mens rea* (short review) – paras. 467 – 493 [756], and see *also*, Justice Fisher's and Justice Winter's Dissenting Opinions in that regard.

(v) CAH - Existence of a widespread and systematic attack

a. Kenema – CAH – Existence of a widespread and systematic attack

1711. para. 637: The Trial Chamber found that there was a widespread and systematic attack against the civilian population in several districts during the junta period of May 1997 to February 1998.[1601]

1712. para. 642: The Appeals Chamber only addresses the arguments Sesay sets out in sufficient detail. He contends that because all the crimes found to have been committed took place in or after "late January" 1998 it suggest that there was no evidence of a concerted attack from 25 May 1997 until that time.[1610] The Appeals Chamber recalls that the Trial Chamber observed that it had "heard evidence of numerous incidents of beatings and killings in *Kenema Town* during the Junta period."[1611] The Trial Judgment also states that, although the exact dates on which some of the incidents took place are unknown, the Trial Chamber was satisfied that they occurred within the Junta period, namely between 25 May 1997 and about 19 February 1998.[1612] Sesay fails to show that no reasonable trier of fact could have come to the conclusion reached by the Trial Chamber.

1713. para. 643: The Trial Chamber made numerous findings in relation to *Kenema Town* during the pertinent period. The Trial Judgment indicates that throughout the Junta period, individuals were harassed and their property confiscated.[1613] At unspecified times during the Junta period,

numerous individuals were killed.[1614] Specifically, in late January and early February 1998, several individuals were detained, beaten and subsequently killed.[1615] Furthermore, the crimes as found by the Trial Chamber were not limited to that period. In October 1997, an individual was beaten and detained;[1616] and in the "early months" of the Junta regime, still others were killed.[1617] The fact that some of these individuals may have been killed to promote the image of the AFRC/RUF forces as the law enforcement authorities of the area does not mean that they necessarily fall outside the scope of the attack. Indeed, as the Trial Chamber put it, "these killings demonstrated the reckless disregard for civilian life characteristic of the widespread and systematic attack on the civilian population."[1618] The Trial Chamber also found that numerous other crimes were committed in the relevant period.[1619]

1714. para. 644: In relation to Sesay's arguments concerning Tongo Fields, the Appeals Chamber notes that a semblance of law and order therein does not preclude the existence of an attack against a civilian population; the two may well co-exist as long as the civilian population is the primary object of the attack as opposed to a limited and randomly selected number of individuals.[1620] Thus, even if Sesay's arguments under this sub-ground were made out, it would not establish that the Trial Chamber erred in finding the existence of an armed attack in Tongo Fields during the period in question.

(vi) CAH - Attack against civilian population

a. Kailahun District – CAH – Attack against civilian population

1715. para. 714: In its holdings on the *chapeau* requirements of crimes against humanity, the Trial Chamber found that the AFRC/RUF directed an attack against the civilian population of Sierra Leone from 30 November 1996 until at least the end of January 2000.[1845]

1716. para. 719: The Appeals Chamber understands Sesay's argument to mean that the occurrence of "few crimes" in Kailahun District negated the third requirement of crimes against humanity; that "the attack must be directed against any civilian population." The Appeals Chamber rejects this proposition. First, nothing in the Trial Judgment suggests that only "few crimes" were committed in Kailahun District; numerous crimes were found to have been committed by RUF fighters there.[1857] Second, as correctly noted by the Trial Chamber, the use of the word "population" does not mean that the entire population of the geographic entity in which the attack is taking place must have been subjected to that attack.[1858] It is 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 trier of fact that the attack was in fact directed against a civilian "population", rather than against a limited and randomly selected number of individuals.[1859] In this respect, Sesay refers to the *Haradinaj et al*. Trial Judgment[1860] but fails to explain how the facts of that case[1861] are so similar to those of the present case that any reasonable trier of fact, based on the evidence here, would reach the same conclusion as the *Haradinaj et al*. Trial Chamber. Sesay's argument therefore fails.

1717. para. 720: Contrary to Sesay's assertion, paragraph 650 of the Trial Judgment does not buttress the claim that the RUF committed only few crimes in Kailahun District or that civilians supported the RUF.[1862] The Appeals Chamber further fails to see how the fact that amputations, mutilations and rapes were not committed in Kailahun District detracts from the Trial Chamber's reliance on the crimes which were committed in the District to conclude that the attack against the civilian population of Sierra Leone extended to Kailahun District. This submission is rejected.

1718. para. 721: The Appeals Chamber considers that the Trial Chamber's conclusion in paragraph 955 of the Trial Judgment that "mistreatment of civilians was … a well organised and permanent feature of RUF operations, sanctioned at the highest level"[1863] emanated from several findings of the Trial Chamber including its finding in paragraph 953 of the Trial Judgment. While paragraph 953 is silent on any crimes against the civilian population, the Trial Chamber also found that during the relevant period that the RUF controlled Kailahun District, civilians were forced to work on farms owned by members of the RUF High Command including Bockarie, Sesay and Gbao;[1864] an unknown number of women and young girls entered into forced marriages with RUF rebels; and civilians were abducted and forced to act as porters, sex slaves and fighters.[1865] On that basis, the Trial Chamber reached the impugned conclusion in paragraph 955. Sesay does not demonstrate this conclusion to be unreasonable.

1719. para. 722: Contrary to Sesay's claim,[1866] the Trial Chamber considered the nature of RUF institutions in Kailahun District[1867] and the role and activities of the G5 unit[1868] in reaching its conclusion that an attack was directed at the civilian population in Kailahun District. It found, however, that the RUF continued to commit crimes against civilians in Kailahun District despite the fact that the RUF and some parts of the civilian population in Kailahun District generally cohabited and may have been relatively integrated.[1869] Similarly, while some of the activities of the G5 included monitoring the welfare of civilians, issuing travel passes and settling dispute between civilians and fighters,[1870] it also found that the G5 managed farms on which hundreds of civilians were engaged in forced labour as enslavement.[1871] Simply repeating the findings on the limited benign behavior of the RUF in Kailahun District without explaining how the Trial

Chamber erred in its assessment thereof when compared to the crimes committed against the civilian population, Sesay fails to show an error. His argument therefore fails.

1720. para. 723: The Trial Chamber found that the RUF ideology contained some ideal, attractive and virtuous norms in that they prohibited members of the RUF from raping and looting without the authorisation of Commanders and from killing or molesting "liberated" civilians and also provided punishments for violations.[1872] However, the Trial Chamber reasoned that the RUF found certain criminal conduct acceptable and permissible in certain situations, such as the practice of using civilians as forced labour, women as bush wives and children to participate in active hostilities.[1873] Accordingly, the Trial Chamber found that the RUF system of discipline was "highly selective"[1874] and that some crimes were punished in RUF-controlled areas and where no hostilities were taking place in order to appease the population who reacted to a particular situation.[1875] Additionally, the Trial Chamber found that the declared norms of the RUF prohibiting rape, unauthorised looting, killings or molestation of "liberated" civilians, were "… a mere farce intended to camouflage the planned enormity and gruesomeness of the ruthless brutality that characterised the actions of the RUF Commanders and their subordinates in the operational pursuance of the objectives of their 'broad-based' armed struggle ideology."[1876] While Sesay refers to evidence he posits buttressed the virtuous norms in the RUF ideology, he fails to explain why no reasonable trier of fact, based on other evidence could have arrived at these findings.[1877]

1721. para. 724: These findings, coupled with the Trial Chamber's findings on the crimes in Kailahun District,[1878] contrary to Sesay's submission,[1879] are consistent with the Trial Chamber's holding that "the mistreatment of civilians was particularly frequent and endemic in Kailahun District"[1880] and that the "attack" involved mistreatment of civilians by fighters throughout the Indictment period. Consequently, Sesay's submission fails.

(vii) CAH – Various

a. Kailahun District – CAH – Various

1722. para.1066: The Trial Chamber found Gbao liable pursuant to JCE 1 for the unlawful killing, as a crime against humanity, of one *hors de combat* SLA soldier, who was killed on Bockarie's orders in Kailahun District.[2943]

1723. para.1067: Gbao argues that the Trial Chamber erred in law in finding that the killing of this *hors de combat* SLA soldier constituted murder as a crime against humanity.[2944] In support of his argument, Gbao submits that, the Trial Chamber, in its own legal holdings, held that "it is trite law that an armed group cannot hold its own members as prisoners of war" and that the killing of the same individual did not constitute a war crime.[2945] In Gbao's view, these holdings contradict its finding of murder as a crime against humanity.

1724. para.1069: The Appeals Chamber finds Gbao's argument to be misconceived. The Trial Chamber held that the killing of the *hors de combat* SLA soldier "does not constitute the *war crime* of violence to life, as charged in Count 5 of the Indictment."[2947] Gbao was convicted of the unlawful killing of the *hors de combat* SLA soldier as a *crime against humanity*, as charged in Count 4 of the Indictment.[2948] There is no merit to Gbao's argument that this conviction contradicted the Trial Chamber's own findings.

(viii) Kenema District - Murder

1725. para. 370: The Trial Chamber found that acts of unlawful killings, physical violence and enslavement were committed in Kenema District, some of which amounted to terror and collective punishment.[901] It found that these crimes fell within time period of the Junta and that the common plan and plurality of person remained the same.[902]

1726. para. 374: In his first argument, Sesay essentially submits that the low number of crimes committed in furtherance of the Common Criminal Purpose in Kenema District between 25 May 1997 and 11 August 1997 and in Kenema Town between 25 May 1997 and late January 1998 negates the existence of a JCE covering these areas.[909]

1727. para. 375: The Appeals Chamber notes that the Trial Chamber could not determine the specific dates of each crime committed in Kenema Town during the Junta period.[910] It therefore remains unclear whether Sesay is correct that a low number of crimes were committed in Kenema from the onset of the Junta on 25 May 1997 until the commencement of the forced mining activities in August 1997. However, even assuming that Sesay is correct in that regard, the Appeals Chamber is not persuaded that this renders unreasonable the Trial Chamber's finding that a JCE existed which encompassed "the territory of Sierra Leone", *i.e.* also Kenema District.[911] While evidence of the number of crimes committed in a certain area may be relevant to the assessment of whether a JCE existed, it is not determinative thereof. The Trial Chamber was entitled to consider, as it did, factors such as the geographic proximity of various crimes,

including those in Kenema, their similar *modus operandi*[912] and their widespread and systematic nature[913] in its assessment of that question. Sesay's present submission does not challenge this assessment. In addition, the Appeals Chamber recalls that although the forced mining in Tongo Fields did not commence until August 1997,[914] it is clear from the Trial Chamber's findings that the planned and systematic policy of the Junta and the centralised system pursuant to which this large scale enslavement was implemented must have been devised much earlier.[915] Indeed, "[w]ithin a week of the coup of 25 May 1997, RUF rebels and the military Junta were in full control of" Kenema Town.[916]

1728. para. 376: The Appeals Chamber therefore finds that Sesay fails to demonstrate that no reasonable trier of fact could have found that the JCE extended to Kenema District from the onset of the Junta.

1729. para. 380: Sesay refers to evidence that the AFRC and RUF kept separate command structures in Kenema.[933] This evidence, which was cited by the Trial Chamber in its analysis of the AFRC/RUF organisation in Kenema,[934] does not detract from the finding that the two groups collaborated in Kenema.[935] Moreover, in none of these arguments does Sesay juxtapose the evidence he invokes with the evidence the Trial Chamber relied on, or otherwise attempt to demonstrate why the Trial Chamber could not reasonably have preferred the latter evidence over that which he proffers.

1730. para. 385: The Appeals Chamber therefore finds that Sesay does not show an error in the Trial Chamber's findings regarding the criminal means employed to achieve the objective in Kenema District.

1731. para. 419: Both Sesay and Gbao submit that the Trial Chamber made insufficient findings on the links between the principal perpetrators of certain crimes in Kenema and the JCE members.[1038] In order to assess their submissions on the proper factual basis, it is necessary to first address another argument by Sesay relating to the Trial Chamber's crime-base findings regarding Kenema.

1732. para. 420: Sesay argues that the finding in paragraph 1100 of the Trial Judgment created a presumption that the crimes in Kenema were committed for personal reasons rather than in pursuance of a common criminal purpose.[1039] The relevant part of paragraph 1100 reads:

> 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.

This finding is silent on the fighters' own reasons for committing crimes in Kenema Town. It only says that the permissive environment created by the AFRC and RUF there permitted them to do so with impunity. The presumption that Sesay reads into this finding is thus his own, and not one the Trial Chamber made. This argument fails.

1733. para. 421: The Appeals Chamber now turns to the alleged failures to make sufficient findings. Sesay and Gbao first submit that no link was shown between the JCE members and the persons who carried out the *actus reus* of the following crimes in Kenema Town: (i) the beating of TF1-122; (ii) the killing of Mr. Dowi; and (iii) the killing of an alleged Kamajor boss. TF1-122 was beaten by AFRC/RUF rebels at the Junta Secretariat in Kenema Town for having requested them to cease removing property from a woman.[1040] This incident was part of the so-called "flag trick:" It was common practice for those near the Junta Secretariat in Kenema Town to stand still during the raising and lowering of the Sierra Leonean flag; AFRC/RUF fighters would raise and lower the flag at irregular times and harass individuals who did not stand still and seise whatever property the latter were carrying.[1041] As to Mr. Dowi, he was killed by AFRC/RUF rebels when trying to prevent them from looting his freezer at his home in Kenema Town.[1042] Both crimes were found to have taken place in the context of the permissive environment created by the control exercised by the AFRC and RUF over Kenema Town wherein their fighters could commit crimes with impunity.[1043]

1734. para. 422: The fact, as noted, that this finding is silent on the perpetrators' own reasons for beating TF1-122 and killing Mr. Dowi is not determinative for whether the Trial Chamber found that they were used by the JCE members to commit these crimes in furtherance of the Common Criminal Purpose.[1044] Of greater relevance for that issue is the finding that the "control exercised" by the AFRC/RUF over Kenema Town "created" an environment which permitted the beating and the killing.[1045] That control, the Trial Chamber found, was exercised by the Junta: "Within one week of the coup of 25 May 1997, RUF rebels and the military Junta were in full control of [Kenema] town."[1046] Indeed, the beating of TF1-122 was found to have taken place while he was in custody at the Junta's own Secretariat building in Kenema Town.[1047] At the head of the Junta were most of the JCE members, who shared the intent to employ beatings and killings, such as those now at issue, as a means to control the territory of Sierra Leone, including Kenema Town.[1048] The Appeals Chamber is satisfied that these findings suffice to show how the perpetrators of the crimes in question were used by JCE members acting in furtherance of the Common Criminal Purpose.[1049] Sesay's and Gbao's submissions to the contrary fail.

1735. para. 423: The alleged Kamajor boss was killed by AFRC/RUF fighters during "Operation No Living Thing," which had been launched by the RUF and AFRC as a pre-emptive measure due to rumours of an impending Kamajor attack.[1050] "Operation No Living Thing" did not refer to a particular military campaign, but it "described a set of brutal and merciless tactics which AFRC/RUF fighters were encouraged to adopt in combat."[1051] The killing also formed part of the AFRC/RUF's "deliberate strategy to terrorise the civilian population and prevent any support for their opponents."[1052] Seen against the background that the AFRC/RUF Junta, headed by most JCE members, controlled Kenema Town,[1053] the Appeals Chamber is satisfied that these findings suffice to explain the Trial Chamber's reasons why the killing was imputed to the JCE members. Sesay's and Gbao's claims to the contrary fail.

1736. para. 424: Next, Sesay and Gbao allege a lack of findings on the links between the JCE members and the perpetrators of the killings in Tongo Field of (i) a civilian at Lamin Street;[1054] and (ii) a Limba man.[1055] The Trial Chamber found that the killing at Lamin Street was perpetrated by AFRC/RUF fighters in a crowd of civilians publicly protesting against the fighters' raping women.[1056] It found that "the perpetrators intended to impart a clear public message that such protests would be met with violence."[1057] This conduct falls squarely within the finding that the "Junta 'government' brutally suppressed opposition", including through public executions, in order to control captured territory.[1058] These findings explain how the Trial Chamber found that the killing at Lamin Street, among others, evidenced a "systematic nature" of the crimes, which lead it to conclude that the peretrators were used by one or more JCE members acting in furtherance of the Common Criminal Purpose.[1059] Sesay's and Gbao's claims of insufficient reasoning as regards this incident fail.

1737. para. 425: The Trial Chamber found that the Limba man was killed in Tongo Field by an AFRC/RUF fighter for refusing to give him palm wine.[1060] This crime was neither related to the AFRC/RUF forced mining activities in Tongo Field nor was it committed within the "permissive environment," which was limited to Kenema Town. In fact, the Trial Chamber held that the killing was "apparently [an] isolated crime."[1061] The proposition that the perpetrator was used in furtherance of the Common Criminal Purpose is further contradicted by the finding that "Captain Yamao Kati ordered that as the fighter had used his hand to fire a gun at a civilian, the fighter should also be shot in the hand."[1062] In view of these findings, the mere fact that the perpetrator was an "AFRC/RUF fighter" is insufficient reason for imputing this killing to a JCE member. The Trial Chamber therefore erred in law in so doing. Absent a valid conclusion in this regard, the Appellants' convictions under JCE for the killing of a Limba man in Tongo Field fall. Gbao's submissions are granted insofar they relate to the killing of a Limba man in Tongo Field.

1738. para.426: As a result, none of the Appellants could be held liable under the JCE mode of liability for crime. The Appellants' remaining challenges to the Trial Chamber's findings on the links between the perpetrators of the crimes in Kenema District and the JCE members fail.

1739. para.490: In respect of the crimes committed in Kenema District, the Trial Chamber found in paragraph 2060 of the Trial Judgment that

> [T]he 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 joint criminal enterprise or persons under their control.

1740. Regarding Sesay's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District – JCE – Participation in and shared intent – Sesay – paras. 617, 619 – 623 [7580].

1741. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Existence of a widespread and systematic attack – Kenema District – paras. 637, 642 – 644 [1711].

1742. para. 662: The Trial Chamber found that the following acts at Tongo Field constituted unlawful killings: (i) the killing of a civilian at Lamin Street,[1678] (ii) the killing of a Limba man,[1679] and (iii) the killing of 63 civilians at Cyborg Pit.[1680] In regard to the killing of 63 civilians at Cyborg Pit, the Trial Chamber found 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."[1681] On a fourth occasion at Cyborg Pit, "three civilians and two fighters were killed by the AFRC/RUF."[1682] It further found that the killing at Lamin Street and the killings at Cyborg Pit constituted acts of terrorism.[1683]

1743. para. 666: The Appeals Chamber recalls its conclusion that the Trial Chamber was not required to find that those who carried out the *actus reus* of the crimes had the requisite *mens rea* for acts of terrorism.[1695] Sesay's claims will be addressed in light of that conclusion. In that respect, the Appeals Chamber notes the Trial Chamber's findings that acts of terrorism were within the Common Criminal Purpose of the JCE,[1696] and that, with respect to Kenema District, Sesay intended the commission of acts of terrorism and "shared, with the other participants, in the joint criminal enterprise the requisite intent to commit these crimes."[1697] The Trial Chamber

further found that one or more members of the JCE used the non-members who carried out the *actus reus* of the crimes to commit the crime of acts of terrorism.[1698]

1744. para. 667: In arguing that the Trial Chamber erred in finding that the deaths at Cyborg Pit constituted unlawful killings,[1699] Sesay merely reargues his position at trial without addressing the evidence relied on by the Trial Chamber. In particular, by only referencing the absence of corroborating testimony from other witnesses, Sesay fails to establish that no reasonable trier of fact could have preferred the affirmative testimonies of witnesses TF1-035 and TF1-045. This claim is therefore dismissed.

1745. para. 668: Contrary to Sesay's claim,[1700] the fact that the acts of violence were intended to serve a further goal, such as the enslavement of the civilian population, does not show that the intent to spread terror was not the principal purpose of those acts.[1701] Simply, it need not be shown that the intent was to spread terror only for its own sake.[1702] Rather, the requirement that the principal purpose be to spread terror serves to distinguish "terror that is merely an incidental effect of acts of warfare which have another primary object and are in all other respects lawful."[1703] Accordingly, whether the goal of the acts of terrorism was to further the enslavement of the civilian population, or further the Common Criminal Purpose of taking control of the territory of Sierra Leone by criminal means, the fact that the acts of terrorism were committed to further another objective would not show that the intent to spread terror was not the principal purpose of the acts of violence.

1746. para. 669: The Appeals Chamber considers that the facts highlighted by Sesay do not establish that the killings did not spread terror in fact.[1704] Moreover, even if the Trial Chamber had been satisfied that the killings did not have that effect, the actual terrorisation of the civilian populations is not an element of the crime,[1705] but is only an evidentiary consideration to be assessed in light of the circumstances as a whole. Sesay fails to address the other considerations the Trial Chamber relied on, and fails to establish that the Trial Chamber's conclusion was unreasonable.

1747. Regarding Kallon's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District – JCE – Participation in and shared intent – Kallon – paras. 798, 801 – 804 [7598].

1748. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings

and Conclusions – Kenema District – JCE – Participation in and shared intent – Gbao – paras. 946-948 951–955 [7615].

1749. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

1750. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras. 4 – 28 [7454].

1751. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

1752. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Gbao – para. 1061 [7694].

(ix) Kono District - Murder

1753. para. 429: Sesay and Gbao allege that the Trial Chamber erred in imputing to members of the JCE[1069] the killings between February and March 1998 in Tombodu ordered by Savage and Staff Alhaji,[1070] the six killings in Yardu (and the subsequent amputation of TF1-197),[1071] and the killings of at least 29 civilians in Penduma on orders of Staff Alhaji in April 1998.[1072] Sesay further argues that the Trial Chamber erred in fact in imputing the killings of 30 to 40 captive civilians by Rocky in Koidu in April 1998,[1073] and the killing of Sata Sesay's family in Wendedu.[1074] In addition, Gbao contends that the Trial Chamber failed to explain why it imputed the killing of Chief Sogbeh in Tombodu at sometime between February/March 1998 to the JCE members.[1075]

1754. para. 430: With regard to the unlawful killings committed or ordered by Rocky, Savage or Staff Alhaji, the Appeals Chamber is satisfied that the Trial Chamber's finding that these

individuals, together with Rambo RUF, "were directly subordinate to and used by members of the [JCE]" sufficiently explains how the Trial Chamber imputed their crimes to the JCE members.[1076]

1755. para. 431: Kallon challenges this finding.[1077] However, he does not address the evidence the Trial Chamber relied on to make it.[1078] He also fails to point to any parts of the record in support for his assertion that Rocky, Rambo, Savage and Staff Alhaji were not under the control of the Appellants. For his part, Sesay argues that the crimes of Savage, Staff Alhaji and their men did not fall within the Common Criminal Purpose because the finding that the rapes, killings and amputations in Penduma in April 1998 were committed "in a bid to disempower President Kabbah and to 'topple' his 'selfish and corrupt' regime" was "insufficient" to make such a finding.[1079] However, Sesay neither explains why that finding is insufficient, nor does he attempt to support his assertion with any reference to the evidence. Due to these flaws, Kallon's and Sesay's arguments are dismissed. The Appeals Chamber now turns to the specific killing incidents.

1756. para. 432: As to the killings by Rocky, Sesay argues that they were not part of the Common Criminal Purpose because Bockarie recalled Superman, Kallon and Rocky to Buedu for punishment when he heard of them.[1080] However, the finding he relies on does not sustain his claim that Superman, Kallon and Rocky were recalled "for punishment", as the Trial Chamber only found that they were summoned.[1081] Moreover, contrary to Sesay's claim, the fact that Rambo was not happy that one of the captive civilians (TF1-015) was still alive does not refute that the killings were committed in furtherance of the Common Criminal Purpose.[1082] To the contrary, Rocky's own admonition to the captives before the massacre suggests that it was committed in furtherance of the Common Criminal Purpose:

> 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.[1083]

In addition, the Trial Chamber found that in March 1998 members of the JCE had ordered the commission of crimes against civilians, including killings in Koidu Town, to punish them for being traitors and for failing to support the Junta.[1084] Sesay points to no part of the record in support for his additional claim that Rocky acted for personal reasons or pursuant to a "localised order from Rambo," nor is that claim borne out by the Trial Chamber findings he refers to, in particular seeing as Kallon was one of the fifteen Commanders assembled after the massacre who voted that TF1-015 should be killed.[1085] This submission fails.

1757. para. 433: With respect to the killings ordered by Savage and Staff Alhaji in Tombodu between February and March 1998, Sesay submits that they were committed for twisted self-gratification independently from the AFRC/RUF, but he neither points to any evidence in support nor does he address the evidence the Trial Chamber relied on for its findings on these killings.[1086] In particular, he does not challenge the findings that the execution of about 200 civilians on Savage's orders was committed because the victims were cheering for ECOMOG troops[1087] and that the "scale and gruesome nature" of the killings in Tombodu during this period "guaranteed their notoriety, as reflected by the evidence of several witnesses that the killings were reported to and discussed by Commanders in other locations."[1088] These submissions therefore fail as well.

1758. para. 434: Regarding the six killings in Yardu, Sesay submits that TF1-197 was unable to identify the perpetrators, or even their grouping.[1089] However, in the parts of TF1-197's testimony he invokes, the witness testified that the "RUF and AFRC" amputated his hand and that "those two groups … were the only two groups that were in Kono."[1090] Consequently, in the witness's mind, the "rebels" who captured him and the other six civilians, and who killed those six civilians before proceeding to amputate his hand, belonged to the AFRC/RUF.[1091] The Trial Chamber therefore did not err in finding that the perpetrators were "AFRC/RUF rebels."[1092] Because the witness's alleged failure to identify the perpetrators is the only basis for Sesay's submission that the killings were wrongly imputed, his submission is rejected. The Appeals Chamber is further satisfied that the Trial Chamber sufficiently explained how the JCE members availed themselves of the perpetrators of the killings. It held that the killings were part of a "polic[y] that promoted violence [and] targeted civilians"[1093] and that the "widespread commission by RUF and AFRC fighters"[1094] of unlawful killings such as the ones at issue demonstrated that the Common Criminal Purpose contemplated the commission of crimes as a means to control the territory of Sierra Leone. Sesay's and Gbao's allegations of a failure to provide a reasoned opinion in respect of this incident lack substance.

1759. para. 435: Sesay and Gbao submit that the Trial Chamber provided insufficient reasons as to why it imputed the killings of at least 29 civilians in Penduma in April 1998 to the JCE members. It is undisputed that these killings were carried out on orders of Staff Alhaji. The Appeals Chamber has already found that the Trial Chamber provided sufficient reasoning as to why Staff Alhaji's crimes were imputed to the JCE members. As Sesay and Gbao do not allege any error of fact in that reasoning, let alone with respect to the specific killings now at issue, their arguments are dismissed.

1760. para. 436: Gbao argues that the Trial Chamber failed to explain why the killing of Town Chief Sogbeh imputed to the JCE members. The Appeals Chamber notes that this crime was committed on the orders of Officer Med at the Tombodu Bridge mining site sometime in February/March 1998.[1095] Sogbeh was killed for refusing an order to mine, and the rebels warned teh civilians at the mine that the same faith awaited anyone who refused to work.[1096] Officer Med was the mining Commander at Tombodu Bridge[1097] and, as such, reported directly to Sesay.[1098] These findings show how the Trial Chamber imputed the killing to members of the JCE. Gbao's argument is dismissed.

1761. para. 437: Lastly, with respect to the killing of Sata Sesay's family, Sesay fails to explain how the alleged error in imputing this crime to the JCE led to a miscarriage of justice,[1099] seeing as the Trial Chamber did not enter a conviction under JCE for this crime.[1100] This submission is accordingly dismissed.

1762. para. 438: For these reasons, the Appeals Chamber dismisses the Appellants' submissions that the Trial Chamber erred in failing to provide sufficient reasons for its conclusion that the unlawful killings in Kono District could be imputed to the members of the JCE. The Appeals Chamber also dismisses the Appellants' submissions that the Trial Chamber erred in fact in so concluding.

1763. Regarding Sesay's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Sesay – paras. 624, 627 – 634 [7658].

1764. Regarding Kallon's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Kallon – paras.806, 810 - 815 [7667].

1765. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Pleading – paras. 826, 828 – 836 [1694].

1766. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District (also, Kono District) – JCE – Participation in and shared intent – Gbao – paras. 946-948, 951– 955 [7615].

1767. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see also below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

1768. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see also below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras.4 – 28 [7454].

1769. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see also below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

1770. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Gbao – para. 1061 [7694].

(x) Kailahun District - Murder

1771. Regarding Sesay's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Sesay – para. 635 [7758].

1772. Repeated from above – Chapter 2 – RUF – Appellate judgment – Legal conclusions – CAH – Attack against civilian population – Kailahun District – paras. 714, 719 – 724 [1715].

1773. Regarding Kallon's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Kallon – paras. 817, 820 – 824 [7759].

1774. Regarding Gbao's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Gbao – paras. 958- 959 [7773], 962 – 966 [7775], 982-983 [7791], 986 – 994 [7793].

(xi) Bo District - Murder

1775. para. 416: Gbao alleges that the Trial Chamber provided insufficient reasons for why the principal perpetrators of the unlawful killings during the 15 June 1997 attack on Tikonko and the 26 June 1997 attack on Gerihun (Counts 1 and 3 to 5) were used by a JCE member in furtherance of the Common Criminal Purpose.[1029] Gbao argues no factual errors in the crime-base findings to which he refers.

1776. para. 417: The Appeals Chamber notes that the Trial Chamber gave some indication as to how the perpetrators of the crimes during the Tikonko and Gerihun attacks were used by JCE members, by finding that they were "AFRC/RUF fighters."[1030] This finding must moreover be read together with the holdings regarding the context in which the attacks occurred. In that regard, the Trial Chamber found that "the Junta regime did not enjoy consolidated territorial power over Bo District from the outset"[1031] and that "[a]t 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.[1032] the town and its civilians." In June 1997 that attack was carried out.[1033] Shortly thereafter AFRC/RUF fighters also attacked Sembehun and Gerihun.[1034] All three attacks followed the same *modus operandi* as other attacks in terms of the crimes committed in their midst, which, the Trial Chamber reasoned, showed that they "were not isolated incidents but rather a central feature of a concerted campaign against civilians."[1035] Indeed, among the perpetrators in the Gerihun attack were the heads of the AFRC Secretariat in Bo Town, Secretary of State AF Kamara and Brigade Commander Boysie Palmer.[1036]

1777. para. 418: The Appeals Chamber is satisfied that these findings provide sufficient reasoning as to how the unlawful killings in Tikonko and Gerihun fitted into the "widespread and systematic nature of the crimes" and how the perpetrators "were sufficiently closely connected" to JCE members acting in furtherance of the Common Criminal Purpose, which was the Trial Chamber's basis for imputing these crimes to one or more JCE members.1037 Gbao's submission is therefore untenable.

1778. Regarding Sesay's participation in and shared intent of the JCE in relation to Bo District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Bo District – JCE – Participation in and shared intent – Sesay – paras. 612, 614 [7905].

1779. Regarding Kallon's participation in and shared intent of the JCE in relation to Bo District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Bo District – JCE – Participation in and shared intent – Kallon – paras. 791, 794 – 796 [7908].

1780. Regarding Gbao's participation in and shared intent of the JCE in relation to Bo District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District (also, Bo District) – JCE – Participation in and shared intent – Gbao – paras. 946-948, 951– 955 [7615].

1781. Regarding Gbao's participation in and shared intent of the JCE in relation to Bo District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

1782. Regarding Gbao's participation in and shared intent of the JCE in relation to Bo District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras. 4 – 28 [7454].

1783. Regarding Gbao's participation in and shared intent of the JCE in relation to Bo District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

1784. Regarding Gbao's participation in and shared intent of the JCE in relation to Bo District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Gbao – para. 1061 [7623].

C. AFRC

1. Indictment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

1785. Paragraphs 21 through 36 are incorporated by reference.[52]

1786. 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 ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, 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. [53]

1787. These attacks [para. 38: 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] were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property. [54]

1788. 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. [55]

[52] AFRC Indictment, para. 37.
[53] AFRC Indictment, para. 38.
[54] AFRC Indictment, para. 39.
[55] AFRC Indictment, para. 40.

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

1789. Members of the AFRC/RUF subordinate to and/or acting in concert with ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, committed the crimes set forth below in paragraphs 42 through 79 and charged in Counts 3 through 14, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF. [56]

(iii) Counts 3-5: Unlawful killings

i. Bo District - Between about 1 June 1997 and 30 June 1997, AFRC/RUF attacked Tikonko, Telu, Sembehun, Gerihun and Mamboma, unlawfully killing an unknown number of civilians; [57]

ii. Kenema District - 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; [58]

iii. 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. [59]

iv. Kailahun District - 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; [60]

v. Koinadugu District - 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; [61]

vi. Bombali District - 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; [62]

vii. Freetown and the Western Area - Between 6 January 1999 and 28 February 1999, AFRC/RUF conducted armed attacks throughout the city of Freetown and

[56] AFRC Indictment, para. 41.
[57] AFRC Indictment, para. 43.
[58] AFRC Indictment, para. 44.
[59] AFRC Indictment, para. 45.
[60] AFRC Indictment, para. 46.
[61] AFRC Indictment, para. 47.
[62] AFRC Indictment, para. 48.

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; [63]

viii. Port Loko - 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; [64]

1790. By their acts or omissions in relation to these events, ALEX T AMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, 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 3.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.[65]

2. Trial Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-T, Judgement, 20 June 2007

(a) Factual Findings

1791. para. 804: The Trial Chamber has considered the available evidence below to determine whether the *actus reus* of the acts of murder under Article 2(a) and Article 3(a) of the Statute and extermination under Article 2(b) of the Statute is proved beyond reasonable doubt in respect of the locations and time frames pleaded in the Indictment. The Trial Chamber finds that where the *actus reus* of the crime has been established, the only reasonable inference on the evidence adduced is

[63] AFRC Indictment, para. 49.
[64] AFRC Indictment, para. 50.
[65] AFRC Indictment, para. 50.

that the perpetrators intentionally killed the victim or caused serious bodily harm in the knowledge that death would likely result.

1792. para. 805: Where findings have been made of murder as crimes against humanity, the Trial Chamber is further satisfied that the perpetrators of the crimes were aware that their acts were part of the widespread and systematic attack on the civilian population of Sierra Leone which was taking place at the time.

(i) Bo District - Crimes

1793. para. 806: The Prosecution alleges that "[b]etween about 1 June 1997 and 30 June 1997, AFRC/RUF attacked Tikonko, Telu, Sembehun, Gerihun, and Mamboma, unlawfully killing an unknown number of civilians".[1564]

1794. para. 807: No evidence of unlawful killings has been adduced with respect to the villages of Telu, Sembehun and Mamboma, as alleged in the Indictment.[1565]

1795. para. 808: The Brima Defence submits that no evidence was led by the Prosecution of any attack by the AFRC in Bo District, implying that the perpetrators of the crimes in Bo District were exclusively members of the RUF.[1566]

1796. para. 809: In arriving at the following factual findings, the Trial Chamber has examined the entirety of the evidence and relies on Prosecution Witnesses TF1-004, TF1-053 and TF1-054 and Defence Witness DBK-137, as well as Exhibit P-66.

a. Tikonko - Bo District – Crimes

i. Unlawful killings in Tikonko – Bo District – Crimes

1797. para. 810: Witness TF1-004 testified that on or around 25 June 1997, two groups of more than 200 "soldiers" in military fatigue and red head bands attacked Tikonko.[1567] He stated that after the two attacks the streets of Tikonko were full of dead bodies and that as many as 200 persons may have lost their lives.[1568] Given the general nature of this evidence and the possibility that some of the persons killed were not protected persons, the Trial Chamber will make findings only on the specific incidents described by the witness below.

1798. para. 811: The witness testified that he was at Tikonko Junction when the first group of soldiers came from the direction of Bo. The first group of soldiers said that they were coming to

kill Kamajors; he heard this from some market women who were fleeing and, later, from the soldiers themselves.[1569] One of the soldiers from the group asked the witness who he was and the witness replied that he was "with them" so that the soldiers would not kill him. The soldier said they had come for Kamajors and did not kill the witness.[1570]

1799. para. 812: Witness TF1-004 testified that a second group of soldiers followed the first and that they were "not selecting" meaning that they were killing people indiscriminately.[1571] The witness observed the soldiers kill five civilians and three Kamajors.[1572]

1800. para. 813: The burden of proof as to whether a combatant is *hors de combat* rests with the Prosecution.[1573] The witness did not describe with precision the circumstances in which the three Kamajors were killed. The Trial Chamber is therefore unable to determine whether they were taking active part in the hostilities at the time. The Trial Chamber accordingly finds that five civilians were intentionally killed during the attack on Tikonko.

1801. para.814: Some time later, the witness came out of his hiding spot and saw an unknown number of dead people at Tikonko Junction. The corpses were dressed in civilian clothing.[1574] The Witness walked into Tikonko proper, towards his house and saw more corpses, both women and men.[1575] He heard a woman calling from a house. The witness entered the house and the woman asked him for water. The woman had been shot in the knee and her belly had been split open. She told the witness that the "soldiers" were responsible. The witness also observed approximately ten other bodies in the room with bullet wounds. In the next room, the witness saw the body of a man who had been shot in the back of the neck. A child was lying next to him, shot dead through the chest. The witness moved into a third room of the house where he observed another two bodies; one of a man who had been shot in the side and through the ears.[1576]

1802. para. 815: The witness left the house and continued walking towards his home. He saw the corpse of a man whose legs had been broken and whose skin appeared to have been removed from his forehead with a knife as well as the corpse of another man with bullet wounds lying in the gutter.[1577]

1803. para. 816: The witness entered another house, next to his home and saw the bodies of two dead women. One woman had a gunshot wound to the ear and her stomach had been split open so that the intestines had slipped out. The second woman had a gunshot wound in her side. The bodies were piled one on top of the other.[1578]

1804. para. 817: The witness testified that he did not know anyone in the village who owned guns that could have killed these individuals.[1579]

1805. para. 818: Two to three days after the attacks, the witness, together with some youths and elders from the village dug a mass grave, collected bodies from around the town and buried them. The witness estimates that they buried 20 bodies.[1580]

1806. para. 819: The Trial Chamber is satisfied on the basis of the witness's evidence that at least 18 to 20 civilians were killed by "soldiers" during the attack on Tikonko.

1807. para. 820: The Brima and Kanu Defence submit that the witness in cross-examination accepted that the soldiers who attacked Tikonko in June 1997 were members of the RUF.[1581] The Trial Chamber notes that while witness TF1-004 testified that the "soldiers" attacking Tikonko identified themselves as belonging to the AFRC faction,[1582] he also stated that some of them were the "rebels" or RUF who had been stationed in Tikonko prior to the May 1997 coup.[1583] In light of this evidence, the Trial Chamber finds that the above-established incidents were committed by members of either the AFRC faction or the RUF, but it cannot be determined beyond reasonable doubt to which of the two factions the perpetrators belonged.

b. Gerihun – Bo District – Crimes

i. Unlawful killings in Gerihun – Bo District – Crimes

1808. para. 821: TF1-053 testified that on 26 June 1997, eight "soldiers" with guns, among them a certain AF Kamara, one AB Kamara and one Boysie Palmer, arrived in vehicles and entered house of Paramount Chief Sandy Demby in Gerihun.[1584]

1809. para. 822: TF1-054 watched as a group of soldiers shot Paramount Chief Demby in the stomach . . . another soldier stabbed him in the neck[1586] . . . TF1-054 found the dead body of the caretaker, Sumaila, lying in the bathtub. Witness TF1-054 did not give further information as to who killed Sumaila.[1587] Given the strong circumstantial evidence, the Trial Chamber is satisfied beyond reasonable doubt that Sumaila was also killed by the soldiers.

1810. para 823: The Brima Defence submits that the evidence of witness TF1-053 should not be relied upon and alleges that his testimony contradicted his earlier pre-trial statements.[1588] In addition, Defence witness DBK -137 testified that he heard that Kamajors were responsible for the death of Chief Demby.[1589] The Trial Chamber notes that the testimony of witness TF1-053 regarding the killing of Chief Demby was corroborated by witness TF1-054 and was not shaken on cross-examination.[1590] The Trial Chamber thus dismisses the version of events presented by witness DBK-137 which is based on hearsay.

1811. para. 824: On the same day, 26 June 1997, witness TF1-053 observed a "soldier" shoot and kill a boy who used to run errands for him, named Kamo Lahai.[1591] The witness also saw a dead woman lying on Old Bo Road. The witness was told by mourners that her name was Sukie and that she had been shot in the breast by a "soldier".[1592] Although witness TF1-053 did not mention the name Sukie in his pre-trial statement, the Trial Chamber finds that this does not affect the credibility of the witness as he explained that he only recalled her name when giving evidence at trial.[1593] The Trial Chamber is satisfied Sukie was unlawfully killed by a soldier during the attack on Gerihun.

1812. para. 825: On 26 or 27 June 1997, in the vicinity of the market in Gerihun, Witness TF1-053 encountered at least five corpses, both male and female.[1594] The Trial Chamber is unable to establish with certainty the identity of the perpetrators or whether the victims were protected persons. The Trial Chamber accordingly makes no findings on this incident.

(ii) Kenema District - Crimes

1813. para. 827: The Prosecution alleges that "[b]etween 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."[1595]

1814. para. 828: In making the following factual findings, the Trial Chamber has considered the entirety of the evidence and relies on Prosecution Witnesses TFl-122 and Defence Witnesses DAB-063 and DAB-147, as well as Exhibit P-24.

a. Kenema Town – Kenema District – Crimes

i. Unlawful killings in Kenema Town – Kenema District – Crimes

1815. para. 829: Following the coup in May 1997, both "RUF rebels" and "AFRC Juntas" took control of Kenema Town.[1596] These groups were present in Kenema until February 1998.[1597]

1816. para. 830: Not long after the takeover of Kenema Town, witness TF1-122 saw the house of one Pa Mansaray at Mambu Street on fire. According to the witness, the house had previously been occupied by Kamajors.[1598] Thereafter, he saw three dead bodies dressed in plain cloth - two elderly men and one younger man - lying on the street. Witness TF1-122 insisted that they were civilians and not Kamajors.[1599] However, in the absence of further evidence, the Trial Chamber

cannot establish beyond reasonable doubt that these individuals were killed by members of the AFRC/RUF .

1817. para. 831: Witness TF1-122 gave evidence that at the end of May 1997 or shortly thereafter, a certain Ms. Dowei reported to the Kenema Police that "AFRC Juntas" and "RUF rebels" shot dead her husband who intervened while they were looting his property.[1600]

1818. para. 832: The testimony of witnesses TF1-122 and DAB-147, as well as Exhibit P-24, establish that in late January or early February 1998, a number of persons, among them BS Massaquoi, Brima Kpaka and Andrew Quee were arrested on the orders of Sam Bockarie of the RUF and brought to the AFRC Secretariat in Kenema. Bockarie announced that these persons were Kamajor supporters and would be killed.[1601] The detainees were then transferred to the Kenema Police Station. BS Massaquoi and Brima Kpaka were subsequently released on bail.[1602] Within a couple of days, BS Massaquoi was re-arrested by "AFRC juntas". He was then taken away, along with the other detainees, to an unknown location.[1603] Thereafter, at Lambaya stream near a waterfall called Dorwala, witness TF1-122 found the corpses of BS Massaquoi, Andrew Quee and four other individuals. Their bodies were covered with gunshot wounds, and the cranium of BS Massaquoi had been crushed by a cement block.[1604]

1819. para. 833: The Trial Chamber notes that the evidence on precisely who carried away BS Massaquoi, Andrew Quee and the other detainees is inconclusive. There is also no direct evidence on who killed the individuals found at Lambaya stream.[1606] Nonetheless, the Trial Chamber is satisfied on the evidence that unidentified members of AFRC/RUF were responsible for these killings.

1820. para. 834: In late June 1997, a certain Bonnie Wailer was detained at the Kenema police station. One day, witness TF1-122 saw Sam Bockarie arriving at the police station, accompanied by an unidentified AFRC Lieutenant and others.[1607] In the presence of police officers and civilians, witness TF1-122 heard Bockarie ordering that Bonnie Wailer and two other detained persons should be killed. Witness TF1-122 was present when "Bockarie's men" and "AFRC juntas" shot dead the three individuals.[1608] Their bodies were taken away on a military pickup van.[1609]

1821. para. 835: After the end of the rainy season in 1997, the Kenema police were investigating the burglary of the warehouse of the International Committee of the Red Cross ("ICRC") in Kenema. Witness TF1-122 heard Sam Bockarie announce that he would take the investigation into his own hands.[1610] As a result, Bockarie had two individuals arrested, one of whom was named

Santos.[1611] On the same evening, Witness TF1-122 found the dead bodies of these two persons at his doorstep.[1612] Two days later, Sam Bockarie and "his boys" loaded the corpses onto a vehicle and drove off.[1613] Although Witness TF1-122 in a pre-trial statement stated that the burglary concerned the warehouse of 'Medecins Sans Frontieres', not of the ICRC,[1614] the Trial Chamber is satisfied that this inconsistency can be attributed to the lapse of time and that the credibility of Witness TF1-122 remains unshaken.

1822. para. 836: [I]n late December 1997, when 'Operation No Living Thing' was launched in Kenema, Witness TF1-122 saw the dead body of a man dressed in civilian clothes near the Sierra Leone Telecommunication Building on Hangh Road in Kenema Town.[1615] "RUF rebels" and "AFRC juntas" were dancing around the body and singing that they would kill all Kamajors. They split open the dead man's abdomen with a bayonet and stretched his intestines across Hangh Road and established a checkpoint around it. The body stayed there for three days.[1616]

1823. para. 837: At an unspecified time between May 1997 and February 1998, Sam Bockarie personally killed a farmer near the NIC Building in Kenema town with two gunshots. Witness TF1-122 heard the gunshots and arrived at the scene when the farmer was dying. Sam Bockarie remarked that all Kamajors must be "finished". Bockarie's "boys" then threw the farmer's dead body into a hole.[1617]

1824. para. 839: The Trial Chamber accepts on the evidence that some of the above killings can be attributed to Sam Bockarie of the RUF. However, it dismisses the Kanu Defence submission that none of the killings can be attributed to the AFRC faction as the testimony of witness TF1-122 implicating "AFRC juntas" in these incidents was not shaken on cross-examination.

(iii) Kono District - Crimes

1825. para. 841: The Prosecution alleges that "[a]bout 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."[1619]

1826. para. 842: No evidence has been led on unlawful killings with respect to the villages of Foindu, Willifeh and Biaya.[1620]

1827. para. 843: In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on the evidence of Prosecution witnesses TFl-334, George Johnson, TFl-216 and Defence witnesses DBK-129, DAB-018, and DAB-023.

a. Koidu – Kono District – Crimes

i. Unlawful killings in Koidu – Kono District – Crimes

1828. para. 845: In early March 1998, Johnny Paul Koroma declared Koidu Town a "no go area" for civilians. This declaration was reiterated by Issa Hassan Sesay of the RUF. 1623 Many civilians were killed following this order by AFRC and RUF troops in Koidu Town and surrounding villages.[1624] This testimony is generally corroborated by witnesses TF1-206 and TF1-217, who heard about killings in Koidu Town.[1625]

1829. para. 846: Documentary evidence suggests that in mid-June 1998, more than 650 civilians were killed as a result of the fighting in the area around Koidu.[1626] Again, the Trial Chamber is unable to attribute those killings to a specific faction.

1830. para. 847: The Trial Chamber therefore finds that an unknown number of civilians were unlawfully killed in Koidu, but is unable to determine beyond reasonable doubt whether these killings are attributable to AFRC and/or RUF forces in Kono District.

b. Tombodu – Kono District – Crimes

i. Unlawful killings in Tombodu – Kono District – Crimes

1831. para. 848: In or about April 1998, upon the orders of a certain 'Staff Alhaji Bayo', 53 people were burnt alive by "juntas" in a big house near late Sahr Fania's compound at Tombodu.[1627]

1832. para. 849: In mid-May 1998, 'Savage' locked 15 civilians into a house in Tombodu town which he then set ablaze. None of them escaped.[1628] Another 47 people were beheaded by 'Savage' and 'Guitar boy' and then thrown into a diamond pit.[1629] Witness George Johnson corroborated this evidence generally, testifying that 'Changabulanga' aka 'Savage' killed more than 150 people who were then thrown into a pit. He stated that all were civilians and had all been

killed by machete.[1630] Several other witnesses testified that massive killings took place at the hands of AFRC/RUF fighters in Tombodu town between February and June 1998.[1631]

1833. para. 850: Witness TF1-033 testified that in or about March 1998, the Accused Brima ordered 'Savage' to attack Tombodu, which resulted in the killing of "hundreds of civilians".[1632] In the presence of AFRC commanders including the Accused Kamara and Kanu, many civilians were burned alive as they were locked up in houses which were then set on fire.[1633]

1834. para. 852: The following issues are in dispute amongst the parties regarding the testimony of witness TF1-033: the number of persons killed in Tombodu, the time frame when the killings took place and whether the Accused Brima ordered or was present while the crimes were committed.

1835. para. 853: In cross-examination, witness TF1-033 stated that 'Savage' was the sole commander of Tombodu at the time of the atrocities described and he was subordinate commander to 'Gullit'.[1636] Prosecution witness George Johnson testified that the Accused Brima arrived after the commission of crimes in Tombodu.[1637] Further, witness TF1-033 gave only very general information in relation to the alleged order and his testimony is inconsistent and contradicts the evidence of other reliable witnesses.[1638] For example, witness TF1-033 testified that the Accused Kanu was present in Tombodu in March 1998, at a time that other witnesses locate the Accused Kanu in Koinadugu District. Further, witness TF1-033 testified that the Accused Brima ordered Savage to attack Tombodu at a time where Tombodu was already the base of an AFRC Battalion in Kono District.[1639]

1836. para. 854: The Trial Chamber is thus of the view that the witness's evidence that the Accused Brima gave an order to 'Savage' to kill civilians in Tombodu is not probative and does not rely on it in making a finding on unlawful killings in Tombodu.

1837. para. 855: The Trial Chamber is satisfied that in the Indictment period for Kono District 'Staff Alhaji Bayo' intentionally killed 53 people in Tombodu; that 'Savage' intentionally killed 15 civilians in Tombodu; that Savage and Guitar boy intentionally killed another 47 people in Tombodu.

c. Mortema – Kono District – Crimes

i. Unlawful killing in Mortema – Kono District – Crimes

1838. para. 856: The Trial Chamber notes that the Prosecution has not led any evidence of unlawful killings in Mortema. However, the Defence witnesses DAB-025 and DAB-101 testified that on an unspecified day in 1998, the RUF attacked and took control of Mortema and an unknown number of people were killed as a result of the attack.[1640] As the attack was conducted by the RUF, the Trial Chamber will not make a final determination on the reliability of the evidence.

(iv) Kailahun District – Crimes

1839. para. 858: The Prosecution alleges that "[b]etween about 14 February 1998 and 30 June 1998, in locations including Kailahun town, members of AFRC/RUF unlawfully killed an unknown number of civilians."[1641]

1840. para. 859: In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on Prosecution witnesses TF1-045, TF1-113, TF1-334 and Gibril Massaquoi and Defence witness DAB-147, DAB-140 and DAB-142.

a. Kailahun Town – Kailahun District – Crimes

i. Unlawful killings in Kailahun – Kailahun District – Crimes

1841. para.860: Sam Bockarie was the senior commander of RUF troops which were in Kailahun District between February and June 1998.[1642] Witness TF1-113 testified that on his orders, a total of 67 persons were arrested in several villages in Kailahun District and detained at the G5 office in Kailahun Town. The persons were accused of being Kamajors.[1643] Some time later witness TF1-113 saw Sam Bockarie personally kill two individuals at the roundabout in Kailahun town. Eight dead bodies were already lying on the ground when he arrived at the scene.[1644] From the witness's testimony, the Trial Chamber is satisfied that these eight persons were also killed by Bockarie. The ten persons killed were part of the group of 67 detained 'Kamajors'.

1842. para. 861: Following the incident at the roundabout, Sam Bockarie ordered the killing of the remaining 57 detained 'Kamajors'.[1645] In the witness's presence, Bockarie instructed the

Military Police Commander Joe Fatoma to kill these individuals, threatening him with death if the order was not obeyed. The 57 individuals were shot following that order.[1646] Witness TF1-113's evidence is generally corroborated by a number of Defence Witnesses, although some of them testified that Sam Bockarie killed the 57 persons himself.[1647] Given that Witness TF1-113 was not shaken on cross-examination and the Defence Witnesses' accounts of events were less detailed than her own, the Trial Chamber relies on her evidence. Witnesses DAB-142 and DAB-147 corroborated the evidence that the civilians killed were alleged Kamajors.[1648]

1843. para. 862: As witness TF1-113 testified that the above incidents occurred shortly after Johnny Paul Koroma arrived in Kailahun Town and left for Kangema,[1649] the Trial Chamber is able to infer that the killings described occurred in the last half of March 1998.

1844. para. 863: However, it appears from the evidence that the 67 persons killed were combatants. The Trial Chamber recalls that if a victim is "a member of an armed organization, the fact that he is not armed or in combat at the time of the commission of crimes, does not accord him civilian status."[1650] Accordingly, the Trial Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that the detained and alleged 'Kamajors' were part of the civilian population.

(v) Koinadugu District - Crimes

1845. para. 865: The Prosecution alleges that "[b]etween 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."[1651]

1846. para. 866: No evidence on unlawful killings was led in respect of Heremakono, Kumalu (or Kamalu), Katombo, Kamadugu[1652] and Kurubonla.

1847. para. 867: In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on Prosecution witnesses TF1-334, TF1-209 and TF1-147 and Defence witnesses DAB-081, DAB-083, DAB-077, DAB-078 and DAB-085, as well as Prosecution Exhibits P-57 and P-54 and Defence Exhibit D-24 (under seal).

a. Kabala - Koinadugu District – Crimes

i. Unlawful killings in Kabala – Koinadugu District – Crimes

1848. para. 868: Witness TFl-209 witnessed the killing of her six year old son by a rebel called 'Jabie', loyal to SAJ Musa, at a farm in or near Kabala on an unspecified date in August 1998.[1653] Her husband was beaten to death with a 'mortar pestle' in the same attack by 'Jabie' and a certain 'Allusein', who was loyal to 'Superman's' group.[1654] The witness was sexually assaulted and abducted by the fighters. Her testimony in relation to these events is considered by the Trial Chamber below in its findings on Count 9.[1655]

1849. para. 869: In cross-examination, Defence Counsel referred the witness to a prior statement in which she stated that her son was two, and not six years old. The witness maintained that her child was six years of age when he was killed. She was able to provide a detailed account of the events and explained the inconsistencies with her prior statement.[1656] The Trial Chamber is thus satisfied that the witness's husband and son were killed by fighters loyal to SAJ Musa and 'Superman'.

1850. para. 870: On 17 September 1998, "rebels" attacked Kabala a second time. Witness TFl-147 testified that the rebels engaged in hostilities with loyal government SLA and ECOMOG forces. The witness was not present during those hostilities as he was hiding outside the town.[1657] However, he heard about the killing of many people.[1658] On his return to Kabala the next morning he saw ten corpses with gun shot wounds at the main junction in the centre of town.[1659] During cross-examination, the witness testified that the ten corpses that he saw were killed during the hostilities. The witness was not able to state whether the persons were civilians or by which armed organisation they were killed.[1660] In the absence of more specific evidence, the Trial Chamber is not satisfied that these victims were killed by AFRC or RUF forces or that they were civilians.

1851. para. 871: The Trial Chamber notes the evidence of witness TFl-199, that in the course of the attack on Kabala, ECOMOG were captured. Lieutenant Colonel 'Savage' and his men captured seven ECOMOG and loyal government SLA soldiers, removed their combat uniform, lined them up with their hands tied behind their back and executed them.[1661] However, this incident occurred outside of the Indictment period for Koinadugu.

b. Koinadugu Town – Koinadugu District – Crimes

i. Unlawful killings in Koinadugu Town – Koinadugu District – Crimes

1852. para. 872: AFRC and RUF forces under the command of SAJ Musa and 'Superman' attacked and occupied Koinadugu Town in late July 1998.[1662] Many civilians were killed upon the orders of 'Superman'.[1663] Specifically, Witness DAB-081 testified that more than ten civilians were beaten to death with machetes or sticks by the RUF.[1664]

1853. para. 873: Witness DAB-081 testified that one civilian boy, Lansana Farroo, was guarding a school in Koinadugu where child soldiers were being held. When he denied access to two RUF soldiers, they killed him.[1665]

1854. para. 874: In addition to the specific incidents described above, evidence of dead bodies found in the streets of Koinadugu Town was adduced at trial. The Trial Chamber finds this evidence insufficient to form the basis of findings of unlawful killings.[1666]

c. Fadugu – Koinadugu District – Crimes

i. Unlawful killings in Fadugu – Koinadugu District – Crimes

1855. para. 875: Notwithstanding the Defence submission that ECOMOG may be accountable for some of the killings which occurred in Fadugu at the relevant time,[1667] the Trial Chamber is satisfied that the following incidents cannot be attributed to ECOMOG.

1856. para. 876: On 22 May 1998, rebels attacked the town of Fadugu. They shot indiscriminately at civilians and killed an unspecified number.[1668] The Trial Chamber finds this evidence insufficient to form the basis of findings of unlawful killings.

1857. para. 877: Witness DAB-078 saw eight armed soldiers capture a civilian man, whom they believed was a member of the CDF, at a checkpoint in Fadugu on 22 May 1998.[1669] The soldiers beat the man to death, cut open his stomach and removed his intestines. The intestines were displayed openly at the checkpoint.[1670] In close vicinity to the checkpoint, a teacher and his younger brother were killed.[1671] The Trial Chamber is not satisfied beyond reasonable doubt that the soldiers knew that the killings were part of the attack on the civilian population and therefore

the requisite *mens rea* to establish a crime against humanity is lacking. However, on the evidence adduced, the Trial Chamber finds that the perpetrators were aware that the victim was not taking active part in the hostilities and that they acted in furtherance of the armed conflict. However, the witness was not able to provide any details as to which faction the soldiers belonged.

1858. para. 878: During the early hours of 11 September 1998, there was a second attack on Fadugu by "rebels" in a campaign known as "Operation Die." An unknown number of civilians were killed in the course of this attack, including the local paramount chief of Mabolo who was burnt to death.[1672] This incident is corroborated by documentary evidence.[1673]

(vi) Bombali District - Crimes

1859. para. 880: The Prosecution alleges that "[b]etween about 1 May 1998 and 30 November 1998, in several locations in Bombali District, including Bonyoyo (or Bomoya), Karina, Mafabu, Mateboi and Gbendembu (or Gbendubu or Pendembu), members of the AFRC/RUF unlawfully killed an unknown number of civilians."[1674]

1860. para. 881: No evidence on unlawful killings was led with respect to Mafabu.[1675]

1861. para. 882: In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on Prosecution Witnesses TF1-156, TF1-157, TF1-158, TF1-033, George Johnson and TF1-334 and Defence witnesses DBK-089, DBK-050 and DBK-094.

a. Bornoya - Bombali District – Crimes

i. Unlawful killings in Bornoya - Bombali District – Crimes

1862. para. 883: Witnesses TFl-156, TFl-157 and TF1-158 testified that Bornoya was attacked by "soldiers" in the morning hours on an unspecified day in May 1998. Defence witnesses testified that the exact date of the attack was 8 May 1998. The assailants were armed and wore combat uniforms and red head bands.[1676] An unspecified number of civilians were killed during the attack.[1677]

1863. para. 884: A man wearing shorts, boots and a jacket uniform, and another man with a head band carrying a cutlass, slit open the stomach of a pregnant woman named Isatta and removed the foetus. Isatta died as a result.[1678] A certain Lansana Mansaray and Sarah Foday were assaulted and seriously wounded and later died as a result of their injuries.[1679] Two children of one Alhaji Sorie

Mansaray were intentionally burnt to death under a mattress which was set on fire.[1680] An unspecified number of other civilians were killed in the course of the attack, including Adama Kamara, Jammah Daboh, Sheriff Mansaray and Mohamdu Koroma.[1681] A female soldier called Adama hacked to death the father of witness TF1-158.[1682] Witness DBK-050 watched soldiers hack his younger brother to death with a cutlass, on the orders of a female soldier known to him as 'Adama Cut Hand'.[1683]

1864. para. 885: Witness TFl-158, who was abducted and later used as a child soldier by the troops that attacked Bornoya, testified that he learned from another abducted boy who had been with the troops since Kono District that the leaders of the troops included 'Gullit', 'Five-Five', 'O-Five' and SAJ Musa.[1684] He testified that he learned about those names during the subsequent attack on the nearby village of Karina. However, witnesses belonging to SAJ Musa's group testified that SAJ Musa and 'O-Five' were not en route with the advance team led by Brima.[1685] Nevertheless, Witness TFl-157, who was also abducted and later used as a child soldier, corroborates the fact that the troops were lead by 'Gullit' and 'Five-Five'.[1686] He testified that he only heard about those names once he arrived at Camp Rosos.[1687] The Trial Chamber is satisfied that the attack on Bornoya was conducted by troops associated with the three Accused, as the village was on the route taken by the advance team led by Brima during the same time period.[1688]

b. Karina - Bombali District – Crimes

i. Unlawful killings in Karina - Bombali District – Crimes

1865. para. 886: On 8 May 1998 AFRC soldiers attacked Karina, a Mandingo village in Bombali District. Previously, at Kamagbengbe, the Accused Brima ordered his troops to specifically target Karina, as he alleged that it was the home town of President Kabbah.[1689] All three Accused participated in the attack.[1690]

1866. para. 887: In the presence of witness TF1-334, the Accused Kamara and two other "juntas" locked five young girls into a house and subsequently set it ablaze. The five girls were burnt alive.[1691]

1867. para. 888: "Juntas" threw an unspecified number of little children into the flames of burning houses. The children were burnt alive.[1692] Soldiers stabbed a pregnant woman to death.[1693]

A certain Saccoh Kankoh Fanta was injured during the attack and subsequently died.[1694] An unspecified number of children were killed during the attack.[1695]

1868. para. 889: 'Cyborg', a security officer to the Accused Kamara, threw at least four children aged between five and ten years from a two-storey building in Karina.[1696] The witness did not clarify whether the four children died as a result. The Trial Chamber therefore is not satisfied beyond a reasonable doubt that the children were killed.

1869. para. 890: A certain Eddie Williams, a.k.a. 'Maf', wrapped into an unknown number of people in a carpet inside a house and thereafter set the house on fire. The people were burnt alive. The Accused Kamara was watching from outside the house, together with Witness George Johnson and several personal security guards of the Accused Kamara.[1697]

1870. para. 89l: Prosecution Witnesses TFl-334, George Johnson, TFl-199 and TF1-055 testified that civilians were killed at the Karina mosque, including the Imam.[1698] Witness TFl-334 testified that the Accused Brima was at the mosque and accused the Imam of supporting President Kabbah. Brima allegedly said to the Imam: "You, you are the one that pray for people. You are one of Pa Kabbah's family ... [s]o you are the worst people here." The Witness stated that the Accused Brima then shot and killed the Imam, along with six men and five women with his 'Magnum' pistol.[1699] Witness George Johnson testified that the civilians at the mosque were killed by Halaji Kamanda aka 'Gun Boot'. However, Witness George Johnson did not see the civilians being killed, but rather observed dead bodies with gun shot wounds inside and outside the mosque subsequently.[1700]

1871. para. 892: The Defence presented a different version of events. The Defence adduced evidence in closed session that established beyond reasonable doubt that the Imam was not killed in the attack on Karina mosque.[1701] Defence Witnesses DBK-089 and DBK-094 gave evidence that the Imam left Karina three days prior to the attack, leaving the Imam's elder brother in charge of the mosque.[1702] The Imam's elder brother appointed someone to lead the prayers in the absence of the Imam.[1703]

1872. para. 893: Defence witnesses DBK-089 and DBK-094 did not dispute the killing of civilians at the mosque. The Brima Defence submits that the testimony of witness TF1-334 is unreliable based on his assertion that the Imam was killed.[1704] The Trial Chamber notes that when asked to whom Brima spoke at the mosque, Witness TFl-334 responded "It was the imam -- the imam that was in charge of the mosque who was leading prayers."[1705] The Trial Chamber is thus satisfied that the Witness referred to the person killed as the 'Imam' on the basis that this person

was leading the prayers when the troops arrived at the mosque. This mistake on the part of the witness does not undermine the credibility of his evidence that the Accused Brima killed the person leading the prayers, along with 11 other civilians at the mosque.

1873. para. 894: In light of the above evidence, the Trial Chamber considers the testimony of witness DBK- 094, who claimed to have only seen seven dead bodies in Karina after the attack to be unreliable.[1706] The Trial Chamber is satisfied that in fact civilians were killed on a massive scale in Karina.[1707] One witness estimated that at least 200 civilians were killed in the attack on Karina.[1708] Even though other witnesses have not estimated any total figures for the event, the figure of 200 civilians killed is corroborated by the totality of the evidence given, the massiveness of the attack on the village and the general destruction caused.

c. Mateboi - Bombali District – Crimes

i. Unlawful killing in Mateboi - Bombali District – Crimes

1874. para. 895: At an unspecified time in 1998, the Accused Brima sent an AFRC "advance team" under the command of 'Captain Arthur' to Mateboi, a village close to Camp Rosos.[1709] Upon return to Camp Rosos, 'Captain Arthur' brought the decapitated head of the chief of Mateboi and handed it over the commanders at headquarters, which included the Accused Brima and Kamara.[1710]

d. Gbendembu - Bombali District – Crimes

i. Unlawful killings in Gbendembu - Bombali District – Crimes

1875. para. 896: In or around August 1998, 'Gullit' ordered two AFRC commanders, one Salifu Mansaray and 'Arthur' to attack Gbendembu, on the basis that ECOMOG and loyal SLA troops were purportedly stationed there.[1711] Witness TF1-033 heard that 25 civilians were killed in the attack on Gbendembu and that 'Gullit' commended his men for "a job well done".[1712]

(vii) Freetown and the Western Area – Crimes

1876. para. 899: The Prosecution alleges that "[b]etween 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".[1713]

1877. para. 900: The Prosecution has led evidence from witnesses who heard of killings of civilians and witnessed dead bodies in various locations in Freetown and the Western Area.[1714] While the Trial Chamber accepts this evidence as credible, given its general nature, the Trial Chamber relies on it to corroborate its findings on the more specific incidents described below.

1878. para. 901: The Trial Chamber has considered the available evidence and, in arriving at the following findings of fact, relies on the evidence of Prosecution witnesses TF1-033, TF1-184, Gibril Massaquoi, TF1-334, TF1-024, TF1-I04, TF1-083, TF1-157, TF1-021, TF1-153 and TF1-084.

a. Freetown - Freetown and the Western Area – Crimes

i. Unlawful killings in Freetown – East End Police - Freetown and the Western Area – Crimes

1879. para. 902: Witness TFl-157 testified that when the troops entered Freetown, police officers and their families were specifically targeted and killed.[1715] The targeting of police officers followed a specific reminder by the Accused Kanu, who reiterated a previous order given to the troops by SAJ Musa at Newton, ordering that the troops should kill Nigerian soldier, Nigerian civilians, police officers and SLPP party members.[1716] The Accused Kanu reminded the troops of that order at a meeting near Orugu Village[1717] on the eve of the attack on Freetown. The Accused Brima, Kamara, the witness George Johnson, Hassan Papah Bangura and other battalion commanders were present at that meeting.[1718]

1880. para. 903: No suggestion has been made that the regular police were involved in the hostilities during the armed conflict in Sierra Leone. The Trial Chamber is therefore satisfied that the killed officers were civilians.

ii. Unlawful killings in Freetown – State House Area - Freetown and the Western Area – Crimes

1881. para. 904: Witness TF1-033 testified that on 6 January 1999, while he was seated on a bench at State House with Gibril Massaquoi, fighters including 'Junior Sheriff' brought one boy to

State House. The witness saw the boy's ID card, from which the witness learnt that he was from Guinea-Bissau. Witness TF1-033 testified that 'Junior Sheriff' then shot and killed the boy.[1719]

1882. para. 905: Witness TF1-033 also testified that on 6 January 1999 and the subsequent four or five days thereafter, he observed civilians being killed around State House by AFRC fighters on the orders of 'Gullit'.[1720] The witness stated that people perceived to be Nigerians and civilians suspected of harbouring Nigerians were brought to State House and killed. Given the more detailed evidence of killings at State House considered below, some of which involved the Accused Brima, the Trial Chamber makes no additional findings on this general evidence of witness TF1-033.

1883. para. 906: On 6 January 1999, at State House, witness TF1-184 watched the Accused Brima shoot dead a woman, who was the girlfriend of one of the soldiers.[1721] Witness TF1-334 also described an incident wherein the Accused Brima shot and intentionally killed a woman at State House on that same day, whom he referred to as the wife of one of the soldiers.[1722]

1884. para. 907: Witness Gibril Massaquoi testified that when he entered State House on 6 January 1999, he saw sixteen persons in civil attire sitting on the ground inside the compound. The witness overheard 'Five-Five' talking to the men, who were explaining that they were not soldiers but Nigerian businessmen. 'Gullit' then arrived and told 'Five-Five' that the men were Nigerian ECOMOG soldiers who had removed their uniforms and were posing as civilians. Several of the Nigerians denied this. 'Gullit' then told his soldiers to "get rid" of the Nigerians.[1723] The witness testified that he saw 'Five-Five' and other soldiers take "some of them" across the road from State House to "a place now they are referring to as the Defence Building. It was formerly a hotel."[1724] The witness testified that 'Five-Five' shot and killed one man. Three others were shot and killed, although the witness does not state by whom. The four corpses and the remaining Nigerians, who were still alive, were then loaded into a white four wheel drive and taken away from State House.[1725]

1885. para. 908: The Trial Chamber has considered the cross-examination of witness Gibril Massaquoi on this point.[1726] It emerged that in a prior statement concerning the incident, the witness stated that he saw two persons being killed at "the defence building". He states that neither 'Gullit' nor 'Five-Five' personally killed anyone, but that "they gave orders to their men" to execute the Nigerians.[1727]

1886. para. 909: Witness TF1-184 gave the following evidence regarding killings he witnessed at State House on 6 January 1999:

> A. [...] So by this I left him and came inside State House. They came with four men-
>
> Q. Mr Witness, who is they? They came?
>
> A. We, our soldiers, junior soldiers, went to the defence. By then it was Paramount Hotel. They used to call it Paramount Hotel. That is where they brought this four civilian, including one woman. As they said, these people were Nigerians. Gullit shot at them. Five-Five took the woman. We left there. I came down. I came inside again.[1728]

The witness was not cross-examined on this evidence, which the Trial Chamber finds somewhat imprecise.

1887. para. 910: The Trial Chamber is satisfied that witnesses Gibril Massaquoi and TF1-184 describe the same incident, as their accounts are substantially similar and over six years passed between the event in question and their testimony. It is plausible that the discrepancies between the witnesses' accounts are explicable on the basis that the witnesses arrived at State House at a different point in time and described the incident from their various perspectives. The Trial Chamber is satisfied that the Accused Brima gave an order to his subordinates, including Kanu, to execute the civilians. The Trial Chamber is further satisfied that Kanu shot and killed one civilian near State House and ordered his men to execute another three civilians.

1888. para. 911: Witness TF1-334 testified that on the same day, he observed 'Tito' bringing fourteen captured Nigerian ECOMOG soldiers, in uniform, to State House. 'Gullit' questioned these soldiers about their commander and where their "military hardware" was stored. The witness stated that 'Gullit' became irritated when the soldiers did not give adequate responses and he took a pistol and shot and killed two of them. He then ordered 'Tito' to execute the remaining soldiers. 'Tito' took the remaining twelve Nigerians "out the back of the State House" where they were executed by himand his men.[1729] The Trial Chamber observes, from the evidence of witness TF1-024, that the Defence building, formerly the Paramount Hotel, is situated behind State House but close by it.[1730] Witness TF1-334 was not cross-examined on this incident.

1889. para. 912: As there is a possibility that the victims were combatants, the Trial Chamber is not satisfied that they belonged to the civilian population. The Trial Chamber is satisfied that at least four persons hors de combat were executed by AFRC soldiers who were acting in furtherance of the armed conflict.

1890. para. 913: On 6 January 1999, at Garrison Street outside State House, witness TF1-334 observed a AFRC named Lieutenant Colonel Kido shoot and kill approximately six civilians because they had "overlooked" him,[1731] meaning that they did not pay him sufficient respect.

1891. para. 914: Prior to the departure of the AFRC troops from State House, while Witness TFl-024 was in captivity there, he overheard a commander whom the others called 'Gullit' telling his fighters to force captured civilians to join the AFRC troops on their retreat, in order to replace those fighters killed by ECOMOG. Civilians who refused to join were shot in the presence of 'Gullit' and their dead bodies were thrown out the back of State House. The witness was unable to specify the number of civilians who were killed, but estimated that there were more than thirty.[1732] The Trial Chamber thus finds that at least thirty civilians were killed.

1892. para. 915: The Brima Defence submits that witness TF1-024's identification of 'Gullit' at State House was a mere guess, intended to favour the Prosecution case.[1733] In cross-examination it emerged that the witness, in a prior written statement, described 'Gullit' as a man of medium height, 'not too black' but rather 'fair in complexion'. The witness clarified that he did not intend to suggest that the person to whom he referred as 'Gullit' was white.[1734] The Trial Chamber accepts the evidence of the witness, contained in a pre-trial written statement and repeatedly asserted in oral testimony, that he knew the person to be 'Gullit' by the fact that people called him by that name and he responded.[1735] Further, there is corroborating evidence from other witnesses that 'Gullit' was present at State House in the first week after the invasion.[1736]

1893. para. 916: The Brima Defence also challenge the witness's description of State House, submitting that it is contradicted by the description given by the Accused Brima in evidence.[1737] The Trial Chamber has reviewed the evidence of both witness TF1-024 and the First Accused in relation to the layout of State House and especially the kitchen.[1738] The Trial Chamber is of the view that the discrepancies between the two descriptions of the building are minor and explicable on the basis that the First Accused worked in the building for a number of years while on the witness's account he spent a short and stressful period in captivity there.

iii. Unlawful killings in Freetown – Kingtom - Freetown and the Western Area – Crimes

1894. para. 917: In the second week that the troops were in Freetown, while the headquarters was still at State House, the 5th Battalion Commander 'Basky', aka Saidu Kambolai, came to State House and reported that he needed reinforcements at Kingtom, near Ascension Town, as ECOMOG had taken over the area.[1739] Witness TFl-334 was at State House in the presence of the

three Accused, his superior Commander A[1740], Colonel Woyoh and some of the military supervisors when 'Basky' made this report. In response, the witness, his superior, Commander Basky and Colonel Woyoh gathered some men and returned to State House, where they introduced the men to 'Gullit'. 'Gullit' told the Operations Commander in front of the men that he needed the ground at Kingtom captured.

1895. para. 918: The troops, led by Operations Commander, Commander Basky and Colonel Woyoh and accompanied by the witness, went to Kingtom.[1741] The witness stated that the soldiers broke into houses and killed the civilians inside because they perceived them as 'traitors' who were collaborating with ECOMOG.[1742] The witness testified that the soldiers would knock on the door of the house and if the door was not opened, they would force it open and "[t]he first person who came out was a dead person."[1743] The witness was unable to estimate the number of civilians killed in this manner.

iv. Unlawful killings in Freetown – Fourah Bay - Freetown and the Western Area – Crimes

1896. para. 919: Witness TF1-334 testified that in Freetown in January 1999, after the troops lost State House and Eastern Police and while the troops were at Savage Square, 'Gullit' received information that the people of Fourah Bay had killed one of his soldiers. 'Gullit' announced that he would lead the AFRC troops to Fourah Bay to burn houses and kill people in retaliation. The witness testified that troops including himself, 'Gullit', 'Bazzy', 'Five-Five', the Operation Commander, the Deputy Operation Commander and his superior "Commander A" moved to Fourah Bay. The troops attacked Fourah Bay and he observed a number of civilians being killed. The witness testified that all of the commanders participated in the attack, naming specifically 'Gullit' and 'Five-Five'. The troops then moved to Upgun.[1744]

1897. para. 920: Witness George Johnson corroborated the evidence of the Accused Brima ordering retaliatory killings of civilians in Fourah Bay, although he stated that Brima and the other commanders were at State House when they received the report about the soldier allegedly killed. The witness testified that he went on the attack, along with around one hundred AFRC soldiers, led by one Saidu Kambolia.[1745] "A lot of civilians" were killed, including men, women and children burned inside houses. Soldiers shot people who attempted to escape from burning houses.[1746] The attack was not limited to Fourah Bay Road but encompassed the entire Fourah Bay area. When asked to estimate the number of civilians killed, the witness replied that "I

couldn't estimate because I could not go round the whole Fourah Bay to count each and every body."[1747] After the operation, the soldiers returned to State House where Brima was present.[1748]

1898. para. 921: Witness TFl-184 gave the most detailed account of an attack on Fourah Bay ordered by Brima in retaliation for the alleged killing of one of the soldiers by civilians in that area. He testified that he was at Ferry Junction, after the troops lost State House, with 'Gullit' and 'Five-Five' and Kamara was nearby.[1749] Upon receiving this information, 'Gullit' ordered a soldier named "Mines" to go to the SLRA to collect cutlasses. "Mines" subsequently returned with cutlasses, which he distributed to the troops with the assistance of one of the battalion commanders 'Changabulanga'.[1750] He described a demonstration of an amputation that 'Five-Five' gave for the troops at this point.[1751]

1899. para. 922: Brima then ordered the soldiers to move to the Upgun roundabout via Kissy Road. The witness testified that upon arrival at Upgun, the troops were summoned in a muster parade. 'Five-Five' and 'Gullit' held a discussion and then 'Five-Five' told the troops that 'Gullit' had said that the civilians should be taught a lesson. 'Five-Five' then ordered that any civilian the troops saw from Ross Road until Fourah Bay Road should be amputated and killed and the entire area should be burned down.[1752] The witness stated that it was normal practice for the commanders to have a discussion, after which 'Five-Five', whom the witness referred to as the "army chief commander", would inform the troops on the details of the operation.[1753]

1900. para. 923: According to the witness, the troops were then divided for the attack on Fourah Bay, with 'Five-Five' as the commander of one group and 'Bazzy' at Kissy Road. He then stated that after carrying out the orders, the troops were called back to where 'Gullit' was near Kissy Road.[1754]

1901. para. 924: The Kamara Defence submits that the testimonies of witnesses TF1-334, George Johnson and TF1-184 on the attack on Fourah Bay are inconsistent.[1755] The Trial Chamber accepts that there are discrepancies between the three accounts. Nonetheless, this does not mandate the dismissal of the entire testimony of each witness in relation to the attack on Fourah Bay. The Trial Chamber is of the view that the variations in the three accounts are explicable due to the passage of years since the events in question and the chaotic and stressful atmosphere existing at the relevant time, rather than bias on the part of witnesses George Johnson and TF1-334, as suggested by the Kamara Defence.[1756] However, the Trial Chamber notes that neither witness George Johnson nor TF1-334 were cross-examined on their testimony regarding the incident. In addition, witness TF1-184' s evidence was more detailed.

1902. para. 925: The Trial Chamber further finds it has not been established beyond reasonable doubt that the Accused Brima personally killed any civilians. However, the Trial Chamber is satisfied beyond reasonable doubt, based on the consistent testimony of all three witnesses, that Brima ordered the attack on Fourah Bay.

1903. para. 926: The Trial Chamber further finds, based on the detailed eye-witness account of witness TF1-184 which was not shaken in cross-examination in this regard, that the Accused Kanu reiterated the order to the assembled troops prior to the attack. While both witnesses TFl-334 and TFl-184 testified that the Accused Kanu went on the attack, the Trial Chamber is not satisfied that the Accused Kanu personally killed any civilians.

v. Unlawful killings in Freetown – Guard Street - Freetown and the Western Area – Crimes

1904. para. 927: At an unspecified point during the AFRC retreat from Freetown, witness TFl-334 encountered 'Captain Blood', who was a bodyguard of the Accused Kamara, with seven captured civilians at Guard Street. The witness watched 'Captain Blood' shoot and kill three of the civilians and kill the remaining four using a machete.[1757]

a. Kissy - Freetown and the Western Area – Crimes

vi. Unlawful killings in Kissy – Good Shepard Hospital - Freetown and the Western Area – Crimes

1905. para. 928: Witness TFl-104 was working as a nurse at the Good Shepherd Hospital in Kissy in January 1999.[1758] He testified that on 18 January 1999, a group of "juntas" went to the Good Shepherd Hospital in Kissy and accused personnel there of treating ECOMOG and Kamajors. They forced everybody out of the hospital - patients, nurses, staff, and visitors - and beat them with a large stick called a 'coboko', which has a rope tied to it.[1759]

1906. para. 929: The "juntas" then took Witness TF1-104, along with other civilians, to a certain Pa Zubay's house a short distance away. At this house there were a number of juntas and commanders including 'Captain Shepherd', whom the witness had met previously, and an individual to whom the other juntas called 'Captain Blood'. The civilians were made to stand against a wall and the juntas opened fire and began shooting randomly from different directions. The witness was injured and indicated wounds on his elbow, knee and right hip for the record

during his examination-in-chief. He testified that fifteen civilians were killed as a result of the shooting.[1760]

1907. para. 930: The Trial Chamber finds the elements in relation to Counts 4 and 5 (murder as a crime against humanity and a war crime respectively) have been established beyond reasonable doubt in respect of the shooting by 'juntas' at the house of 'Pa Zubay'.

vii. Unlawful killings in Kissy – Rogbalan Mosque - Freetown and the Western Area – Crimes

1908. para. 931: Witness TFl-334 testified that while the troops were at Kissy Mental Home during the retreat from Freetown in January 1999, 'Gullit' called the Operation Commander and one Lieutenant Colonel named 'Gunboot' and "other commanders" to him. 'Gullit' told the assembled commanders that he had received information that civilians were harbouring ECOMOG forces in mosques. 'Gullit' further stated that AFRC troops should shoot and kill people they encounter in mosques, as these people were enemies.[1761] The witness stated that while the area had many mosques, 'Gullit' referred in particular to a mosque "down towards Shell Old Road, towards the junction" that was housing "collaborators".[1762] 'Gullit' chose 'Five-Five' to lead a group of men including the witness, his superior 'Supervisor A' and others to the mosque. As the troops approached the mosque, 'Five-Five' instructed them to start shooting at it. The witness stated that the mosque was big and there were many people inside. The troops opened the door and started shooting. The witness observed many people die in the mosque. The troops then withdrew.[1763]

1909. para. 932. On or about 22 January 1999, witness TF1-083 sought refuge from fighting between "rebels" and ECOMOG in Rogbalan Mosque. He encountered many corpses on the premises of the mosque, both inside the mosque itself and within the fenced area surrounding it. The witness estimated that there would have been seventy corpses. He stated that the dead included elderly people, men, women and children.[1764]

1910. para. 933: Witness TF1-021 testified that on a Friday afternoon in January 1999, around half past twelve to one o'clock, unarmed civilian worshippers were gathered at Rogbalan Mosque in Windsor St, Kissy. Over fifteen men armed with guns and machetes, stormed into the compound of the mosque. The men asked the civilians if they were praying, to which the civilians responded affirmatively. The witness stated that the men told the civilians "As you are here now, you are people who voted for Tejan Kabbah. We are going to kill all of you." The civilians collected money and offered it to their assailants so that they would leave. The men took the

money and then began firing indiscriminately, killing people throughout the mosque. According to the witness, the men stated that the killings were not their fault, as they came in peace, but that of President Kabbah, since he did not recognise the People's Army.

1911. para. 934: The witness testified that he did not know to which group the men belonged as they did not wear identifying clothing and it was difficult to distinguish between the factions. He stated that he was thrown to the ground and the rebels stepped on him, telling him that he would die that way as they did not have any bullets left in their magazines. After the men departed, the witness counted the bodies. He testified that approximately 71 were killed, with 36 bodies inside the mosque, 7 at the back of the mosque, 7 in the toilet and 21 outside the mosque. The witness knew several of the victims personally and gave their names to the Trial Chamber.[1765]

1912. para. 935: In cross-examination, the Brima Defence put to witness TF1-021 a prior written statement in which he said that the attackers of Rogbalan Mosque identified themselves as belonging to the RUF, which the witness did not deny at trial.[1766] Specifically, the witness stated "I know this because when they were addressing us, they told us that they were RUF rebels and that they were People's Army."[1767]

1913. para. 936: The Trial Chamber finds the evidence of witness TF1-021 regarding the killings of civilians at the mosque to be clear, consistent and well corroborated by the evidence of TF1-083. The Brima Defence did not challenge either witness on the killing of civilians, but argued that the men responsible were members of the RUF and there is therefore no nexus with any of the Accused.[1768]

1914. para. 937: The Trial Chamber observes that witness TF1-021 testified that the mosque was attacked by RUF rebels, or members of the 'People's Army'. Although individual RUF members may have been active in Freetown, the Trial Chamber has found that the fighters present in Freetown in January 1999 were largely members of the AFRC and entirely under AFRC command. The term 'People's Army' was also used by members of the AFRC, particularly during the AFRC government period. The Trial Chamber also recalls that the lack of distinguishing insignia worn by the AFRC and RUF made it difficult for members of the public to identify the perpetrators of crimes by sight.

1915. para. 938: Documentary evidence was admitted which suggests that more than one mosque was attacked during the January 1999 invasion and retreat from Freetown.[1769] However, exhibit P-19, a map of Freetown, shows that the mosque attacked by witness TFl-334's group is situated on Whenzle St in Kissy. The Trial Chamber observes that Rogbalan Mosque in Kissy is located on

the same street, and is satisfied the reference in the transcript to "Windsor Street" is due to an error. The Trial Chamber is therefore satisfied beyond reasonable doubt that the armed men who attacked Rogbalan Mosque were AFRC fighters as described in the testimony of witness TFl-334.

viii. Unlawful killings in Kissy - Kissy Mental Home - Freetown and the Western Area – Crimes

1916. para. 939: Witness TFl-334 testified that one evening in January 1999, on the day that the AFRC troops arrived at Kissy Mental Home during the retreat from Freetown, the Accused Brima, in the presence of commanders including the Accused Kamara and Kanu, ordered troops to go out from the mental home and "clear up" the area. Brima stated that civilians were to be killed and amputated and houses burned as punishment for their support of ECOMOG.[1770] Specifically, he ordered the witness, 'Pikin', 'Shrimp', 'Hassim' and others to go as far as they could towards "PWD" killing people.[1771]

1917. para. 940: The witness stated that his group accordingly moved from the Kissy Mental Home, along the Old Road, towards Kissy market, where they heard civilians celebrating. The soldiers began firing machine guns at the civilians, killing an unspecified number of them. The troops went as far as Fisher Lane and then retreated to Kissy Mental Home, where they reported to 'Gullit' that the mission had been accomplished.[1772]

1918. para. 941: Witness TFl-334 further testified that in this period the AFRC troops held eight captured nuns at Kissy Mental Home. After ECOMOG began bombarding the troops there, two abducted clerics escaped. 'Gullit' ordered that the nuns should be killed so as to prevent them escaping and leaking information. Pursuant to this order, Foday Bah Marah a.k.a. 'Bulldoze' executed five nuns.[1773] Witness George Johnson also testified that the troops had eight abducted nuns at the mental home. However, he stated that when ECOMOG attacked the troops, Foday Bah Marah killed three nuns and the others escaped. The witness did not state whether this was pursuant to any order.[1774] Witness TF1-184 corroborated the evidence that three nuns were killed when the Nigerians attacked the mental home. He does not state who killed the nuns, but he testified that it was 'Gullit' who ordered their execution.[1775]

1919. para. 942: On the basis of the testimony of witnesses TF1-334, George Johnson and TF1-184, the Trial Chamber finds beyond reasonable doubt that three nuns were killed on the orders of the Accused Brima.

1920. para. 943: Witness TF1-153 testified that in January 1999 as the AFRC troops and some captured civilians retreated from Kissy Mental Home area towards the Portee area by the Cotton Tree, the Accused Brima, in the presence of witness TF1-153, shot dead a nun because she was not walking quickly enough.[1776]

ix. Unlawful killings in Kissy - Rowe Street - Freetown and the Western Area – Crimes

1921. para. 944: Witness TF1-084 testified that at an unspecified time in January 1999, at Rowe Street in the Kissy area of Freetown, "rebels" in military uniform commanded by a man named Tafaiko captured him, along with seven other civilians, and body-searched them for valuables. The "rebels" then lined up the other seven civilians and shot them dead in front of the witness.[1777]

1922. para. 945: In cross-examination, it emerged that in a prior statement the witness had referred to the rebels in Kissy as 'RUF'.[1778] He explained that the forces he saw in Kissy were mixed, with some wearing military uniform and others civilian attire on which was written 'RUF'.[1779] The Trial Chamber recalls that it was often difficult for members of the public to distinguish between AFRC and RUF fighters. In view of this, the Trial Chamber considers the witness's identification of his attackers to be unreliable.

1923. para. 946: The Trial Chamber notes that while some members of the RUF participated in the attack on Freetown, these individuals were fighting with the AFRC troops.[1780] The Trial Chamber accordingly finds that the perpetrators of the attack were individuals associated with the AFRC troops.

x. Unlawful killings in Kissy - Fatamaran Street- Freetown and the Western Area – Crimes

1924. para. 947: On approximately 18 January 1999, witness TF1-098, his brother and his cousin were forced by rebels at gunpoint to follow them to a school on Fataraman Street.[1781] Upon arrival at the school, four other civilians captured by the rebels were joined with the witness's group. A certain Tommy, one of the rebels, amputated the hands of the seven captured persons.[1782] Witness TF1-098's cousin died as a result of the amputation.[1783]

b. Calaba Town - Freetown and the Western Area – Crimes

xi. Unlawful killings in Calaba Town - Freetown and the Western Area – Crimes

1925. para. 948: Immediately after the withdrawal of the troops from Kissy Mental Home, at Calaba Town, witness Gibril Massaquoi saw a AFRC named "Foday Bah" shoot dead three nuns who supposedly refused to join the retreating troops.[1784] Thereafter, the witness also saw the dead body of a priest lying on the ground. The witness was not present when the priest was shot and does not know who the perpetrator is.[1785]

1926. para. 949: Having carefully considered the evidence of witnesses Gibril Massaquoi, TF1-334, TF1-184 and George Johnson in relation to the killing of three nuns around the time the troops retreated from Kissy Mental Home, the Trial Chamber is not satisfied beyond reasonable doubt that this incident at Calaba Town is different to that described above as taking place at Kissy Mental Home and accordingly makes no additional findings.

c. Wellington - Freetown and the Western Area – Factual Findings

xii. Unlawful killings in Wellington - Freetown and the Western Area – Crimes

1927. para. 950: Witness TF1-085 was abducted by rebels in Wellington in January 1999. She testified that in Wellington, "I saw them burning houses, killing people and looting property."[1786] The Trial Chamber finds this evidence too general to make any additional finding of unlawful killings. However, the Trial Chamber has considered the witness's testimony regarding her abduction in its factual findings in relation to outrages on personal dignity.

(viii) Port Loko District – Crimes

1928. para. 952: The Prosecution alleges that "[a]bout 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."[1787]

1929. para. 953: The Trial Chamber recalls that the Prosecution did not lead evidence of unlawful killings with respect to Tendakum.[1788]

1930. para. 954: In arriving at the following findings, the Trial Chamber has examined the available evidence and relies on the testimony of Prosecution witnesses TFl-334, George Johnson, TFl-157, TF1-023, TFl-253, TFl-256 and TFl-320 and Defence witnesses, DBK-129, DBK-012.

a. Manaarma - Port Loko District – Crimes

i. Unlawful killings in Manaarma - Port Loko District – Crimes

1931. para. 955: Witness TF1-320 testified that on an unspecified date in April 1999, "soldiers" wearing military uniforms brought a number of civilians who had been captured in the surrounding villages to Manaarma. After separating the women from the men, the "soldiers" took an unspecified number of women to a house where they killed some of them with axes and shot dead the others.[1789]

1932. para. 956: In April 1999, witness TF1-253 was abducted on the way to Ro-Makambisa by "rebels" who took him to Manaarma.[1790] As they entered Manaarma, witness TF1-253 saw a pregnant woman whose head had been severed and her stomach opened by the "rebels".[1791] The Brima Defence submits that the testimony of witness TF1-253 is inconsistent and unreliable.[1792] However, the Trial Chamber is satisfied that the witness's testimony on this particular incident was not shaken in cross-examination and therefore relies on his evidence.

1933. para. 957: The Prosecution submits that the evidence of Prosecution witnesses TF1-253 and TF1-320, both residents of Manaarma who were abducted by rebels in April 1999 and taken to Port Loko,[1793] establishes that the "rebels" and "soldiers" who attacked Manaarma were in fact AFRC troops en route to Port Loko, where a major attack was staged at the end of April 1999.[1794] The Trial Chamber will thus consider the available evidence on the attacks on Port Loko and Manaarma in order to make a finding on this submission.

1934. para. 958: Witness George Johnson testified that en route to Port Loko, the troops attacked a village where a fat lady was killed by an AFRC captain using a machete.[1795] The witness, who was the commander of the troops at the time, then sent an advance troop to secure the village ahead. He testified that when he subsequently arrived at the next village, he observed a number of dead civilians and 'Sheriff complained to him that 'Cyborg' had killed them.[1796] The witness did

not give the names of either village. He stated that no other villages were attacked en route to Port Loko.[1797] The witness led the troops to Port Loko, where they fought Malian ECOMOG soldiers and captured a large cache of arms and ammunition and two Malian soldiers.[1798]

1935. para. 959: Witness TF1-334 also went on the operation commanded by George Johnson to Port Loko.[1799] The witness testified that at Port Loko, Junior Lion and the other troops fought the Malians at Shelenka secondary school.[1800]

1936. para. 960: Witness TF1-253 was told by one of the rebels who captured him that he was part of Superman's group.[1801] However, he stated that "Johnson" and "Sesay" were the "big men" in Manaarma. He described Johnson as fat and black with plaited hair.[1802] "Colonel Sesay" was described as fair in complexion, not overly tall, wearing combat and a 'cap' that from the witness's description sounded like a balaclava.[1803] The witness states that "Johnson" was speaking into a device which the witness's described as "the thing [...] which is called a solar, normally they put it in the sun".[1804] The Trial Chamber infers that the witness is referring to a radio. Witness TF1-253 accompanied the troops as their captive to Port Loko. He testified that at Port Loko, the rebels fought the Malians at a secondary school called Schenlenker, at which point he escaped.[1805]

1937. para. 961: Witness TF1-320 also stated that at Port Loko, the rebels fought Malian ECOMOG soldiers at "Sri Lanka", a place near Low Shell Road.[1806] The Trial Chamber infers that the witness was referring to 'Shelenker' or 'Shelenka', the school referred to by witnesses TF1-320 and TF1-334.[1807]

1938. para. 962: Although the Trial Chamber has not relied on the testimony of Defence witness DBK-012 in relation to the command structure in Port Loko District, the Trial Chamber notes that the witness went on the operation to Port Loko and testified that the troops attacked Manaarma en route.[1808]

1939. para. 963: On the basis of the evidence of witnesses TF1-253 and TF1-320, the Trial Chamber finds that a group of rebels attacked Manaarma en route to Port Loko, where they engaged the Malian ECOMOG soldiers in combat at Shelenker/Shelenka secondary school. The Trial Chamber is satisfied from the evidence of witnesses TF1-334 and DBK-012 that the group of rebels that attacked Manaarma were AFRC soldiers under the command of 'Junior Lion' aka George Johnson. In making this finding, the Trial Chamber has not relied on witness TF1-253's description of 'Colonel Sesay' and 'Colonel Johnson', which it found confused and contradictory.

d. Nonkoba - Port Loko District – Crimes

ii. Unlawful killings in Nonkoba - Port Loko District – Crimes

1940. para. 964: On the morning of 28 April 1999, "rebels" attacked the village of Nonkoba. Witness DBK-111 and other inhabitants of Nonkoba fled to the bush. The witness later learned that 36 villagers were killed in this attack, including his mother-in-law. He observed several dead bodies with severed heads.[1809]

(b) Legal Conclusions

(i) Applicable law – Crimes against humanity ("CAH")

1941. para. 211: Article 2 of the Statute is entitled 'Crimes against humanity' and provides as follows:

> The Special Court shall have 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.

1942. para. 212: Article 2 of the Statute differs from similar provisions in the governing statutes of other international tribunals in that it does not specifically require such crime to have been committed "during armed conflict" (unlike its ICTY counterpart[361]), or "on national, political,

ethnic, racial or religious grounds" (unlike its ICTR counterpart[362]), or with the perpetrator's "knowledge of the attack" (unlike its ICC counterpart[363]).

1943. para. 213: The Trial Chamber endorses the following chapeau requirements or contextual elements of crimes against humanity pursuant to Article 2 of the Statute, as articulated in its Rule 98 Decision.[364]

a. Attack – Applicable law – CAH

1944. para. 214: An 'attack' has been defined as a "campaign, operation or course of conduct directed against a civilian population and encompasses any mistreatment of the civilian population".[365] The concepts of 'attack' and 'armed conflict' are distinct and separate notions, even though, under Article 2 of the Statute, the attack on any civilian population may be part of an armed conflict.[366] The 'attack' can precede, outlast, or continue during an armed conflict, thus it may, but need not be, be part of an armed conflict as such.[367]

b. Widespead or systematic attack – Applicable law - CAH

1945. para. 215: The requirement that the attack must be either widespread or systematic is disjunctive, so that once either requirement is met, it is not necessary to consider whether the alternative is also satisfied.[368] Proof that the attack occurred either on a widespread basis or in a systematic manner is sufficient to exclude isolated or random acts.[369] Each act occurring within the attack need not itself be widespread or systematic. It is sufficient that the act or various acts form part of an attack upon the civilian population that is either "widespread" or "systematic".[370] While isolated or random acts unrelated to the attack are usually excluded from the definition of crimes against humanity, a single act perpetrated in the context of a widespread or systematic attack upon a civilian population is sufficient to bestow individual criminal liability upon the perpetrator. Similarly, a perpetrator need not commit numerous offences to be held liable for crimes against humanity.[371] In the context of crimes against humanity, International Tribunals have defined the term "widespread" to denote "massive, frequent, large-scale action, carried out collectively with considerable seriousness and directed at multiple victims"; and the term "systematic" to denote "organised action following a regular pattern and carried out pursuant to a pre-conceived plan or policy, whether formalised or not."[372] That the crimes were supported by a policy or plan to carry them out is not a legal ingredient of crimes against humanity. However, it may eventually be relevant to establish the widespread or systematic nature of the attack and that it was directed against a civilian population.[373] Patterns of crimes, i.e., the non-accidental

repetition of similar criminal conduct on a regular basis, are a common expression of 'systematic' occurrence.[374] Accordingly, the Trial Chamber endorses the interpretation of the ICTY Appeals Chamber that

> [t]he assessment of what constitutes a 'widespread' or 'systematic' attack is essentially a relative exercise in that it depends upon the civilian population which, allegedly, was being attacked. A Trial Chamber must therefore 'first identify the population which is the object of the attack and, in light of the means, methods, resources and result of the attack upon the population, ascertain whether the attack was indeed widespread or systematic'. The consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities or any identifiable patterns of crimes, could be taken into account to determine whether the attack satisfies either or both requirements of a 'widespread' or 'systematic' attack vis-a-vis this civilian population.[375]

c. Directed against any civilian population – Applicable law – CAH

1946. para. 216: There is an absolute prohibition against targeting civilians in customary international law.[376] The term "civilian population" has been widely defined to include not only civilians in the ordinary and strict sense of the term, but all persons who have taken no active part in the hostilities, or are no longer doing so, including members of the armed forces who laid down their arms and persons placed hors de combat by sickness, wounds, detention or any other reason.[377] The targeted population must be predominantly civilian in nature and the presence of a number of non-civilians in their midst does not change the civilian character of that population.[378] The term "directed against" connotes that the civilian population must be the primary object of the attack and in determining whether or not an attack is so directed the Trial Chamber should consider, inter alia, the means and methods used in the course of the attack, the status and number of the victims, the nature of the crimes committed in course of the attack, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.[379]

1947. para. 217: 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[380] although the targeting of only a limited and randomly selected number of individuals cannot satisfy the requirements of Article 2.[381]

1948. para. 218: The presence of combatants within the "civilian population" does not change the civilian nature of the population. However, the Trial Chamber notes that the Prosecution defined

the term "civilian" and "civilian population" as "persons who took no active part in the hostilities, or who were no longer taking an active part in the hostilities."[382] This definition is usually used for persons protected under Common Article 3 and Additional Protocol II and also covers combatants who no longer take active part in hostilities hors de combat. The definition proposed by the Prosecution would appear to cover all the references to the terms "civilian" and "civilian population" in the Indictment. With regards to alleged crimes under Article 2 of the Statute, however this definition is overly broad and inconsistent with customary international law.

1949. para. 219: Referring to principles of international humanitarian law, the Gali6 and Blaski6 Appeal Judgements, distinguished between a person hors de combat and a civilian:

> Persons hors de combat are certainly protected in armed conflicts through Common Article 3 of the Geneva Conventions. This reflects a principle of customary international law. Even hors de combat, however, they would still be members of the armed forces of a party to the conflict and therefore fall under the category of persons referred to in Article 4(A)(1) of the Third Geneva Convention; as such, they are not civilians in the context of Article 50, paragraph 1, of Additional Protocol I. Common Article 3 of the Geneva Conventions supports this conclusion in referring 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" . [emphasis added][383]

Therefore, the Trial Chamber concludes that the term civilian must be narrowly defined in order to ensure a distinction in an armed conflict between civilians and combatants no longer participating in hostilities. The fact that the persons are hors de combat during the commission of a crime, does not render them "civilian" or being part of the "civilian population" for the purposes of Article 2 of the Statute. This distinction is particular important in a case were the Prosecution alleges that crimes against humanity were committed in a situation of armed conflict.

d. The acts of the perpetrator must form part of the attack – Applicable law – CAH

1950. para. 220: In order for the offence to amount to a crime against humanity, there must be a sufficient nexus between the unlawful acts of the perpetrator and the attack.[384] Although this nexus depends on the factual circumstances of each case, reliable indicia of a nexus include the similarities between the perpetrator's acts and the acts occurring within the attack; the nature of the events and circumstances surrounding the perpetrator's acts; the temporal and geographic proximity of the perpetrator's acts with the attack; and the nature and extent of the perpetrator's knowledge of the attack when he commits the acts.[385]

e. *Mens rea* – Applicable law – CAH

1951. para. 221: The *mens rea* or mental requisite for crimes against humanity is that the perpetrator of the offence must be aware that a widespread or systematic attack on the civilian population is taking place and that his action is part of this attack.[386] Evidence of knowledge depends on the facts of a particular case; thus the manner in which this legal element may be proved may vary from case to case.[387] However, the perpetrator need not have been aware of the details of the pre-conceived plan or policy when he committed the offence and need not have intended to support the regime carrying out the attack on the civilian population.[388]

1952. para. 222: It does not suffice that an accused knowingly took the risk of participating in the implementation of a policy, plan or ideology.[389] Nevertheless, the accused need not know the details of the attack or approve of the context in which his or her acts occur;[390] the accused merely needs to understand the overall context in which his or her acts took place.[391] The motives for the accused's participation in the attack are irrelevant; the accused need only know that his or her acts are parts thereof.[392]

(ii) Pleadings

1953. para. 223: The Prosecution submits that the evidence adduced at trial suffices to prove the general requirements for crimes against humanity.[393] The Joint Defence submitted at the close of the Prosecution case that the Prosecution failed to prove the general requirements for crimes against humanity, although no specific detail was provided in support of this submission and it was not reiterated in their Final Briefs.[394]

(iii) Findings on general requirements - CAH

1954. para. 224: The Trial Chamber finds that it is established beyond reasonable doubt that a widespread or systematic attack by AFRC/RUF forces was directed against the civilian population of Sierra Leone at all times relevant to the Indictment. The context in which the crimes alleged in the Indictment were committed has been described earlier in this Judgement.[395] Unless stated otherwise in the Factual Findings, the Trial Chamber is satisfied that each incident described therein formed part of a widespread or systematic attack within the meaning of Article 2 of the Statute. In arriving at this finding, the Trial Chamber has taken into consideration reliable witness testimony adduced in respect of any locations in Sierra Leone within the Indictment period and documentary evidence from a number of sources, having carefully considered each document cited and being satisfied as to its authenticity and reliability.

1955. para. 225: The attack against the civilian population of Sierra Leone during the period relevant to the Indictment evolved through two distinct stages and the Trial Chamber has divided its consideration of the evidence accordingly. The first stage coincides with the rule of the AFRC/RUF military government, from the May 1997 coup until the intervention of ECOMOG in February 1998. The attack against the civilian population was therefore state-sponsored, aimed broadly at quelling opposition to the regime and punishing civilians suspected of supporting the CDF /Kamajors.[396]

1956. para. 226: The second stage was precipitated by the removal of the AFRC/RUF government from Freetown, from which point onwards the two factions operated as non-state actors. The focal points of violence shifted as AFRC/RUF troops moved throughout the various provinces, faced with the challenge of more limited resources and poorer organisational capacity. The point has been made in the jurisprudence of the ICTY that such practical difficulties may typically result in attacks by non-State actors being less obviously classifiable as 'widespread' or 'systematic'.[397] However, the Trial Chamber finds that this was not the case in Sierra Leone. Instead, the continued attack against the civilian population was in most instances more frequent and brutal.

a. AFRC/RUF Government period

1957. para. 227: Reliable documentary evidence establishes that after the May 1997 coup, violence and human rights abuses against civilians increased. Extrajudicial killings, mutilation, amputations, rape and beatings of unarmed civilians were frequent.[398] The AFRC/RUF routinely directed attacks against civilians suspected of supporting the Kamajors, in the course of which civilians were shot and their property looted.[399] Such attacks were not limited to selected individuals. Rather, entire villages in the southern and eastern provinces were burned on the basis that they harboured Kamajors.[400]

1958. para. 228: In Bo District, for example, civilians were killed, property was looted and homes were burned during attacks executed jointly by AFRC/RUF troops on the villages of Tikonko, Gerihun, Sembehun and Telu Bongor in June 1997.[401] Kenema District was controlled by the AFRC/RUF from Kenema Town and frequent beatings and killings of civilians took place there throughout the junta period.[402] In December 1997, in Kenema Town, the AFRC/RUF declared a campaign code named 'Operation No Living Thing' which mandated the killing of civilians accused of being Kamajors.[403]

1959. para. 229: The diamond mines in Kenema District were also the site of sustained attacks on civilians. The AFRC/RUF mining operations at Tongo Field were particularly well-organised, with a system established for abducting large numbers of civilians and forcing them to work in the mines on certain days.[404] Witnesses testified that many civilians were assaulted or killed during this process.[405] This testimony is corroborated by documentary evidence from the US Department of State describing physical violence inflicted on civilian miners near Tongo Field.[406]

1960. para. 230: Certain features of this evidence prove that the attack against the civilian population was systematic. First, it was executed at the behest of the State, as AFRC/RUF government officials were routinely responsible for the commission of the crimes. In Bo District, for example, AFRC officials were involved in the burning down of the SLPP party office.[407] In Kenema Town, several alleged Kamajor supporters were arrested and detained at the police station, released on bail and then subsequently re-arrested and executed by AFRC officials.[408] A similar incident occurred in Kailahun District, where at least 57 alleged Kamajor supporters were arrested and shot by AFRC/RUF officials.[409]

1961. para. 231: The execution of the attack pursuant to pre-conceived policies or plans is an additional feature that demonstrates the systematic nature of the attack. The Trial Chamber is satisfied that civilians were forced to labour in the diamond mines in Tongo Field pursuant to a policy formulated and administered by the AFRC Secretariat.[410] In addition, the pattern of crimes evinces a policy that inflicting violence on civilians served to eradicate support for the Kamajors. The Trial Chamber emphasises in this regard that the alleged presence of Kamajors among the civilians does not preclude the characterisation of the attack as one directed primarily against the civilian population. The Trial Chamber accepts the submission of the Prosecution that throughout the junta period, the AFRC/RUF government sanctioned the commission of crimes against civilian population generally as a means of consolidating control and eliminating opposition to the regime.[411]

1962. para. 232: Although it is sufficient for the general requirements of crimes against humanity to establish that the attack was systematic, the Trial Chamber is satisfied that it was also widespread as AFRC/RUF attacks were carried out frequently against a large number of civilian victims and involved the simultaneous commission of multiple serious offences.

b. Post AFRC/RUF Government Period (February 1998 January 2000)

1963. para. 233: The retreat of the AFRC/RUF from Freetown in 1998 was characterised by the infliction of violence against civilians.[412] Documentary evidence authored by the United Nations and Human Rights Watch reports that attacks in villages across Sierra Leone continued regularly throughout the year.[413] Such attacks "exhibited a characteristic modus operandi: amputation of limbs, mutilation, actual or attempted decapitation, rape, burning alive of men, women and children, destruction of homes, abduction and looting".[414] Numerous instances appear in the oral evidence of pregnant women being killed, beaten or raped in these attacks.[415] Civilians suffered amputations including arms, hands, feet, breasts, lips and ears.[416] The abducted civilians, numbered in their thousands[417], were forced to serve the AFRC/RUF as "porters, potential recruits or sex slaves".[418] Women were actively targeted through sexual violence.[419] The phenomenon of the 'bush wives' witnessed thousands of women forcibly married to rebels.[420]

1964. para. 234: The fact that civilians were the primary target of the attack is amply demonstrated by the nature of the offences described above, the majority of which served no military purpose. Instead, evidence establishes that the infliction of mass violence on the civilian population was on occasion regarded as a legitimate method for advancing the AFRC/RUF cause. The town of Karina in Bombali District was attacked in May 1998 because it was the alleged home town of President Kabbah.[421] The stated aim of the attack was to shock the entire country and the international community.[422] In addition to Karina, AFRC and/or RUF forces attacked civilians in a number of other villages in Bombali District, including Mandaha,[423] Rosos,[424] Bornoya,[425] Mateboi,[426] Gbendembu,[427] Madina Loko,[428] Kamadogbo,[429] Kamalu,[430] Kamagbengbe[431] and Batkanu.[432]

1965. para. 235: A report admitted in evidence, authored by UNHCR officers, details numerous incidents of killings, mutilations, beatings and rapes of civilians in Kono and Koinadugu Districts in 1998.[433] This report is corroborated by documentary evidence and the testimony of both Prosecution and Defence witnesses pertaining to attacks by the AFRC and/or RUF in Kono, Koinadugu and Kailahun Districts. In Kono District, civilians were attacked in Tombodu,[434] Kaima (or Kayima),[435] Koidu Town,[436] Foendor,[437] Bomboafuidu,[438] Yardu Sandu,[439] Penduma[440] and Mortema.[441] In Koinadugu District, civilians were attacked in Koinadugu Town,[442] Kabala,[443] Yifin,[444] Yiraye,[445] Yomadugu,[446] Bafodeya,[447] Krubola,[448] Bambukura[449] and Fadugu.[450] In Kailahun District, civilians were attacked in Kailahun Town,[451] Daru[452] and Buedu.[453] These locations are named on the basis that reliable evidence of attacks was adduced with respect to

them. The Trial Chamber notes that these villages therefore represent a minimum assessment of the attack on the civilian population of Sierra Leone in the post-intervention period.

1966. para. 236: This attack culminated in the invasion of Freetown in January 1999, which has been described as "the most intensive and concentrated period of human rights abuses and international humanitarian law violations in Sierra Leone's civil war".[454] Reliable documentary evidence from several sources estimates that up to five thousand civilians were killed, one hundred had limbs amputated, thousands were raped, thousands were abducted, civilians were used by rebels as human shields and entire neighbourhoods were burnt to the ground, often with civilians inside their houses.[455] Eyewitnesses described the execution of members of religious orders[456] and civilians in mosques were also killed on suspicion that they had been harbouring ECOMOG soldiers.[457] A military expert testified that the damage to Freetown during the subsequent retreat appeared to have been a policy driven by spite as there was little military justification for the crimes committed.[458] Witnesses testified that violence against civilians continued over the following months in Port Loko, at locations including Masiaka,[459] Gberibana,[460] Manaarma,[461] Sumbuya,[462] Nonkoba[463] and Tendakum.[464]

1967. para. 237: The above evidence suffices to establish the widespread nature of the attack against the civilian population in the post-intervention period, given the frequency with which attacks occurred over a prolonged period throughout much of the territory of Sierra Leone and the untold number of civilian victims affected.

1968. para. 238: Although it is not strictly necessary, the Trial Chamber finds that the regular pattern of crimes committed demonstrates that the attack was also systematic. In addition, it is evident from the declaration by AFRC/RUF leaders of a number of 'operations' targeted at civilians that preconceived plans or policies for the execution of the attack existed. One of the most notorious of these was 'Operation Pay Yourself' which officially sanctioned the looting of civilian property on an unprecedented scale so that the soldiers could support themselves.[465] 'Operation Spare No Soul' saw troops instructed to kill, maim or amputate any civilian with whom they came into contact, burn villages and rape girls and women freely.[466] The area surrounding the AFRC headquarters in Rosos, Bombali District, was secured through "Operation Fearful" and "Operation Clear the Area" which respectively mandated the killing of any civilian in the vicinity and the looting and burning of surrounding villages.[467]

1969. para. 239: The Trial Chamber is also satisfied beyond reasonable doubt that the Accused knew that their conduct formed part of this pattern of widespread or systematic attack. The

evidence pertaining to this requirement will be presented in Chapter XI of this Judgement regarding the responsibility of the Accused.

(iv) Applicable law – Murder

1970. para. 688: Murder is charged under Article 2(a) of the Statute (Count 4 - Crime against Humanity) and Article 3(a) of the Statute (Count 5 - Violation of Article 3 Common to the Geneva Convention and of Additional Protocol II). The Trial Chamber observes that the elements defining murder are identical regardless of the provision under which it is charged.[1343] Thus, in addition to the chapeau requirements of Crimes against Humanity pursuant to Article 2 of the Statute (for Count 4) and the chapeau requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute (for Count 5), the Trial Chamber adopts the following elements of the crime of murder:

1. The perpetrator by his acts or omission caused the death of a person or persons; and

2. The perpetrator had the intention to kill or to cause serious bodily harm in the reasonable knowledge that it would likely result in death.[1344]

1971. para. 689: For the *actus reus* of murder to be satisfied, the Prosecution is required to establish beyond reasonable doubt that the perpetrator's conduct substantially contributed to the death of the person.[1345] This does not necessarily require proof that the dead body of that person has been recovered.[1346] The death of the victim may be demonstrated through circumstantial evidence, provided it is the only inference that may reasonably be drawn from the acts or omissions of the perpetrator.[1347] Such circumstantial evidence may include factors such as proof of incidents of mistreatment against the alleged victim, pattern of mistreatment and disappearances of individuals in the location in question, general climate of lawlessness, length of time which has elapsed since the person disappeared and the fact that the alleged victim has not been in contact with others whom he would have been expected to contact.[1348]

1972. para. 690: The *mens rea* required for murder is intent to kill or cause serious bodily harm in the reasonable knowledge that it would likely result in death. Premeditation IS not a *mens rea* requirement.[1349]

(v) Bo District – Unlawful killings

a. Tikonko and Gerihun – Bo District – Unlawful killings

1973. para. 826: The Trial Chamber is satisfied beyond reasonable doubt that between about 1 June 1997 and 30 June 1997, a minimum of 27 civilians were unlawfully killed in Bo District as charged under Counts 4 and 5. On the evidence adduced, the Trial Chamber has been unable to establish beyond reasonable doubt whether the perpetrators were members of the AFRC and/or RUF.

1974. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Bo, Kemena and Kailahun Districts, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bo, Kenema and Kailahun Districts - paras. 1641-1650 [7991], 1842-1847 [8001], 1982-1984 [8007], 1987-1991 [8012].

1975. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Bo, Kenema and Kailahun Districts, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bo, Kenema and Kailahun Districts - paras. 1641-1643 [8838], 1651-1664 [8839], 1842-1844 [8853], 1848-1855 [8854], 1982-1984 [8862], 1992-1996 [8863].

(vi) Kenema District – Unlawful killings

a. Kenema Town – Kenema District – Unlawful killings

1976. para. 840: By virtue of the foregoing evidence . . . the Trial Chamber is satisfied beyond reasonable doubt that between about 25 May 1997 and about 19 February 1998, members of the AFRC/RUF unlawfully killed a minimum of 17 civilians in Kenema Town in Kenema District, amounting to the elements of Counts 4 and 5.

(vii) Kono District – Unlawful killings

a. Koidu, Tombodu and Mortema – Kono District - Unlawful killings

1977. para. 857: On the basis of the foregoing evidence, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied beyond reasonable doubt that between about 14 February 1998 and 30 June 1998, members of the AFRC unlawfully killed a minimum of 265 civilians in Tombodu, Kono District, as charged under Counts 4 and 5. [The Trial Chamber is further satisfied that these large scale killings satisfy the element of massiveness for the crime of extermination charged under Count 3 of the Indictment. The indiscriminate manner in which the victims were targeted and the fact that the killings occurred in a single village over a relatively short period of time establishes that the principal perpetrators of the individual killings intended to contribute to the overall and massive result of these killings.[1638]][66]

1978. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Kono District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment -Findings and Conclusions - Kono District - paras. 1665-1668 [8017], 1856-1861 [8021], 1997-2000 [8027].

1979. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Kono District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Kono District - paras. 1665 [8868], 1669-1673 [8869], 1856 [8874], 1862-1893 [8875], 1997 [8907], 2001-2005 [8908].

(viii) Kailahun District – Unlawful killings

a. Kailahun Town – Kailahun District – Unlawful killings

1980. para. 864: By virtue of the foregoing, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied that between 14 February 1998 and 30 June 1998, Sam Bockarie and his subordinates unlawfully killed 67 persons in Kailahun Town in Kailahun District. As the Prosecution has not proved beyond reasonable doubt that the detained 'Kamajors' were part of the civilian population but only that they were hors de combat,

[66] Only relevant to crime of extermination.

the Trial Chamber concludes that only the elements of murder (Count 5) are established in respect of the killings in Kailahun Town.

1981. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Kailahun District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Kailahun District – paras. 1674-1679 [8031], 1894-1897 [8037], 2006-2009 [8041].

1982. Regarding Brima's, Kamara's and Kanu's superior responsibility in relation to Kailahun District, see below: Chapter 13 (Article 6.3 Liability) – AFRC – Trial Judgment – Findings and Conclusions – Kailahun District – paras. 1674 [8913], 1680-1685 [8914], 1894 [8920], 1898-1903 [8921], 2006 [8927], 2010-2014 [8928].

(ix) Koinadugu District – Unlawful killings

a. Kabala, Koinadugu Town and Fadugu – Koinadugu District – Unlawful killings

1983. para. 879: By virtue of the foregoing, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied beyond reasonable doubt that between about 14 February 1998 and 30 September 1998, members of the AFRC/RUF unlawfully killed a minimum of 21 civilians in Kabala, Koinadugu Town and Fadugu in Koinadugu District, amounting to the elements of Counts 4 and 5.

1984. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Koinadugu District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions – Koinadugu District - paras. 1686-1696 [8045], 1904-1906 [8056], 2015-2018 [8060].

1985. Regarding Brima's, Kamara's and Kanu's superior responsibility in relation to Koinadugu District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Koinadugu District - paras. 1686 [8933], 1697-1699 [8934], 1904 [8937], 1907-1910 [8938], 2015 [8942], 2019-2024 [8943].

(x) Bombali District – Unlawful killings

a. Bornoya, Karina, Mateboi and Gbendembu – Bombali District – Unlawful killings

1986. para. 897: By virtue of the foregoing, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied that between 1 May 1998 and 30 November 1998, members of the AFRC unlawfully killed an unknown number of civilians in Bornoya, Mateboi and Gbendembu in Bombali District. Consequently, the Trial Chamber finds that the material elements in relation to Counts 4 and 5 have been established.

1987. para.898: The Trial Chamber is further satisfied that each of the killings in Karina was part of a large scale killing which in its totality satisfies the element of massiveness for the crime of extermination as charged under Count 3 of the Indictment. The indiscriminate manner in which the victims were targeted and the fact that the killings occurred over a relatively short period of time establishes that the perpetrators of the individual killings intended to contribute to the overall and massive result of these killings.

1988. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Bombali District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bombali District - paras. 1700-1720 [8064], 1911-1920 [8085], 2025-2031 [8095].

1989. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Bombali District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bombali District - paras. 1700 [8949], 1721-1744 [8950], 1911 [8974], 1921-1928 [8975], 2025 [8983], 2032-2044 [8984].

(xi) Freetown and the Western Area – Unlawful killings

a. End Police, State House Area, Kingtom , Fourah Bay, Guard Street , Good Shepherd Hospital, Rogbalan Mosque, Kissy Mental Home, Rowe Street and Fatamaran Street

1990. para. 951: In light of the foregoing evidence and leaving aside for the present the individual responsibility of the Accused, the Trial Chamber is satisfied beyond reasonable doubt that between 6 January and 28 February 1999, AFRC forces killed at least 45 civilian men,

women and children in the city of Freetown and in Kissy in the Western Area, as charged under Counts 4 and 5. The Trial Chamber is further satisfied that these large scale killings satisfy the element of massiveness for the crime of extermination charged under Count 3 of the Indictment. The indiscriminate manner in which the victims were targeted and the fact that the killings occurred over a relatively short period of time establishes that the principal perpetrators of the individual killings intended to contribute to the overall and massive result of these killings.

b. Calaba Town – Freetown and Western Area – Unlawful killings

1991. See above: Chapter 2 – AFRC – Trial Judgment – Legal Conclusions – Freetown and the Western Area (6 January 1999 - 28 February 1999) - East End Police, State House Area, Kingtom , Fourah Bay, Guard Street , Good Shepherd Hospital, Rogbalan Mosque, Kissy Mental Home, Rowe Street and Fatamaran Street – para. 951 [1990].

c. Wellington – Freetown and Western Area – Unlawful killings

1992. See above: Chapter 2 – AFRC – Trial Judgment – Legal Conclusions – Freetown and the Western Area (6 January 1999 - 28 February 1999) - East End Police, State House Area, Kingtom , Fourah Bay, Guard Street , Good Shepherd Hospital, Rogbalan Mosque, Kissy Mental Home, Rowe Street and Fatamaran Street – para. 951 [1990].

1993. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Freetown and Western Area, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment -Findings and Conclusions - Freetown and Western Area - paras. 1745-1786 [8102], 1929-1941 [8144], 2045-2064 [8157].

1994. Regarding Brima's, Kamara's, and Kanu's superior responsibility in relation to Freetown and Western Area, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Freetown and Western Area - paras. 1745 [8997], 1787-1810 [8998], 1929 [9022], 1942-1950 [9023], 2045 [9032], 2065-2080 [9033].

(xii) Port Loko District – Unlawful killings

a. Manaarma and Nonkoba – Port Loko District – Unlawful killings

1995. para. 965: By virtue of the foregoing, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied beyond reasonable doubt that between February and April 1999, in Port Loko District, an unknown number of civilians were unlawfully killed by AFRC troops in Manaarma, as charged under Counts 4 and 5. The Trial Chamber further finds that at least 36 civilians were unlawfully killed in Nonkoba, as charged under Counts 4 and 5. However, on the evidence adduced, the Trial Chamber has been unable to establish beyond reasonable doubt whether the perpetrators of the killings in Nonkoba were members of the AFRC and/or RUF.

1996. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Port Loko District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions – Port Loko District - paras. 1811-1814 [8177], 1951-1955 [8181], 2081-2084 [8187].

1997. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Port Loko District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions – Port Loko District - paras. 1811 [9049], 1815-1819 [9050], 1951-1952 [9055], 1956-1969 [9056], 2081 [9070], 2085-2088 [9071].

3. Appellate Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-A, Judgement, 22 February 2008

(a) Factual Findings

1998. Not applicable.

(b) Legal Conclusions

1999. Regarding Bimba's, Kamara's and Kanu's individual criminal responsibility, see below: Chapter 12 (Article 6.1 Liability) –AFRC – Appellate Judgment – Findings and Conclusions. paras.72 - 87 [8234], 171 – 174 [8261], 231 – 232 [8265], 301 – 306 [8270].

2000. Regarding Bimba's, Kamara's and Kanu's superior responsibility, see below: Chapter 13 (Article 6.3 Liability) –AFRC – Appellate Judgment – Findings and Conclusions -paras. 225 - 230 [9082], 259 – 271 [9093], 289 – 292 [9109].

D. CDF

1. Indictment

The Prosecutor v. Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa, SCSL-03-14-I, Indictment, 4 February 2004

(a) Particulars

(i) Charges

2001. Paragraph 4 through 21 is incorporated by reference.[67]

2002. These actions [para. 23: The CDF, largely Kamajors, engaged the combined RUF/AFRC forces in armed conflict in various parts of Sierra Leone - to include the towns of Tongo Field, Kenema, Bo, Koribondo and surrounding areas and the Districts of Moyamba and Bonthe.] by the CDF, largely Kamajors, which also included looting, destruction of private property, personal injury and the extorting of money from civilians, were intended to threaten and terrorize the civilian population. Many civilians saw these crimes committed; others returned to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property. Typical CDF actions and the resulting crimes included: [Paragraphs 24.a to 24.f incorporated by reference].[68]

(ii) Counts 6-7: Terrorizing the Civilian Population and Collective Punishments

2003. At all times relevant to this Indictment, the CDP, largely Kamajors, committed the crimes set forth in paragraphs 22 through 27 and charged in counts 1 through 5, including threats to kill, destroy and loot, as part of a campaign to terrorize the civilian populations of those areas and did terrorize those populations. The CDP, largely Kamajors, also committed the crimes to punish the

[67] CDF Indictment, para. 22.
[68] CDF Indictment, para. 24.

civilian population for their support to, or failure to actively resist, the combined RUFf AFRC forces.[69]

(iii) Counts 1-2: Unlawful killings

2004. Unlawful killings included the following:[70]

a. between about 1 November 1997 and about 30 April 1998, at or near Tongo Field, and at or near the towns of Lalehun, Kamboma, Konia, Talama, Panguma and Sembehun, Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants;

b. on or about 15 February 1998, at or near the District Headquarters town of Kenema and at the nearby locations of SS Camp, and Blama, Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants;

c. on or about 15 February 1998, at or near Kenema, Kamajors unlawfully killed an unknown number of Sierra Leone Police Officers;

d. in or about January and February 1998, in locations in Bo District including the District Headquarters town of Bo, Kebi Town, Koribondo, Kpeyama, Fengehun and Mongere, Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants;

e. between about October 1997 and December 1999 in locations in Moyamba District, including Sembehun, Taiama, Bylago, Ribbi and Gbangbatoke, Kamajors unlawfully killed an unknown number of civilians;

f. between about October 1997 and December 1999 in locations in Bonthe District including Talia (Base Zero), Mobayeh, Makose and Bonthe Town, Kamajors unlawfully killed an unknown number of civilians;

g. between about 1 November 1997 and about 1 February 1998, as part of Operation Black December in the southern and eastern Provinces of Sierra Leone, the CDF unlawfully killed an unknown number of civilians and captured enemy combatants in road ambushes at Gumahun, Gerihun, Jembeh and the Bo-Matotoka Highway;

By their acts or omissions in relation to these events, SAMUEL IDNGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA, 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: Murder, a Crime against Humanity, punishable under Article 2.a of the Statute of the Court

[69] CDF Indictment, para. 28.
[70] CDF Indictment, para. 25.

In addition, or in the alternative:

Count 2: 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.

2. Trial Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-T, Judgement, 2 August 2007

(a) Factual Findings

(i) Kenema District – Crimes

a. Tongo Town – Kenema District – Crimes

i. Unlawful killings in Tongo Town - Kenema District – Crimes

2005. para. 377: On 16 November 1997 TF2-079 prepared a situation report on events occurring between 19 September and 13 November 1997 in Zone II Operational Frontline which included Lower Bambara and Dodo Chiefdoms. It requested arms and ammunitions and described attacks which had been launched in the area. It also narrated the following killing which was committed by Kamajors:

> On 9 November 1997, Siaka Lahai and eight of his Kamajor militia were patrolling Gboegiama Village armed with assault rifles and an RPG launcher. The Kamajors entered the village and captured Robert Ndanema, who was in possession of a large number of AFRC market due. Mr. Ndanema admitted complicity and was summarily executed.[650]

2006. para. 379: Around November 1997, while the rebels occupied Tongo and the Kamajors were headquarted in Panguma, Kamajors killed a small boy who had been travelling on foot from Tongo to Panguma. The boy was killed because he was coming from rebel-held territory.[652]

ii. Talama and Panguma after the Second Attack on Tongo – Kenema District – Crimes

2007. para. 386: [on the second attack on Tongo in early January 1998] Kamabote asked 12-year-old Foday Koroma what tribe he belonged to and the boy responded that he was a Loko. The boy also said that he was related to Akim, a rebel based in Tongo. Kamabote responded by striking him on the head with a machete, killing him.[671] The remaining Lokos, Limbas and Temnes were taken 20 to 25 feet away and Kamabote ordered his Kamajors to kill them. They used cutlasses to kill each of the 150 people in the queue. Afterwards, the Kamajors split open the stomach of one victim and displayed his entrails in a bucket before the remaining civilians.[672]

iii. Crimes Committed During and Subequent to the Third Attack on Tongo – Gathering of Civilians at the National Diamond Mining Corporation Headquarters – Kenema District – Crimes

2008. para. 390: [During the third attack on Tongo 14 January 1998] TF2-027 saw corpses on the side of the road on the way to headquarters. Some had visible wounds on their bodies and others did not.[686] … TF2-144 saw the corpse of a man named Joskie lying on the ground; the back of his neck had been chopped with a machete. TF2-144 also saw the corpse of an unidentified woman, but he was unable to tell whether she had wounds on her body.[688] After the attack, TF2-027 also saw Joskie Mboma's corpse on the street, as well as three other corpses. TF2-027 recognized one of the corpses as that of a Fullah boy who used to sell bread. This corpse was on its stomach and TF2-027 did not see any marks on the body.[689]

iv. 14 January 1998 - NDMC Headquarters – Tongo – Kenema District- Crimes

2009. para. 391: Witnesses testified that when they arrived at NDMC headquarters they saw hundreds of corpses of men and women at the entrance. There were also corpses on the football field inside where the civilians were gathering.[690] …After the rebels dispersed, TF2-022 saw a Kamajor with a cutlass chopping at three people who had been lying on the ground to avoid the crossfire.[693]

2010. para. 393: Kamabote stood before the crowd and called on two women to identify the rebels.[700] The women identified two men as rebels and Kamabote shot them both dead.[701] The women were ordered to continue identifying rebels and they pointed out more than 10 men.[702]

The Kamajors stripped these men and handed them over to armed Kamajors who took them toward Dodoma, which is a place behind the NDMC Headquarters where cows are slaughtered.[703] TF2-027 saw Kamajors lead another 200 men and women in the same direction. The members of this group had been identified as rebels and included a rebel youth leader, a woman who sold cookery and a man who sold second-hand clothing.[704]

2011. para. 394: TF2-047 saw a woman named Fatmata Kamara identify a rebel named Dr. Blood to Kamabote.[705] She complained that he and his colleagues used to eat at her shop without paying.[706] Kamabote ordered Dr. Blood to sit on the ground and then struck him in the neck and decapitated him.[707] Kamabote then killed Fatmata Kamara with a cutlass for having cooked for the rebels.[708] TF2-047 saw the Kamajors kill another person on that day.[709]

2012. para. 395: TF2-048 testified that she saw Kamajors take her husband's uncle behind a house at the NDMC Headquarters and return with blood on their machetes. She has never seen her husband's uncle again.[710] TF2-048 saw the same thing happen to a woman and a child.[711]

2013. para. 396: Kamajors led groups of Temne, Loko, Koranko and Limba tribe members away from the football field during the night.[712]

v. 15 Ianuary 1998 - NDMC Headquarters – Tongo – Kenema District – Crimes

2014. para. 398: [15 January 1998] The following morning TF2-022 saw many corpses in the field. Some of these corpses appeared to have been hacked by a machete, while others did not have any visible injuries.[714] The same morning, TF2-022 recognised a rebel named Cobra in a line of 20 men surrounded by armed Kamajors.[715] The men were accused of being rebels and were taken to an open space in the NDMC Headquarters known as the MP Office, where they were all hacked to death. The bodies of these rebels were left where they were killed.[716]

2015. para. 400: Around noon, a Kamajor commander ordered the civilians to leave the NDMC Headquarters. Before they could do so, another commander, angry that they were trying to leave, ordered Kamajors to shoot at the crowd.[720] The Kamajors began shooting sporadically. The civilians dropped to the ground and remained there until the firing stopped.[721] Many were hit by stray bullets.[722] One man next to TF2-022 was hit by a bullet. While the man was suffering from his wound, he was approached by a Kamajor who chopped at his back with a machete, then stole his belt and hit him with it, telling him to get up. The man eventually died.[723]

vi. 15 January - Outside NDMC Headquarters – Tongo – Kenema District – Crimes

2016. para. 401: TF2-048 turned and saw her older brother 15 yards away being held by three Kamajors who took his money and left.[728] Another Kamajor approached her brother and showed him a list of Limbas to be killed. He told him that he had come there for him and then cut off his ear.[729] The brother knelt down and asked the Kamajor to spare his life because he had a wife and children. The Kamajor cut his throat with a machete and then mutilated his body.[730] TF2-048 witnessed this but did not reveal their relationship because she knew that Kamajors were looking for Limbas.[731]

2017. para. 402: Another group of civilians that was allowed to leave the NDMC Headquarters was escorted by Kamajors to a checkpoint where Kamajors took their bags and belongings.[732] After finding a photograph of a rebel in one man's bag, the Kamajors hacked him to death.[733] TF2-022 knew this man to be a civilian.[734] TF2-022 was allowed to pass and eventually came to another checkpoint where a boy named Sule was hacked to death for carrying a wallet that resembled SLA fatigues.[735]

b. Bumie & Kamboma – Kenema District – Crimes

i. Unlawful killings in Bumie and Kamboma – Kenema District – Crimes

2018. para. 404: A group of civilians at the NDMC Headquarters was organized into lines to walk to Bumie.[742] Before they left the NDMC Headquarters, the Kamajors fired at the people in the lines, killing many of them.[743] The remaining people were brought to a house in Bumie.[744] The women were taken behind the house and the men were placed on the veranda in front.[745] The Kamajors told the men to look at the sun. Five of them were pulled from the group and were shot and killed.[746]

2019. para. 406: This group [see paragraph 405] of 15 men and women was joined by other civilians along the Kenema road. They eventually numbered 65 people.[750] The civilians were attacked by the Kamajors at Kamboma Bridge and taken to a house in Kamboma Town where they were told that the Kamajors had received orders to kill anyone who passed by.[751] The group was separated into two lines. The Kamajors shot each person in both lines and rolled the bodies into a swamp behind the house.[752] When there were only eight civilians left, the commander of

Foindu Junction, Mohamed Kaineh,[753] arrived and told the Kamajors that it was an ambush and they should stop spoiling cartridges and use knives to kill the remaining people.[754] The remaining eight people were hacked on the napes of their necks with machetes.[755] TF2-015, who was the last person in the line, was hacked with a machete and rolled into the swamp on top of the other dead bodies. TF2-015 lay there for one hour before he was saved by rebels. He was the only one of the 65 civilians to survive.[756]

c. Lalehun – Kenema District – Crimes

i. Unlawful killings in Lalehun – Kenema District – Crimes

2020. para. 408: In mid-February 1998, Aruna Konowa was tied up and brought to Lalehun by Kamajors.[761] He was forced to sleep at the Kamajors' Headquarters in Lalehun that night and the following morning the entire town was gathered at the court *barri*.[762] Chief Baimba Aruna, one of the Kamajor bosses of Lalehun, ordered Aruna Konowa to sit on the ground, denounced him as a rebel collaborator, and ordered him to be killed.[763] Kamajors took Konowa to the school compound and slit his throat with a knife and disembowelled him.[764] TF2-016 was present for the meeting at the *barri* and saw the body at the school compound afterwards.[765]

2021. para. 409: Kamajors killed Brima Conteh, the Nyawa town speaker, a few days later.[766] He was arrested by Kamajors from Lalehun at a meeting of the chiefs held by BJK Sei in Tongo.[767] Brima Conteh was stripped naked and taken to Lalehun, with a cement block on his head and a rope around his neck. He was paraded around town in this condition.[768] Baimba Aruna denounced Brima Conteh as the chief of the rebels and ordered his death.[769] Kamajors took Brima Conteh to a banana plantation and slit open his throat and stomach.[770] Two Kamajors at the insides of his stomach.[771] The Kamajors severed Brima Conteh's head and left his body at the plantation. A Kamajor was ordered to proceed to town with Brima Conteh's head for a celebration.[772] Another Kamajor named Vandi took Conteh's intestines to town in a five gallon container.[773] The Kamajors proceeded from house to house with his head and intestines; eventually they were left at Baimba Aruna's house.[774]

(ii) Bo District – Crimes

a. Koribondo – Bo District – Crimes

i. Unlawful killings in Koribondo – Bo District – Crimes

2022. para. 421: On Sunday, 15 February1998[809] at 9:30am, Kamajors arrested five Limba civilians named Sofiania, Sarrah, Momoh, Kamara, and Koroma at the Koribondo Junction. They were accused of being junta members responsible for killing Kamajors. While they were beaten, wounded and mutilated, the Kamajors sang the usual Kamajor song which precedes a killing.[810] Two of the civilians were shot and the other three were cut on the back of their necks with a cutlass, all five died from their wounds.[811] Sarrah and Momoh were beheaded and their heads were displayed at the junction; one was turned towards Blama Road and the other towards Sumbaya Road.[812]

2023. para. 422: On the same day, Kamajors mutilated and killed two Limba civilians: Sarah Binkolo and Sarah Lamina. Both of them were killed by the bridge along Blama Road in Koribondo. The Kamajors sang a Kamajor song while mutilating these women.[813]

2024. para. 423: On Monday, 16 February 1998, Kamajors killed eight people along Blama Road in Koribondo. The victims were five men belonging to the junta and three women who were the wives of soldiers. The women's names were Amie, Jainaba and Esther. These eight people were arrested, beaten and mutilated. Two of the women were killed by having sticks inserted through their genitals until they came out through the women's mouths.[815] The third was killed with a cutlass.[816] Four of the men were shot and the fifth was cut on the back of his neck with a cutlass; all five died from their wounds.[817]

2025. para. 424: The Kamajors disembowelled the women and put their entrails in a bucket. The women's stomachs were also removed. Their guts were made into checkpoints so that anyone coming past could see them.[818] Part of their entrails were eaten and their bodies were buried.[819]

2026. para. 425: On the same day, Kamajors killed Chief Kafala.[820] Chief Kafala had been accused of being a junta member who was leading soldiers. He was brought from Bendu to Koribondo in the presence of many people. Chief Kafala was decapitated and his body was mutilated in the street opposite the hospital. This was done in the presence of four civilians. Kamajors took Chief Kafala to the swamp where a Kamajor further mutilated him on the upper right shoulder and then forced him into a small hole with a shovel. Chief Kafala's feet were

amputated and he was shot twice. The Kamajors ordered civilians present to cover him with mud; two of them did so while the Kamajors sang.[821]

2027. para. 426: After the capture of Koribondo, an elderly person named Lahai Bassie was arrested and beaten severely by Kamajors because his son was a soldier. The Kamajors found a picture of his son and also a letter from his son in his house.[822] Lahai Bessie died one week after the serious beatings he suffered at the hands of Kamajors.[823]

b. Bo - Bo District – Crimes

i. Crimes Committed Against Policemen by Kamajors on Arrival in Bo – Bo District – Crimes

2028. para. 451: While the Kamajors were in Bo they captured and killed police officers.[880] Those that were missing had been killed; they were not missing in action. The police that had been killed did not have ammunition.[881]

2029. para. 452: On 15 February 1998, Kamajors killed eight police men at the new police barracks; TF2-056 saw the corpses.[882]

ii. Killing of Corporal Freeman – Bo – Bo District – Crimes

2030. para. 455: On 15 February 1998, while and Kandeyama Road opposite the police barracks, TF2-001 saw a group of Kamajors rush to Corporal Freeman and drag him to the road. The Kamajors then hacked Corporal Freeman to death with a cutlass. Freeman's corpse was dragged along the highway while the Kamajors shouted, "Allahu Akbar, Allahu Akbar." A little girl shouted, "Daddy, Daddy, they have killed your brother Freeman."[888]

iii. Killing of James Vandy – Bo – Bo District – Crimes

2031. para. 459: On 16 February 1998, some Kamajors left the police barracks and headed towards Bo Township with loads on their heads. James Vandy, the Sub-Inspector of the Police Criminal Investigations Division, had been captured by the Kamajors and was made to walk in front of them. During this walk, some Kamajors turned and struck James Vandy; he fell, dead. The Kamajors cut James Vandy into pieces while singing, "Allahu, Akbar, Allahu Akbar." James

Vandy was decapitated by the Kamajors. His head was thrown in a stream under under a bridge and the rest of his body was abandoned on the road.[893]

iv. Killings at Bo Government Hospital by Kamajors – Bo – Bo District – Crimes

2032. para. 462: TF2-156 was also a patient at Bo Government Hospital. He witnessed Kamajors open fire at the hospital because several policemen were patients there. The Kamajors said the policemen were all juntas and should be killed.[899]

v. Killings and Mistreatment of Civilians – Bo – Bo District –Crimes

2033. para. 468: When Kamajors led by TF2-017 were in Bo on 15 February 1998, there was fear among the civilians. Many people had been killed. The situation reports of the civilians indicated excessive killing of civilians.

vi. Killing of Collaborators at MB Sesay's Hotel – Bo – Bo District – Crimes

2034. para. 469: During the raid on MB Sesay's hotel on 15 February 1998, an unidentified woman who cooked for rebels was found hiding; she was shot and killed by Kamajors on the order of TF2-017.

2035. para. 470: On the same occasion, Joseph Lappia, the Kamajor deputy commanding officer ordered the killing of John Musa. John Musa was considered a collaborator because he traded with rebels.

vii. Killing of TF2-058's Son – Bo – Bo District – Crimes

2036. para. 471: TF2-058's son was killed by Kamajors when they entered Bo.

viii. Killing of a Woman and Mistreatment of Civilians at a Check Point – Bo – Bo District – Crimes

2037. para. 474: On 17 February 1998, TF2-001, who left Bo after the attack, reached a Kamajor checkpoint at Fobu Village. He saw two men and women who had been forced to lay naked on the ground on their backs facing the sun. The Kamajors stepped on their stomachs; an unidentified woman's ribs were stepped on and she shouted and then was shot. This woman's guts oozed out between her legs. The woman was taken behind a house and Kamajors came back holding her heart in their hands. The Kamajors threatened to do the same thing with the other people that were lying down. These people were left lying under the sun for hours[919] as the Kamajors opened their anuses to see if they had defecated.[920] Joe Nunie, the senior leader of this group of Kamajors, eventually ordered TF2-001's release.[921]

ix. Killing of Enemy Combatant John Hota – Bo – Bo District – Crimes

2038. para. 475: While in Bo, TF2-017 handed an unarmed child soldier wearing civilian clothes to Albert J Nallo. At the same time, Nallo was deployed at office of the Red Cross, near the clock tower where captured soldiers were taken and imprisoned.[922] John Hota was killed by the Death Squad, which had received direct instructions from Norman to kill John Hota because "he had no place to keep prisoners of war and had no food for them."[923] Hota's head was severed from his body and put in a white plastic bag.[924]

x. Torture of TF2·198 and Killing of his Brother – Bo – Bo District – Crimes

2039. para. 478: The Kamajors took TF2-198 and his brother to Sikissi Y-Junction, where burning plastic was dropped on the TF2-198 for 30 minutes.[928] The Kamajors put TF2-198 and his brother in a back room with two corpses dressed in civilian clothes. TF2-198 watched as the Kamajors cut off his brother's head.[929]

xi. Killing of TF2·030's Husband and Six Others on 23 February 1998 – Bo- Bo District – Crimes

2040. para. 479: On 22 February 1998, while TF2-030 and her husband were at their home near CKC Bo, a group of fifteen Kamajors armed with machetes and sharp irons surrounded TF2-030's

husband. Her husband ran to a nearby swamp but the Kamajors followed him and chopped at him all over his body using a machete. TF2-030's husband died at 6 a.m. the following morning.[931] The Kamajors killed TF2-030's husband because he was a Temne; the Kamajors said they would weed all the Temne from Bo Town.[932] Six other people were hacked to death by the Kamajors at the same time.[933]

xii. Killing of TF2-156's Brothers – Bo – Bo District – Crimes

2041. para. 481: The Kamajors chopped at TF2-156's brothers with machetes and killed them.[938] Sorie and the unidentified man were also killed.[939] The Kamajors thought TF2-156 was also dead and left him lying beside the bodies of these four people.[940]

xiii. Killings by Kamajors in a Park – Bo – Bo District – Crimes

2042. para. 490: A Temne man was arrested in a park by Kamajors because they thought he was a Temne. When the man protested that he was not a Temne, he was shot. As they left, the Kamajors purposely stepped on the man's body.[953] Later in the evening, Kamajors burnt the Temne man's body.[954]

xiv. Killing of a Former Soldier by Kamajors at a Checkpoint – Bo – Bo District – Crimes

2043. para. 493: When leaving Bo Town, TF2-067 was stopped at three checkpoints. At the first checkpoint he saw Kamajors capture a man that they believed to be a former soldier. The man denied the Kamajors' allegations. One of the Kamajors announced that they would kill the man because he was arguing. TF2-067 saw one Kamajor shoot the man. This killing was also witnessed by a large group of people passing through the checkpoint.[958]

xv. Killing of TF2-058's Husband – Bo – Bo District – Crimes

2044. para. 499: On 27 April 1998, TF2-058 witnessed Kamajors kill her husband in the Duwebu Section of Bo Town. Approximately 15 Kamajors carrying various weapons including cutlasses, RPGs, knives and guns came up behind TF2-058 and her husband as they were walking

home. The Kamajors called her husband a junta and began attacking him. He was struck in the eye and then the side with a long knife-like weapon. When he fell, all of the Kamajors stabbed him. TF2-058 ran away.[966] She did not return for her husband's body because she feared the Kamajors would see and kill her. She did not report the killing or confront the Kamajors because she feared that the Kamajors would kill her or burn down her house.[967]

xvi. Killings by Kamajors in a Swamp near Njai Town and at "Was hear " – Bo – Bo District – Crimes

2045. para. 501: On 27 April 1998, TF2-058 witnessed Kamajors attack a man in the swamp near Njai Town in Bo. The Kamajors said "Alahu Akbar" as they killed him.[969] That same day, TF2-058 witnessed Kamajors hack at a man with cutlasses at "washcar" near the Shenge market. They were also saying "Alahu Akbar".[970]

xvii. Killing of TF2-088's Nephews and Eldest Son – Bo – Bo District – Crimes

2046. para. 516: On 29 November 1997, TF2-088's eldest son and two of his nephews were shot and killed by Sundifu Samuka, Joseph Kulagbanda, and Wan Mohammed. These three corpses were thrown into the Taia River.[999] A third nephew was was shot while attempting to run from the Kamajors but he survived the shooting.[1000]

xviii. Killings in Mandu – Bo – Bo District – Crimes

2047. para. 517: On 30 November 1997, a nephew of TF2-088 named "Daddy" and his nephew's mother, Jeneba, stood amongst the Kamajors and many civilians at the Kamajor Brima Sheki's compound.[1001] Alhaji Hassan, James Bundu, Gibril Mansaray, Sundifu Samuka and Joseph Kulagbanda arrived at the compound and entered the parlour with the Mandu Battalion Commander Earnest Blango Kandapa.[1002]

2048. para. 518: Jeneba was the town mother of Nyandehun when she was captured by the rebels and was forced to cook and care for them.[1003] The Chief Kamajor James Bundu told Jeneba they would kill her because she had joined the rebels. She was shot by Philip Mboma, a Kamajor Battalion Commander based in Mandu. Her neck was cut with a cutlass by Philip Mboma and she fell to the ground and died.[1004]

2049. para. 519: James Bundu accused Daddy of being a rebel because he caught fish for the rebel's king, Smith Joseph.[1005] Philip Mboma cut Daddy in two at the waist with a cutlass. Daddy's intestines fell to the ground and he died.[1006] Gibril Mansaray forced four civilians and TF2-088's younger son to dig a hole and bury the bodies of Jeneba and Daddy.[1007]

xix. Killing of TF2-088's Son – Bo District – Crimes

2050. para. 522: Late in the evening of 22 April 1999, while TF2-088 was with his son in Kpetewoma village, he heard and saw his son screaming while being held by Kamajors.[1012] There was a gunshot, then a Kamajor named Borbor Aruna cut TF2-088's son's throat with a machete. His son was bleeding from the throat and gasping. There was a celebration in Gumahun after the Kamajors killed his son.[1013] TF2-088 went to the swamp where he saw his son's body. The Kamajors had cut his son open from the throat to the penis and had removed his internal organs including the heart, lungs and intestines.[1014] The body of his son was burnt in the presence of many commanders including Gibril Mansaray, James Bundu, David Joseph, Sundifu Samuka and Chief Mulai Abu of Nyandehun.[1015]

xx. Crimes Committed in Fengehun – Bo District – Crimes

2051. para. 532: TF2-007 was told by the Kamajors to say good-bye to his father. TF2-007's father was then tied and put inside a hut which was set on fire. After the burning, Kamajors decapitated TF2-007's father's corpse. Later in the day, TF2-007 saw the Kamajors dancing and holding a stick onto which they had attached his father's head. The Kamajors requested a token from TF2-007 in exchange for bringing his father's head but TF2-007 had nothing to give them and they passed by.[1030] He did not see his father's body again.[1031]

xxi. Killing of Ieneba and Iuma Ioe Betty by Vanjawai in Bama Bongor Chiefdom - Bo District – Crimes

2052. para. 533: Vandi Vanjawai was posted to a town called Gondama. He had authority in Soa Chiefdom, Jiama Bongor Chiefdom and Tikonko Chiefdom. Albert J Nallo made a report at Base Zero about killings involving Vanjawai: the first was the killing of a pregnant woman named as Jeneba in Gbonima Village and the second was having had his boys kill a man named Juma Joe Betty in Sulehun village. Albert J Nallo took Juma Joe Betty's elder brother Musa Joe Betty to Base Zero to report his brother's killing.[1032]

(iii) Bonthe District – Crimes

a. Killing of Kpana Manso – Bonthe District – Crimes

2053. para. 541: On the same day a Sherbro fisherman, Kpana Manso, was shot by Beigeh, the Kamajor Commander of the invading force.[1051] Kpano Manso was killed because he was wrongfully blamed for being the father of soldiers.[1052] Beigeh said he was the Battalion Commander of the Kamajor naval battalion, also referred to as the Kasilla Battalion. He said, "From now on Bonthe is under the control of the Kamajors, headed by […] Commander Morie Jusu Kamara."[1053]

b. Killings in Bonthe – Bonthe District – Crimes

2054. para. 545: On 16 February 1998, a young man named Abu Samukah Mampeh was shot by Kamajors.[1058] His corpse was left at the junction of Medina Street and Lime Street.[1059] It had been mutilated by the amputation of his arms.[1060]

2055. para. 546: On the same day, a fisherman named Kondor Bantiamor was killed by Kamajors on the shore.[1061]

2056. para. 549: At the same meeting a boy named Bendeh Battiama was accused of being a collaborator. The boy was trapped by Alfred Bobby and dragged to Heddy Road and shot. Rambo Conteh came back to the meeting and said that he was not satisfied, but at least he had spilled human blood on the soil of Bonthe. Rambo Conteh killed the boy.[1067]

c. Killing of Abu Conteh on 17 February 1998 – Bonthe District – Crimes

2057. para. 551: On 17 February 1998, a tailor named Abu Conteh was shot at the St. Joseph's Secondary School by Kamajors from Sittia Chiefdom.[1069] He was killed because he was suspected to have prepared talismans and magical concoctions to protect the Soldiers.[1070] The District Commander Mori Jusu was informed that one of his Kamajors had killed Abu Conteh.[1071] Although Mori Jusu was a disciplinarian "in his own right", he did not punish his Kamajors.[1072]

d. Mosandi, Molakaika, Bembay, Bolloh around 15 September 1997 – Bonthe District – Crimes

2058. para. 558: One evening around 15 September 1997,[1094] 34 civilians went to the villages near Bonthe Town to collect food. They were captured by Kamajors and taken to Mosandi. Three of them were killed: Bockarie Kpaka, Junisa and Pa Samuel Kamara. The civilians of Bonthe then took cutlasses and spears and went to Mosandi to liberate the captured civilians. The civilians were supported by the soldiers, who were in effective control of Bonthe at that time.[1095]

2059. para. 559: Sometime after these killings at Mosandi, Mohamed Kamara, Brima, Chokoh, Konglebbie and his wife were captured by Kamajors at Molakaika. Three of them escaped but Mohamed Kamara was killed by the Kamajors.[1097] His corpse was found under a tree next to the bridge going towards Molakaika; his back had been split open.[1098]

2060. para. 561: The civilians of Mobayeh fled into the bush after the Kamajors left, except for an old woman, named Musu Fai and a pregnant woman named Jebbeh Kpaka. The Kamajors killed Musu Fai. They ordered Jebbeh Kpaka to accompany them with the looted properties. They then asked her to go back but before she left, the Kamajors stabbed her to death. Jebbeh Kpaka fell on her back.[1100]

2061. para. 562: Around the same time Kong Sam and Ndogbei, a blind man, were killed in Bolloh village by Kamajor Commander Adu Kai Ne Challey of Masanda Village. Kong Sam was cut and his belly was slit open.[1101]

e. Unlawful killings in Motumbo around March 1998 – Bonthe District – Crimes

2062. para. 563: Around the beginning of March 1998, TF2-086 went with her business partner, Jitta, to Sebongie. On their way back to Bonthe many Kamajors, armed with machetes and guns, came out of the bush. TF2-086 was caught by five Kamajors, including Borbor from Motombo, Abu from Gondoma, Jitta from Mosebay and Baigeh from Mu. Abu Jakineh wounded TF2-086 with a cutlass on her head and wrist. Baigeh stabbed TF2- 086's belly and cut her neck.[1102] Borbor said: "Look how dead you are. Look how filthy. You are rebels. […] They [sic] are very dirty, filthy people." TF2-086 responded that she was not a rebel. Baigeh Mu pierced TF2-086's stomach with a stick. The Kamajors then asked TF2-086 to bring money; they took 140,000 leones from Jitta and TF2-086.[1103] After taking the money the Kamajors took Jitta to the bush and

killed her. Afterwards Baigeh cut TF2-086 again on her neck with the machete and stabbed her in the stomach. TF2-086 nearly died.[1104]

f. Killings at Gambia Village, Jong Chiefdom – Bonthe District – Crimes

2063. para. 564: TF2-187's uncle reported to Kondewa that his initiates from Vaahun had uprooted his cassava. In response Kondewa sent his boys to arrest TF2-187's uncle. TF2- 187's uncle was taken to the initiation bush and tied up. Melted plastic was dropped into his eyes until he died.[1105] Kondewa's deputy Sheku Kaillie, a.k.a. Bombowai, was present during the killing of TF2-187's uncle. No one gave instructions during the incident.[1106]

2064. para. 565: At the court *barri* in Gambia Village, as the Kamajors heard the sound of Norman's plane approaching, they split open the stomachs of three pregnant women and removed the fetuses, one after the other. The Kamajors decapitated the fetuses and put each of the skulls on a long stick. These were mounted "like a flag" at the junction which goes to Mattru.[1107] All three women died. Many civilians were present during this incident. Commander Sheku Kaillie was also present, but Norman had not yet arrived.[1108] After Norman arrived he went to see Kondewa at the society bush. The fetuses' heads had been put there for Norman to see. Later, the Kamajors removed the heads from the stick and smeared blood on their own faces. The Kamajors sang and celebrated as they went into town.[1109].

(iv) Talia/Base Zero - Crimes

a. Killings of civilians at Talia/Base Zero – Crimes

2065. para. 623: When they entered Talia, the Town Commanders were not carrying guns.[1272] Allieu Kondewa and Kamoh Bonnie, Kondewa's priest,[1273] were among the Kamajors. They were standing behind the town commanders. TF2-096 witnessed Allieu Kondewa take a gun from Kamoh Bonnie, and shoot one of the Town Commanders.[1274] The next morning, TF2-096 saw two graves. She was told that the Town Commanders were buried within them.[1275] Joe Tamidey and Ngobeh were also present in Talia on the day Kondewa shot the Town Commander.[1276]

2066. para. 624: TF2-133 was captured on York Island by Kamajors. She was taken to Talia Yawbeko, where she stayed for one month. During that time, TF2-133 saw Kamajors kill her mother in the palm oil plantation.[1277]

2067. para. 625: TF2-188 was captured together with her mother in Blama and both women were made to carry loads to Talia. When they arrived in Talia, Allieu Kondewa told his boys to capture TF2-188's mother and said that the mother should be killed. TF2-188 saw the Kamajors kill her mother.[1278]

2068. para. 626: During the rainy season of 1997, TF2-189 was captured by Kamajors and taken to Talia Yawbeko.[1279] When TF2-189's husband came to Talia to see her, he was captured.[1280] The following morning, TF2-189's husband was surrounded by a crowd of civilians and Kamajors. The Kamajors cut TF2-189's husband's throat and decapitated him.[1281]

2069. para. 627: The killings of Jusu Shalley, Baggie Vaiey and Lahai Lebbie were witnessed by women held in Talia Yawbeko. The three men were captured together and brought to Talia and were killed the same night that they arrived.[1282] A large group of Kamajors and civilians surrounded them. Lahai Lebbi was tied up by Kamajors and burnt to death.[1283] Jusu Shalley and Baggie Vaiey were killed with machetes.[1284] All three men were civilians.[1285]

2070. para. 630: Sometime after 13 February 1998,[1289] a soldier, named Sgt. Kamanda[1290] was brought to Talia from Koribondo to surrender. Norman was not in Talia when the soldier arrived. Sgt. Kamanda was killed. When Norman returned to Talia and learned of the soldier's death, he said that the soldier should not have been killed, but should have been used for training.[1291]

2071. para. 632: Sometime between January and March 1998, Mustafa Fallon was killed in the Poro Bush[1295] in Talia as part of a Kamajor ritual. Mustafa Fallon was a fighting Kamajor who had been enlisted by Bobor Tucker, a.k.a. Jegbeyama, of the Death Squad.[1296] Many Kamajors were present when he was killed including Junisa, Gaima, Gibrilla, Amara Sengay, Jahman, Dr. Jigbao and Mustafa Fallon's two brothers, Momoh Rogers and Sheku Massaquoi. Norman, Fofana and Kondewa were also present. Norman threatened to kill anyone who told the truth about Mustafa Fallon's death. He said "[i]f you go and explain outside and if somebody should cry, if that secret leaks, we will kill you because you have nowhere to go. You cannot go to Bo. As long as you are within the Kamajor zone I have absolute power to get you wherever you are."[1297]

2072. para. 633: Alpha Dauda Kanu was one of about 40 Kapras from Gbonkolenken Chiefdom in Tonkolili District who had come to Talia for training. He was killed sometime between December 1997 and January 1998 in the palm oil plantation near Talia as part of a Kamajor ritual.[1298] Upon learning of Alpha Dauda Kanu's killing, the Kapra leader lodged a complaint with Fofana, who then brought the complaint to Norman.[1299].

(v) Kenema District – Crimes

a. Blama – Kenema District – Crimes

i. Killing of Sergeant Fosana in Blama – Kenema District – Crimes

2073. para. 579: In Blama, the Ground Commander dismissed TF2-041 and Sergeant Fosana with a wave of his hand. TF2-041 and Sergeant Fosana were taken to the back of a house where Kamajors discussed how to kill them.[1143] Sergeant Fosana was killed.[1144] TF2-041 was cut with a knife; he lost consciousness and was left for dead.[1145]

ii. Unlawful Killing of a Temne man in Blama – Kenema District – Crimes

2074. para. 581: On Monday 16 February 1998, TF2-154 fled with her family from Kenema to Blama.[1150] Kamajors separated all those who arrived in Blama into straight lines according to their tribe.[1151] The Kamajors said that "Temnes are all relatives of Sankoh" and that "Sankoh […] brought the war".[1152] A man tried to run from the Temne line but was caught and decapitated with a cutlass. His head was put on a stick and a cigarette was put in his mouth. The Kamajors sang and danced with this man's head.[1153]

iii. Killing of Two Young Tenants at TF2-154's Father's House – Kenema Town – Kenema District – Crimes

2075. para. 585: TF2-154 observed that Kamajors launched an RPG into her father's house and two young male tenants came running out.[1163] The tenants, who were aged approximately 19 and 22, were not related to TF2-154.114 Although both young men protested that they were not part of the junta, they were killed by the Kamajors.[1165] The Kamajors set TF2-154's father's house on fire.[1166]

iv. The Killing of Sergeant Mason, Corporal Fandai and Momoh Tawol - Kenema Town – Kenema District – Crimes

2076. para. 587: Two Kamajors chased Sergeant Mason through the police barracks on 15 February 1998.1171 One Kamajor with a gun shot Sergeant Mason three times.[1172] Sergeant

Mason fell to the ground and another Kamajor chopped at his head and neck with a cutlass. Sergeant Mason died from the wounds inflicted by these Kamajors.[1173]

2077. para. 588: A group of Kamajors stopped Corporal Fandai and asked him who he was. Corporal Fandai responded that he was a police officer. The Kamajors, who were speaking in Krio, told Corporal Fandai that they wanted to kill him. Corporal Fandai asked for time to pray but was shot three times.[1174] Corporal Fandai's corpse was found on the ground near his home.[1175]

2078. para. 589: Momoh Tawol was sitting on his veranda when Corporal Fandai was killed. He asked in Krio who had fired; one of the Kamajors responded in Krio that they had made a mistake. One of the Kamajors then shot Momoh Tawol four times. Momoh Tawol fell on his knees and was shot three more times. The same Kamajor who had chopped at Sergeant Mason's head chopped at Tawol's head and neck.[1176] Momoh Tawol's corpse was left outside near his home.[1177]

v. The Killing of Sergeant Turay – Kenema Town – Kenema District – Crimes

2079. para. 591: TF2-039, a police officer, was stopped by a group of Kamajors that came to Kenema on Sunday morning, 15 February 1998.[1179] While the Kamajors were questioning him, Sergeant Turay came up to the group of Kamajors and was identified by one of them as the police supervisor.[1180] Sergeant Turay raised his hand to show the Kamajors an identification card and Brima Massaquoi, a Kamajor commander, chopped his hand.[1181] Sergeant Turay begged for his life and started backing up but Brima Massaquoi ordered the Kamajors to fire.[1182] Sergeant Turay was hit in the neck and did not get up again because there was constant firing.[1183] He died from wounds inflicted by the Kamajors.[1184]

vi. The Killing of SI Mimor – Kenema Town – Kenema District – Crimes

2080. para. 592: SI Mimor, who was partially paralyzed, was limping towards his quarters when he was spotted by Kamajors who shouted in Krio, "[l]ook at the policeman […] that we've been [sic] looking for." One of the Kamajors took his cutlass and chopped SI Mimor on his arm and leg. SI Mimor fell down, bleeding.[1185] His corpse was left outside.[1186]

vii. The Killing of OC Kano and Desmond Pratt – Kenema Town –Crimes

2081. para. 593: OC Kano and Desmond Pratt were stopped and questioned by Kamajors as they walked across the police football field.[1187] OC Kano produced an identity card. After examining the card the Kamajors shot OC Kanu and Desmond Pratt.[1188] Desmond Pratt's corpse was left outside.[1189]

viii. Killing of Police Officers at the Kenema Barracks – Kenema Town – Crimes

2082. para. 599: On Monday, 16 February 1998, after driving off the rebels, Kamajors entered the Kenema Police Barracks and started searching the houses.[1202] A group of three Kamajors searched the houses and killed some policemen that were hiding under their beds.[1203] At least one body was taken outside and burnt in the field.[1204]

ix. Killing of Alleged Junta – Kenema Town – Kenema District – Crimes

2083. para. 602: In late February 1998,[1210] TF2-151 was asked to accompany some Kamajors to the CDF office on Kaisamba Terrace.[1211] As they reached the junction closest to the CDF office, TF2-151 saw a boy run from the CDF office. He was pursued by people who shouted, "[c]atch him, he's a junta."[1212] The boy was caught by a Kamajor who chopped at him with a machete.[1213] The boy fell and was set on fire by a group of Kamajors.[1214] The Kamajors accompanying TF2-151 to the CDF office started to beat him and warned that if he did not cooperate, they would do to him what had been done to the boy.[1215]

x. Killing of Mr. Ojuku and other Mistreatment – Kenema Town – Kenema District – Crimes

2084. para. 604: One morning, some time after the arrival of ECOMOG,[1220] when TF2-144 was at his house in Nyandeyama, he saw Kamajors come for Mr. Ojuku, who was sitting on a veranda.[1221] MO Foday gave an order and one of the Kamajors raised his gun and hit Mr. Ojuku on his chest.[1222] Mr. Ojuku fell down. The Kamajors trampled him and then dragged him to the back of the house.[1223] TF2-144 later heard people say that the Kamajors cut off Mr. Ojuku's head and took it to the market where Mr. Ojuku's wife was doing business.[1224]

2085. para. 605: Two days after the killing of Mr. Ojuku, TF2-144 saw Kamajors catch a man of 25 or 30 years at a checkpoint between Kahunla Street and Nyandeyama. The man was beaten, tied up and stabbed. TF2-144 left after seeing a Kamajor named Yamorto pierce the man's chest with a knife.[1225]

xi. Other Killings – Kenema District – Crimes

2086. para. 606: Between mid-September 1998 and mid-December 1998,[1226] TF2-152 was arrested by Kamajors and taken to a cell at the CDF office at Kaisamba Terrace.[1227] KBK Magonna handed TF2-152 and one other person over to Colonel Biko, a.k.a. Yamorto, who took them to Nyandeyama Yamorto Base, which is by the roundabout near the council and the court.[1228] On the way there, Colonel Biko cut open the stomach of TF2- 152's friend and created a checkpoint by stringing this person's guts between two sticks.[1229] The friend was not yet dead.[1230] Colonel Biko and the Kamajors said, "[y]ou are going to die here."[1231] Various organs were removed from TF2-152's friend's torso. TF2-152 was taken to the Kamajor base where he was tied and stripped naked. A friend of TF2-152's arrived and rescued him.[1232]

2087. para. 607: During the same period, TF2-152 saw Kamajors kill two people at the NP petrol station on Blama Road. A tire was put on one and thatch on the other and they were set on fire. On Hangha Road, three people were killed opposite Capitol by the police barracks.[1233]

(vi) Moyamba District – Crimes

a. Moyamba Town – Moyamba District – Crimes

i. Murder of Mr. Thomas in Moyamba – Moyamba District – Crimes

2088. para. 639: After the Kamajors returned to Moyamba they searched for collaborators.[1311] The Kamajors looked specifically for Mr. Thomas,[1312] who was suspected of collecting information from Moyamba and selling it to the AFRC at Camp Charlie in Mile 91.[1313] When the Kamajors found Mr. Thomas they took him to Mustapha Ngobeh's place.[1314] Three or four days later, TF2-165 saw Mr. Thomas in the midst of a group of Kamajors[1315] who were singing, and dancing as they headed towards Shenge Park in Moyamba Town.[1316] People from the town stood around and waited to see what was going to happen to Mr. Thomas. TF2-165 heard the Kamajors say: "Go, […] you are now a free man […]"[1317] Mr. Thomas began to leave but was shot in the

back by a Kamajor and fell.[1318] Kamajors dragged Mr. Thomas' corpse to Langowa Street where they decapitated him.[1319] Some Kamajors drank blood from the body of Mr. Thomas; some rubbed the blood on their bodies; and one Kamajor took Thomas' head and placed it on his own head.[1320] The Kamajors proceeded along Langowa Street with Mr. Thomas' head still on one of the Kamajor's heads. The headless body of Mr. Thomas was left in Langowa Street for some time.[1321]

ii. Killing of One Person in Shenge Park (Moyamba Town) – Moyamba District – Crimes

2089. para. 640: In late 1997 or early 1998, Kamajors brought three people to Shenge Park.[1322] The Kamajors set fire to a tire on Chief Siaka Stevens Street opposite the court barri. [1323] A few minutes later they brought three hairless men from the Native Administration cell.[1324] The Kamajors said that they would give justice to one of the three in Moyamba but that the other two would be taken back to Shenge so that their people would know they were "bad" people.[1325] The hands of all three men were tied.[1326] The Kamajors placed one of the men on the fire and he burnt to ashes.[1327] Kenei Torma and Chuck Norris were in control of the Kamajors in Moyamba at that time.[1328]

b. Sembehun – Moyamba District

i. Murder in Yakarji in Sembehun – Moyamba District – Crimes

2090. para. 649: On the morning of the third day after the Kamajors arrived in Sembehun, they travelled two miles to a village called Yakarji.[1355] In Yakarji the Kamajors looted a Mazda van which had been in the care of TF2-073's brother-in-law.[1356] The Kamajors beat TF2-073's brother-in-law severely and forced him to show them where the van was located.[1357] They looted the vehicle and brought it back to their base in Sembehun. TF2- 073's brother-in-law died from the beatings a few weeks after this event.[1358]

c. Rokonta and Surrounding Areas – Moyamba District – Crimes

i. Arrest ofTF2-166's Family and Killing of her Father on 11 May 1998 – Rokonta – Moyamba District – Crimes

2091. para. 653: The CDF returned and entered Rokonta Village on Sunday, 11 May 1998 at 8:00pm.[1370] The Kamajors arrived at TF2-166's father's house and opened fire. The family tried to escape to Mabang[1371] but some of them were captured, including TF2-166 and her parents. TF2-166's father was hit[1372] and taken in a vehicle with some family members[1373] to Masanki Village[1374] where Amadou Mahoi was the CDF commander.[1375] Those captured had to carry her father's looted property.[1376] Gibrille Kamara, a CDF from Rokonta, came and tied her father's hands;[1377] the latter shouted and offered 500,000 leones to the CDF to spare his life. They took the money and Lamina Pupil, a CDF member, said that they would kill TF2-166' father. One CDF said: "This child […] is sharp, […] let's tie her and kill her after killing the father. [sic]" They said they would rape TF2-166 before killing her.[1378] One CDF, Mohamed Lingon, tied TF2-166's left foot. Mohamed Koroma of Mayenoh and Commander Amadou Muhoi[1379] stabbed the witness' father in the eye with a knife,[1380] cut his mouth[1381] and threw hot water on him. TF2-166's father died.[1382] TF2-166 escaped with the help of one Kamajor.[1383]

d. Bradford – Moyamba Disrtict – Crimes

i. Murder of Ruffus Charlie speaker at Bradford in 1997 – Moyamba Disrtict – Crimes

2092. para. 655: In late 1997 Albert J Nallo was the CDF Director of Operations in Moyamba.[1389] In this capacity Albert J Nallo had control over Moyamba District. When Albert J Nallo went to Moyamba Town, he learned from Mustapha Ngobeh that four days earlier Abu Bawote, the Commander in the Ribbi area,[1390] had killed the Chiefdom Speaker. Mustapha Ngobeh related that he had seen Abu Bawote in Bradford with the severed hand of the Chiefdom Speaker; Bawote had dried the hand and tied in to his neck as a necklace. Albert J Nallo reported this incident to Fofana and Norman and told Norman that this Chiefdom Speaker was a collaborator. Norman responded: "Well, a Collaborator deserves that. That was the standing order. You know that was the standing order I passed long ago."[1391]

ii. Third Arrival at Bradford on 23 March 1998 - Moyamba Disrtict – Crimes

2093. para. 658: On 23 March 1998, Kamajors came to Bradford at 7:00am. There were Kamajors from Moyamba as well as Obai's group; Obai commanded them all. The Kamajors fired indiscriminately at the civilian population. All the families of Bradford ran and hid in the bush.[1400] TF2-167's grandson Aluseini, who was three and a half years old, was shouting. One Kamajor shot at him and Aluseini died.[1401] The Kamajors threatened to kill all of TF2-167's children.[1402]

iii. Capture and Murder of One Civilian near Makabi Loko in Tune 1998 – Moyamba District – Crimes

2094. para. 664: One of the CDF took a long sharp knife and cut Aluseini Kabbah's head. Blood oozed from his mouth.[1420] Some of the CDF reported the incident to Kakpata.[1421] Kakpata took a gun from Amadou Lavalie, cocked it and shot Aluseini Kabbah twice. Aluseini Kabbah fell over.[1422]

e. Murders in Kongonani – Crimes

2095. para. 666: In February or March 1999, a report of two murders that occurred in Kongonani,[1424] was made to TF2-073 in Sembehun.[1425] Three traders were captured by eight Kamajors. One of them escaped; the other two were shot.[1426] On the day he received this report, TF2-073 attended a meeting of Kamjors called by the local chief to investigate the killings.[1427] Eight Kamajors suspected of having committed the killings confessed. One was Tiby Bangura, the other John Aruna. TF2-073 informed the District Officer of these killings; the matter was then referred to the Criminal Investigation Division of the Sierra Leone Police.[1428] The eight Kamajors were taken to Tihun. Kondewa was in Tihun at this time.[1429] The Kamajors were detained for about a month by the police.1430

(b) Legal Conclusions

(i) Applicable Law - Crimes against Humanity ("CAH")

2096. para. 110: 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 widespread or systematic attack directed against any civilian population.

a. Attack – Applicable Law – CAH

2097. para. 111: The Chamber adopts the definition of attack as meaning a "campaign, operation or course of conduct"[114] and notes that, in the context of a Crime against Humanity, the said term is not limited to the use of armed force, but also encompasses any mistreatment of the civilian population.[115] The Chamber further notes that an attack can precede, outlast, or continue during an armed conflict. Thus it may, but need not, be part of an armed conflict.[116] Therefore, 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.[117]

b. Widespread or systematic attack – Applicable law – CAH

2098. para. 112: In the Chamber's view, the requirement that the attack must be either widespread *or* systematic is disjunctive and not cumulative.[118] The Chamber is of the opinion that 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.[119] 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"[120] and further subscribes to the interpretation of the ICTY Appeals Chamber in the *Kunarac et al*. case which stated that:

> [T]he assessment of what constitutes a 'widespread' or 'systematic' attack is essentially a relative exercise in that it depends upon the civilian population which, allegedly, was being attacked. A Trial Chamber must therefore 'first identify the population which is the object of the attack and, in light of the means, methods, resources and result of the attack upon the population, ascertain whether the attack was indeed widespread or systematic'. The consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities or any identifiable patterns of crimes, could be taken into account to determine whether the attack satisfies either or both requirements of a 'widespread' or 'systematic' attack vis-a-vis this civilian population.[121]

2099. para. 113: 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.[122] Furthermore, the Chamber is of the view that customary international law does not presuppose a discriminatory or persecutory intent for all crimes against humanity.[123]

c. Directed against any civilian population – Applicable law – CAH

2100. para. 114: The attack must be directed against any civilian population. This requires that the civilian population "be the primary rather than an incidental target of the attack".14 Accordingly, the Chamber recalls its adoption of the interpretation of the ICTY Appeals Chamber in *Kunarac et al*. which stated 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 a: the time and the extent to which the attacking force may be said 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. [125]

2101. para. 115: The Chamber concur, with the view of the ICTY Appeals Chamber in the *Blaskic* case that there is an absolute prohibition against targeting civilians in customary international law.[126]

2102. para. 116: The term "civilian population" must be interpreted broadly.[127] 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.[128]

2103. para. 117: 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.[129] 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.[130] The presence of members of resistance armed groups or former combatants who have laid down their arms, within a civilian population, does not alter its civilian nature.[131]

2104. para. 118: The Chamber recognises that the protection of Article 2 of the Statute extends to "any" civilian population including, if a state takes part in the attack, that state's own population[132] and that there is no requirement that the victims are linked to any particular side.[133] It is also our view that 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.[134]

2105. para. 119: The Chamber concurs with the interpretation 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".[135] However, the targeting of a select group of civilians - for example, the targeted killing of a number of political opponents - cannot satisfy the requirements of Article 2.[136] It would therefore 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.[137]

d. The acts of the Accused must be part of the attack – Applicable law - CAH

2106. para. 120: 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.[138] 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.[139] 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.[140] Only the attack, not the individual acts, must be widespread or systematic.[141]

e. *Mens rea* – Applicable law – CAH

2107. para. 121: 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.[142] 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. The manner in which this legal element may be proved may therefore vary from case to case.[143] The Accused must have known or had reason to know that there is an attack on the civilian population and that his acts comprised part of that attack. The Accused needs to understand the overall context in which his acts took place,[144] but need not know the details of the attack or share the purpose or goal behind the attack.[145] The motives for the Accused's participation in the attack are irrelevant.[146] It is also 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.[147]

(ii) CAH – Findings on general requirements

a. Widespead or systematic attack – CAH – Findings on general requirements

2108. para. 691: The Chamber finds that the following events constitute part of a widespread attack:

1. The attacks by Kamajors on Tongo in late November/early December 1997; in early January 1998; and on 14 January 1998;
2. The attack by Kamajors on Koribondo between 13 and 15 February 1998;
3. The attack by Kamajors on Bo Town between 15 and 23 February 1998;
4. The attack by Kamajors on Bonthe 15 February 1998; and
5. The attack by Kamajors on Kenema between 15 and 18 February 1998;

2109. para. 692: In light of the broad geographical area over which these attacks occurred, the Chamber is satisfied that the requirement of a widespread attack has been established in this case. Since the requirement that an attack be widespread or systematic is disjunctive, the Chamber does not need to consider whether the attack was also systematic.

b. Attack directed against civilian population of Sierra Leone – CAH – Findings on general requirements

2110. para. 693: The Chamber finds, however, that evidence adduced does not prove beyond reasonable doubt that the civilian population was the primary object of the attack. By contrast,

there is evidence that these attacks were directed against the rebels or juntas that controlled towns, villages, and communities throughout Sierra Leone.[1528] In this regard, the Chamber recalls the admission of the Prosecutor that "the CDF and Kamajors fought for the restoration of democracy."[1529]

2111. para. 694: Having thus found that the essential requirement of an attack against the civilian population has not been satisfied beyond reasonable doubt, the Chamber finds that Fofana and Kondewa are not guilty of Crimes against Humanity as charged in Count 1 (Murder as a Crime against Humanity) and Count 3 (Other Inhumane Acts as a Crime against Humanity).

(iii) Applicable Law- Murder

2112. para. 143: The constitutive 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.[184]

2113. para. 144: In this regard, the Chamber is of the opinion that proof beyond reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person has been recovered. The fact of a victim's death can be inferred circumstantially from all the evidence presented to the Trial Chamber.[185] In addition, the Prosecution must prove that the victim or victims died as a result of acts or omissions of the Accused.[186]

(iv) Towns of Tongo Field – Unlawful killings

2114. See below: Chapter 3 – CDF – Trial Judgment – Legal Conclusions – Towns of Tongo Field –-Unlawful killings – paras. 750 – 753 [2603].

2115. Regarding Fofana's and Kondewa's individual criminal responsibility in relation to Towns of Tongo Field, see below: Chapter 12 (Article 6.1 Liability) – CDF – Trial Judgment – Findings and Conclusions – Towns of Tongo Field – paras. 721-732 [8340], 735-744 [8352], 747-748 [8362].

2116. Regarding Fofana's and Kondewa's superior responsibility in relation to Towns of Tongo Field, see below: Chapter 13 (Article 6.3 Liability) – CDF – Trial Judgment – Findings and Conclusions – Towns of Tongo Field – paras. 721 [9165], 733-734 [9166], 745-746 [9168].

(v) Koribondo – Unlawful killings

2117. See below: Chapter 3 – CDF – Trial Judgment – Legal Conclusions - Koribondo – Bo District – Unlawful killings – paras. 786 – 789 [2609].

2118. Regarding Fofana's and Kondewa's individual criminal responsibility in relation to Koribondo, see below: Chapter 12 (Article 6.1 Liability) – CDF – Trial Judgment – Findings and Conclusions – Koribondo – paras. 765-771 [8380], 799-808 [8387].

2119. Regarding Fofana's and Kondewa's superior responsibility in relation to Koribondo, see below: Chapter 13 (Article 6.3 Liability) - CDF - Trial Judgment - Findings and Conclusions - Koribondo - paras. 756 [9170], 772-784 [9171], 785-789 [9184], 798 [9197], 805-808 [9198].

(vi) Bo District – Unlawful killings

2120. See below: Chapter 3 – CDF – Trial Judgment – Legal Conclusions –Bo District – Unlawful killings -Fofana – paras. 830 – 833 [2615].

2121. Regarding Fofana's and Kondewa's individual criminal responsibility in relation to Bo District, see below: Chapter 12 (Article 6.1 Liability) – CDF – Trial Judgment – Findings and Conclusions –Bo District – paras. 809-815 [8394], 847-855 [8401].

2122. Regarding Fofana's and Kondewa's superior responsibility in relation to Bo District, see below: Chapter 13 (Article 6.3 Liability) - CDF - Trial Judgment - Findings and Conclusions -Bo District - paras. 809 [9202], 816-833 [9203], 846 [9233], 852-855 [9234].

(vii) Bonthe District – Unlawful killings

2123. See below: Chapter 3 – CDF – Trial Judgment – Legal Conclusions –Bonthe District – Unlawful killings – paras. 883 – 888 [2621].

2124. Regarding Fofana's and Kondewa's individual criminal responsibility in relation to Bonthe District, see below: Chapter 12 (Article 6.1 Liability) – CDF – Trial Judgment – Findings and Conclusions –Bonthe District - paras. 856-859 [8407] , 863-866 [8411].

2125. Regarding Fofana's and Kondewa's superior responsibility in relation to Bonthe District, see below: Chapter 13 (Article 6.3 Liability) – CDF – Trial Judgment – Findings and Conclusions –Bonthe District – 856 [9238], 860-863 [9239], 867-881 [9243], 882-888 [9258], 903 [9279].

(viii) Kenema District – Unlawful killings

2126. Regarding Fofana's and Kondewa's individual criminal responsibility in relation to Kenema District, see below: Chapter 12 (Article 6.1 Liability) - CDF - Trial Judgment - Findings and Conclusions - Kenema District - paras. 904-908 [8416] , 911-915 [8420], 918-919 [8425].

2127. Regarding Fofana's and Kondewa's superior responsibility in relation to Kenema District, see below: Chapter 13 (Article 6.3 Liability) - CDF - Trial Judgment - Findings and Conclusions - Kenema District - paras. 904 [9280], 909-911 [9281], 916-919 [9284].

(ix) Talia/Base Zero — Unlawful killings

2128. Regarding Fofana's and Kondewa's individual criminal responsibility in relation to Talia/Base Zero, see below: Chapter 12 (Article 6.1 Liability) – CDF – Trial Judgment – Findings and Conclusions – Talia/Base Zero- paras. 920-929 [8427], 931-937 [8437].

2129. Regarding Fofana's and Kondewa's superior responsibility in relation to Talia/Base Zero, see below: Chapter 13 (Article 6.3 Liability) - CDF - Trial Judgment - Findings and Conclusions - Talia/Base Zero- paras. 920-930 [9288].

(x) Moyamba District – Unlawful killings

2130. Regarding Fofana's and Kondewa's individual criminal responsibility in relation to Moyamba District, see below: Chapter 12 (Article 6.1 Liability) – CDF – Trial Judgment – Findings and Conclusions – Moyamba District – paras. 938-940 [8444], 949-950 [8448], 956 [8450].

2131. Regarding Fofana's and Kondewa's individual criminal responsibility in relation to Moyamba District, see below: Chapter 13 (Article 6.3 Liability) – CDF – Trial Judgment – Findings and Conclusions – Moyamba District – paras. 938 [9298], 941-948 [9299], 951-956 [9307].

(xi) Separate and Concurring and Partially Dissenting Opinion

2132. Separate Concurring and Partially Dissenting Opinion of Hon. Justice Bankole Thompson, see CDF Trial Judgment, Annex C.

3. Appellate Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-A, Judgment, 28 May 2008

(a) Factual Findings

(i) Talia/Base Zero – Unlawful killings

a. Kondewa — Killing of town commander – Talia/Base Zero - Unlawful Killings

2133. para. 198: Before assessing whether the Trial Chamber erred in its application of the law to the facts, the Appeals Chamber considers it necessary to set out the applicable law. The Appeals Chamber considers that as a matter of law it is permissible to base a conviction on circumstantial evidence and/or hearsay evidence. Because hearsay evidence is admissible as substantive evidence in order to prove the truth of its contents, the Appeals Chamber considers that establishing the reliability of hearsay evidence is of paramount importance.

2134. para. 201: Witness TF2-096 testified that she saw Kondewa shoot one of the town commanders and that he fell. Immediately after witnessing this incident, the witness ran away. The Appeals Chamber finds that the fact that she did not herself witness that the town commander was dead, leaves the possibility open that someone else may have killed the town commander. The Trial Record does not contain any evidence corroborating the veracity of Witness TF2-096's testimony that the Kamajors identified the graves of the two people dancing. Furthermore, no evidence indicates the identity of the Kamajors or whether they were present during the incident during which Witness TF2-096 saw Kondewa shoot the town commander. In addition, no further evidence concerned whether the town commander died. No nexus exists between Kondewa's act and the death of the town commander. The evidence that the town commander died is insufficient and, therefore, the offence of murder has not been proved.

2135. para. 202: Therefore, because Witness TF2-096's testimony did not establish that the town commander died, no reasonable trier of fact could have found that the only reasonable inference was that Kondewa killed the town commander. Further, even if it had been established that the Town Commander died, someone else could have killed the town commander after Witness TF2-096 ran away, given that it has not been established that the town commander died because of Kondewa's shot.

(b) Legal Conclusions

(i) CAH – Findings – Attack directed against civilian population

a. Introduction

2136. para. 232: Paragraph 25 of the Indictment sets out the material facts upon which Fofana and Kondewa were charged with murder as a crime against humanity under Article 2.a. of the Statute (Count 1) and as a war crime under Article 3.a. of the Statute (Count 2). The material facts of acts of physical violence and infliction of mental harm or suffering are set out in paragraph 26 of the Indictment, charging both Fofana and Kondewa with inhumane acts, as a crime against humanity under Article 2.g. of the Statute (Count 3) and cruel treatment as a war crime under Article 3.a. of the Statute (Count 4).

2137. para. 233: The Trial Chamber convicted Fofana and Kondewa under Counts 2 and 4, finding that the legal requirements for murder and cruel treatment as well as the general requirements for war crimes were satisfied.[442] However, the Trial Chamber acquitted them of Counts 1 and 3 because it held that the general requirements of crimes against humanity were not satisfied in this case.

2138. para. 234: The Prosecution submits that the Trial Chamber erred in law and in fact in not finding that the general requirement for crimes against humanity was satisfied.[443]

b. Attack directed against civilian population – CAH – Findings on general requirements

2139. para. 244: As has been earlier stated, the Trial Chamber found that the requirement that the attack be directed against the civilian population was not satisfied in this case.

2140. para. 245: The Prosecution submits that two legal errors arise from that finding: first, it contends that the Trial Chamber erred in considering that the fact that CDF fought for democracy was a relevant factor; and second, that the Trial Chamber incorrectly considered that, as a matter of law, an attack is not directed against a civilian population if civilians are targeted in the course of an attack against opposing forces.

i. Whether Fighting for Democracy May be a Material Element for the Purposes of CAH – CAH

2141. para. 246: The Prosecution submits that "the elements of crimes against humanity prohibit attacks against the civilian population regardless of their purpose."[461] The Appeals Chamber notes Kondewa's contentions that while the existence of a plan or policy can be evidentially relevant in proving that an attack was directed against a civilian population – although it is not a legal element of crimes against humanity – "it should be evidentially relevant in proving that an attack was not directed against a civilian population."[462]

2142. para. 247: In the opinion of the Appeals Chamber, it is manifestly incorrect to conclude that widespread or systematic attacks against a civilian population cannot be characterised as crimes against humanity simply because the ultimate objective of the fighting force was legitimate and/or aimed at responding to aggressors. The Appeals Chamber deems it necessary to emphasise that rules of international humanitarian law apply equally to both sides of the conflict, irrespective of who is the "aggressor," and that the absolute prohibition under international customary and conventional law on targeting civilians precludes military necessity or any other purpose as a justification. The Appeals Chamber holds that it is no justification that the perpetrators of a crime against humanity were fighting for the restoration of democracy.

2143. para. 248: The Trial Chamber's finding shall not be interpreted as legitimizing any unlawful acts committed against the civilians. The Trial Chamber's Judgment, read as a whole, makes it clear that the Trial Chamber underscored the prohibition on targeting civilians and the criminality of any acts directed against such protected persons. In its description of the applicable law on crimes against humanity, the Trial Chamber recalled that "there is an absolute prohibition against targeting civilians in customary international law."[463]

2144. para. 249: For these reasons, the Appeals Chamber is unable to find that references by the Trial Chamber to the purpose for which the CDF was fighting was a decisive consideration in its determination of the general requirements for crimes against humanity.

ii. Whether an Attack Could Not be One "Directed Against A Civilian Population" if Civilians are Attacked in Connection with Legitimate Military Operations - CAH

2145. para. 250: The Prosecution argues that the challenged finding of the Trial Chamber implies that, as a matter of law, an attack could not be one "directed against a civilian population"

if civilians are attacked in the course of, or immediately after, an attack directed against opposing forces.464 At the appeals hearing, the Prosecution specified that it would be incorrect to consider that an attack against a civilian population occurring at the same time as, or immediately after a military attack and undertaken by the same fighting forces "must all be seen as one attack."[465] Kondewa agreed with this interpretation of the law.[466]

2146. para. 251: The Appeals Chamber finds no ambiguity in the Trial Chamber's articulation of the applicable law. The Trial Chamber did not exclude the possibility that these attacks were directed against a civilian population merely because there was proof of military attacks targeting the opposing forces. Instead, the Trial Chamber found that, while there were attacks against the rebels or juntas, there was no evidence beyond reasonable doubt of the existence of parallel and coexisting attacks directed against the civilian population. The Trial Chamber found that a number of civilians were killed and subject to mistreatments.[467]

2147. para. 252: The Appeals Chamber is unable to conclude that the Trial Chamber considered that, as a matter of law, a military attack cannot coexist with an attack directed against a civilian population.

(ii) Attack directed against civilian population - CAH – Findings on general requirements

a. Preliminary considerations

2148. para. 257: Relying on *Kunarac* Appeal Judgment, the Trial Chamber stated that "directed against a civilian population" requires "that the civilian population be the primary rather than incidental target of the attack."[483] In Kunarac, the ICTY Appeals Chamber held that:

> "In order to determine whether the attack may be so directed [against a civilian population], 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 to have complied or attempted to comply with the precautionary requirements of the laws of war."[484]

2149. para. 258: The Trial Chamber stated that "civilian population" must be interpreted broadly. It includes "all those persons who are not members of the armed forces or otherwise recognised as combatants."[485] It also stated that the population must be predominantly civilian in nature and that the presence of certain non-civilians in their midst does not change the character of the population.[486] It further stated 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 the subject of that attack.[487] The Trial Chamber finally stated that:

> "the targeting of a select group of civilians – for example, the targeted killing of a number of political opponents – cannot satisfy the requirements of Article 2. It would therefore 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."[488]

2150. para. 259: Article 50 of Additional Protocol I provides:

> "A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian. 2. The civilian population comprises all persons who are civilians. 3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character."

The Appeals Chamber considers that Article 50(1) of the Additional Protocol I is a useful tool in determining a "civilian population." The Appeals Chamber agrees with the view expressed in several judgments of international tribunals that "the presence within a population of members of resistance groups, or former combatants, who have laid down their arms, does not alter its civilian characteristic"[489] and "[t]he civilian population comprises all persons who are civilians and the presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character."[490] In line with this principle, the Appeals Chamber takes the view that the presence of rebels or juntas within the victims does not deprive the population of its civilian character.

2151. para. 260: The Appeals Chamber further considers that perceived "collaborators" are accorded civilian status under international law.[491] The Appeals Chamber also notes that the Trial Judgment mentions the killings and mistreatments of a number of police officers. The Trial Chamber found that, as a general presumption and in the execution of their typical law enforcement duties, police forces are considered civilians for the purpose of international humanitarian law, unless they operate under the control of the military.[492]

2152. para. 261: The Trial Chamber noted in this regard that the Sierra Leone Police operated under the control of a civilian authority.[493] Nonetheless, as stated by the Trial Chamber, the status of police officers has to be determined on a case-by-case basis. In its factual findings in respect to the attack in Bo, the Trial Chamber found that, in the early stage of the conflict in Sierra Leone the police were duty bound to support the soldiers, but that they ceased to support the junta in late

1997,[494] and that the Kamajors "turned against the police because of their 'alleged collaboration with the junta.'"[495] The Appeals Chamber further notes, from the Trial Judgment, that "while the Kamajors were in Bo, they captured and killed police officers. […] The police that had been killed did not have ammunition."[496] The Appeals Chamber therefore, holds, that police officers who have been subject to killings and mistreatments in Bo are "civilians." In Kenema, a number of police officers were also killed when the Kamajors entered Kenema Town on 15 February 1998.[497] The Trial Judgment shows no findings that those police officers were armed or fought against the Kamajors. The following day, upon the return of the juntas to Kenema, there were exchange of fire for several hours between the Kamajors and the rebels–among whom were police officers who were fighting.[498] In this context, the Appeals Chamber does not consider those police officers as "civilians."

2153. para. 262: The Appeals Chamber now turns to Kondewa's submission that, to establish that the attack was directed against a civilian population, it must be shown that civilians were targeted because of some distinguishable characteristic of the civilian population.[499] He relies in this regard on the case law of the ICTY and ICTR, where the Kosovo Albanian population, the Croats, the Bosnian Muslims, and the Tutsi were found to be a "civilian population."[500] His submission implies that for crimes against humanity to be committed civilians must be targeted on a specific discriminatory ground.

2154. para. 263: In the opinion of the Appeals Chamber the argument is misconceived and inconsistent with the well-established principle that discriminatory intent is only a requirement for the crime of persecution,[501] and not for other crimes against humanity. Further, while several cases have held that crimes against humanity were committed as a result of attacks against civilian populations sharing a common nationality, race or ethnicity, the same has also been found in several cases where civilians were targeted based on less defined grounds.[502] In some of these cases alleged or perceived opponents to a regime, faction or political party have been targeted.[503] Indeed, the Trial Chamber found in the *AFRC* Trial Judgment that attacks against the civilian population were "aimed broadly at quelling opposition to the regime and punishing civilians suspected of supporting the CDF/Kamajors."[504]

2155. para. 264: The Appeals Chamber holds that as a matter of law perceived or suspected collaborators with the rebels or juntas, as in the present case, are likewise part of a "civilian population." The Appeals Chamber will now turn to the main issue in this ground of appeal, in light of the Trial Chamber's factual findings.

b. Attacks Tongo in late November/early December 1997, early January 1998 and on 14 January 1998; in Koribondo between 13 and 15 February 1998; in Bo Town between 15 and 23 February 1998; in Bonthe on 15 February 1998; and in Kenema between 15 and 18 February 1998 - General requirements – CAH

2156. para. 265: In determining whether the Trial Chamber erred in finding that the evidence adduced did not prove beyond reasonable doubt that the attacks were "directed against a civilian population" the Appeals Chamber will now consider the relevant findings of fact made by the Trial Chamber in respect to each of the locations where the attacks have been carried out by the Kamajors, namely: in Tongo in late November/early December 1997, early January 1998 and on 14 January 1998; in Koribondo between 13 and 15 February 1998; in Bo Town between 15 and 23 February 1998; in Bonthe on 15 February 1998; and in Kenema between 15 and 18 February 1998.[505]

(iii) CAH – Findings on general requirements

a. Attack directed against civilian population - CAH

2157. para. 297: The Trial Chamber concluded, in respect of the third element for crimes against humanity, (i.e., an attack "directed against a civilian population") that:

> "the evidence adduced does not prove beyond reasonable doubt that the civilian population was the primary object of the attack. By contrast, there is evidence that these attacks were directed against the rebels or juntas that controlled towns, villages, and communities throughout Sierra Leone. In this regard the Chamber recalls the admission of the Prosecutor that 'the CDF and the Kamajors fought for the restoration of democracy.'"[638]

2158. para. 298: At the outset, the Appeals Chamber notes that the Trial Chamber's conclusion in regard to the third element of crimes against humanity is devoid of articulation of its reasoning. While it is not always mandatory, the Appeals Chamber is of the view that, in the interest of justice, a Trial Chamber should endeavor to provide reasons for its conclusions.

2159. para. 299: The Appeals Chamber will now consider whether, based on the findings of the Trial Chamber in relation to the attacks on Tongo, Koribondo, Bo, Bonthe and Kenema, it was open to the Trial Chamber to conclude that the Prosecution failed to prove beyond reasonable doubt that the attacks were not "directed against the civilian population." The Appeals Chamber approves the opinion of the Trial Chamber that the expression "directed against" a civilian

population requires that "the civilian population which is subjected to the attack must be the primary rather than an incidental target of the attack."[639] The Appeals Chamber emphasizes that what must be primary is the civilian population as a target and not the purpose or the objective of the attack.

2160. para. 300: The Trial Chamber found that "the evidence adduced does not prove beyond reasonable doubt that the civilian population was the primary object of the attack. By contrast, there is evidence that these attacks were directed against the rebels or juntas that controlled towns, villages, and communities throughout Sierra Leone."[640] The Appeals Chamber is of the view that the Trial Chamber appears to have misdirected itself when applying the principle it had already stated, by confusing the target of the attack with the purpose of the attack. When the target of an attack is the civilian population, the purpose of that attack is immaterial.

2161. para. 301: During the second attack on Tongo, immediately after the military operation on the rebel checkpoint, the Kamajors "took control" of the civilians and killed civilians consisting of 151 Limbas, Lokos and Temnes. Most of the crimes committed on civilians during the third attack on Tongo on 14-15 January 1998 occurred after the rebels retreated.[641] Those crimes included a mass killing of a group of 65 civilians.[642]

2162. para. 302: The Appeals Chamber has examined the findings in regard to each of the locations earlier mentioned. There is no doubt from those findings that the Trial Chamber was satisfied beyond reasonable doubt that civilians were attacked in various ways by the Kamajors in several of these locations. It was on these findings that the Trial Chamber found that war crimes were proved beyond reasonable doubt.

2163. para. 303: The Appeals Chamber is of the opinion that having found as earlier stated, the Trial Chamber fell into error in not testing these findings against the actual situation in the various locations, before coming to a general conclusion that attacks directed against a civilian population had not been proved beyond reasonable doubt. Had it done so it would have found on the evidence that there were locations in which the rebels and junta had already withdrawn before the attack on the civilian population by the Kamajors occurred.

2164. para. 304: The Trial Judgment reveals that the attacks in Bo,[643] Bonthe[644] and Kenema[645] were launched and carried out after the departure of the rebels and juntas.

2165. para. 305: In this context, the Appeals Chamber notes the holding of the Trial Chamber in its Sentencing Judgment that:

> "[I]nstead of limiting themselves and directing these attacks on legitimate military targets and objectives . . . the Accused Persons and their Kamajors . . . went beyond these acceptable military and legal limits and carried out killings and other atrocities against unarmed civilians who they characterised and designated as 'rebel collaborators'. In fact, we note here that the crimes for which they have been found guilty were perpetrated by the Accused Persons and CDF/Kamajor fighters when combat activities and operations against the enemy AFRC forces were already over.[646]

2166. para. 306: In view of the absence of military operations between the Kamajors and the rebels/soldiers at the time of the commission of most of the crimes against the civilians, the Appeals Chamber rejects Fofana's submission that those civilians were "collateral victims" of military operations,[647] and further opines that those civilians could not reasonably be considered as mere "incidental targets"[648] of a legitimate military attack. Rather, in the view of the Appeals Chamber, the context of the commission of the crimes, remote from military operations, supports a reasonable conclusion that the "attacks" were, in fact, specifically "directed against" a civilian population, within the meaning of Article 2 of the Statute.

2167. para. 307: In view of these findings of fact, taken as a whole, the Appeals Chamber is of the view that the criminal conduct against those civilians was neither random nor isolated acts but was rather perpetrated pursuant to a common pattern of targeting the civilian population.

2168. para. 308: In view of the foregoing, having regard to the factual findings of the Trial Chamber, the Appeals Chamber holds that the Trial Chamber erred in concluding that it had not been proved beyond reasonable doubt that the attacks were directed against a civilian population.

2169. para. 309: The Prosecution's First Ground of Appeal is granted in this respect. Under this Ground of Appeal, the Prosecution requests the Appeals Chamber to enter corresponding convictions against Fofana and Kondewa under Counts 1 and 3 in respect of all acts for which they were found by the Trial Chamber to be guilty under Counts 2 and 4.[649] The Appeals Chamber will next consider whether the remaining legal requirements for crimes against humanity are satisfied in this case.

b. The Act Must be Part of the Widespread or Systematic Attack Against the Civilian Population - CAH

2170. para. 310: In regard to the fourth element the Prosecution submits that on the basis of the findings of the Trial Chamber and the evidence it accepted, the only conclusion open to any reasonable trier of fact is that the crimes that were committed were part of an attack against a civilian population.

2171. para. 311: Neither Fofana nor Kondewa contested this submission in their response briefs.

2172. para. 312: The Appeals Chamber agrees with the submission of the Prosecution and finds that the fourth element of crimes against humanity is proved.

2173. para. 313: We now turn to the fifth element of crimes again humanity.

c. *Mens rea* - CAH

2174. para. 314: In relation to the fifth element the Prosecution submits that the only conclusion available to a reasonable trier of fact is that the Accused knew or had reason to know that the act constituted part of a widespread or systematic attack directed against any civilian population.

2175. para. 315: However, in regard to this fifth element the Appeals Chamber is of the view that the knowledge required in order to find that crimes against humanity had been committed is that of the actual perpetrator.

2176. para. 316: For this reason, the Appeals Chamber will consider whether the actual perpetrators had such knowledge.

2177. para. 317: In relation to the attack on Tongo, Norman told the Kamajors that "there is no place to keep captured or war prisoners like the juntas, let alone their collaborators"650 and that "all collaborators should forfeit their properties."[651] In relation to the attack on Koribondo, Norman instructed the Kamajors not to "leave any house or any living thing there, except mosque, church, the barri and the school,"[652] and that "anyone left in Koribondo should be termed an enemy or a rebel and killed."[653] He further said that the capture of Koribondo had failed "because the civilians had given their children to the juntas in marriage and thus, they were all 'spies and collaborators' [and], [t]herefore, . . . 'anybody that was met there should be killed' and nothing should be left 'not even a farm' or '[. . .] a fowl.'"[654] In relation to the attack on Bo, Norman told the Kamajors to "kill enemy combatants and people who had connections with or supported the rebels and who were therefore worse than the combatants;" he referred to them as "collaborators."[655] At several occasions, Norman also ordered the Kamajors to kill police officers.[656]

2178. para. 318: The above findings of the Trial Chamber demonstrate that the "all out offensive" military attacks against towns and villages occupied by the rebels and juntas encompassed also an element of targeting civilians perceived or alleged "collaborators." In the view of the Appeals Chamber, it is without a reasonable doubt that this policy was pursued by the

Kamajors, through killings of definite individuals in view of any perceived or alleged relationships with the rebels, the commission of mass-killings of groups of civilians, a recurrent targeting of police officers and indiscriminate shootings at civilians, the burning of their houses or looting of their properties.

2179. para. 319: The evidence accepted by the Trial Chamber shows that the actual perpetrators of the crimes knew that a widespread or systematic attack was planned to break any possible resistance or collaboration by the population. Orders had been given to do so and punishment for not obeying was made clear to the perpetrators as well.[657]

2180. para. 320: The Appeals Chamber states that the only conclusion is that the actual perpetrators had the requisite knowledge.

2181. para. 321: The Appeals Chamber holds that whenever the Trial Chamber has found Fofana and Kondewa individually criminally responsible for war crimes under Counts 2 and 4, it reasonably follows that the same responsibility attaches to them for crimes against humanity in the same locations.[658]

d. Disposition - CAH

2182. para. 322: The Appeals Chamber, Justice King dissenting, sets aside the verdict of not guilty against Fofana and Kondewa by the Trial Chamber under Counts 1 and 3 and substitutes, therefore, a verdict of guilty on those Counts. The Appeals Chamber will consider and impose appropriate sentences in respect of those Counts as part of its Disposition of the Prosecution's Tenth Ground of Appeal.

2183. Regarding Fofana's criminal responsibility in relation to Tongo Town, see below: Chapter 12 (Article 6.1 Liability) – CDF – Appellate Judgment – Findings and Conclusions – Fofana – Tongo Town – paras. 54 – 57, 61 - 64 [8467].

2184. Regarding Kondewa's criminal responsibility in relation to Tongo Town, see below: Chapter 12 (Article 6.1. Liability) – CDF – Appellate Judgment – Findings and Conclusions – Kondewa – Tongo Town – paras. 70-73, 75– 79 [8475], 85- 86 [8489].

2185. Regarding Fofana's criminal responsibility in relation to Koibondo, Bo District, and Kenema District, see below: Chapter 12 (Article 6.1. Liablity) – CDF – Appellate Judgment – Findings and Conclusions – Fofana - Koribondo, Bo District, and Kenema District – paras. 97 – 98, 101 – 103 [8503].

2186. Regarding Kondewa's criminal responsibility in relation Koibondo, Bo District, and Kenema District, see below: Chapter 12 (Article 6.1. Liablity) – CDF – Appellate Judgment – Findings and Conclusions – Kondewa - Koribondo, Bo District, and Kenema District – paras. 109 – 111 [8508].

2187. Regarding Kondewa's criminal responsibility in relation Bonthe District, see below: Chapter 13 (Article 6.3. Liablity) – CDF – Appellate Judgment – Findings and Conclusions – Kondewa – Bonthe District – paras. 171-173, 175– 179 [9320], 181- 182 [9330], 186 – 189 [9335].

i. Dissent – Justice King

2188. Partially dissenting Opinion of Justice King, para. 58: The Prosecution, however, argues in its Appeal Brief that it had proved the specific elements of the crimes in Counts 1 and 3 and that the Appeals Chamber should grant the relief it seeks in paragraph 2 of the Prosecution's Notice of Appeal.[1143] Since I have held that the Trial Chamber was correct in law in finding that the third general requirement to prove the offence of Crimes against Humanity had not been met, I see no reason to consider the specific elements in respect of those crimes in Counts 1 and 3. It follows therefore, that Ground One of the Prosecution Grounds of Appeal is untenable. I accordingly dismiss it and uphold the Trial Chamber's acquittal of Fofana and Kondewa on Counts 1 and 3 of the Indictment.

2189. See below: Partially dissenting Opinion of Justice King, paras, 81 – 94 [8485] regarding Kondewa's criminal responsibility, Chapter 12 (Article 6.1 Responsibility).

(c) Summary Findings

2190. para. 112: In relation to the attacks on Tongo, the Appeals Chamber, Justice King dissenting, upholds the Trial Chamber's convictions of Kondewa and Fofana, pursuant to Article 6(1), of aiding and abetting violence to life, health and physical or mental well-being of persons, in particular murder and cruel treatment punishable under Article 3.a. of the Statute (Counts 2 and 4 respectively).

2191. para. 113: In relation to the attacks on Koribondo, Bo District and Kenema District, the Appeals Chamber upholds the Trial Chamber's acquittals of Kondewa and Fofana, pursuant to Article 6(1), of violence to life, health and physical or mental well-being of persons, in particular murder and cruel treatment, punishable under Article 3.a. of the Statute (Counts 2 and 4,

respectively) as well as pillage, a violation of Article 3.a. common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.f. of the Statute (Count 5).

2192. para. 114: The Appeals Chamber dismisses the Prosecution's Third and Fourth Grounds of Appeal and dismisses, Justice King dissenting, Kondewa's Fourth Ground of Appeal.

2193. para. 203: Having found that the death of the Town Commander was not proved beyond reasonable doubt, the Appeals Chamber comes to the conclusion that the Trial Chamber was in error in finding that the Town Commander was killed by the Kamajors as alleged in the Indictment.

2194. para. 204: The Appeals Chamber grants Kondewa's Second Ground of Appeal.

CHAPTER 3 – VIOLENCE TO LIFE, HEALTH AND PHYSICAL OR MENTAL WELL-BEING OF PERSONS, IN PARTICULAR, MURDER

A. CHARLES TAYLOR

1. Indictment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-I, Indictment, 16 March 2006

(a) Particulars

(i) Charges

2195. By his acts or omissions in relation to the below described events, the ACCUSED, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:[71]

(ii) Count 1: Terrorizing the civilian population

2196. Members of the Revolutionary United Front (RUF), Armed Forces Revolutionary Council (AFRC), AFRC/RUF Junta or alliance, and/or Liberian fighters, including members and ex-members of the NPFL (Liberian fighters), assisted or encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, burned civilian property, and committed the crimes set forth below in paragraphs 6 through 31 and charged in Counts 2 through 11, as part of a campaign to terrorize the civilian population of Sierra Leone.[72]

(iii) Counts 2-3: Unlawful killings

> Count 2: Murder, a CRIME AGAINST HUMANITY, punishable under Article 2.a. of the Statute
>
> In addition, or in the alternative:
>
> **Count 3: 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

[71] Taylor Indictment, Charges, p. 2.
[72] Taylor Indictment, para. 5.

2197. Between about 30 November 1996 and 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or Alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, throughout Sierra Leone, unlawfully killed an unknown number of civilians, including the following:[73]

> i. Kenema District: Between about 25 May 1997 and about 31 March 1998, in various locations, including Kenema Town and the Tongo Fields area;[74]
>
> ii. Kono District: Between about 1 February 1998 and about 31 January 2000, in various locations, including Koidu, Tombodu or Tumbodu, Koidu Geiya or Koidu Gieya, Koidu Buma, Yengema, Paema or Peyima, Bomboa fuidu, Bumpe, Nimikoro or Njaimu Nimikoro, and Mortema;[75]
>
> iii. Kailahun District: Between about 1 February 1998 and about 30 June 1998, in various locations, including Kailahun town;[76]
>
> iv. Freetown and Western Area: Between 21 December 1998 and 28 February 1999, in locations throughout Freetown, including the State House, Kissy, Fourah Bay, Upgun, Calaba Town, Allen Town and Tower Hill areas of the city, and Hastings, Wellington, Tumbo, Waterloo, and Benguema in the Western Area.[77]

2. Trial Judgment

The Prosecutor v. *Charles Ghankay Taylor*, SCSL-03-01-T, Judgement, 18 May 2012

(a) Factual Findings

(ii) General – Crimes

2198. See above: Chapter 2 – Taylor – Trial Judgment – Factual Findings – General - para. 582 [1193].

(iii) Kenema District – Crimes

2199. See above: Chapter 2 – Taylor – Trial Judgment – Factual Findings – Kenema District – paras. 585 – 587 [1194].

[73] Taylor Indictment, para. 9.
[74] Taylor Indictment, para. 10.
[75] Taylor Indictment, para. 11.
[76] Taylor Indictment, para. 12.
[77] Taylor Indictment, para. 13.

a. Kenema Town – Kenema District – Crimes

i. Killing of Mr. Dowei – Kenema Town – Kenema District – Crimes

2200. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kenema District – Kenema Town – Killing of Mr. Dowei – paras. 588 [1197].

ii. Killing of three civilians near Mambu Street – Kenema Town – Kenema District – Crimes

2201. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kenema District – Kenema Town – Killing of three civilians near Mambu Street – paras. 590 [1198].

iii. Killing of Bonnie Wailer and other suspected burglars – Kenema Town – Kenema District – Crimes

2202. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kenema District – Kenema Town – Killing of Bonnie Wailer and other suspected burglars – paras. 592 – 594 [1199].

iv. Killing of a farmer at the NIC building – Kenema Town – Kenema District – Crimes

2203. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kenema District – Kenema Town – Killing of a farmer at the NIC building – paras. 598 [1202].

v. Killing of Santos and an alleged thief – Kenema Town – Kenema District – Crimes

2204. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kenema District – Kenema Town – Killing of Santos and an alleged thief – paras. 601 [1203].

vi. Killing of an alleged “Kamajor Boss” on Hangha Road – Kenema Town – Kenema District – Crimes

2205. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kenema District – Kenema Town – Killing of an alleged “Kamajor Boss” on Hangha Road – paras. 604 [1204].

vii. Killing of Mohamed Fityia – Kenema Town – Kenema District – Crimes

2206. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kenema District – Kenema Town – Killing of Mohamed Fityia – paras. 607 -608 [1205].

viii. Killing of Brima S. Massaquoi and others – Kenema Town – Kenema District – Crimes

2207. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kenema District – Kenema Town – Killing of Brima S. Massaquoi and others – paras. 611 – 621 [1207].

b. Tongo Fields – Kenema District – Crimes

i. Killing of three persons in residential house – Tongo Fields – Kenema District – Crimes

2208. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kenema District – Tongo Fields – Killing of three persons in residential house – paras. 625 - 626 [1218].

ii. Killing of 15 civilians at Bumpe near Tongo Fields around September 1997 – Tongo Fields – Kenema District – Crimes

2209. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kenema District – Tongo Fields – Killing of 15 civilians at Bumpe near Tongo Fields around September 1997 – paras. 628 – 630 [1220].

iii. Killing of civilians engaged in mining at Pandembu, Sandeyeima and Wuima in Tongo Fields Area – Tongo Fields – Kenema District – Crimes

2210. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kenema District – Tongo Fields – Killing of civilians engaged in mining at Pandembu, Sandeyeima and Wuima in Tongo Fields Area – paras. 633 – 634 [1223].

iv. Killing of civilian miners at Cyborg Pit – Tongo Fields – Kenema District – Crimes

2211. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kenema District – Tongo Fields – Killing of civilian miners at Cybor Pit – paras. 637 – 638 [1225].

c. Alleged unlawful killings in locations in Kenema District not pleaded in the Indictment

2212. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kenema District – Alleged unlawful killings in locations in Kenema District not pleaded in the Indictment – paras. 642 [1435].

(iv) Kono District – Crimes

2213. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – paras. 645 – 648 [1228].

a. Koidu Town – Kono District – Factual Findings

i. Killing of civilians at Yardo Road, Hill Station and Superman Ground in February/March 1998 – Koidu Town – Kono District – Crimes

2214. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – Koidu Town – Killing of civilians at Yardo Road, Hill Station and Superman Ground in February/March 1998 – paras. 649 – 657 [1232].

ii. Killing of civilians in and around Koidu Town between April and May 1998 – Koidu Town – Kono District – Crimes

2215. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – Koidu Town – Killing of civilians in and around Koidu Town between April and May 1998 – paras. 664 – 669 [1241].

iii. Other killings around Koidu Town between December 1999 and the disarmament – Koidu Town – Kono District – Crimes

2216. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – Koidu Town – Other killings around Koidu Town between December 1999 and the disarmament – paras. 673 [1247].

b. Bumpe – Kono District – Crimes

i. Killings in Bumpe between March and June 1998 – Bumpe – Kono District – Crimes

2217. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – Bumpe – Killings in Bumpe between March and June 1998 – paras. 676 – 681 [1248].

c. Tombodu – Kono District – Crimes

i. Massacre of more than 20 civilians in Tombodu around March or April 1998 – Tombodu – Kono District – Crimes

2218. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – Tombodu – Massacre of more than 20 civilians in Tombodu around March or April 1998 – paras. 685 [1254].

ii. Second Massacre at Tombudu involving 77-78 civilians around April 1998 – Tombodu – Kono District – Crimes

2219. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – Tombodu – Second Massacre at Tombudu involving 77-78 civilians around April 1998 – paras. 688 – 690 [1255].

iii. Third Massacre of over 53 civilians in Tombudu in April 1998 – Tombodu – Kono District – Crimes

2220. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – Tombodu – Third Massacre of over 53 civilians in Tombudu in April 1998 – paras. 693 – 696 [1258].

iv. Killings of civilians in and around Tombodu between March and May 1998 – Tombodu – Kono District – Crimes

2221. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – Tombodu – Killings of civilians in and around Tombodu between March and May 1998 – paras. 699 – 701 [1262].

d. Koidu Geiya or Koidu Gieya – Kono District – Crimes

i. Killings of civilians at Koidu Geiya around May to June 1998 – Koidu Geiya or Koidu Gieya – Kono District – Crimes

2222. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – Koidu Geiya or Koidu Gieya – Killings of civilians at Koidu Geiya around May to June 1998 – paras. 705 – 708 [1265].

e. Koidu Buma – Kono District – Crimes

i. Killings of civilians at Koidu Buma around May to June 1998 – Koidu Buma – Kono District – Crimes

2223. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – Koidu Buma – Killings of civilians at Koidu Buma around May to June 1998- paras. 711 [1269].

f. Yengema – Kono District – Crimes

i. Killings of civilians at Yengema around March/April 1998 – Yengema – Kono District – Crimes

2224. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – Yengema – Killings of civilians at Yengema around March/April 1998 – para.714 [1270].

ii. Killing of civilians at the Yengema Training base between December 1998 and January 2000 – Yengema – Kono District – Crimes

2225. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – Yengema – Killing of civilians at the Yengema Training base between Decemver 1998 and January 2000 – paras. 717 – 720 [1271].

g. Paema or Peyima – Kono District – Crimes

i. Killings of civilians in Paema around March/April 1998 – Paema or Peyima - Kono District – Crimes

2226. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – Paema or Peyima – Killings of civilians in Paema around March/April 1998 – paras. 723 – 728 [1275].

h. Bomboa Fuidu – Kono District – Crimes

i. Killings of civilians in Bomboa Fuidu around March/April 1998 – Bomboa Fuidu – Kono District – Crimes

2227. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – Bomboa Fuidu – Killings of civilians in Bomboa Fuidu around March/April 1998 – paras. 731 – 734 [1281].

i. Njaima Nimikoro or Nimikoro – Kono District – Crimes

i. Killing of civilians in Nimikoro between February and June 1998 – Njaima Nimikoro or Nimikoro – Kono District – Crimes

2228. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – Njaima Nimikoro or Nimikoro – Killing of civilians in Nimikoro between February and June 1998 – paras. 737 – 738 [1285].

j. Mortema – Kono District – Crimes

i. Killing of civilians in Mortema (or Motema) between February and June 1998 – Mortema – Kono District – Crimes

2229. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – Mortema – Killing of civilians in Mortema (or Motema) between February and June 1998 – paras. 741 – 745 [1287].

k. Alleged unlawful killings in Other Locations in Kono District not pleaded in the Indictment

2230. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kono District – Alleged unlawful killings in Other Locations in Kono District not pleaded in the Indictment – paras. 748 [1292].

(v) Kailahun District – Crimes

2231. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kailahun District – paras. 751 [1293].

a. Kailahun Town – Kailahun District – Crimes

i. Massacre of around 60-65 civilians in Kailahun Town in February 1998 – Kailahun Town – Kailahun District – Crimes

2232. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Kailahun District – Kailahun Town – Massacre of around 60-65 civilians in Kailahun Town in February 1998 – paras. 752 – 767 [1294].

(vi) Freetown and the Western Area – Crimes

2233. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Freetown and the Western Area – paras. 772 – 780 [1310].

a. Killing of civilians and ECOMOG soldiers around State House in Freetown – Freetown and the Western Area – Crimes

2234. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Freetown and the Western Area – Killing of civilians and ECOMOG soldiers around State House in Freetown – paras. 781 – 784 [1319].

b. Unlawful killing of civilians in Kissy area around January 1999 – Freetown and the Western area – Crimes

2235. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Freetown and the Western Area – Unlawful killing of civilians in Kissy area around January 1999 – paras. 789 – 804 [1323].

c. Unlawful killings of civilians in Fourah Bay in late January 1999 – Freetown and the Western Area – Crimes

2236. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Freetown and the Western Area – Unlawful killings of civilians in Fourah Bay in late January 1999 – paras. 809 – 812 [1339].

d. Unlawful killing of civilians in Calaba Town in the third week of January 1999 – Freetown and the Western Area – Crimes

2237. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Freetown and the Western Area – Unlawful killing of civilians in Calaba Town in the third week of January 1999 – paras. 815 – 829 [1343].

e. Unlawful killing of civilians in Kingtom, Allen Town and Tower Hill areas – Freetown and the Western Area – Crimes

2238. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Freetown and the Western Area – Unlawful killing of civilians in Kigtom, Allen Town and Tower Hill areas – paras. 832 – 838 [1358].

f. Unlawful killing of civilians in Tumbo – Freetown and the Western Area – Crimes

2239. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Freetown and the Western Area – Unlawful killing of civilians in Tumbo – paras. 842 [1365].

g. Unlawful killing of civilians in Waterloo – Freetown and the Western Area – Crimes

2240. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Freetown and the Western Area – Unlawful killing of civilians in Waterloo – paras. 845 – 852 [1366].

h. Unlawful killing of civilians in Wellington – Freetown and the Western Area – Crimes

2241. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Freetown and the Western Area – Unlawful killing of civilians in Wellington – paras. 855 – 858 [1374].

i. Unlawful killing of civilians in Hastings – Freetown and the Western Area – Crimes

2242. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Freetown and the Western Area – Unlawful killing of civilians in Hastings – paras. 861 [1378].

j. Unlawful killing of civilians in Benguema – Freetown and the Western Area – Crimes

2243. See above: Chapter 2 - Taylor – Trial Judgment – Factual Findings – Freetown and the Western Area – Unlawful killing of civilians in Hastings – paras. 863 – 866 [1379]

(b) Legal Conclusions

(i) Applicable law – War Crimes / Violations of Common Article 3

2244. See above: Chapter 1 – Taylor – Trial Judgment – Legal Conclusions – Applicable law – War Crimes / Violations of Common Article 3 – paras. 561 – 568 [111].

(ii) Applicable law – War Crimes / Violations of Common Article 3 – Findings on general requirements

2245. See above: Chapter 1 – Taylor – Trial Judgment – Legal Conclusions – Applicable Law – War Crimes / Violations of Common Article 3 – Findings on general requirements – paras. 571 – 574 [119].

(iii) Unlawful killings – Applicable law

2246. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Unlawful killings – Applicable law – paras. 411 – 413 [1408].

(iv) General – Legal Conclusions

2247. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – General – paras. 582 [1411].

(v) Kenema District – Unlawful killings

a. Kenema Town – Kenema District – Unlawful killings

i. Killing of Mr. Dowie – Kenema Town – Kenema District – Unlawful killings

2248. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kenema District – Kenema Town – Killing of Mr. Dowie – paras. 589 [1412].

ii. Killing of three civilians near Mambu Street – Kenema Town – Kenema District – Unlawful killings

2249. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kenema District – Kenema Town – Killing of three civilians near Mambu Street – paras. 591 [1413].

iii. Killing of Bonnie Wailer and other suspected burglars – Kenema Town – Kenema District – Unlawful killings

2250. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kenema District – Kenema Town – Killing of Bonnie Wailer and other suspected burglars – paras. 595 – 597 [1414].

iv. Killing of a farmer at the NIC building – Kenema Town – Kenema District – Unlawful killings

2251. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kenema District – Kenema Town – Killing of a farmer at the NIC building – paras. 599 - 600 [1417].

v. Killing of Santos and an alleged thief – Kenema Town – Kenema District – Unlawful killings

2252. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kenema District – Kenema Town – Killing of Santos and an alleged thief – paras. 602- 603 [1419].

vi. Killing of an alleged "Kamajor Boss" on Hangha Road – Kenema Town – Kenema District – Unlawful killings

2253. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kenema District – Kenema Town – Killing of an alleged "Kamajor Boss" on Hangha Road – paras. 605- 606 [1421].

vii. Killing of Mohamed Fityia – Kenema Town – Kenema District – Unlawful killings

2254. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kenema District – Kenema Town – Killing of Mohamed Fityia – paras. 609 - 610 [1423].

viii. Killing of Brima S. Massaquoi and others – Kenema Town – Kenema District – Unlawful killings

2255. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kenema District – Kenema Town – Killing of Brima S. Massaquoi and others – paras. 622 – 624 [1425].

b. Tongo Fields – Kenema District – Unlawful killings

i. Killing of three persons in residential house – Tongo Fields – Kenema District – Unlawful killings

2256. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kenema District – Tongo Fields – Killing of three persons in residential house – paras. 627 [1428].

ii. Killing of 15 civilians at Bumpe near Tongo Fields around September 1997 – Tongo Fields – Kenema District – Unlawful killings

2257. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kenema District – Tongo Fields – Killing of 15 civilians at Bumpe near Tongo Fields around September 1997 – paras. 631- 632 [1429].

iii. Killing of civilians engaged in mining at Pandembu, Sandeyeima and Wuima in Tongo Fields Area – Tongo Fields – Kenema District – Unlawful killings

2258. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kenema District – Tongo Fields – Killing of civilians engaged in mining at Pandembu, Sandeyeima and Wuima in Tongo Fields Area – paras. 635- 636 [1431].

iv. Killing of civilian miners at Cyborg Pit – Tongo Fields – Kenema District – Unlawful killings

2259. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kenema District – Tongo Fields – Killing of civilian miners at Cyborg Pit – paras. 640- 641 [1433].

c. Alleged unlawful killings in locations in Kenema District not pleaded in the Indictment

2260. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kenema District – Alleged unlawful killings in locations in Kenema District not pleaded in the Indictment – paras. 642 [1435].

d. Conclusion – Unlawful Killings – Kenema District

2261. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kenema District – Conclusion – Unlawful Killings – paras. 643 – 644 [1436].

(vi) Kono District – Unlawful killings

a. Koidu Town – Kono District – Unlawful killings

i. Killing of civilians at Yardo Road, Hill Station and Superman Ground in February/March 1998 – Koidu Town – Kono District – Unlawful killings

2262. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Koidu Town – Killing of civilians at Yardo Road, Hill Station and Superman Ground in February/March 1998 – paras. 658 – 663 [1438].

ii. Killing of civilians in and around Koidu Town between April and May 1998 – Koidu Town – Kono District – Unlawful killings

2263. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Koidu Town – Killing of civilians in and around Koidu Town between April and May 1998 – paras. 670 – 672 [1444].

iii. Other killings around Koidu Town between December 1999 and the disarmament – Koidu Town – Kono District – Unlawful killings

2264. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Koidu Town – Other killings around Koidu Town between December 1999 and the disarmament – paras. 674 – 675 [1447].

b. Bumpe – Kono District – Unlawful killings

i. Killings in Bumpe between March and June 1998 – Bumpe – Kono District – Unlawful killings

2265. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Bumpe – Killings in Bumpe between March and June 1998 – paras. 682 – 684 [1449].

c. Tombodu – Kono District – Unlawful killings

i. Massacre of more than 20 civilians in Tombodu around March or April 1998 – Tombodu – Kono District – Legal Conclusions

2266. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Tombodu – Massacre of more than 20 civilians in Tombodu around March or April 1998 – paras. 686 – 687 [1452].

ii. Second Massacre at Tombudu involving 77-78 civilians around April 1998 – Tombodu – Kono District – Unlawful killings

2267. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Tombodu – Second Massacre at Tombudu involving 77-78 civilians around April 1998 – paras. 691 – 692 [1454].

iii. Third Massacre of over 53 civilians in Tombudu in April 1998 – Tombodu – Kono District – Unlawful killings

2268. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Tombodu – Third Massacre of over 53 civilians in Tombudu in April 1998 – paras. 697 - 698 [1456].

iv. Killings of civilians in and around Tombodu between March and May 1998 – Tombodu – Kono District – Unlawful killings

2269. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Tombodu – Killings of civilians in and around Tombodu between March and May 1998 – paras. 702 – 704 [1458].

d. Koidu Geiya or Koidu Gieya – Kono District – Unlawful killings

i. Killings of civilians at Koidu Geiya around May to June 1998 – Koidu Geiya or Koidu Gieya – Kono District – Unlawful killings

2270. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Koidu Geiya or Koidu Gieya – Killings of civilians at Koidu Geiya around May to June 1998 – paras. 709 - 710 [1461].

e. Koidu Buma – Kono District – Unlawful killings

i. Killings of civilians at Koidu Buma around May to June 1998 – Koidu Buma – Kono District – Unlawful killings

2271. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Koidu Buma – Killings of civilians at Koidu Buma around May to June 1998 – paras. 712 – 713 [1463] .

f. Yengema – Kono District – Unlawful killings

i. Killings of civilians at Yengema around March/April 1998 – Yengema – Kono District – Unlawful killings

2272. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Yengema – Killings of civilians at Yengema around March/April 1998 – paras. 715 – 716 [1465].

ii. Killing of civilians at the Yengema Training base between December 1998 and January 2000 – Yengema – Kono District – Unlawful killings

2273. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Yengema – Killing of civilians at the Yengema Training base between December 1998 and January 2000 – paras. 721 – 722 [1467].

g. Paema or Peyima – Kono District – Unlawful killings

i. Killings of civilians in Paema around March/April 1998 – Paema or Peyima - Kono District – Unlawful killings

2274. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Paema or Peyima – Killings of civilians in Paema around March/April 1998 – paras. 729 – 730 [1469].

h. Bomboa Foidu – Kono District – Unlawful killings

i. Killings of civilians in Bomboa Fuidu around March/April 1998 – Bomboa Fuidu – Kono District – Unlawful killings

2275. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Bomboa Foidu – Killings of civilians in Bombia Fuidu around March/April 1998 – paras 735, 736 [1471].

i. Njaima Nimikoro or Nimikoro – Kono District – Unlawful killings

i. Killing of civilians in Nimikoro between February and June 1998 – Njaima Nimikoro or Nimikoro – Kono District – Unlawful killings

2276. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Njaima Nimikoro or Nimikoro – Killing of civilians in Nimikoro between February and June 1998 – paras. 739 -740 [1473].

j. Mortema – Kono District – Unlawful killings

i. Killing of civilians in Mortema (or Motema) between February and June 1998 – Mortema – Kono District – Unlawful killings

2277. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Mortema – Killing of civilians in Mortema (or Motema) between February and June 1998 – paras. 746 – 747 [1475].

k. Alleged unlawful killings in Other Locations in Kono District not pleaded in the Indictment

2278. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Alleged unlawful killings in Other Locations in Kono District not pleaded in the Indictment – paras. 748 [1477].

l. Conclusion – Unlawful killings – Kono District

2279. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Conclusion – Unlawful killings – paras. 749 -750 [1478].

(vii) Kailahun District – Unlawful killings

a. Kailahun Town – Kailahun District – Unlawful killings

i. Massacre of around 60-65 civilians in Kailahun Town in February 1998 – Kailahun Town – Kailahun District – Unlawful killings

2280. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kailahun District – Kailahun Town – Massacre of around 60-65 civilians in Kailahun Town in February 1998 – paras. 768 – 769 [1480].

b. Conclusion – Unlawful killings – Kailahun District

2281. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Kailahun District – Conclusion – Unlawful killings – paras. 770 – 771 [1482].

(viii) Freetown and the Western Area – Unlawful killings

a. Killing of civilians and ECOMOG soldiers around State House in Freetown – Freetown and the Western Area – Unlawful killings

2282. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Killing of civilians and ECOMOG soldiers around State House in Freetown – paras. 785 - 788 [1484].

b. Unlawful killing of civilians in Kissy area around January 1999 – Freetown and the Western area – Unlawful killings

2283. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Unlawful killing of civilians in Kissy area around January 1999 – paras. 805 - 808 [1488].

c. Unlawful killings of civilians in Fourah Bay in late January 1999 – Freetown and the Western Area – Unlawful killings

2284. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Unlawful killings of civilians in Fourah Bay in late January 1999 – paras. 813 - 814 [1492].

d. Unlawful killing of civilians in Calaba Town in the third week of January 1999 – Freetown and the Western Area – Unlawful killings

2285. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Unlawful killing of civilians in Calaba Town in the third week of January 1999 – paras. 830 – 831 [1494].

e. Unlawful killing of civilians in Kingtom, Allen Town and Tower Hill areas – Freetown and the Western Area – Unlawful killings

2286. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Unlawful killing of civilians in Kingtom, Allen Town and Tower Hill areas – paras. 839 - 841 [1496].

f. Unlawful killing of civilians in Tumbo – Freetown and the Western Area – Unlawful killings

2287. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Unlawful killing of civilians in Tumbo – paras. 843 – 844 [1499].

g. Unlawful killing of civilians in Waterloo – Freetown and the Western Area – Unlawful killings

2288. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Unlawful killing of civilians in Waterloo – paras. 853 – 854 [1501].

h. Unlawful killing of civilians in Wellington – Freetown and the Western Area – Unlawful killings

2289. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Unlawful killing of civilians in Wellington – paras. 859 – 860 [1503].

i. Unlawful killing of civilians in Hastings – Freetown and the Western Area – Unlawful killings

2290. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Unlawful killing of civilians in Hastings – paras. 862 [1505].

j. Unlawful killing of civilians in Benguema – Freetown and the Western Area – Unlawful killings

2291. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Unlawful killing of civilians in Beguema – paras. 867 – 868 [1506].

k. Conclusion – Unlawful killings – Freetown and the Western Area

2292. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Conclusion – Unlawful killings – paras. 869 – 870 [1508].

2293. Regarding Taylor's individual criminal responsibility (Aiding and Abetting), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Aiding and Abetting - paras. 6904-6906 [6351], 6910-6915 [6354], 6918-6924 [6360], 6927-6937 [6367], 6940-6946 [6378], 6947-6952 [6385], 6953 [6391].

2294. Regarding Taylor's individual criminal responsibility (Planning), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Planning - paras. 6957 [6392], 6958-6968 [6393], 6969-6970 [6404], 6971 [6406].

2295. Regarding Taylor's individual criminal responsibility (Instigating), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Instigating - para. 6972 [6407].

2296. Regarding Taylor's individual criminal responsibility (Ordering), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Ordering - para. 6973 [6408].

2297. Regarding Taylor's superior responsibility, see below: Chapter 13 (Article 6.3 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.3 of the Statute - Superior Responsibility - paras. 6977 - 6986 [8613].

3. Appellate Judgment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-A, Judgment, 26 September 2013

(a) Factual Findings

2298. para. 253: The Trial Chamber found that the RUF/AFRC's operational strategy was characterised by a campaign of crimes against the Sierra Leonean population, including the crimes charged in all 11 Counts of the Indictment,[578] which were inextricably linked to the strategy of the military operations themselves. This strategy entailed a campaign of terror against civilians as a primary *modus operandi*, to achieve military gains at any civilian cost and political gains in order to attract the attention of the international community and improve the RUF/AFRC's negotiating stance with the Sierra Leonean government (the "Operational Strategy").[579]

2299. para. 254: In assessing Taylor's alleged criminal liability, the Trial Chamber found that Taylor, by his acts and conduct, was "critical in enabling" the RUF/AFRC's Operational Strategy, "supported, sustained and enhanced" the functioning of the RUF/AFRC and its capacity to implement its Operational Strategy, planned an attack of terror as the *modus operandi* of the attack on Freetown and had a substantial effect on the crimes committed by the RUF/AFRC.[580] It further found that Taylor knew of the RUF/AFRC's Operational Strategy, knew that his acts and conduct assisted the commission of crimes in the implementation of that Operational Strategy and knew the essential elements of the crimes in which he was participating.[581]

2300. Regarding the RUF/AFRC's Operational Strategy, see below: Chapter 12 (Article 6.1. Liability) -Taylor - Appellate Judgment - Findings and Conclusions - The RUF/AFRC's Operational Strategy - paras. 257-302 [6411].

2301. para. 303: The Appeals Chamber has reviewed the Trial Chamber's assessment of the evidence and affirmed the findings in the Judgment.[821] It has further affirmed the Trial Chamber's finding that the RUF/AFRC leadership pursued an Operational Strategy to commit the crimes charged in Counts 1-11 of the Indictment.[822]

2302. Regarding Taylor's Acts, Conduct and Mental State, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Acts, Conduct and Mental State - paras. 303 - 343 [6457].

(b) Legal Conclusions

2303. See below: Annex B encompasses the discussion of the evaluation of evidence relating to all the crimes [Annex B].

2304. Regarding Taylor's Criminal Liability, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Criminal Liability - paras. 497-595 [6630].

B. RUF

1. Indictment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-2004-15-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

2305. Paragraph 19 through 39 are incorporated by reference.[78]

2306. These attacks [para.41: 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] were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property.[79]

[78] RUF Indictment, para. 40.
[79] RUF Indictment, para. 42.

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

2307. Members of the AFRC/RUF subordinate to and/or acting in concert with Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, committed crimes set forth below in paragraphs 45 through 82, and charged in counts 3 through 14, as part of a campaign to terrorize the civilian population. The AFRC/RUF also committed the crimes to punish the civilian population or 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.[80]

(iii) Counts 3-5: Unlawful killings

2308. Victims were routinely shot, hacked to death and burned to death. Unlawful killings included the following:[81]

> i. Bo District: Between about 1 June 1997 and 30 June 1997, AFRC/RUF attacked Tikonko, Telu, Sembehun, Gerihun, Mamboma, unlawfully killing an unknown number of civilians;[82]
>
> ii. Kenema District: Between 25 May 1997 and about 19 February 1998, in locations including Kenema town, members of AFRC/RUF unlawfully killed an unknown of civilians;[83]
>
> iii. Kono District: About Mid-February 1998, AFRC/RUF fleeing from Freetown arrived in Kono District. Between 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;[84]
>
> iv. Kailahun District: Between about 14 February 1998 and 30 September 1998, in locations including Kailahun town, members of AFRC/RUF unlawfully killed an unknown number of civilians;[85]
>
> v. Koinadugu District: 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;[86]
>
> vi. Bombali District: Between about 1 May 1998 and 30 November 1998, in several locations in Bombali District, including Bonyoyo (or Bornoya), Karina,

[80] RUF Indictment, para. 44.
[81] RUF Indictment, para. 45.
[82] RUF Indictment, para. 46.
[83] RUF Indictment, para. 47.
[84] RUF Indictment, para. 48.
[85] RUF Indictment, para. 49.
[86] RUF Indictment, para. 50.

Mafabu, Mateboi, and Gbendembu (or Gbendembu or Pendembu), members of AFRC/RUF unlawfully killed an unknown number of civilians;[87]

vii. Freetown and Western Area: 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;[88]

viii. Port Loko: 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.[89]

2309. 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 3.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.[90]

2. Trial Judgment

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[87] RUF Indictment, para. 51.
[88] RUF Indictment, para. 52.
[89] RUF Indictment, para. 53.
[90] RUF Indictment, para. 53.

(a) Factual Findings

(i) Kono District – Crimes

a. Background to Kono District – Kono District - Crimes

2310. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Background to Kono District – paras. 1136 – 1139 [208].

b. Koidu Town – Kono District - Crimes

2311. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Koidu Town – Killings during attack on Koidu – para. 1146 [218].

2312. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Koidu Town – Killing of civilians by Rocky and his men – paras. 1147 – 1151 [219].

c. Tombodu – Kono District - Crimes

2313. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Tombodu - Killings by Savage and Staff Alhaji – paras. 1165 – 1169 [237].

2314. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Tombodu – Killing of Chief Sogbeh – para.1170 [242].

d. Wendedu – Kono District - Crimes

2315. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Wendedu - Killing of female Nigerian civilian – paras. 1174 – 1175 [246].

2316. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Wendedu - Killing of Sata Sesay's family – para. 1176 [248].

e. Yardu – Kono District - Crimes

2317. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Yardu – Killings and amputations – paras. 1186- 1187 [258].

f. PC Ground – Kono District - Crimes

2318. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – PC Ground – Killings – paras. 1188- 1189 [260].

g. Penduma – Kono District - Crimes

2319. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Penduma – Rapes, killings and amputations – paras. 1191 – 1196 [263].

h. Koidu Buma – Kono District – Crimes

2320. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Koidu Buma – Killing of 15 civilians – para.1204 [273].

i. RUF Camps – Kono District - Crimes

2321. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Treatment of civilians in RUF Camps – para. 1233 [302].

j. Yengema – Kono District - Crimes

2322. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Forced military training at Yengema (Dec 1998 to Jan 2000) – para.1264 [333].

(ii) Kenema District – Crimes

a. Background to Kenema District – Kenema District – Crimes

2323. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Background to Kenema District - paras. 1042 – 1044 [335].

b. Kenema Town – Kenema District - Crimes

2324. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - para. 1045 [338].

2325. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - Three corpses at Mambu Street – para.1057 [350].

2326. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - Killing of a suspected Kamajor at the NIC building – paras. 1058- 1059 [351].

2327. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - Killing of Mr. Dowi – para. 1060 [353].

2328. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - Killing of Bonnie Wailer and two others – paras. 1061 – 1063 [354].

2329. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - Killing of two alleged thieves – para. 1064 [357].

2330. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - Killing of an alleged Kamajor boss – para. 1065 [358].

2331. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - Beating and killing of B.S Massaquoi and others – paras. 1072 – 1079 [365].

c. Tongo Field – Kenema District – Crimes

2332. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Tongo Field - Killing at Lamin Street – para. 1080 [373].

2333. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Tongo Field - Killing of Limba man for his palm wine – para. 1081 [374].

2334. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Tongo Field - Killings at Cyborg Pit – paras. 1082 – 1087 [375].

2335. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Tongo Field - Forced mining at Tongo Field and Cyborg Pit – para. 1095 [388].

(iii) Bo District – Crimes

a. Background to Bo District – Bo District - Crimes

2336. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bo District – Crimes – Background to Bo District - paras. 991- 992 [389].

b. Tikonko – Bo District – Crimes

2337. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bo District – Crimes – Tikonko - Second Attack on Tikonko – paras. 995 – 1005 [393].

c. Sembehun – Bo District – Crimes

2338. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bo District – Crimes – Sembehun – paras. 1006 – 1007 [404].

d. Gerihun – Bo Ditsrict – Crimes

2339. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bo District – Crimes – Gerihun – para. 1014 [412].

(iv) Kailahun District – Crimes

a. Background to Kailahun District – Kailahun District – Crimes

2340. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Background to Kailahun District – paras. 1380 – 1385 [413].

2341. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Killings – para.1386 [419].

b. Killing of suspected Kamajors in Kailahun Town – Kailahun District – Crimes

2342. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Killings – Killing of suspected Kamajors in Kailahun Town – paras. 1387 – 1397 [420].

c. Killing of Fonti Kanu in Pendembu – Kailahun District – Crimes

2343. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Killings – Killing of Fonti Kanu in Pendembu – paras.1398- 1399 [431].

d. Killing of Foday Kallon in Buedu – Kailahun District – Crimes

2344. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Killings – Killing of Foday Kallon in Buedu – paras. 1400 – 1402 [433].

e. Killing of Dr. Kamara– Kailahun District – Crimes

2345. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Killings – Killing of Dr. Kamara – paras. 1403 -1404 [436].

(v) Freetown and the Western Area – Crimes

a. Background to Freetown and the Western Area – Freetown and the Western Area – Crimes

2346. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area – para. 1510 [477].

2347. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Perpetrators of the Attack on Freetown – paras. 1511 – 1515 [478].

2348. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Targeting of the civilian population in Freetown – paras. 1516 – 1519 [483], 1522 [489].

b. State House – Freetown and the Western Area – Crimes

2349. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – State House – para. 1523 [490].

c. Kingtom – Freetown and the Western Area – Crimes

2350. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kingtom – para.1524 [491].

d. Guard Street – Freetown and the Western Area – Crimes

2351. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Guard Street – para. 1525 [492].

e. Upgun and Fourah Bay – Freetown and the Western Area – Crimes

2352. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Upgun and Fourah Bay – para. 1526 – 1529 [493].

f. Wellington – Freetown and the Western Area – Crimes

2353. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Wellington - Killing and Looting of TF1-235 and his family – paras. 1531 – 1535 [498].

2354. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Wellington - Killings and Amputations at Loko Town – para. 1536 [503].

2355. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Wellington - Killing, Looting and Abduction at a clinic – para.1538 [505].

g. Kissy – Freetown and the Western Area – Crimes

2356. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings at Kissy Police Station – para. 1541 [508].

2357. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings and Beatings at a clinic – paras. 1542 – 1545 [509].

2358. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings and Amputations of TF1-101 and others - paras. 1546 – 1548 [513].

2359. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings at Rogbalan Mosque – paras. 1550 – 1552 [517].

2360. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings, Amputations and Looting of TF1-022 and others – para. 1553 [520].

h. Allan Town, Calaba Town and Benguema – Freetown and the Western Area – Crimes

2361. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes - Allan Town, Calaba Town and Benguema - 'Forced Marriage' of TF1-029 – paras. 1562 - 1564 [529].

(vi) Koindugu District – Crimes

2362. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 - 1505 [533].

(vii) Bombali District – Crimes

2363. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 - 1509 [543].

(viii) Port Loko District – Crimes

2364. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras. 1609 – 1613 [547].

(b) Legal Conclusions

(i) Applicable law - War crimes / Violations of Common Article 3

2365. See above: Chapter 1 – RUF – Trial Judgment – Legal conclusions – Applicable law - War crimes / Violations of Common Article 3 – paras. 91 – 105 [552].

(ii) War crimes / Violations of Common Article 3 – Findings on general requirements

2366. See above: Chapter 1 – RUF – Trial Judgment – Legal conclusions – War crimes / Violations of Common Article 3 – Findings on general requirements – paras. 964 – 988 [567].

(iii) Applicable law – Murder

2367. para.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]

2368. para.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 reasonable knowledge that it would likely result in death.[276]

(iv) Pleading

a. Criminal acts and events - Pleading

2369. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Criminal acts and events – paras. 412 [605], 418 - 419 [611].

b. Locations – Pleading

2370. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Locations – paras. 420 – 422 [613].

c. Timeframes – Pleading

2371. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Timeframes – paras. 423 – 432 [616].

d. Conduct charged under Common Article 3 and Additional Protocol II – Pleading

2372. See above: Chapter 1 – RUF – Trial Judgment – Legal conclusions – Pleading - Conduct charged under Common Article 3 and Additional Protocol II – paras. 436 – 447 [626].

(v) Kono District – Unlawful killings

2373. See above: Chapter 2 – RUF – Trial Judgment – Legal Conclusions –Kono District – Unlawful killings - paras. 1266 – 1268 [1630].

a. Koidu Town – Kono District – Unlawful killings

2374. See above: Chapter 2 – RUF – Trial Judgment – Legal Conclusions –Kono District – Unlawful killings – Koidu Town - Killings in attack on Koidu Town – paras. 1269 - 1270 [1633].

2375. See above: Chapter 2 – RUF – Trial Judgment – Legal Conclusions –Kono District – Unlawful killings – Koidu Town - Killing of civilians by Rocky and his men – paras. 1271 – 1272 [1635].

b. Tombodu – Kono District – Unlawful killings

2376. See above: Chapter 2 – RUF – Trial Judgment – Legal Conclusions –Kono District – Unlawful killings – Tombodu - Killings by Savage and Staff Alhaji – paras. 1273 – 1275 [1637].

2377. See above: Chapter 2 – RUF – Trial Judgment – Legal Conclusions –Kono District – Unlawful killings – Tombodu - Killing of Chief Sogbeh – para. 1276 [1640].

c. Wendedu – Kono District – Unlawful killings

2378. See above: Chapter 2 – RUF – Trial Judgment – Legal Conclusions –Kono District – Unlawful killings – Wendedu - para.1277 [1641].

d. Penduma – Kono District – Unlawful killings

2379. See above: Chapter 2 – RUF – Trial Judgment – Legal Conclusions –Kono District – Unlawful killings – Penduma - para.1278 [1642].

e. Yardu – Kono District – Unlawful killings

2380. See above: Chapter 2 – RUF – Trial Judgment – Legal Conclusions –Kono District – Unlawful killings – Yardu - para. 1279 [1643].

f. Koidu Buma – Kono District – Unlawful killings

2381. See above: Chapter 2 – RUF – Trial Judgment – Legal Conclusions –Kono District – Unlawful killings – Koidu Buma - para. 1280 [1644].

g. Killings near PC Ground – Kono District – Unlawful killings

2382. See above: Chapter 2 – RUF – Trial Judgment – Legal Conclusions –Kono District – Unlawful killings – Killings near PC Ground - paras. 1281 – 1282 [1645].

(vi) Kenema District – Unlawful killings

2383. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Kenema District – Unlawful killings – paras. 1096 – 1098 [1647].

a. Kenema Town – Kenema District – Unlawful killings

2384. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Kenema District – Unlawful killings – Kenema Town - Killing of B.S Massaquoi, Andrew Quee and four others – para. 1099 [1650].

2385. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Kenema District – Unlawful killings – Kenema Town - Killing of Mr Dowi – para. 1100 [1651].

2386. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Kenema District – Unlawful killings – Kenema Town - Killings of suspected Kamajors – paras. 1101- 1102 [1652].

2387. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Kenema District – Unlawful killings – Kenema Town - Killing of civilians accused of larceny – paras. 1103 – 1104 [1654].

b. Tongo Field – Kenema District – Unlawful killings

2388. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Kenema District – Unlawful killings – Tongo Field - Killing of civilian at Lamin Street and killing of Limba man – para. 1105 [1656].

2389. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Kenema District – Unlawful killings – Tongo Field - Killings of civilians at Cyborg Pit – paras. 1106 – 1108 [1657].

(vii) Bo District – Unlawful killings

2390. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Bo District – Unlawful killings – paras. 1015 – 1017 [1660].

a. Tikonko – Bo District – Unlawful killings

2391. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Bo District – Unlawful killings – Tikonko – paras. 1018 – 1022 [1663].

b. Sembehun – Bo District – Unlawful killings

2392. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Bo District – Unlawful killings – Sembehun – para. 1023 [1668].

c. Gerihun – Bo District – Unlawful killings

2393. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Bo District – Unlawful killings – Gerihun – paras. 1024 – 1025 [1669].

(viii) Kailahun District – Unlawful killings

2394. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Kailahun District – Unlawful killings - paras. 1444 – 1446 [1671].

a. Kailahun Town - Killing of 63 suspected Kamajors and one AFRC fighter hors de combat – Kailahun District – Unlawful killings

2395. para.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]

2396. para.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 population. Consequently, the Chamber finds that these killings constitute the war crime of murder, as charged under Count 5 of the Indictment.

2397. para.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.

2398. para.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]

2399. para.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 reconceptualization of a fundamental principle of international humanitarian law. We are not prepared to embark on such an exercise.

2400. para.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.

b. Killing of Fonti Kanu – Kailahun District – Unlawful killings

2401. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Kailahun District – Unlawful killings – Killing of Fonti Kanu - para. 1455 [1677].

c. The Killing of Foday Kallon – Kailahun District – Unlawful killings

2402. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Kailahun District – Unlawful killings – The Killing of Foday Kallon - paras. 1456 – 1457 [1678].

d. The Killing of Dr. Kamara – Kailahun District – Unlawful killings

2403. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Kailahun District – Unlawful killings – The Killing of Dr. Kamara - para. 1458 [1680].

(ix) Freetown and the Western Area – Unlawful killings

2404. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Freetown and the Western Area – Unlawful killings - paras. 1566 – 1572 [1681].

(x) Koindugu District – Unlawful killings

2405. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 - 1505 [533].

(xi) Bombali District – Unlawful killings

2406. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 – 1509 [543].

(xii) Port Loko District – Unlawful killings

2407. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras. 1609 – 1613 [547].

3. Appellate Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-A, Judgment, 26 October 2009

(a) Factual Findings

(i) Kono District – Violence to life, health and physical or mental well-being of persons, in particular, murder

2408. See above: Chapter 1 – RUF – Appellate Judgment – Factual Findings – Kono District – para. 428 [712].

(b) Legal Conclusions

(i) Pleading

2409. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Pleading – para. 492 [1693].

2410. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Pleading – paras. 826, 827 – 836 [1694].

(ii) Pleading – Dissents

a. Justice Fisher:

2411. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Pleading-Dissents – Justice Fisher – para. 20 (p.517) [746], para. 22 (518) [747], para. 23 (p.518) [748], para. 24 (p.518-519) [749].

(iii) Crimes charged as criminal means of furthering Common Criminal Purpose - Violence to life, health and physical or mental well-being of persons, in particular, murder

2412. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 333, 348 [751].

2413. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 377 – 378 [754].

(iv) Crimes charged and JCE *mens rea* (short review) - Violence to life, health and physical or mental well-being of persons, in particular, murder

2414. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged and JCE *mens rea* (short review) – paras. 467 - 468, 482, 492 - 493 [756] and see, also, Justice Fisher's and Justice Winter's Dissenting Opinions in that regard.

(v) Kenema District - Violence to life, health and physical or mental well-being of persons, in particular, murder

2415. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Kenema District – paras. 370, 374, 375 - 376, 380, 385, 419 - 426, 490 [1725].

2416. Regarding Sesay's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District – JCE – Participation in and shared intent – Sesay – paras.617, 619 – 623 [7580].

2417. See above: Chapter 2 – RUF – Appellate Judgment – Legal conclusions – Kenema District – paras. 662, 666 – 669 [1742].

2418. Regarding Kallon's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District – JCE – Participation in and shared intent – Kallon – paras.798, 801 – 804 [7598].

2419. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District – JCE – Participation in and shared intent – Gbao – paras. 946-948, 951– 955 [7615].

2420. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

2421. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras. 4 – 28 [7454].

2422. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

2423. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Gbao – para. 1061 [7694].

(vi) Kono District - Violence to life, health and physical or mental well-being of persons, in particular, murder

2424. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Kono District – paras. 429 – 438 [1753].

2425. Regarding Sesay's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Sesay – paras. 624, 627 – 634 [7658].

2426. Regarding Kallon's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Kallon – paras. 806, 810 – 815 [7667].

2427. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Pleading – paras. 826, 828 – 836 [1694].

2428. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District (also, Kono District) – JCE – Participation in and shared intent – Gbao – paras. 946-948, 951– 955 [7615].

2429. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 - 493 [7440].

2430. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras. 4 – 28 [7454].

2431. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

2432. Regarding Gbao's participation in and shared intent of the JCE in relation to **Kono District**, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Gbao – para. 1061 [7694].

(vii) Kailahun District - Violence to life, health and physical or mental well-being of persons, in particular, murder

2433. Regarding Sesay's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Sesay – para. 635 [7694].

2434. Regarding Kallon's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Kallon – paras. 817, 820 – 824 [7759].

2435. Regarding Gbao's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Gbao – paras. 958- 959 [7773], 962 – 966 [7775], 982-983 [7791], 986 – 994 [7793].

(viii) Bo District - Violence to life, health and physical or mental well-being of persons, in particular, murder

2436. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Bo District – paras. 416 – 418 [1775].

2437. Regarding Sesay's participation in and shared intent of the JCE in relation to Bo District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Bo District – JCE – Participation in and shared intent – Sesay – paras. 612, 614 [7905].

2438. Regarding Kallon's participation in and shared intent of the JCE in relation to Bo District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Bo District – JCE – Participation in and shared intent – Kallon – paras. 791, 794 – 796 [7908].

2439. Regarding Gbao's participation in and shared intent of the JCE in relation to Bo District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District (also, Bo Doistrict)– JCE – Participation in and shared intent – Gbao – paras. 946-948, 951– 955 [7615].

2440. Regarding Gbao's participation in and shared intent of the JCE in relation to Bo District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

2441. Regarding Gbao's participation in and shared intent of the JCE in relation to Bo District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras.4 – 28 [7454].

2442. Regarding Gbao's participation in and shared intent of the JCE in relation to Bo District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

2443. Regarding Gbao's participation in and shared intent of the JCE in relation to Bo District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Gbao – para. 1061 [7571].

C. AFRC

1. Indictment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

2444. Paragraphs 21 through 36 are incorporated by reference.[91]

2445. 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 ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, conducted armed attacks throughout the territory of the Republic of Sierra Leone, including Bo, Kono, Kenema,

[91] AFRC Indictment, para. 37.

Koinadugu, Bombali and Kailahun and Port Loko Districts and the city of Freetown and the Western Area. Targets of the armed attacks included civilians. [92]

2446. These attacks were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property. [93]

2447. 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. [94]

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

2448. Members of the AFRC/RUF subordinate to and/or acting in concert with ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, committed the crimes set forth below in paragraphs 42 through 79 and charged in Counts 3 through 14, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF. [95]

[92] AFRC Indictment, para. 38.
[93] AFRC Indictment, para. 39.
[94] AFRC Indictment, para. 40.
[95] AFRC Indictment, para. 41.

(iii) Counts 3-5: Unlawful killings

i. Bo District - Between about 1 June 1997 and 30 June 1997, AFRC/RUF attacked Tikonko, Telu, Sembehun, Gerihun and Mamboma, unlawfully killing an unknown number of civilians; [96]

ii. Kenema District - 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; [97]

iii. 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. [98]

iv. Kailahun District - 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; [99]

v. Koinadugu District - 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; [100]

vi Bombali District - 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; [101]

vii. Freetown and the Western Area - 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; [102]

viii. Port Loko - 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; [103]

2449. By their acts or omissions in relation to these events, ALEX T AMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, pursuant to Article 6.1. and, or

[96] AFRC Indictment, para. 43.
[97] AFRC Indictment, para. 44.
[98] AFRC Indictment, para. 45.
[99] AFRC Indictment, para. 46.
[100] AFRC Indictment, para. 47.
[101] AFRC Indictment, para. 48.
[102] AFRC Indictment, para. 49.
[103] AFRC Indictment, para. 50.

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 3.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.[104]

2. Trial Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-T, Judgement, 20 June 2007

(a) Factual Findings

(i) General

2450. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings - para. 804 [1791].

(ii) Bo District – Crimes

2451. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Bo District – paras. 806 – 809 [1793].

a. Tikonko - Bo District – Crimes

i. Unlawful killings in Tikonko – Bo District – Crimes

2452. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Bo District – Tikonko – paras. 810 – 820 [1797].

[104] AFRC Indictment, para. 50.

b. Gerihun – Bo District – Crimes

i. Unlawful killings in Gerihun – Bo District – Factual Findings

2453. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Bo District – Gerihun – paras. 821 – 825 [1808].

(iii) Kenema District – Crimes

2454. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Kenema District – paras. 827 – 828 [1813].

a. Kenema Town – Kenema District – Crimes

i. Unlawful killings in Kenema Town – Kenema District – Crimes

2455. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Kenema District – Kenema Town – paras. 829 – 837, 839 [1815].

(iv) Kono District – Crimes

2456. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Kono District – paras. 841 – 843 [1825].

a. Koidu – Kono District – Crimes

i. Unlawful killings in Koidu – Kono District – Crimes

2457. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Kono District – Koidu – paras. 845 – 847 [1828].

b. Tombodu- Kono District – Crimes

i. Unlawful killings in Tombodu – Kono District – Crimes

2458. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Kono District – Tombodu – paras. 848 - 850, 852 – 854 [1831].

c. Mortema – Kono District – Crimes

i. Unlawful killing in Mortema – Kono District – Crimes

2459. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Kono District – Mortema – para. 856 [1838].

(v) Kailahun District – Crimes

2460. See above: Chapter 1 – AFRC – Trial Judgment – Factual Findings – Kailahun District – paras. 858 – 859 [1839].

a. Kailahun Town – Kailahun District – Crimes

2461. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Kailahun District – Kailahun Town - paras. 860 – 863 [1841].

(vi) Koinadugu District – Crimes

2462. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Koinadugu District – paras. 865 – 867 [1845].

a. Kabala – Koinadugu District – Crimes

i. Unlawful killings in Kabala – Koinadugu District – Crimes

2463. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Kailahun District – Kabala - paras. 868 – 871 [1848].

b. Koinadugu Town - Koinadugu District – Crimes

i. Unlawful killings in Koinadugu Town – Koinadugu District – Crimes

2464. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Kailahun District – Koinadugu Town - paras. 872 – 874 [1852].

c. Fadugu- Koinadugu District – Crimes

i. Unlawful killings in Fadugu – Koinadugu District – Crimes

2465. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Kailahun District – Fadugu - paras. 875 – 878 [1855].

(vii) Bombali District – Crimes

2466. See above: Chapter 1 – AFRC – Trial Judgment – Factual Findings – Bombali District – paras. 880 – 882 [1859].

a. Bornoya – Bombali District – Crimes

i. Unlawful killings in Bornoya - Bombali District – Crimes

2467. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Bombali District – Bornoyo - paras. 883 – 855 [1862].

b. Karina – Bombali District – Crimes

i. Unlawful killings in Karina - Bombali District – Crimes

2468. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Bombali District – Karina - paras. 886 – 894 [1865].

c. Mateboi – Bombali District – Crimes

i. Unlawful killing in Mateboi - Bombali District – Crimes

2469. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Bombali District – Mateboi - para. 895 [1874].

d. Gbendembu - – Bombali District – Crimes

i. Unlawful killings in Gbendembu - Bombali District – Crimes

2470. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Bombali District – Gbendembu - para. 896 [1875].

(viii) Freetown and the Western Area – Crimes

2471. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Freetown and the Western Area – paras. 899 – 901 [1876].

a. Freetown - Freetown and the Western Area – Crimes

2472. Unlawful killings in Freetown – East End Police - Freetown and the Western Area – Factual Findings See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Freetown and the Western Area – Freetown - East End Police - paras. 902 – 903 [1879].

i. Unlawful killings in Freetown – State House Area - Freetown and the Western Area – Crimes

2473. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Freetown and the Western Area – Freetown – State House Area - paras. 904 – 914, 916 [1881].

ii. Unlawful killings in Freetown – Kingtom - Freetown and the Western Area – Crimes

2474. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Freetown and the Western Area – Freetown – Kingtom - paras. 917 – 918 [1894].

iii. Unlawful killings in Freetown – Fourah Bay - Freetown and the Western Area – Crimes

2475. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Freetown and the Western Area – Freetown – Fourah Bay - paras. 919 - 924, 926 [1896]

i. Unlawful killings in Freetown – Guard Street - Freetown and the Western Area – Crimes

2476. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Freetown and the Western Area – Freetown – Guard Street - para. 927 [1904].

b. Kissy - Freetown and the Western Area – Crimes

i. Unlawful killings in Kissy – Good Shepard Hospital - Freetown and the Western Area – Crimes

2477. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Freetown and the Western Area – Kissy – Good Shepherd Hospital - paras. 928 – 930 [1905].

ii. Unlawful killings in Kissy – Rogbalan Mosque - Freetown and the Western Area – Crimes

2478. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Freetown and the Western Area – Kissy – Rogbalan Mosque - paras. 931 – 938 [1908].

iii. Unlawful killings in Kissy - Kissy Mental Home - Freetown and the Western Area – Crimes

2479. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Freetown and the Western Area – Kissy – Kissy Mental Home - paras. 939 – 943 [1916].

iv. Unlawful killings in Kissy - Rowe Street - Freetown and the Western Area – Crimes

2480. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Freetown and the Western Area – Kissy – Kissy Mental Home - paras. 944 – 945 [1921].

v. Unlawful killings in Kissy - Fatamaran Street- Freetown and the Western Area – Crimes

2481. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Freetown and the Western Area – Kissy – Fatamaran Street - paras. 947 [1924].

c. Calaba Town - Freetown and the Western Area – Crimes

i. Unlawful killings in Calaba Town - Freetown and the Western Area – Crimes

2482. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Calaba Town - paras. 948 – 949 [1925].

k. Wellington - Freetown and the Western Area – Crimes

ii. Unlawful killings in Wellington - Freetown and the Western Area – Crimes

2483. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Wellington- para. 950 [1927].

(ix) Port Loko District – Crimes

2484. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Port Loko District - paras. 952 – 954 [1928].

a. Manaarma - Port Loko District – Crimes

i. Unlawful killings in Manaarma - Port Loko District – Crimes

2485. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Port Loko District - Manaarma - paras. 955 – 963 [1931].

b. Nonkoba - Port Loko District – Crimes

i. Unlawful killings in Nonkoba - Port Loko District – Crimes

2486. See above: Chapter 2 – AFRC – Trial Judgment – Factual Findings – Port Loko District - Nonkoba - para. 964 [1940].

(b) Legal Conclusions

(i) Applicable law - War crimes / Violations of Common Article 3

2487. See above: Chapter 1 – AFRC – Legal Conclusions – Applicable law - War crimes / Violations of Common Article 3 - paras. 241 - 242 [1023].

a. There must have been an armed conflict whether non-international or international in character at the time the offences were allegedly committed

2488. See above: Chapter 1 – AFRC – Legal Conclusions – There must have been an armed conflict whether non-international or international in character at the time the offences were allegedly committed - paras. 243 - 245 [1025].

b. There must be a nexus between the armed conflict and the alleged offence

2489. See above: Chapter 1 – AFRC – Legal Conclusions – There must be a nexus between the armed conflict and the alleged offence - paras. 246 - 247 [1028].

c. The victims were not directly taking part in the hostilities at the time of the alleged violation

2490. See above: Chapter 1 – AFRC – Legal Conclusions – The victims were not directly taking part in the hostilities at the time of the alleged violation - para. 248 [1030].

(ii) War crimes / Violations of Common Article 3 – Findings on general requirements

2491. See above: Chapter 1 – AFRC – Legal Conclusions – War crimes / Violations of Common Article 3 – Findings on general requirements – paras. 249 – 254 [1031].

(iii) Applicable law – Murder

2492. para. 688: Murder is charged under Article 2(a) of the Statute (Count 4 - Crime against Humanity) and Article 3(a) of the Statute (Count 5 - Violation of Article 3 Common to the Geneva Convention and of Additional Protocol II). The Trial Chamber observes that the elements defining murder are identical regardless of the provision under which it is charged.[1343] Thus, in addition to the chapeau requirements of Crimes against Humanity pursuant to Article 2 of the Statute (for Count 4) and the chapeau requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute (for Count 5), the Trial Chamber adopts the following elements of the crime of murder:

1. The perpetrator by his acts or omission caused the death of a person or persons; and

2. The perpetrator had the intention to kill or to cause serious bodily harm in the reasonable knowledge that it would likely result in death.[1344]

2493. para. 689: For the *actus reus* of murder to be satisfied, the Prosecution is required to establish beyond reasonable doubt that the perpetrator's conduct substantially contributed to the death of the person.[1345] This does not necessarily require proof that the dead body of that person has been recovered.[1346] The death of the victim may be demonstrated through circumstantial evidence, provided it is the only inference that may reasonably be drawn from the acts or omissions of the perpetrator.[1347] Such circumstantial evidence may include factors such as proof of incidents of mistreatment against the alleged victim, pattern of mistreatment and disappearances of individuals in the location in question, general climate of lawlessness, length of time which has elapsed since the person disappeared and the fact that the alleged victim has not been in contact with others whom he would have been expected to contact.[1348]

2494. para. 690: The *mens rea* required for murder is intent to kill or cause serious bodily harm in the reasonable knowledge that it would likely result in death. Premeditation is not a *mens rea* requirement.[1349]

(iv) Bo District – Unlawful killings

a. Tikonko and Gerihun – Bo District – Unlawful killings

2495. See above: Chapter 2 – AFRC – Legal Conclusions – Bo District (1 June 1997 - 30 June 1997) – Tikonko and Gerihun - para. 826 [1973].

2496. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Bo, Kemena and Kailahun Districts, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bo, Kenema and Kailahun Districts - paras. 1641-1650 [7991], 1842-1847 [8001], 1982-1984 [8007], 1987-1991 [8012].

2497. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Bo, Kenema and Kailahun Districts, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bo, Kenema and Kailahun Districts - paras. 1641-1643 [8838], 1651-1664 [8839], 1842-1844 [8853], 1848-1855 [8854], 1982-1984 [8862], 1992-1996 [8863].

(v) Kenema District – Unlawful killings

a. Kenema Town – Kenema District – Unlawful killings

2498. See above: Chapter 2 – AFRC – Legal Conclusions – Kenema District (25 May 1997 - 19 February 1998) - Kenema Town- para. 840 [1976].

(vi) Kono District – Unlawful killings

a. Koidu, Tombodu and Mortema – Kono District – Unlawful killings

2499. See above: Chapter 2 – AFRC – Legal Conclusions – Kono District – Koidu, Tombodu and Mortema - para. 857 [1977].

2500. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Kono District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment -Findings and Conclusions - Kono District - paras. 1665-1668 [8017], 1856-1861 [8021], 1997-2000 [8027].

2501. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Kono District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Kono District - paras. 1665 [8868], 1669-1673 [8869], 1856 [8874], 1862-1893 [8875], 1997 [8907], 2001-2005 [8908].

(vii) Kailahun District – Unlawful killings

a. Kailahun Town – Kailhun District – Unlawful killings

2502. See above: Chapter 2 – AFRC – Legal Conclusions – Kailahun District - Kailahun Town - para. 864 [1980].

2503. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Kailahun District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Kailahun District – paras. 1674-1679 [8031], 1894-1897 [8037], 2006-2009 [8041].

2504. Regarding Brima's, Kamara's and Kanu's superior responsibility in relation to Kailahun District, see below: Chapter 13 (Article 6.3 Liability) – AFRC – Trial Judgment – Findings and Conclusions – Kailahun District – paras. 1674 [8913], 1680-1685 [8914], 1894 [8920], 1898-1903 [8921], 2006 [8927], 2010-2014 [8928].

(viii) Koinadugu District – Unlawful killings

a. Kabala, Koinadugu Town and Fadugu – Koinadugu District – Unlawful killings

2505. See above: Chapter 2 – AFRC – Legal Conclusions – Koinadugu District – Kabala, Koinadugu Town and Fadugu - para. 879 [1983].

2506. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Koinadugu District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment -

Findings and Conclusions - Koinadugu District - paras. 1686-1696 [8045], 1904-1906 [8056], 2015-2018 [8060].

2507. Regarding Brima's, Kamara's and Kanu's superior responsibility in relation to Koinadugu District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Koinadugu District - paras. 1686 [8933], 1697-1699 [8934], 1904 [8937], 1907-1910 [8938], 2015 [8942], 2019-2024 [8943].

(ix) Bombali District –Unlawful killings

a. Bornoya, Karina, Mateboi and Gbendembu – Bombali District – Unlawful killings

2508. See above: Chapter 2 – AFRC – Legal Conclusions – Bombali District – Bornoya, Karina, Mateboi and Gbendembu - paras. 897 - 898[1986].

2509. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Bombali District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bombali District - paras. 1700-1720 [8064], 1911-1920 [8085], 2025-2031 [8095].

2510. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Bombali District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bombali District - paras. 1700 [8949], 1721-1744 [8950], 1911 [8974], 1921-1928 [8975], 2025 [8983], 2032-2044 [8984].

(x) Freetown and the Western Area - Unlawful killings

a. East End Police, State House Area, Kingtom , Fourah Bay, Guard Street , Good Shepherd Hospital, Rogbalan Mosque, Kissy Mental Home, Rowe Street and Fatamaran Street

2511. See above: Chapter 2 – AFRC – Trial Judgment – Legal Conclusions – Freetown and the Western Area - East End Police, State House Area, Kingtom , Fourah Bay, Guard Street , Good Shepherd Hospital, Rogbalan Mosque, Kissy Mental Home, Rowe Street and Fatamaran Street – para. 951 [1990].

b. Calaba Town – Freetown and the Western Area – Unlawful killings

2512. See above: Chapter 2 – AFRC – Trial Judgment – Legal Conclusions – Freetown and the Western Area - East End Police, State House Area, Kingtom , Fourah Bay, Guard Street , Good Shepherd Hospital, Rogbalan Mosque, Kissy Mental Home, Rowe Street and Fatamaran Street – para. 951 [1990].

c. Wellington – Freetown and the Western Area – Unlawful killings

2513. See above: Chapter 2 – AFRC – Trial Judgment – Legal Conclusions – Freetown and the Western Area - East End Police, State House Area, Kingtom , Fourah Bay, Guard Street , Good Shepherd Hospital, Rogbalan Mosque, Kissy Mental Home, Rowe Street and Fatamaran Street – para. 951 [1990].

2514. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Freetown and Western Area, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment -Findings and Conclusions - Freetown and Western Area - paras. 1745-1786 [8102], 1929-1941 [8144], 2045-2064 [8157].

2515. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Freetown and Western Area, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Freetown and Western Area - paras. 1745 [8997], 1787-1810 [8998], 1929 [9022], 1942-1950 [9023], 2045 [9032], 2065-2080 [9033].

(xi) Port Loko District – Unlawful killings

a. Manaarma and Nonkoba – Port Loko District – Unlawful killings

2516. See above: Chapter 2 – AFRC – Trial Judgment – Legal Conclusions – Port Loko District – Manaarma and Nonkoba – para. 965 [1995].

2517. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Port Loko District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Port Loko District - paras. 1811-1814 [8177], 1951-1955 [8181], 2081-2084 [8187].

2518. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Port Loko District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Port Loko District - paras. 1811 [9049], 1815-1819 [9050], 1951-1952 [9055], 1956-1969 [9056], 2081 [9070], 2085-2088 [9071].

3. Appellate Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-A, Judgement, 22 February 2008

(a) Factual Finding

2519. Not applicable.

(b) Legal Conclusions

2520. Regarding Bimba's, Kamara's and Kanu's criminal responsibility, see below: Chapter 12 (Article 6.1 Liability) –AFRC – Appellate Judgment – Findings and Conclusions - paras.72 - 87 [8234], 171 – 174 [8261], 231 – 232 [8265], 301 – 306 [8270].

2521. Regarding Bimba's, Kamara's and Kanu's criminal responsibility, see below: Chapter 13 (Article 6.3 Liability) –AFRC – Appellate Judgment – Findings and Conclusions – paras.225 - 230 [9082], 259 – 271 [9093], 289 – 292 [9109].

D. CDF

1. Indictment

The Prosecutor v. Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa, SCSL-03-14-I, Indictment, 4 February 2004

(a) Particulars

(i) Charges

2522. Paragraph 4 through 21 is incorporated by reference.[105]

2523. These actions [para. 23: The CDF, largely Kamajors, engaged the combined RUF/AFRC forces in armed conflict in various parts of Sierra Leone - to include the towns of Tongo Field,

[105] CDF Indictment, para. 22.

Kenema, Bo, Koribondo and surrounding areas and the Districts of Moyamba and Bonthe.] by the CDF, largely Kamajors, which also included looting, destruction of private property, personal injury and the extorting of money from civilians, were intended to threaten and terrorize the civilian population. Many civilians saw these crimes committed; others returned to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property. Typical CDF actions and the resulting crimes included: [Paragraphs 24.a to 24.f incorporated by reference].[106]

(ii) Counts 6-7: Terrorizing the Civilian Population and Collective Punishments

2524. At all times relevant to this Indictment, the CDP, largely Kamajors, committed the crimes set forth in paragraphs 22 through 27 and charged in counts 1 through 5, including threats to kill, destroy and loot, as part of a campaign to terrorize the civilian populations of those areas and did terrorize those populations. The CDP, largely Kamajors, also committed the crimes to punish the civilian population for their support to, or failure to actively resist, the combined RUFf AFRC forces.[107]

(iii) Counts 1-2: Unlawful killings

2525. Unlawful killings included the following:[108]

a. between about 1 November 1997 and about 30 April 1998, at or near Tongo Field, and at or near the towns of Lalehun, Kamboma, Konia, Talama, Panguma and Sembehun, Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants;

b. on or about 15 February 1998, at or near the District Headquarters town of Kenema and at the nearby locations of SS Camp, and Blama, Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants;

c. on or about 15 February 1998, at or near Kenema, Kamajors unlawfully killed an unknown number of Sierra Leone Police Officers;

d. in or about January and February 1998, in locations in Bo District including the District Headquarters town of Bo, Kebi Town, Koribondo, Kpeyama, Fengehun and Mongere, Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants;

e. between about October 1997 and December 1999 in locations in Moyamba District, including Sembehun, Taiama, Bylago, Ribbi and Gbangbatoke, Kamajors unlawfully killed an unknown number of civilians;

[106] CDF Indictment, para. 24.
[107] CDF Indictment, para. 28.
[108] CDF Indictment, para. 25.

f. between about October 1997 and December 1999 in locations in Bonthe District including Talia (Base Zero), Mobayeh, Makose and Bonthe Town, Kamajors unlawfully killed an unknown number of civilians;

g. between about 1 November 1997 and about 1 February 1998, as part of Operation Black December in the southern and eastern Provinces of Sierra Leone, the CDF unlawfully killed an unknown number of civilians and captured enemy combatants in road ambushes at Gumahun, Gerihun, Jembeh and the Bo-Matotoka Highway;

By their acts or omissions in relation to these events, SAMUEL IDNGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA, 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: Murder, a Crime against Humanity, punishable under Article 2.a of the Statute of the Court

In addition, or in the alternative:

Count 2: 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.

2. Trial Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-T, Judgement, 2 August 2007

(a) Factual Findings

(i) Kenema District – Crimes

a. Tongo Town – Kenema District – Crimes

i. Unlawful killings in Tongo Town - Kenema District – Crimes

2526. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District - Tongo Town – Unlawful killings in Tongo Town - paras. 377, 379 [2005].

ii. Talama and Panguma after the Second Attack on Tongo – Kenema District – Crimes

2527. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District - Talama and Panguma after the Second Attack on Tongo- para. 386 [2007].

iii. Crimes Committed During and Subequent to the Third Attack on Tongo – Gathering of Civilians at the National Diamond Mining Corporation Headquarters – Kenema District – Crimes

2528. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District - Crimes Committed During and Subequent to the Third Attack on Tongo – Gathering of Civilians at the National Diamond Mining Corporation Headquarters – para. 390 [2008].

iv. 14 January 1998 - NDMC Headquarters – Tongo – Kenema District- Crimes

2529. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District – Tongo - 14 January 1998 - NDMC Headquarters – para. 391, 393 - 396 [2009].

v. 15 January 1998 - NDMC Headquarters – Tongo – Kenema District – Crimes

2530. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District – Tongo - 15 January 1998 - NDMC Headquarters – paras. 398, 400 [2014].

vi. 15 January - Outside NDMC Headquarters – Tongo – Kenema District – Crimes

2531. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District – Tongo - Outside NDMC Headquarters – paras. 401 - 402 [2016].

b. Bumie & Kamboma – Kenema District – Crimes

i. Unlawful killings in Bumie and Kamboma – Kenema District – Crimes

2532. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District – Bumie & Kamboma - Unlawful killings in Bumie and Kamboma – paras. 404, 406 [2018].

c. Lalehun – Kenema District – Crimes

i. Unlawful killings in Lalehun – Kenema District – Crimes

2533. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District – Lalehun – Unlawful killings in Lalehun – paras. 408 - 409 [2020].

(ii) Bo District – Crimes

a. Koribondo – Bo District – Crimes

i. Unlawful killings in Koribondo – Bo District – Crimes

2534. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Koribondo – Unlawful killings in Koribondo – paras. 421, 423 – 426 [2022].

b. Bo - Bo District – Crimes

i. Crimes Committed Against Policemen by Kamajors on Arrival in Bo – Bo District – Crimes

2535. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo - Crimes Committed Against Policemen by Kamajors on Arrival in Bo – paras. 451 - 452 [2028].

ii. Killing of Corporal Freeman – Bo – Bo District – Crimes

2536. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo - Killing of Corporal Freeman – para. 455 [2030].

iii. Killing of James Vandy – Bo – Bo District – Crimes

2537. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo - Killing of James Vandy – para. 459 [2031].

iv. Killings at Bo Government Hospital by Kamajors – Bo – Bo District – Crimes

2538. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo - Killings at Bo Government Hospital by Kamajors – para. 462 [2032].

v. Killings and Mistreatment of Civilians – Bo – Bo District – Crimes

2539. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo – Killings and Mistreatment of Civilians – para. 468 [2033].

vi. Killing of Collaborators at MB Sesay's Hotel – Bo – Bo District – Crimes

2540. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo – Killing of Collaborators at MB Sesay's Hotel – paras. 469 - 470 [2034].

vii. Killing of TF2-058's Son – Bo – Bo District – Crimes

2541. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo – Killing of TF2-058's Son – para. 471 [2036].

viii. Killing of a Woman and Mistreatment of Civilians at a Check Point – Bo – Bo District – Crimes

2542. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo – Killing of a Woman and Mistreatment of Civilians at a Check Point – para. 474 [2037].

ix. Killing of Enemy Combatant fohn Hota – Bo – Bo District – Crimes

2543. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo – Killing of Enemy Combatant fohn Hota – para. 475 [2038].

x. Torture of TF2-198 and Killing of his Brother – Bo – Bo District – Crimes

2544. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo – Torture of TF2-198 and Killing of his Brother – para. 478 [2039].

xi. Killing of TF2·030's Husband and Six Others on 23 February 1998 – Bo- Bo District – Crimes

2545. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo – Killing of TF2-030's Husband and Six Others on 23 February 1998 – para. 479 [2040].

xii. Killing of TF2-156's Brothers – Bo – Bo District – Crimes

2546. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo – Killing of TF2-156's Brothers – para. 481 [2041].

xiii. Killings by Kamajors in a Park – Bo – Bo District – Crimes

2547. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo – Killings by Kamajors in a Park – para. 490 [2042].

xiv. Killing of a Former Soldier by Kamajors at a Checkpoint – Bo – Bo District – Crimes

2548. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo – Killing of a Former Soldier by Kamajors at a Checkpoint – para. 493 [2043].

xv. Killing of TF2-058's Husband – Bo – Bo District – Crimes

2549. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo – Killing of TF2-058's Husband – para. 499 [2044].

xvi. Killings by Kamajors in a Swamp near Njai Town and at "Was hear" – Bo – Bo District – Crimes

2550. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo – Killings by Kamajors in a Swamp near Njai Town and at "Was hear" – para. 501 [2045].

xvii. Killing of TF2-088's Nephews and Eldest Son – Bo – Bo District – Crimes

2551. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo – Killing of TF2-088's Nephews and Eldest Son – para. 516 [2046].

xviii. Killings in Mandu – Bo – Bo District – Crimes

2552. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo – Killings in Mandu - paras. 517 – 519 [2047].

xix. Killing of TF2-088's Son – Bo District – Crimes

2553. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo – Killing of TF2-088's Son – para. 522 [2050].

xx. Crimes Committed in Fengehun – Bo District – Crimes

2554. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo – Crimes Committed in Fengehun – para. 532 [2051].

xxi. Killing of Ieneba and Iuma Ioe Betty by Vanjawai in Bama Bongor Chiefdom - Bo District – Crimes

2555. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bo District – Bo – Killing of Ieneba and Iuma Ioe Betty by Vanjawai in Bama Bongor Chiefdom – para. 533 [2052].

(iii) Bonthe District – Crimes

a. Killing of Kpana Manso – Bonthe District – Crimes

2556. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bonthe District – Killing of Kpana Manso – para. 541 [2053].

b. Killings in Bonthe – Bonthe District – Crimes

2557. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bonthe District – Killings in Bonthe – paras. 545 -546, 549 [2054].

c. Killing of Abu Conteh on 17 February 1998 – Bonthe District – Crimes

2558. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bonthe District – Killing of Abu Conteh on 17 February 1998 – para. 551 [2057].

d. Mosandi, Molakaika, Bembay, Bolloh around 15 September 1997 – Bonthe District – Crimes

2559. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bonthe District – Mosandi, Molakaika, Bembay, Bolloh around 15 September 1997 – paras. 558 - 559, 561 - 562 [2058].

e. Unlawful killings in Motumbo around March 1998 – Bonthe District – Crimes

2560. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bonthe District – Unlawful killings in Motumbo around March 1998 – para. 563 [2062].

f. Killings at Gambia Village, Jong Chiefdom – Bonthe District – Crimes

2561. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bonthe District – Killings at Gambia Village, Jong Chiefdom – paras. 564 - 565 [2063].

(iv) Talia/Base Zero – Crimes

a. Killings of civilians at Talia/Base Zero

2562. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Bonthe District – Talia/Base Zero – paras. 623 - 627, 630, 632 – 633 [2065].

(v) Kenema District – Crimes

a. Blama – Kenema District – Crimes

i. Killing of Sergeant Fosana in Blama – Kenema District – Crimes

2563. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District – Killing of Sergeant Fosana in Blama – para. 579 [2073].

ii. Unlawful Killing of a Temne man in Blama – Kenema District – Crimes

2564. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District – Unlawful Killing of a Temne man in Blama – para. 581 [2074].

iii. Killing of Two Young Tenants at TF2-154's Father's House – Kenema Town – Kenema District – Crimes

2565. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District – Killing of Two Young Tenants at TF2-154's Father's House – para. 585 [2075].

iv. The Killing of Sergeant Mason, Corporal Fandai and Momoh Tawol - Kenema Town – Kenema District – Crimes

2566. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District – The Killing of Sergeant Mason, Corporal Fandai and Momoh Tawol – paras. 587 – 589 [2076].

v. The Killing of Sergeant Turay – Kenema Town – Kenema District – Crimes

2567. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District – Kenema Town - The Killing of Sergeant Turay – para. 591 [2079].

vi. The Killing of SI Mimor – Kenema Town – Kenema District – Crimes

2568. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District – Kenema Town - The Killing of SI Mimor – para. 592 [2080].

vii. The Killing of OC Kano and Desmond Pratt – Kenema Town – Crimes

2569. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District – Kenema Town - The Killing of OC Kano and Desmond Pratt – para. 593 [2081].

viii. Killing of Police Officers at the Kenema Barracks – Kenema Town – Crimes

2570. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District – Kenema Town - Killing of Police Officers at the Kenema Barracks – para. 599 [2082].

ix. Killing of Alleged Junta – Kenema Town – Kenema District – Crimes

2571. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District – Kenema Town - Killing of Alleged Junta – para. 602 [2083].

x. Killing of Mr. Ojuku and other Mistreatment – Kenema Town – Kenema District – Crimes

2572. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District – Kenema Town - Killing of Mr. Ojuku and other Mistreatment – paras. 604 - 605 [2084].

xi. Other Killings – Kenema District – Crimes

2573. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Kenema District – Other Killing – paras. 606 - 607 [2086].

(vi) Moyamba District – Crimes

a. Moyamba Town – Moyamba District – Crimes

i. Murder of Mr. Thomas in Moyamba – Moyamba District – Crimes

2574. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Moyamba District – Moyamba Town – Murder of Mr. Thomas in Moyamba – para. 639 [2088].

ii. Killing of One Person in Shenge Park (Moyamba Town) – Moyamba District – Crimes

2575. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Moyamba District – Killing of One Person in Shenge Park (Moyamba Town) – para. 640 [2089].

b. Sembehun – Moyamba District – Crimes

i. Murder in Yakarji in Sembehun – Moyamba District – Crimes

2576. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Moyamba District – Murder in Yakarji in Sembehun – para. 649 [2090].

c. Rokonta and Surrounding Areas – Moyamba District – Crimes

i. Arrest of TF2-166's Family and Killing of her Father on 11 May 1998 – Rokonta – Moyamba District – Crimes

2577. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Moyamba District – Rokonta and Surrounding Areas - Arrest of TF2-166's Family and Killing of her Father on 11 May 1998 – para. 653 [2091].

d. Bradford – Moyamba District – Crimes

i. Murder of Ruffus Charlie speaker at Bradford in 1997 – Moyamba District – Crimes

2578. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Moyamba District – Bradford - Murder of Ruffus Charlie speaker at Bradford in 1997 – paras. 655 [2092].

ii. Third Arrival at Bradford on 23 March 1998 - Moyamba District – Crimes

2579. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Moyamba District – Third Arrival at Bradford on 23 March 1998 – para. 658 [2093].

iii. Capture and Murder of One Civilian near Makabi Loko in Tune 1998 – Moyamba District – Crimes

2580. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Moyamba District – Capture and Murder of One Civilian near Makabi Loko in Tune 1998, para. 664 [2094].

e. Murders in Kongonani – Crimes

2581. See above: Chapter 2 – CDF – Trial Judgment – Factual Findings – Murders in Kongonani – para. 666 [2095].

(b) Legal Conclusions

(i) Applicable Law – War crimes/Violations of Common Article 3

2582. para. 122: The general requirenents 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;148
>
> (iii) The victim was a person not taking direct part in the hostilities at the time of the alleged violation; 149 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.

a. The Existence of an Armed Conflict

2583. para. 123: The Chamber concludes that the application of Article 3 of the Statute requires that the alleged acts of the Accused.)e committed in the course of an armed conflict, and "it is immaterial whether the conflict is internal or international in nature."[150]

2584. para. 124: Relying on the ICTY Appeals Chamber in the *Tadic* case, and as it held in the CDF Rule 98 Decision, 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 organized armed groups or between such groups within a state".[151] Therefore, the criteria for establishing the existence of an armed conflict are the intensity of the conflict and the organisation of the parties.[152] These criteria are used "solely for the purpose, as a minimum, of distinguishing an armed cc nflict from banditry, unorganised and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law".[153]

2585. para. 125: The Chamber notes that Additional Protocol II contains a stricter threshold for the establishment of an armed conflict than Common Article 3. 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 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 therr. to carry out sustained and concerted military operations and to implemt:nt 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.

2586. para. 126: This Chamber is therefore satisfied that where the Prosecution has alleged an offence 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 organized armed groups; and The dissident armed forces or other organized 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.[154]

2587. para. 127: The first requiremen, that there be an armed conflict, has already been discussed in the context of the Common Article 3 test of armed conflict. The Chamber notes, therefore, that any armed conflict satisfying the higher threshold of the Additional Protocol II test would automatically constitute armed conflict under Common Article 3. The term "armed forces" is to be defined broadly.[155] The armed forces or groups must be under responsible command which implies a degree of organization to enable them "to plan and carry out concerted military operations, and to impose discipline in the name of a de facto authority."[156] They must also be able to control a part of the territory of the country enabling them "to carry out sustained and concerted military operatiom" and to implement Additional Protocol II.

2588. para. 128: The Chamber also finds that international humanitarian law applies from the beginning of such armed conflicts and extmds 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.[157] 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.[158]

b. Nexus

2589. para. 129: What distinguishes a war crime from a purely domestic crime "is that a war crime is shaped by or dependant upon the ernvironment - the armed conflict - in which it is committed".[159] As to the precise nature of the nexus between the alleged violation and the armed conflict, the Chamber, consistent with thl: decisions of the Appeals Chambers of the ICTY and of the ICTR on this issue, rules that the nexus requirement is fulfilled if the alleged violation was closely related to the armed conflict.[160] When 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".[161] 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 perpdrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed'.[162] The nexus requirement is satisfied where the Accused acted in furtherance of or under the guise of the armed conflict.[163] 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".[164]

2590. para. 130: The Chamber subscribes to the jurisprudence of the *Ad Hoc* Tribunals which outlined the following factors in determining whether or not the act in question was sufficiently related to the armed conflict, 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".[165] It has also been stated that the determination of a close relationship between particular offences and an armed conflict will usually require consideration of several factors, not just one.[166]

c. Protected Persons

2591. para. 131: Finally, 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" and Additional Protocol II applies to "all persons who do not take a direct part or who have ceased to take part in hostilities". The Chamber holds that these phrases are so similar that, therefore, they may be treated as

synonymous and be categorised as "all persons not taking direct part in the hostilities at the time of the alleged violation."[167]

2592. para. 132: The Chamber notes 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 said offence was directly taking part in the hostilities, "being those hostilities in the context of which the alleged offences are said to have been committed".[168] If the answer to that question is negative, the victim will be a person protected by Common Article 3 and Additional Protocol 11.[169] Thus, for the purpose of establishing the commission of an offence under Article 3, the Prosecution must also prove that the victim was a person not taking a direct part in the hostilities at the time the offence was committed.[170]

2593. para. 133: Adopting the position taken by the Trial Chamber in the ICTY *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.

2594. para. 134: 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.[l71] 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.[172] The Chamber takes the view that the direct participation should be understood to mean "acts which by their nature and purpose, are intended to cause actual harm to the enemy personnel and material."[173]

2595. para. 135: The Chamber is therefore of the opinion that persons Accused of "collaborating" with the government or armed forces would only become legitimate military 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 have qualified as legitimate military targets during the period of their direct participation.[174] 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. 175 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.[176]

2596. para. 136: 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.[177] This same presumption will not exist for military police or gendarmerie who operate under the control of the military.[178] The Chamber notes that, in accordance with the provisions of the Constitution of 1991[179] and the The Police Act[180] of 1964, the Sierra Leone Police operates under the control of the Minister of Internal Affairs, a civilian authority.

2597. para. 137: The Chamber is of the opinion that the status of police officers in· a time of armed conflict must be determined in light of an analysis of the particular facts of a case. A civilian police force, for example, 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*.

(ii) War Crimes/Violations of Common Article 3 – Findings on general requirement

2598. para. 696: As regards the first requirement, the Chamber recalls that it has taken judicial notice of the fact that the "armed conflict in Sierra Leone occurred from March 1991 until January 1992".

2599. para. 697: With respect to the other general requirements for war crimes, where findings have been made of murder (Count 2), cruel treatment (Count 4), pillage (Count 5), acts of terrorism (Count 6), or collective punishments (Count 7) as war crimes, the Chamber is satisfied that the perpetrators were aware of the protected status of the victims who were either civilians (a category which includes "collaborators" and police officers) or captured enemy combatants. Similarly, where such findings have been made the Chamber is satisfied that the alleged crimes were closely related to the armed conflict.

(iii) Applicable law – Murder – War Crimes/Violations of Common Article 3

2600. para. 145: The Chamber notes that the Indictment charges the Accused under Count 2 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, since

the category of 'violence to life and person' does not exist as an independent offence in customary international law.[187]

2601. para. 146: 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,[188] except for the general elements outlined in the Introduction 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 reasonable knowledge that it would likely result in death.

2602. para. 147: The status of the victim as a person not taking direct part in the hostilities is an element of the offence.[189] 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.[190]

(iv) Towns of Tongo Field - Murder

2603. para. 750: As set out above in Sections V.2.3.3-V.2.3.7 the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 2, Murder:

(i) In early January 1998, a 12 year old boy named Foday Koroma was killed in Talama because he was related to a rebel from Tongo;

(ii) In early January 1998, 150 Loko Limba and Temne tribe members were separated from members of other tribes and were killed in Talama;

(iii) On 14 January 1998, two men identified as rebels were killed by Kamabote at the NDMC Headquarters in Tongo;

(iv) On 14 January 1998, Kamabote killed a man named "Dr. Blood," and a woman named Fatmata Kamara at the NDMC Headquarters in Tongo. Both were considered to be collaborators;

(v) On 14 January 1998, at the NDMC Headquarters in Tongo, two women identified than 10 men as collaborators. These men were led by armed Kamajors to a place behind the Headquarters where cows were also led the same direction;

(vi) On 14 January 1998, Kamajors took TF2-048's uncle, an unidentified woman and an unidentified child behind a house at NDMC Headquarters in

Tongo. The Kamajors returned with blood on their machetes. These people have not been seen again;

(vii) On 15 January 1998, 20 men who had been accused of being rebels were hacked to death with machetes at the NDMC Headquarters in Tongo;

(viii) Around noon on 15 January 1998, Kamajors shot at a crowd of civilians at the NDMC Headquarters in Tongo. Many civilians were hit by stray bullets and at least one died;

(ix) On 15 January 1998, at an intersection near the NDMC Headquarters in Tongo, TF2-048's brother was killed by a Kamajor;

(x) On 15 January 1998, Kamajors at a checkpoint hacked one man to death for carrying a photograph of a rebel;

(xi) On 15 January 1998, Kamajors at another checkpoint hacked a boy named Sule to death for carrying a wallet that resembled SLA fatigues;

(xii) Kamajors separated men and women in Bumie and killed five men after making them stare at the sun;

(xiii) Shortly after the third attack on Tongo a group of 65 civilians was separated into two lines in Kamboma; the Kamajors shot the first 57 people and rolled the bodies into a swamp behind the house; The last eight people were hacked in the neck with machetes and rolled into the swamp with other bodies. Only one man survived;

(xiv) In mid-February 1998, Aruna Konowa was killed at Lalehun, on the order of a Kamajor boss named Baimba Aruna because he was considered to be a collaborator;

(xv) A few days after the killing of Aruna Konowa, Brima Conteh was killed in Lalehun by Kamajors who accused him of being the "chief of the rebels."

2604. para. 751: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i) through (xv) and concludes that all perpetrators are Kamajors. We find that individuals were killed intentionally; in the majority of cases they were specifically targeted because of the perpetrator's belief that they were "collaborators" or rebels. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all the evidence adduced, the Chamber is satisfied that each of the acts described in paragraphs 750i-xv was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred above in paragraph 750, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that they were killed and, furthermore, that the perpetrator knew that the victims were not taking an active part in the hostilities.

2605. para. 752: In light of the findings set out above, the Chamber is satisfied that the general requirements of war crimes have been established beyond reasonable doubt with respect to each incident described in paragraph 750.

2606. para. 753: With respect to those incidents described in paragraph 750 above, the Chamber is satisfied not only that the general requirements of war crimes have been established but also that the specific elements of murder have been met with respect to each incident. However, the Chamber finds that the specific elements of the crime of murder have not been establish with respect to paragraph 750, as the conclusion that these people were killed is not the only reasonable inference to be drawn from the evidence.

2607. Regarding Fofana's and Kondewa's individual criminal responsibility in relation to Towns of Tongo Field, see below: Chapter 12 (Article 6.1 Liability) - CDF - Trial Judgment - Findings and Conclusions - Towns of Tongo Field - paras. 763-764 [8378].

2608. Regarding Fofana's and Kondewa's superior responsibility in relation to Towns of Tongo Field, see below: Chapter 13 (Article 6.3 Liability) - CDF - Trial Judgment - Findings and Conclusions - Towns of Tongo Field - paras. 721 [9165], 733-734 [9166], 745-746 [9168].

(v) Koribondo - Murder

2609. para. 786: As set out above in the Factual Findings, The Chamber found that the following acts have been committed which are relevant for Count 2, Murder:

(i) On 15 February 1998, the mutilation and killing at Koribondo Junction of five limba who had been accused of being collaborators;

(ii) On 15 February 1998, the mutilation and killing at Blama Road of two Limba civilians;

(iii) On 16 February 1998, the killing of eight people along the Blama Road; five men belonging to the junta, and three soldiers' wives;

(iv) On 16 February 1998, the killing and mutilation of Chief Kafala took place in the street opposite the hospital. Chief Kafala had been accused of collaboration; this killing took place in the presence of many people;

(v) After the capture of Koribondo, Lahai Bassie was arrested, beaten and accused of being a collaborator because his son was a soldier. He died of his wounds one week later.

2610. para. 787: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i) through (v) and concludes that all of the perpetrators were

Kamajors under the effective control of Fofana. We find that individuals were intentionally killed; in the majority of cases they were specifically targeted because of the perpetrator's belief that they were collaborators or rebels. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 786 was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 786, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time they were killed and, furthermore, that the perpetrator knew that the victims were not taking an active part in the hostilities.

2611. para. 788: In light of the findings set out above, the Chamber is satisfied that the general requirements of war crimes have been established with respect to each incident described in paragraph 786.

2612. para. 789: With respect to those incidents described in paragraph 786 listed above, the Chamber is also satisfied not only that the general requirements of war crimes have been established but also that the specific elements of murder have been established with respect to each incident.

2613. Regarding Fofana's and Kondewa's individual criminal responsibility in relation to Koribondo, see below: Chapter 12 (Article 6.1 Liability) - CDF - Trial Judgment - Findings and Conclusions - Koribondo - paras. 765-771 [8380], 799-808 [8387].

2614. Regarding Fofana's and Kondewa's superior responsibility in relation to Koribondo, see below: Chapter 13 (Article 6.3 Liability) - CDF - Trial Judgment - Findings and Conclusions - Koribondo - paras. 756 [9170], 772-784 [9171], 798 [9197], 805-808 [9198].

(vi) Bo District – Murder

a. Fofana – Bo District – Murder

2615. para. 830: As set out above in Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 2, Murder:

(i) The killing of an unidentified woman who was alleged to have cooked for rebels, by Kamajors, on order of TF2-017;

(ii) The killing of John Musa, an alleged collaborator, by Kamajors under the control of Joseph Lappia.

2616. para. 831: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i) through (ii) and concludes that all of the perpetrators were Kamajors under the effective control of Fofana. We find that individuals were intentionally killed; in the majority of cases they were specifically targeted because of the perpetrator's belief that they were collaborators or rebels. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 830 was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 830, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time they were killed and, furthermore, that the perpetrator knew that the victims were not taking an active part in the hostilities.

2617. para. 832: In light of the findings set out above, the Chamber is satisfied that the general requirements of war crimes have been established with respect to each incident described in paragraph 830.

2618. para. 833: With respect to those incidents described in paragraph 830 listed above, the Chamber is also satisfied not only that the general requirements of war crimes have been established but also that the specific elements of murder have been established with respect to each incident.

2619. Regarding Fofana's and Kondewa's individual criminal responsibility in relation to Bo District, see below: Chapter 12 (Article 6.1 Liability) - CDF - Trial Judgment - Findings and Conclusions -Bo District - paras. 809-815 [8394], 847-855 [8401].

2620. Regarding Fofana's and Kondewa's superior responsibility in relation to Bo District, see below: Chapter 13 (Article 6.3 Liability) - CDF - Trial Judgment - Findings and Conclusions -Bo District - paras. 809 [9202], 816-829 [9203], 846 [9233], 852-855 [9234].

(vii) Bonthe District - Murder

a. Kondewa - Bonthe District - Murder

2621. para. 883: As set out above in Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 2, Murder:

(i) On 15 February 1998, Kpana Manso was killed by Beigeh, a Kamajor Commander subordinate to Morie Jusu Kamara.

(ii) On 16 February 1998, Bendeh Battiama was accused of being a collaborator and was killed by a Kamajor named Rambo Conteh.

(iii) On 17 February 1998, Abu Conteh was killed at St. Joseph's Secondary School by one of Mori Jusu's Kamajors.

(iv) In early March 1998, a woman named Jitta was killed by a Kamajor named Beigeh between Sebongie and Bonthe.

(v) TF2-087's uncle was killed in Gambia village by Kondewa's deputy Sheku Kallie, after having reported to Kondewa the misconduct of some of his boys.

(vi) During the same period, three pregnant women were killed in Gambia village by Kondewa's boys before Norman's arrival in Gambia.

2622. para. 884: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i) through (vi) and concludes that all of the perpetrators were Kamajors under the effective control of Kondewa. We find that individuals were intentionally killed; in the majority of cases they were specifically targeted because of the perpetrator's belief that they were collaborators or rebels. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 830 was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 883, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time they were killed and, furthermore, that the perpetrator knew that the victims were not taking an active part in the hostilities.

2623. para. 885: In light of the findings set out above, the Chamber is satisfied that the general requirements of war crimes have been established with respect to each incident described in paragraph 883.

2624. para. 886: With respect to those incidents described in paragraph 883(i) through (iv), listed above, the Chamber is satisfied that Kamajors under the effective control of Kondewa intentionally caused the deaths of Kpana Manso, Bendeh Battiama Abu Conteh, and a woman named Jitta.

2625. para. 887: The Chamber is therefore satisfied not only that the general requirements of war crimes have been established but that the specific elements of murder have been established with respect to the killing of Kpana Manso, Bendeh Battiama, Abu Conteh, and a woman named Jitta.

2626. para. 888: The Chamber finds, however, that the evidence adduced has not established beyond a reasonable doubt that the killings described in paragraph 883(v) and (vi) occurred during the time period set out in the indictment. The Chamber finds that Kondewa is not guilty with respect to these killings.

2627. Regarding Fofana's and Kondewa's individual criminal responsibility in relation to Bonthe District, see below: Chapter 12 (Article 6.1 Liability) - CDF - Trial Judgment - Findings and Conclusions -Bonthe District - paras. 856-859 [8407], 863-866 [8411].

2628. Regarding Fofana's and Kondewa's superior responsibility in relation to Bonthe District, see below: Chapter 13 (Article 6.3 Liability) - CDF - Trial Judgment - Findings and Conclusions -Bonthe District - 856 [9238], 860-863 [9239], 867-881 [9243], 882 [9258], 903 [9279].

(viii) Kenema District – Murder

2629. Regarding Fofana's and Kondewa's individual criminal responsibility in relation to Kenema District, see below: Chapter 12 (Article 6.1 Liability) - CDF - Trial Judgment - Findings and Conclusions - Kenema District - paras. 904-908 [8416] , 911-915 [8420], 918-919 [8425].

2630. Regarding Fofana's and Kondewa's superior responsibility in relation to Kenema District, see below: Chapter 13 (Article 6.3 Liability) - CDF - Trial Judgment - Findings and Conclusions - Kenema District - paras. 904 [9280], 909-911 [9281], 916-919 [9284].

(ix) Talia/Base Zero - Murder

2631. Regarding Fofana's and Kondewa's individual criminal responsibility in relation to Talia/Base Zero, see below: Chapter 12 (Article 6.1 Liability) - CDF - Trial Judgment - Findings and Conclusions - Talia/Base Zero- paras. 920-929 [8427], 931-937 [8437].

2632. Regarding Fofana's and Kondewa's superior responsibility in relation to Talia/Base Zero, see below: Chapter 13 (Article 6.3 Liability) - CDF - Trial Judgment - Findings and Conclusions - Talia/Base Zero- paras. 920-930 [9288].

(x) Moyamba District – Murder

2633. Regarding Fofana's and Kondewa's individual criminal responsibility in relation to Moyamba District, see below: Chapter 12 (Article 6.1 Liability) - CDF - Trial Judgment - Findings and Conclusions - Moyamba District - paras. 938-940 [8444], 949-950 [8448], 956 [8450].

2634. Regarding Fofana's and Kondewa's individual criminal responsibility in relation to Moyamba District, see below: Chapter 13 (Article 6.3 Liability) - CDF - Trial Judgment - Findings and Conclusions - Moyamba District - paras. 938 [9298], 941-948 [9299], 951-956 [9307].

3. Appellate Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-A, Judgment, 28 May 2008

(a) Factual Findings

2635. Not applicable.

(b) Legal Conclusions

2636. para. 112: In relation to the attacks on Tongo, the Appeals Chamber, Justice King dissenting, upholds the Trial Chamber's convictions of Kondewa and Fofana, pursuant to Article 6(1), of aiding and abetting violence to life, health and physical or mental well-being of persons, in particular murder and cruel treatment punishable under Article 3.a. of the Statute (Counts 2 and 4 respectively).

2637. para. 113: In relation to the attacks on Koribondo, Bo District and Kenema District, the Appeals Chamber upholds the Trial Chamber's acquittals of Kondewa and Fofana, pursuant to Article 6(1), of violence to life, health and physical or mental well-being of persons, in particular murder and cruel treatment, punishable under Article 3.a. of the Statute (Counts 2 and 4, respectively) as well as pillage, a violation of Article 3.a. common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.f. of the Statute (Count 5).

2638. para. 114: The Appeals Chamber dismisses the Prosecution's Third and Fourth Grounds of Appeal and dismisses, Justice King dissenting, Kondewa's Fourth Ground of Appeal.

2639. See below: Partially dissenting Opinion of Justice King, paras, 81 – 94 [8485] regarding Kondewa's criminal responsibility, Chapter 12 (Article 6.1 Responsibility).

2640. para. 203: Having found that the death of the Town Commander was not proved beyond reasonable doubt, the Appeals Chamber comes to the conclusion that the Trial Chamber was in error in finding that the Town Commander was killed by the Kamajors as alleged in the Indictment.

2641. para. 204: The Appeals Chamber grants Kondewa's Second Ground of Appeal.

CHAPTER 4 – RAPE

A. CHARLES TAYLOR

1. Indictment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-I, Indictment, 16 March 2006

(a) Particulars

(i) Charges

2642. By his acts or omissions in relation to the below described events, the ACCUSED, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:[109]

(ii) Count 1: Terrorizing the civilian population

2643. Members of the Revolutionary United Front (RUF), Armed Forces Revolutionary Council (AFRC), AFRC/RUF Junta or alliance, and/or Liberian fighters, including members and ex-members of the NPFL (Liberian fighters), assisted or encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, burned civilian property, and committed the crimes set forth below in paragraphs 6 through 31 and charged in Counts 2 through 11, as part of a campaign to terrorize the civilian population of Sierra Leone.[110]

(iii) Counts 4-6: Sexual Violence

> **Count 4: Rape**, **a CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;
>
> And:
>
> Count 5: Sexual slavery, a CRIME AGAINST HUMANITY, punishable under Article 2.g. of the Statute;
>
> In addition, or in the alternative:
>
> Count 6: 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.

[109] Taylor Indictment, Charges, p. 2.
[110] Taylor Indictment, para. 5.

2644. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or Alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, committed widespread acts of sexual violence against civilian women and girls, including the following:[111]

> i. Kono District: Between 1 February 1998 and about 31 December 1998, raped an unknown number of women and girls in various locations, including Koidu, Tombodu or Tumbodu, Wondedu, and AFRC and/or RUF camps, such as "Superman Ground," "Guinea Highway," and "PC Ground"; abducted an unknown number of women and girls from various locations within the District, or brought them from locations outside the District, and used them as sex slaves;[112]
>
> ii. Kailahun District: Between about 30 November 1996 and about 18 January 2002, raped an unknown number of women and girls in locations throughout Kailahun District; abducted many victims from other areas of the Republic of Sierra Leone, brought them to locations throughout the District and used them as sex slaves;[113]
>
> iii. Freetown and Western Area: Between about 21 December 1998 and about 28 February 2002, raped and unknown number of women and girls throughout Freetown and the Western area, and abducted an unknown number of women and girls and used them as sex slaves.[114]

2. Trial Judgment

The Prosecutor v. *Charles Ghankay Taylor*, SCSL-03-01-T, Judgement, 18 May 2012

(a) Factual Findings

(i) Kono District – Crimes

2645. para. 877: The Indictment alleges that between about 1 February 1998 and about 31 December 1998 members of the RUF, AFRC, AFRC/RUF Junta or Alliance, and/or Liberian Fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the Accused, raped an unknown number of women and girls at various locations throughout Kono District including Koidu, Tombodu or Tumbodu, Wondedu and AFRC and/or RUF camps such as "Superman Ground", "Guinea Highway" and "PC

[111] Taylor Indictment, para. 14.
[112] Taylor Indictment, para. 15.
[113] Taylor Indictment, para. 16.

Ground".[2306] The Trial Chamber will not consider instances of rape in locations that have not been specifically pleaded in the Indictment for findings of guilt,[2307] although this evidence has been considered in relation to the chapeau requirements.

2646. para. 878: In arriving at its factual findings in Kono District, the Trial Chamber has considered the evidence of witnesses Gibril Sesay, Finda Gbamanja, Corinne Dufka, Alimamy Bobson Sesay, Alex Tamba Teh, TF1-375, Isaac Mongor, Alice Pyne and TF1-189 in addition to relevant documentary evidence in P-073, P-336 and P-078.

a. Evidence of widespread rape in Kono District – Kono District – Crimes

2647. para. 879: In her expert report,[2308] Prosecution expert witness Beth Vann reported that an estimated 500,000 refugees fled from the conflict in Liberia and Sierra Leone into Guinea in 1998-1999. The report did not specify precisely the numbers of Liberian refugees or of Sierra Leonean refugees. Sierra Leonean refugees fled from the RUF and AFRC forces in approximately March to April 1998. They were primarily from the Kono and Kailahun Districts and arrived in camps along the border in neighbouring Guinea. Another "large group of Sierra Leoneans sought refuge in Guinea from the January 1999 joint AFRC/RUF attack of Freetown".[2309] The largest concentration of camps was in the Gueckedou-Kissidougou prefectures, just across the border from the Kono and Kailahun Districts of Sierra Leone. The refugees described atrocities committed by armed groups, including the RUF and AFRC, in Kono and Kailahun Districts. These atrocities included war-related sexual violence.[2310]

2648. para. 880: Vann is a master's level social worker with 25 years experience in health and social services. Since 1996 her work focused on sexual and gender based violence against women and children in populations affected by armed conflict. She interviewed approximately 60 victims of sexual violence during the course of her work in Guinea in 1998-1999 and reported: "[g]irls as young as 13 and women up to age 55 described having been abducted while fleeing fighting or gathering food or firewood, and then raped, often repeatedly, and often by several men. Some were held for only a day, others were held for two months before they were able to escape. All described seeing many other captives who were also raped, forced to serve as 'wives' (cooking, cleaning and used for sex)".[2311] She reported that during the year she worked in Guinea, several times a month 13-20 year old girls would arrive at one of the camps and most

[114] Taylor Indictment, para. 17.

would eventually disclose that they have been abducted and held as sexual slaves or "wives", and had been repeatedly raped by one or more combatants. Eighty-four percent of those interviewed were able to identify their attackers; the RUF was "clearly…the perpetrator in the majority of sexual violence incidents reported". Other named armed groups or "rebels" were also named.[2312]

2649. para. 881: Vann also conducted focus group sessions with groups of refugee men, women and adolescent girls taken from a total of 110 people living in three camps comprised exclusively of refugees from Kono and Kailahun Districts who fled in the first half of 1998. She states, "All of the participants described witnessing at least one public rape of a civilian female in or near their home town/village just before flight or during the time they were running to refuge in Guinea. Approximately one-third of the women participants disclosed that they themselves had been sexually assaulted – some with weapons or other objects inserted into the vagina, others forced to perform oral sex. Most participants identified the attackers as "rebels" or "RUF" or "Junta". "Many indicated that it was sometimes impossible to know for sure which faction the group belonged to" but later studies showed 40% of rape attackers were RUF. Notably, all participants disclosed that they knew of at least one woman or girl from their community who had been taken by the 'rebels' and was never seen again".[2313]

2650. para. 882: Vann reported that in "the middle to late 1998 and beyond", a group of medical personnel reported to her that there were very high rates of sexually transmitted infections, unwanted pregnancies due to sexual violence, and large numbers of women/girls with traumatic injuries in the genital and anal areas.[2314] Vann reported that, as a consequence of war-related sexual violence among the 60 victims she interviewed, the primary concern related to their mental health. They exhibited signs of post-traumatic stress disorder; most were socially isolated and expressed feelings of shame, anger and depression and feared stigmatisation, rejection and retribution. Many feared others would find out what had happened to them. They also suffered from sexually transmitted diseases.[2315] Based on reports and interviews Vann concluded that war-related sexual violence among the refugee population in Guinea was underreported due to fears of stigma and rejection, and the lack of assistance services.[2316]

2651. para. 883: Vann reported that some women and girls who were abducted remained with their captors. Based on reports and her research she concluded that the reasons for this included a belief that they had no choice once they had children and particularly economic dependence, identification with the abductor, drug addiction, more desirable food options reportedly available

in the bush, fear of rejection by their families and communities, and customisation to their new way of life and surrogate families were also factors.[2317]

2652. para. 884: Vann's observations are mirrored by an Amnesty International Report, entitled "Sierra Leone, 1998 – a year of atrocities against civilians", which documents that as the AFRC and RUF rebels were pursued eastwards by ECOMOG forces to towns including Koidu from February through April 1998, the rebels were responsible for widespread rape and other forms of sexual assault and abduction.[2318] Similarly, Médecins Sans Frontières (MSF) reported that "[a]ccording to the patients, the civilian population of Kono is terrorised by various armed groups, who have been carrying out executions, mutilations, rapes and kidnappings. Attacks are reported to be very systematic, with groups of people rounded up and killed, wounded, or raped, one by one".[2319]

b. Koidu Town – Kono District – Crimes

2653. para. 886: The Prosecution submits that following the ECOMOG Intervention of February 1998, retreating AFRC/RUF forces travelled to Kono District, specifically Koidu Town. "Their pattern of terror by committing widespread rapes reached unprecedented levels in February, March and April 1998".[2320] The Trial Chamber has considered the evidence of Prosecution witnesses Gibril Sesay, TF1-189 and Finda Gbamanja in relation to these allegations.

i. Evidence of Rape upon the Capture of Koidu Town – Koidu Town – Kono District – Crimes

2654. para. 887: Witness Gibril Sesay testified that after the ECOMOG Intervention, rebels arrived in Koidu Town.[2321] The witness stated that when the rebels arrived, they began looting and raping civilians.[2322] He learned about the rapes when he went to the hospital and spoke to Dr Gborie as well as some of the women who explained what had happened to them.[2323]

2655. para. 888: The Trial Chamber cannot make findings on this evidence without further information regarding the perpetrators and circumstances of the rapes alleged, however, the evidence demonstrates that rape was widespread in Koidu Town and may be relevant as corroboration for specific instances of rape described by witnesses testifying before the Trial Chamber.

ii. Rape of Finda Gbamanja – Koidu Town – Kono District – Crimes

2656. para. 889: In February 1998, witness Finda Gbamanja, her parents and siblings lived in Koidu Town.[2324] Gbamanja testified that she was captured with her family by Peppe, a rebel in Superman's group,[2325] in Baima Town where they were hiding.[2326] After having been taken to Koidu Town by the rebels, she was detained by Peppe despite "his colleague" telling him that she was "a small girl".[2327] Her parents interceded and sought her release but Peppe beat her mother and killed her father.[2328] That night, Peppe took Gbamanja to Koidu Town. On the way, a rebel named "Sergeant Foday" who also was a member of Superman's group,[2329] fought Peppe for possession of Gbamanja. Peppe threatened to kill Gbamanja so that neither could have her. Another rebel, named "Well Man", intervened and "awarded" Gbamanja to Peppe.[2330] Peppe later took her to his house and "slept" with her. She testified that he raped her causing her to bleed and be so weak that she could not stand.[2331]

2657. para. 890: Subsequently, Peppe took Gbamanja to his sister Hawa's "place" where she found many other "wives of rebels" who had been trained as fighters.[2332] She was forced to work. Hawa sent Gbamanja and two other girls to search for vegetables.[2333] Gbamanja stated that while she was harvesting pepper Sergeant Foday met her, threatened her and, under duress, she followed him to his house close to the Opera in Koidu Town.[2334] She stated, "I was there as his wife", and that "I was there for some time",[2335] which she explained meant that Sergeant Foday had sex with her every night.[2336] Gbamanja testified that she did not "volunteer" to have sex with Sergeant Foday but "had no option" but to do so.[2337] She remained at Koidu Town until it was attacked by ECOMOG. She then travelled with Sergeant Foday to Superman Ground.[2338] She could not specify how long she was with Sergeant Foday.

2658. para. 891: The witness did not know her age at the time of the incident[2339] but she had not yet started her menses.[2340] Gbamanja was able to recall that she was captured after Johnny Paul Koroma was overthrown from power in Freetown[2341] on or about 14 February 1998[2342] as she had heard that over the radio.[2343] The Trial Chamber is therefore satisfied that the crimes took place during the Indictment period.

2659. para. 892: The Defence challenged several aspects of Gbamanja's testimony as compared with her prior statements.[2344] She was not challenged on her evidence that she was raped by Peppe and Sergeant Foday. The witness explained the inconsistencies highlighted by the Defence as errors of transcription.[2345] The Trial Chamber considers that these inconsistencies are

immaterial to the substance of Gbamanja's testimony of the rapes. The Trial Chamber is satisfied that Gbamanja's testimony of the rapes she suffered is reliable.

iii. Rape of TF1-189 – Koidu Town – Kono District – Crimes

2660. para. 895: TF1-189 testified that she was raped by five male "rebels" whose ages ranged, in her estimation, from 15-25 years in the living room of a house in a village in Kono in March 1998. Other villagers were outside on the veranda.[2346] The witness testified to similar rapes of other girls and young women on preceding days in a house with the door open and people gathered on the veranda.[2347] She stated "… they do it deliberately for us to see what they are doing".[2348]

2661. para. 896: She was then abducted by the five rebels and brought into Koidu Town to their "boss Superman" and offered to him as a wife. When he rejected her she was taken to a hall where other people were held.[2349] Following an attempted escape and recapture she was held in a house with 13 other girls.[2350] She remained there from approximately mid-March 1998 to August 1998.[2351] At this house she and other girls were forced to work and she had to be a "wife" to the person who brought her and to other men. She explained that she had to have sexual intercourse with men at "any time anyone can just…".[2352] TF1-189 explained that this meant that she had sexual intercourse with these men.[2353] She named several SLA, Junta and RUF perpetrators including one referred to as Commander A in private session.[2354]

2662. para. 897: TF1-189 testified that five other females who stayed in the same compound were similarly forced to be "wives" to their captors.[2355] She never refused to have sexual intercourse with her captors because she was afraid of the consequences. She was forbidden to leave the compound under threat of death.[2356]

c. Tombodu – Kono District – Crimes

2663. para. 899: The Prosecution submits that AFRC and RUF forces settled in Tombodu in or about March 1998, with Mohamed Savage as commander, and that rapes were committed.[2357] The Trial Chamber has examined the evidence of Alimamy Bobson Sesay, Perry Kamara and Sahr Bindi in relation to allegations of rape in Tombodu during this period.

2664. para. 900: Perry Kamara provided evidence regarding the practice of having "wives" in Tombodu.[2358] His evidence is insufficient to prove the elements of the crime of rape, but may be

relevant as corroboration for specific instances of rape described by witnesses testifying before the Trial Chamber.

2665. para. 901: Alimamy Bobson Sesay testified that "many" young women between the ages of 8 and 15 were captured by AFRC and RUF fighters in Kono District. The witness stated, "[w]e captured them, so whatever they did we were forcing them to do it because we had guns" and explained that this meant "we had sex with them" and some became pregnant.[2359] The witness testified that the young women lived with various SLA and RUF commanders and that some of the commanders made them into their "wives". The witness explained that he had captured a young girl in Kono District who stayed with him. He did not marry the girl he had captured. Alimamy Bobson Sesay further testified that the young women cooked, laundered and helped to pound rice in addition to having sexual intercourse with the commanders, both senior and junior.[2360]

2666. para. 902: Alimamy Bobson Sesay stated that this conduct occurred between March and June 1998 and that it occurred in various locations in Kono District, including Koidu Town, Bumpe, Tombodu and Yengema.[2361]

2667. para. 903: Witness Sahr Bindi testified that he was captured by AFRC/RUF soldiers[2362] and taken to Tombodu in around April 1998.[2363] Bindi testified that while he and two other men were tied to a mango tree, he saw a Limba woman named Sia Lappia, a suckling mother with a child strapped on her back, being "brought" to Staff Alhaji who was on the veranda of a house.[2364] Staff Alhaji told her to take the child off her back and when she was "reluctant" and "refused" he then pointed a gun at Lappia's ear. Bindi watched as the woman put down her child and was forced to take off her clothes at gunpoint. He saw Staff Alhaji hit Lappia on her genitals and then have sex with her.[2365]

d. Wondedu – Kono District – Crimes

2668. para. 906: The Prosecution submits that rape was also widespread in Wondedu.[2366] The Trial Chamber has considered the evidence of Alex Tamba Teh in relation to this incident.

2669. para. 907: Teh testified that at some time after the Intervention, he and fellow villagers were captured by armed men, some in military uniform and some in "ordinary trousers" under the command of Rocky and Rambo.[2367] Teh was taken by Rocky to Wondedu.[2368] There the witness heard women screaming at night and heard them say "[y]ou have not married me, now you want to use me as your wife". He often spoke to these women the next day. He described a

conversation in which one woman, Rebecca, told him that women had been abducted at gun point and forced to have sex with their captors. She stated, "They […] bring us, use us, use – forcefully sex us". The witness concluded that "this was the time I realised that they were being raped".[2369]

e. AFRC and/or RUF Camps – Kono District – Crimes

2670. para. 909: The Prosecution submits that on or about April 1998, the AFRC/RUF lost control of Koidu Town, but retained bases in Kono District, including Superman Ground, Guinea Highway and PC Ground. The Prosecution further submits that Isaac Mongor, SLA, STF and RUF fighters captured civilians and brought them to the bases where women captives had sex with fighters under coercive circumstances.[2370]

2671. para. 910: The Trial Chamber has considered the evidence of Isaac Mongor, Finda Gbamanja, TF1-375 and Alice Pyne in relation to allegations at AFRC and RUF camps in Kono District during this period.

i. Superman Ground – AFRC and/or RUF Camps – Kono District – Crimes

2672. para. 911: Witness Isaac Mongor, a high ranking RUF commander, testified that armed members of the RUF, SLA, and STF including the witness himself would take civilian women to "Superman Ground" as wives.[2371] Mongor explained that "to take as […] wife" meant "they will take them to go and sleep with them, to use them, to have sex with them".[2372] A captured civilian woman "had no choice. You were under the sole control of the gunman and the gunman was going to take you as his wife".[2373]

2673. para. 912: Finda Gbamanja, who was abducted and taken to Kono, testified that after staying in Sergeant Foday's house, AFRC/RUF members including Sergeant Foday and Peppe, took her and other captured civilians to Superman Ground in Meiyor when ECOMOG attacked Koidu Town.[2374] Gbamanja testified that at Superman Ground, she and a captured boy stayed with Sergeant Foday "for a long time" and that Sergeant Foday "used to have sex with" her.[2375] She testified that she never agreed to have sex with Sergeant Foday but that "there was no option".[2376] Sergeant Foday sent her to "Mamie's house" when his wife Fatty came from Kailahun. Fatty was jealous and fought Gbamanja but Sergeant Foday continued to have sex with Gbamanja at Mamie's house "whenever he needed [her] to have sex".[2377] Gbamanja

testified that she was with Foday for "a long time" and at Mamie's house "for some time again".[2378]

ii. Guinea Highway – AFRC and/or RUF Camps – Kono District – Crimes

2674. para. 915: The Prosecution did not adduce any evidence of rape at the AFRC/RUF camp called "Guinea Highway" in Kono District.

iii. PC Ground – AFRC and/or RUF Camps – Kono District – Crimes

2675. para. 916: TF1-375 testified that when the AFRC/RUF rebels retreated to PC Ground after being forced out of Koidu Town by ECOMOG, women and girls were taken by the rebels to PC Ground. The witness further testified that "[a]ll women had men. All of them had their husbands … they were with them as wives".[2379] When asked to clarify the meaning of the term "wife" as used by the witness, TF1-375 explained that "[w]hen you captured somebody, whether she was willing or not when you want her you would make her your wife, so forcibly or willingly she has to become a wife for you have to become the wife [of] whoever liked you".[2380] TF1-375 elaborated that there was no ceremony involved, "[t]he only ceremony is to go and sleep",[2381] meaning that RUF rebels had sexual intercourse with abducted women and girls.[2382] The Trial Chamber finds that this evidence is insufficient to establish the elements of the crime of rape, but that it may be relevant as corroboration for specific instances of rape described by witnesses testifying before the Trial Chamber.

2676. para. 917: Alice Pyne testified that AFRC/RUF fighters at PC Ground would capture civilians, men, women, and children. Fighters would take women away, bring them to the base and turn the women into their wives.[2383] Pyne explained that "they would sleep together".[2384] When questioned as to whether women volunteered to become wives of the combatants, Pyne answered no.[2385] Although this evidence suggests that involuntary sexual intercourse occurred, the Trial Chamber finds that it does not establish the elements of the crime of rape. However, this evidence may be relevant as corroboration for specific instances of rape described by witnesses testifying before the Trial Chamber.

2677. para. 918: Mongor also testified that at PC Ground civilian women would be taken to be the wives of the gunmen, members of the RUF, AFRC and STF and that captured civilian

women had "no choice".[2386] The witness further clarified that the wording "to take as […] wife" meant "they will take them to go and sleep with them, to use with them, to have sex with them".[2387] Mongor testified that he had taken a civilian woman as a "wife" at that time at PC Ground and stated "I did not give any money for her, I did not ask her parents, so I take her as my wife too".[2388] Mongor's evidence shows that he and other RUF, AFRC and STF members had sex with captured women who had "no choice".[2389]

f. Rape of Sia Kamara – Kono District – Crimes

2678. para. 920: Witness Sia Kamara, whose testimony in the RUF trial was received pursuant to Rule 92*bis*, was cross-examined in the present trial on 15 October 2008. In her prior testimony Kamara testified that she, her husband and his younger brother fled Tongo when it was attacked by Kamajors. They fled to Segbwema, Bunumbu, and Gandorhun and arrived in Kainako, Kono "Chiefdom" in the dry season. Two days later they fled to the bush when they were informed by other civilians that Kamajors "who had transformed into soldiers/rebels" had entered Koidu. Kamara explained that she meant that "they ran away from Kamajors", but later they were told that "it was now rebels and not Kamajors again".[2390] On cross-examination, she explained that she had encountered civilians fleeing from Koidu Town who told her that Kamajors had entered Koidu Town.[2391] Kamara testified that the bush she fled to was close to Yegbema,[2392] about two and a half miles from Gandorhun and about one and a half miles from Kainako.[2393]

2679. para. 921: Approximately three weeks later, Kamara saw about seven vehicles passing by. She "heard" that it was Johnny Paul Koroma heading towards the "Guinea end". She saw the same vehicles "coming towards Koidu end" about a week later.[2394] On cross-examination, Kamara confirmed that she first saw Johnny Paul Koroma after the ECOMOG Intervention, when the AFRC and RUF were driven out of Freetown and he passed through the area where she was living. He was disguised as a woman.[2395]

2680. para. 922: As the ECOMOG Intervention that ousted the AFRC and RUF from Freetown occurred in February 1998; Koidu Town was captured by the RUF in late February to early March;2396 the Trial Chamber is satisfied that Kamara was in the bush near Yegbema in approximately March/April, 1998.

2681. para. 923: Kamara testified that while her husband was away finding food, she was discovered by two "rebels". The first was wearing a soldier's uniform and was armed with a gun. The second was wearing civilian clothing with combat khaki trousers and was armed with a stick with red cloth tied to it. The rebel with the gun pointed it at Kamara and ordered her to undress

and lie down, which she did. He raped her. Kamara was unable to refuse due to the coercive circumstances. As this was happening, a third rebel, also armed with a stick, arrived. The other two rebels stood by as the rape occurred. After the first rebel raped her, Kamara was raped by "the other one". She testified that she did not agree to have sex with him, but the rebel with the gun was standing by them so she could not fight. After she had been raped by the second rebel, she was raped by the third. Kamara testified that these rapes happened in the "middle of the forest in the open".[2397]

2682. para. 924: After the three rapes, the rebels took Kamara "into the hills" where she saw a number of other civilians who had been captured, some of whom she recognised. She and the other civilians were given loads to carry to Sawoa while the rebels walked in front and behind them. Kamara testified that she thought the rebels were going to kill her and could not think of escaping. Kamara estimates that it was over two and a half miles to Sawoa which was in the Kono "area".[2398]

2683. para. 925: In Sawoa, Kamara heard the rebels address a man as "Lieutenant T" and heard him say that ECOMOG had captured Kailahun Town and Kono, that they were going to "show them that we own the country" and that it was now Operation No Living Thing. Lieutenant T ordered the rebels to kill the civilians.[2399] The Trial Chamber has found that the AFRC forces lost control of Kono District in April 1998.[2400]

2684. para. 926: Kamara testified that the rebels asked one of the captured civilians about Kamajors and Kabbah. When the civilian replied that she knew nothing, the rebels beat the civilians. Kamara testified that a boy of approximately 14 years brought a mortar and cut off the right hands of all the captured men, five in total, including Kamara's brother, who was seated next to her. After the five men had their hands amputated, Kamara was also struck on the upper arm. The rebels then separated out the young "virgins" from the women and took them away.[2401]

2685. para. 927: Kamara testified that the rebels took her and the remaining captured women, six in total, in the direction of Benguema Fiama. Some of the rebels were armed with guns and some with sticks. At Fall Road, the rebels ordered the women to undress and lie down, which they did. Kamara thought that the rebels were going to kill them. A rebel with a gun undressed and had sex with her. She was unable to refuse. There were many other rebels standing by. Then another rebel, armed with a stick, also had sex with her. When he had finished, he took the stick and shoved it into her vagina. Kamara testified that she experienced great pain and bleeding and that she continued to feel pain at the time of her testimony some years later. Kamara testified that she then heard another rebel say that the women were to be killed.[2402] She then fled to a swamp,

where she spent the night. She was bleeding and became unconscious. The following day, she was able to find her husband and three days later, she was brought to Connaught Hospital in Freetown by ECOMOG. She testified that she remained there "until the time the rebels entered Freetown".[2403]

2686. para. 928: On cross-examination, Kamara admitted that she could not distinguish between the SLA and RUF, and that she considered anyone who was carried a gun and who "terrorised" civilians was a rebel.[2404] She insisted, however, that she was captured by "rebels" and not Kamajors and testified that the persons who captured her threatened to amputate her hand because they suspected her of being a Kamajor or a Kamajor supporter. She was unable to say who Lieutenant T's "boss" was but testified that the rebels said they had come from Freetown and were heading for Fiama. She stated that the men spoke Krio, Mende and "Liberian".[2405] By "Liberian" Kamara clarified that she heard them use the phrase "My meh, let's go" which she testified is the way Liberian people speak.[2406]

(ii) Kailahun District – Crimes

2687. para. 933: The Indictment alleges that between about 30 November 1996 and about 18 January 2002 members of the RUF, AFRC, AFRC/RUF Junta or Alliance, and/or Liberian Fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the Accused, raped an unknown number of women and girls in locations throughout Kailahun District.[2408]

2688. para. 934: Several witnesses testified to acts of rape in areas of Kailahun District. As no locations were pleaded in the Indictment for Count 4 in relation to Kailahun District such evidence does not fall within the scope of the Indictment, and is relevant only insofar as it demonstrates that the activity was widespread or systematic, and therefore assists in establishing the chapeau requirements.

2689. para. 935: Witnesses Mustapha Mansaray, Perry Kamara, Isaac Mongor, Issa Sesay, TF1-168, TF1-375, Edna Bangura and DCT-068 gave evidence relevant to allegations of rape in Kailahun District, in addition to Exhibits P-073, P-078, P-077 and P-277.

2690. para. 936: In 1998, Amnesty International reported that "[i]n those areas of the country which remained under the control of rebel forces thousands of civilians, including women and children, effectively remained captive, many of them in Kailahun District, a stronghold of the RUF since the beginning of the internal armed conflict. Some estimates put this number as high as 10,000. They were used to carry goods, as human shields or for sexual slavery".[2409] Expert

Witness Vann reported that a majority of rape victims from Sierra Leone that she interviewed in Gueckedou Camp in Guinea named the perpetrators as members of the AFRC/RUF or "rebels".[2410]

2691. para. 937: Expert witness TF1-150 documented human rights abuses in Sierra Leone from May 1998 through 2000. This witness had published a report by July 1998 which documented that "rebels" were holding large numbers of civilian captives, including women and girls who were being used for forced sexual activity, in various areas of Sierra Leone, but mostly in Kailahun District.[2411]

2692. para. 938: TF1-174 worked at an interim care centre in Makeni where captured girls were provided with assistance. TF1-174 stated that the girls at the centre had been captured from districts including Kailahun District. The girls that TF1-174 worked with had been raped and turned into "wives" of RUF commanders. One girl was said to have been a "wife" of Issa Sesay. She was 14 or 15 years old.[2412]

2693. para. 939: While this evidence is not sufficiently specific to prove any individual instances of rape, it demonstrates that rape was committed on both a widespread and systematic basis in Kailahun District.

a. Rape of women by the RUF throughout Kailahun District – Kailahun District – Crimes

2694. para. 940: Witness Isaac Mongor testified that he would visit Kailahun District at unspecified times.[2413] Mongor stated that RUF fighters used captured women in Kailahun District for sexual purposes and some were trained as soldiers.[2414]

2695. para. 941: TF1-371 testified that after the 1991 attacks on Sierra Leone by RUF and NPFL fighters, captured women and girls would become the "bush wives" of RUF commanders.[2415] These women and girls would be the sexual partners of the commanders and have children by them, and would also do domestic chores.[2416]

2696. para. 942: Issa Sesay testified that rape was not allowed and that rape was punishable by death.[2417] Sesay testified that he did not hear about or see rape in Kailahun from 1992 through disarmament.[2418] Sesay stated that he did hear about rape occurring in other parts of Sierra Leone, but said that actions were taken against the perpetrators.[2419]

2697. para. 943: DCT-068, who had been a member of the RUF from August 1992,[2420] was in Kailahun District from 1992 to 1998.[2421] The witness testified that he had never seen women being raped and that anyone in the RUF who committed rape would be disciplined.[2422] He further testified that women were not assigned to commanders and only women combatants would be assigned work in a particular area. DCT-068 gave the example of Sam Bockarie, and explained that if Bockarie wanted a woman for love, he would talk to that woman in respect of love[2423] and stated that the RUF members could not force anyone to have any kind of relationship with them.[2424] However, DCT-068 also stated that "in that situation because of fear certain people accept certain things because they want their life to be saved".[2425] DCT-068 conceded that he had never seen an RUF commander in an area where the RUF had taken control approach women to offer their love,[2426] but he also stated he had received no complaints about rape in his capacity as a G5,[2427] responsible for civilians.[2428]

2698. para. 944: Based on the witness's admission that women were in an environment of fear and his evasive demeanour while giving evidence on this topic, the Trial Chamber finds DCT-068's statements that abducted women were not forced to have sexual relations to be contrary to the overwhelming volume of evidence and to be disingenuous and unreliable. The Trial Chamber recalls its finding that Issa Sesay's evidence must be treated with caution and requires corroboration.

2699. para. 945: Witness Edna Bangura testified that she was captured from her school in Masingbi, Tonkolili District in 1994.[2429] At the time, she was 10 years old.[2430] Bangura testified that an RUF patrol commander named "CO Blood"[2431] took her to Buedu where she was forced to remain until November or December 1998.[2432]

2700. para. 946: Bangura testified that shortly after arriving in Buedu in 1994, she was assigned to stay with a rebel commander named CO Scorpion and his wife, Hawa.[2433] She was assigned to a small girls unit.[2434] She did domestic chores for Hawa.[2435] Bangura's testimony is inconsistent as to how long she stayed with Hawa, stating at one point that it was less than a year and at another point, that it was many years.[2436] However, Bangura stated that she stayed with Hawa after CO Scorpion left for Freetown, and that she left Buedu with Hawa, following the fighters.[2437] Bangura testified that when she went to Makeni, she was still with Hawa.[2438]

2701. para. 947: Bangura testified as to two specific rapes being committed against her in Buedu prior to 30 November 1996.[2439] Both instances of rape were perpetrated by CO Ray,[2440] who Bangura stated, "…raped me. He forced me. He forced me into sex" but these instances occurred before the Indictment period.

2702. para. 948: Bangura testified that women would be captured by fighters when they went to the war front and that these women became "wives" or would stay with fighters as either house help or as bodyguards.[2441]

2703. para. 949: Bangura also testified that CO Musa was her husband in Buedu after CO Ray died.[2442] She did not provide any details during her direct examination as to the length or nature of her relationship with CO Musa other than that he was her husband. On cross-examination, when asked for how long she was CO Musa's "wife", Bangura explained,

> No, I cannot tell now. Like I am saying, if it was like when I am at this age now that such a thing happened to me I would have been able to tell you the exact particulars, but at that time I was a small child. I was not mature enough to be thinking about or remembering a whole lot of things. I was a small child at that time.[2443]

2704. para. 950: The Defence challenged the witness on a record of an interview with the Prosecution which records her as saying, "CO Musa was killed some time in 1994 during one of the attacks, after which the witness was raped by one CO Ali, an RUF rebel. The witness was taken as a wife by CO Ali, and not CO Musa".[2444]

2705. para. 951: During her cross-examination before this Trial Chamber, Bangura stated that CO Ali and CO Musa was the same person. It was only when Defence counsel confronted the witness with exhibits and testimony in a prior case before the Special Court for Sierra Leone which indicated that CO Ali and CO Musa were different people did the witness agree,[2445] stating that counsel's question confused her.[2446]

2706. para. 952: Issa Sesay testified that Bangura could not have been taken to Buedu from 1994 to 1998 because the NPRC, not the RUF, controlled Buedu from October/November 1993 until April 1995.[2447] Sesay further testified that people were not brought from Kangari Hills to Kailahun until the AFRC coup in 1997.[2448]

2707. para. 953: Issa Sesay's testimony on this point is corroborated by the testimony of TF1-168 and by Exhibit P-277.

b. Rape of women in Buedu that were abducted in Kenema in the wake of "Operation Pay Yourself" – Kailahun District – Crimes

2708. para. 955: The Prosecution submits that "[i]n February 1998, when 'Operation Pay Yourself' was declared by Sam Bockarie in Kenema, more than 400 civilians […] were abducted

and taken to Daru in Kailahun District".[2449] The Prosecution further submits that "these abducted women were taken to Buedu and forced to have sex with their captors".[2450]

2709. para. 956: The Trial Chamber has considered the testimony of Augustine Mallah and Aruna Gbonda in making its findings.

2710. para. 957: Witness Augustine Mallah testified that when the AFRC and RUF left Kenema District in February 1998,2451 they captured civilians, including beautiful women who were held against their will and would become "wives".[2452] He estimated that more than 400 civilians were captured and taken to locations controlled by the AFRC and RUF throughout Kailahun District, including Kailahun Town, Pendembu and Dodo.[2453] The AFRC and RUF also brought civilians who had been previously captured and who had been with the troops for some time.[2454] Mallah testified that he went to Buedu with Sam Bockarie, RUF and AFRC troops and most of the captured civilians.[2455]

2711. para. 958: Mallah testified that he found his niece, Aminata, who was approximately 13 years old, in Daru.[2456] She told him that she had been captured by an "RUF boy" called Ibrahim in Kenema, who had sex with her and told her that she was going to be his "wife".[2457] Mallah took his niece away from Ibrahim.[2458]

2712. para. 959: Mallah stayed in Buedu for approximately two months.[2459] Both the AFRC and RUF were in Buedu and everyone reported to Bockarie.[2460] Mallah testified that the captured civilians in Buedu were there to cook and to have sexual intercourse with the AFRC and RUF soldiers who captured them.[2461] Mallah did not witness women refusing sexual intercourse, and stated that the women were forced by their captors to have sex.[2462]

2713. para. 960: Witness Aruna Gbonda testified that after Tejan Kabba had been reinstated,[2463] which was in March 1998,[2464] he saw that Mosquito and the other rebels came to Kailahun District from Kenema District with male and female civilians.[2465] The captured civilians included adult women and girls who were from Kenema.[2466] The women were taken to Kailahun Town and other villages.[2467] When the rebels and the civilians arrived in Kailahun Town, food was scarce and Gbonda stated that they would ask him where they could find bananas.[2468] When Gbonda spoke to the women and girls, they said that the rebels under Mosquito and Issa Sesay had forcefully captured them and that when they were dislodged from Freetown, some were brought by the rebels to Buedu and some to Kailahun Town.[2469] The women told Gbonda that the rebels had turned them into their wives and "put them into their homes forcefully".[2470]

Gbonda stated that there were many captured women and girls, and that he had personally spoken to about twenty.[2471]

c. Rape after February 1998 of captured women in Buedu from March to December 1999 – Kailahun District – Crimes

2714. para. 962: The Trial Chamber has considered the evidence of Dennis Koker in relation to the evidence of sexual slavery in Buedu from February 1998 to December 1999.

2715. para. 963: Witness Dennis Koker testified that he left Koidu Town in February 1998 and went to Kailahun District together with Issa Sesay, Eldred Collins and others.[2472] He passed through Gandorhun,[2473] Magburaka[2474] Mendeburma, Mendelaema, Manowa, and was sent to the front lines in Jokibu.[2475] He arrived in Buedu approximately one month after the ECOMOG Intervention.[2476] Sam Bockarie (a.k.a. "Mosquito"), was in charge in Buedu. Members of the RUF and AFRC were also present including Johnny Paul Koroma, Edward P. Kanneh, Issa Sesay, Morris Kallon and others.[2477]

2716. para. 964: Mosquito made Koker a Military Policeman (MP) and then an adjutant at the MP office, in which capacity he issued passes to civilians and soldiers.[2478] Koker testified that civilians captured in Masiaka, Makeni and Koidu were brought to Buedu.[2479] A pass and screening system through the MP Office was in place to count and manage the captured civilians in Buedu and to prevent them from escaping.[2480]

2717. para. 965: Koker testified that many women were captured by the RUF and AFRC and detained in Buedu and that "they would marry them without paying bride prices".[2481] Sometimes, commanders would come to Koker's office with women and ask him to "confine" them because they had "overlooked" i.e. been disrespectful. The commanders would ask Koker to "confirm" or charge the women. Koker left Buedu on 16 December 1999, the day after Sam Bockarie left for Liberia.[2482] During the entire time he was at the MP office, he believes there may have been up to 1,300 civilians captured, including men, women and children.[2483]

d. TF1-189 raped by RUF members in Kailahun Town – Kailahun District – Crimes

2718. para. 967: TF1-189, whom the Trial Chamber has found was captured by RUF/AFRC rebels in Kono District in March 1998 and raped in Koidu Town by Commander A (named by the witness in closed session) and other RUF rebels from March through August 1998,[2484]

testified that she was taken by the rebels and "SLA Juntas" to Kailahun Town when Koidu Town was attacked by ECOMOG. The overall leader of the group that left was an RUF commander named Superman.[2485]

2719. para. 968: TF1-189 testified that they arrived in Kailahun Town in August 1998, during the rainy season and remained there less than two months until September 1998. TF1-189 was forced to stay with a commander named Gogomeh, together with five other female captives and four rebels.[2486] TF1-189 testified that during this time, she and the other captured women and girls were forced to cook, wash the rebel's clothes and were "wives".[2487] In private session, TF1-189 testified that Commander A also continued to have sex with her in Kailahun Town.[2488]

2720. para. 969: In September, TF1-189 left Kailahun Town because it was being attacked by ECOMOG jets. She went to another location in Kailahun District together with 40 captives and a rebel.[2489] TF1-189 revealed the location in private session.[2490]

(iii) Freetown and the Western Area – Crimes

2721. para. 973: The Indictment alleges that between about 21 December 1998 and about 28 February 1999, members of the RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the Accused "raped an unknown number of women and girls throughout Freetown and the Western area".[2492] The Prosecution further submits that rape was an intrinsic element of the "reign of terror" unleashed by the AFRC and RUF when they entered Freetown on 6 January 1999,[2493] and that rape was a standard practice of the rebels as they advanced towards and attacked Freetown.[2494]

2722. para. 974: The Prosecution led evidence of acts of rape occurring in the Western area outside of Freetown.[2495] In arriving at its factual findings in Freetown, the Trial Chamber has examined the testimony of Perry Kamara, James Kpumgbu, Abu Bakarr Mansaray, Alimamy Bobson Sesay, TF1-085, TF1-028, Ibrahim Wai and TF1-083, TF1-029 and TF1-023 in addition to relevant documentary evidence.

a. Rape in Freetown – Freetown and the Western Area – Crimes

2723. para. 975: Witnesses Perry Kamara and James Kpumgbu provided evidence that rape occurred as part of the January 1999 Freetown attack without providing details about the victims, perpetrators or the specific circumstances.[2496] TF1-358, a doctor, testified that a number of

female patients, mostly from Freetown, narrated histories of rape during January 1999 by "rebels" to him.[2497] Histories included "gang rape" and rape in front of husbands and relatives[2498] in various locations including Freetown.[2499] Reports from organisations such as Human Rights Watch,[2500] Amnesty International,[2501] FAWE,[2502] UNOMSIL[2503] and experts[2504] also provide evidence of widespread rape and sexual abuse occurring as part of the Freetown invasion in January 1999. The evidence contained in the documentary evidence is hearsay and/or not sufficiently specific to prove any individual act of rape.[2505] However, as the evidence demonstrates that rape was widespread throughout Freetown in the Indictment period, it may be relevant as corroboration for specific incidents of rape described by witnesses testifying before the Trial Chamber. The evidence has been considered for the chapeau requirement that the crimes be widespread or systematic.

i. State House – Rape in Freetown – Freetown and the Western Area – Crimes

2724. para. 976: The Prosecution submits that while AFRC and RUF fighters were based at the State House, commanders forced young girls aged 14 to 16 to have sexual intercourse with them.[2506] The Trial Chamber has considered the evidence of witnesses Abu Bakarr Mansaray and Alimamy Bobson Sesay in relation to rapes allegedly taking place in the State House area.

2725. para. 977: Witness Abu Bakarr Mansaray, whose testimony in the AFRC trial was tendered into evidence through Rule 92*bis*, was cross-examined in this trial on 29 October 2008. He testified that he was captured by rebels in Freetown in January 1999 and taken to State House where he was detained in a kitchen for four days.[2507] Mansaray testified that each night he was detained at State House he observed "many women" and young girls being raped outside.[2508] He was able to witness the rapes through the window, as the rebels around the State House used a lamp.[2509] Mansaray testified that he knew what he saw was rape, because all the women were crying, and some said, in Krio, "we not agree. We are small child. We are school-going girls".[2510] The victims included women and little children and the perpetrators were rebels.[2511] Mansaray did not know which faction the perpetrators belonged to.[2512] However, Mansaray testified earlier that Gullit and "his boys" had been at the State House.[2513]

2726. para. 978: Although the witness initially gave the date of his capture as January 1998, he later clarified that he meant January 1999.[2514] As it is clear that his capture occurred in the context of the January 1999 attack on Freetown, the Trial Chamber is satisfied that the alleged rapes fall within the Indictment period.

2727. para. 979: Mansaray stated that he saw some of the victims being raped and sexual intercourse taking place. He also testified that he heard screaming and all of the victims crying, and the voices of some of the women and girls.[2515]

2728. para. 981: Witness Alimamy Bobson Sesay testified that after the junta captured State House on 6 January 1999, the SLA and RUF captured young girls in Freetown and brought them to State House, which had many rooms.[2516] All of the commanders captured young girls;[2517] most of the girls were aged 14 to 16. The SBUs also captured girls, aged around 8 to 9 to use for sex.[2518] Alimamy Bobson Sesay testified that the girls "were forced to do anything, so they accepted…to have sexual intercourse with the commanders".[2519]

2729. para. 982: When asked in cross-examination if he raped any women between 1997 and June 2000, Alimamy Bobson Sesay testified that he captured a young girl and had sex with her "when we came to Freetown".[2520] As Bobson Sesay distinguished this from events in Freetown after the 1997 coup the Trial Chamber is satisfied that he is referring to the time of the 1999 Freetown attack. The Trial Chamber is satisfied that this incident falls within the Indictment period.

ii. Blackhall Road – Rape in Freetown – Freetown and the Western Area – Crimes

2730. para. 985: The Prosecution submits that when RUF and Junta fighters entered Freetown, RUF rebels brought girls aged 12 to 13 years to a house on Blackhall Road and raped them.[2521] The Trial Chamber has considered the evidence of TF1-028 in relation to the allegation.

2731. para. 986: TF1-028 testified that she was captured by Juntas in Karina,[2522] and then travelled through Rosos to Eddie Town.[2523] In Eddie Town, SAJ Musa held a meeting announcing that everyone was to go Freetown.[2524] The witness and the Juntas travelled to Benguema, where SAJ Musa died, and then continued towards Freetown.[2525] Once the group arrived in Freetown, the witness stayed at Ferry Junction for about two weeks.[2526] TF1-028 was then moved to Blackhall Road, where she was held for approximately one week and several days.[2527]

2732. para. 987: At Blackhall Road, the witness testified that the Juntas and the RUF would bring "small children", girls of about 12 to 13 years, to the house she was staying in and rape them in her presence. The witness testified that she pleaded with the RUF, but that they did not listen to her.[2528]

2733. para. 988: The witness could not remember the year that this occurred, but she remembered it was in January.2529 However, in light of her description of her journey and of SAJ Musa's death, it is clear that she is referring to the Freetown attack which occurred in January 1999.[2530] As such, the alleged rapes fall within the Indictment period.

b. Kissy – Freetown and the Western Area – Crimes

i. Rape of girls in Kissy on or about 22 January 1999 – Kissy – Freetown and the Western Area – Crimes

2734. para. 990: The Prosecution submits that in Kissy, rebels raped girls aged 13 to 15.[2531] The Trial Chamber has considered the testimony of witness Ibrahim Wai in relation to the allegation.

2735. para. 991: Ibrahim Wai was in his family's house in Kissy around 22 January 1999[2532] when a rebel named Captain Blood[2533] and another rebel entered the house and amputated his hand.[2534] After his amputation, the rebels pushed him outside, and he went to the nearby outside toilet where he sat for some time.[2535] While he was in the toilet, he testified that he saw the rebels bringing girls, laying them outside in the open and raping them.[2536] The rebels asked the girls how old they were, and some replied that they were 13, 14 or 15.[2537] The witness testified that when the last rebel came to rape one of the girls, she said she was tired.[2538] She screamed and cried and asked "that the guy should get up away from her".[2539] The rebel then called his leader, who was a woman. This leader said if the girl did not lie down she would tell the rebel boy to kill her.[2540] After that "the boy" had sex with her.[2541] The witness testified that he was able to see what was happening, because the toilet he was in had no door, the girls were in an open place, and although it was night the area was bright because of the flames from burning houses.[2542]

c. Rape of TF1-029 in Wellington, Calaba Town and Benguema – Freetown and the Western Area – Crimes

2736. para. 993: The Prosecution submits that TF1-029 was abducted by Major Arif and taken to Calaba Town and Benguema where she was forced to have sex with him. The Trial Chamber has considered the evidence of TF1-029.[2543]

2737. para. 994: TF1-029's evidence in the RUF trial was introduced through Rule 92bis. She was cross-examined in the instant trial on 22 October 2008. TF1-029 testified that she was

abducted from her house in Wellington by the "RUF and the SLAs" on 22 January 1999.[2544] On cross-examination in the RUF case, she confirmed that the men who came to her house were all wearing soldier's uniforms, carried weapons and were part of a mixed group of soldiers and RUF rebels including five small boys.[2545] She was captured by an SLA soldier named "Major Arif".[2546]

2738. para. 995: The mixed group of RUF and SLA fighters brought the witness, together with 50 other civilians who were captured in the same house, to Calaba Town.[2547] The witness was held there for two weeks.[2548] The witness testified that during this time she lived in Major Arif's house together with his cousins and other RUF and SLA soldiers[2549] and was raped there by Major Arif ten times.[2550] By "rape", the witness stated that she meant he "forced me to have sex".[2551] The witness was sixteen years old when this occurred.[2552] TF1-029 further testified that she saw that the other women who were abducted were also raped.[2553]

2739. para. 996: The rebels then took the witness to Benguema.[2554] She testified that when they arrived in Benguema, she was again raped ten times by Major Arif.[2555]

2740. para. 997: TF1-029 testified that the RUF and SLAs also raped other girls while in Benguema. The witness knows this because the girls who had been captured and raped told her what had happened to them.[2556]

2741. para. 998: Major Arif permitted the witness to leave Benguema on 10 March 1999.[2557] On-cross-examination, TF1-029 insisted that the rebels were mixed RUF and SLA but that most of the people she "dealt with" were SLAs, including Colonel O-Five, Brigadier Five-Five, Colonel Tito, and Colonel Rambo. O-Five, Tito and Five-Five were in control of the soldiers from Calaba Town up to Four Mile.[2558]

d. Rape of Akiatu Tholley in Allen Town and Waterloo – Freetown and the Western Area – Crimes

2742. para. 1000: The Prosecution submits that Akiatu Tholley was abducted from Wellington and raped in the Western Area.[2559] The Trial Chamber has considered the evidence of Akiatu Tholley.

2743. para. 1001: Witness Akiatu Tholley testified that she was in Wellington when "rebels" came to her house on the night of 5 January 1999.[2560] Rebels came to her home on three subsequent occasions as detailed in the section on unlawful killings.[2561] On cross-examination,

Tholley denied a prior statement taken by the Prosecution in which she stated that the rebels came to her house for the first time on 6 January 1999, the day after they entered Wellington.[2562]

2744. para. 1002: Tholley was captured by a rebel named James. Tholley testified that James was accompanied by his "boys" whom he had captured and who carried his ammunition. James' boys gave Tholley and other captured civilians ammunition to carry and took them to Allen Town. James also had his "wives" with him.[2563] On cross-examination, Tholley testified that her cousin Amina was captured again on this occasion and that she did not see Amina again until she returned to Freetown.[2564]

2745. para. 1003: Tholley testified that James took her to the Mammy Dumbuya Church[2565] where she saw rebels raping, beating and killing many young girls, although she was not able to estimate how many.[2566] Tholley testified that she refused to have sex with James, and that he raped her and damaged her in her vagina. She had not yet had her menses. Tholley lost consciousness[2567] and when she awoke, she found herself in a small hut with an old woman who told her that "they" had brought Tholley to her and that she had treated Tholley's injuries with herbs. Tholley testified that James then arrived and killed the old woman.[2568]

2746. para. 1004: James took Tholley to Waterloo, Western Area together with his "wives" and "boys", the other rebels and other captured civilians.[2569] The group was led by Five-Five.[2570] Tholley testified that she remained with James in Waterloo for a "long time" but was unable to say how long.[2571] Tholley testified that after James captured her and raped her in the Mammy Dumbuya Church, he continued to have sex with her against her will.[2572] Tholley did not want to be his "wife".[2573]

2747. para. 1005: Tholley testified that the rebels she was with were a "mixed group" and the leader was Five-Five.[2574] James told Tholley that he belonged to the STF and ULIMO and that he had been part of the Liberian war until "the time they joined the rebels". She did not know to which group Five-Five belonged.[2575]

2748. para. 1006: The Trial Chamber finds that Tholley's evidence of her movements with the rebels is consistent with other evidence of the pattern of RUF/AFRC movements at this time. The Trial Chamber is satisfied that James was an STF member and that he captured Tholley prior to the retreat from Freetown in late January 1999 and that she remained under his control in the Western Area until early April 1999.

e. Rape of TF1-023 in Calaba Town, Benguema and Four Mile by a member of the AFRC from late January until March, 1999 – Freetown and the Western Area – Crimes

2749. para. 1008: TF1-023, whose evidence in the AFRC trial was introduced through Rule 92bis, was cross-examined in the present case on 22 October 2008. She testified that she and her family sought refuge when the AFRC invaded Freetown. They moved from Cline Town, where they were living, back and forth to various places including Wellington and Portee in Eastern Freetown.[2576] On 22 January 1999, TF1-023 was in Wellington when it was attacked so she fled to Consider Lane in Calaba Town. That same afternoon, she and five or six others were captured by a group of rebels. The witness was captured by a "young boy" who was wearing combat trousers and a T-shirt and who was armed with a gun. He was part of a group of approximately 200 people, some of whom were wearing combat uniforms and others civilian clothes with head ties. They were armed with guns and cutlasses. There were also captured civilians among the group. The witness was 16 years old at the time and was not armed.[2577]

2750. para. 1009: The rebels brought TF1-023 and the other captured civilians to an unidentified location and then to Allen Town. There, they encountered a group of approximately 300-400 rebels and captured civilians. The witness and other captured civilians were prevented from escaping by the Small Boys Unit.[2578] The witness was held at Allen Town for about 3 days[2579] and was then taken by a rebel, whom she named in a Confidential Exhibit,[2580] to Calaba Town.[2581] Trial Chamber will refer to the rebel as "Captain A". The witness testified that there were approximately 50-100 rebels in Calaba Town. Some were in combat uniform and some were wearing jeans and T-shirts.[2582]

2751. para. 1010: In Calaba Town, Captain A handed TF1-023 over to a commander, whom she named in a Confidential Exhibit.[2583] The Trial Chamber will refer to the commander as "Colonel B". Captain A told the witness that she should be Colonel B's "wife" and Colonel B accepted this. Colonel B did not ask for the witness's consent. There was no marriage ceremony.[2584] That night, Colonel B threatened the witness, shouted at her and forced her to have sex with him. It was the first time she had sex. After that night, she continued to "sleep with" Colonel B.[2585]

2752. para. 1011: TF1-023 remained in Calaba Town for three days. On the third day, she and the rebels walked to Allen Town, Waterloo and then Benguema where they remained for about four days. They then continued on to Lumpa and Four Mile where they stayed for about a month.[2586] On cross-examination, the witness clarified that she remained with "the armed men"

in Freetown from 22 to 29 January. She left Freetown on 29 January, and it took about two days to reach Benguema, where they spent about three days. From Benguema TF1-023 and the other captured civilians were forcefully taken to Four Mile where they stayed for approximately a month.[2587] Colonel B was not always with the witness; he joined her in Benguema and again in Four Mile. The witness does not know where he was in the interim.[2588]

2753. para. 1012: The witness lived with Colonel B for about three weeks in Four Mile, after which he left her and went to Makeni. During those three weeks, he asked her to cook, but she did not as she did not know how. During those three weeks she continued to sleep with him because he told her that she was his "wife". He never asked her consent before sex. The witness was not able to leave.[2589] There were approximately 400 armed rebels at Four Mile. Some "people" at Four Mile tried to escape but they were beaten. This made the witness afraid and she decided not to try to run away.[2590] Colonel B also had an armed guard follow her so she could not escape.[2591]

2754. para. 1013: When Colonel B left for Makeni, he left the witness in the "care of" a captain, whom the witness identified in a Confidential Exhibit.[2592] The Trial Chamber will refer to the captain as "Captain C". The witness remained in the custody of Captain C from approximately March through August.[2593]

2755. para. 1014: TF1-023 testified that the rebels she named in the exhibits told her that they were members of the AFRC. She first saw their senior commander, Brima or "Gullit" in Benguema. He was a Brigadier at the time. At Four Mile, Colonel B told her that the senior commander was "Bazzy". He used to visit Colonel B and the witness would see him regularly.[2594] On cross-examination, TF1-023 testified that a boy called Alhassan identified Bazzy to her at Four Mile, but that "everyone" told her that Bazzy was the senior commander. She did not talk with Bazzy.[2595] On cross-examination, TF1-023 testified that throughout her "journey" the rebels were a mixed group of AFRC and RUF, but that the ones she had direct contact with were all AFRC.[2596]

(b) Legal Conclusions

(i) Applicable law – Crimes Against Humanity ("CAH")

2756. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Applicable Law – CAH – paras. 504 – 515 [1383].

(ii) CAH – Findings on general requirements

2757. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Applicable Law – CAH – Findings on general requirements – paras. 547 – 559 [1395].

(iii) Applicable law – Rape

2758. para. 415: In addition to the *chapeau* requirements of Crimes against Humanity pursuant to Article 2 of the Statute, the following elements of the crime of rape must be proved beyond reasonable doubt:

> (i) The non-consensual penetration, however slight, of the vagina or anus of the victim by the penis of the perpetrator or by any other object used by the perpetrator, or of the mouth of the victim by the penis of the perpetrator; and
>
> (ii) The perpetrator must have the intent to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.[1022]

2759. para. 416: The consent of the victim must be given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances.[1023] This is necessarily a contextual assessment. However, in situations of armed conflict or detention, coercion is almost universal.[1024] Force or the threat of force provides clear evidence of non-consent, but force is not an element *per se* of rape and there are factors other than force which may render an act of sexual penetration non-consensual or non-voluntary on the part of the victim.[1025] 'Continuous resistance' by the victim, physical force or even threat of force by the perpetrator are not required to establish coercion.[1026] A person may be incapable of giving genuine consent if affected by natural, induced or age related incapacity.[1027] The Trial Chamber acknowledges 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.[1028]

2760. para. 417: In addition, the Trial Chamber is guided by the provisions of Rule 96 of the Rules, which provides, in relevant part that**:**

> In cases of sexual violence, the Court shall be guided by and, where appropriate, apply the following principles:
>
> (i) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;

(ii) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;

(iii) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence.

(iv) Kono District – Rape

a. Evidence of widespread rape in Kono District – Rape

2761. para. 885: While this evidence is not sufficiently specific to prove any individual instances of rape, it demonstrates that rape was committed on a widespread basis in Kono District and may be relevant as corroboration for specific instances of rape described by witnesses testifying before the Trial Chamber.

b. Koidu Town – Kono District – Rape

2762. para. 888: The Trial Chamber cannot make findings on this evidence without further information regarding the perpetrators and circumstances of the rapes alleged, however, the evidence demonstrates that rape was widespread in Koidu Town and may be relevant as corroboration for specific instances of rape described by witnesses testifying before the Trial Chamber.

2763. para. 893: Gbamanja testified that Sergeant Foday had sex with her every night and that she had no option but to comply. Considering the coercive environment, Gbamanja's young age at the time, and her testimony that Sergeant Foday threatened her and that she followed him under duress, the Trial Chamber finds beyond reasonable doubt that Sergeant Foday, a member of the RUF, intentionally engaged in non-consensual sexual intercourse with Gbamanja during the time that she stayed in his house and that he knew of the victim's non-consent.

2764. para. 894: Given the coercive circumstances and the young age of Gbamanja, her capture by Peppe and her testimony that she was "raped" by him, the Trial Chamber also finds beyond reasonable doubt that Peppe, a member of the RUF, intentionally engaged in non-consensual sexual intercourse with Gbamanja and that he knew of her non-consent.

2765. para. 898: Based on the evidence, the Trial Chamber finds beyond reasonable doubt that several men who were members of the RUF/AFRC junta, including those named in closed

session, intentionally engaged in non-consensual sexual intercourse with TF1-189. Given the coercive circumstances of captivity and threat in which these acts occurred the Trial Chamber is satisfied beyond reasonable doubt that the perpetrators knew of TF1-189's non-consent.

c. Tombodu – Kono District – Rape

2766. para. 904: Alimamy Bobson Sesay, an SLA commander and perpetrator, provided clear and reliable evidence of how commanders captured women, forced them to have sex with commanders and of the coercive environment in which such acts took place. Based on his evidence, the Trial Chamber finds beyond reasonable doubt that in Tombodu between March and June 1998, commanders of the AFRC, including Alimamy Bobson Sesay, intentionally engaged in non-consensual sexual intercourse with an unknown number of women and that they knew of the women's non-consent.

2767. para. 905: Bindi's evidence was clear, based on direct observation and reliable. Based on this evidence, the Trial Chamber finds beyond reasonable doubt that Staff Alhaji intentionally engaged in non-consensual sexual intercourse with Sia Lappia and that he knew of the victim's non-consent.

d. Wondedu – Kono District – Rape

2768. para. 908: Teh clearly heard women objecting to being "used" during the night and Rebecca gave a contemporaneous account of her rape following her abduction. The Trial Chamber finds that the direct evidence of the women's protests and the words used clearly show that Rebecca and other women were forced to have sex with their captors. Accordingly the Trial Chamber finds beyond reasonable doubt that men under the command of Rocky intentionally engaged in non-consensual sexual intercourse with Rebecca and with an unknown number of other women, and that they knew of the victims' non-consent.

e. AFRC and/or RUF Camps – Kono District – Rape

2769. para. 913: Isaac Mongor, an RUF commander and perpetrator, provided clear and reliable evidence of how captured civilian women were forced to have sexual intercourse with members of the RUF, AFRC, and STF, including the witness himself, and of the coercive environment in which such acts took place. Based on his evidence, the Trial Chamber finds beyond reasonable doubt that members of the RUF, AFRC, and STF, including the witness himself, intentionally

engaged in non-consensual sexual intercourse with an unknown number of women at Superman Ground in April 1998. Considering the coercive environment where the sexual intercourse occurred, the Trial Chamber finds beyond reasonable doubt that the perpetrators knew of the women's non-consent.

2770. para. 914: The Trial Chamber finds the testimony of Finda Gbamanja to be credible. Based on her evidence, the Trial Chamber is satisfied beyond reasonable doubt that Sergeant Foday, a member of the RUF, intentionally engaged in sexual intercourse with the witness at Superman Ground and that, owing to the coercive environment, the witness did not consent and Sergeant Foday knew of her non-consent.

2771. para. 915: The Prosecution did not adduce any evidence of rape at the AFRC/RUF camp called "Guinea Highway" in Kono District.

2772. para. 919: Isaac Mongor, an RUF commander and a perpetrator, provided clear and reliable evidence of how captured civilian women were forced to have sexual intercourse with members of the RUF, AFRC, and STF, including the witness himself, and the coercive environment in which such acts took place. Mongor's evidence is corroborated by TF1-375 and Pyne. Based on the evidence, the Trial Chamber finds beyond reasonable doubt that members of the RUF, AFRC, and STF, including Isaac Mongor, intentionally engaged in non-consensual intercourse with an unknown number of women in PC Ground in or about April 1998. Given the coercive environment in which the sexual intercourse occurred, the Trial Chamber finds that perpetrators knew that the women did not consent to sexual intercourse.

f. Rape of Sia Kamara – Kono District

2773. para. 929: Kamara's description of events corresponds with the movements of the AFRC and RUF. Given her testimony that one of the rebels who captured her was dressed in a soldier's uniform; that "Lieutenant T" stated that they would show ECOMOG that "we own the country" and that it was now Operation No Living Thing; that the rebels asked the civilians about Kamajors and Kabbah and that they suspected Kamara of being a Kamajor; and her testimony that the rebels stated that they had come from Freetown, the Trial Chamber is satisfied beyond reasonable doubt that Kamara was abducted by members of the AFRC/RUF and not Kamajors.

2774. para. 930: On the basis of Kamara's testimony, the Trial Chamber finds that Kamara was abducted from a location in the bush near Yegbema in March/April 1998 by members of the AFRC/RUF, that she was forced to engage in sexual acts by three members of the AFRC/RUF in

this same location, and that she was later forced to engage in sexual acts and sexually brutalised by two other members of the same group of AFRC/RUF at Fall Road between Sawoa and Benguema Fiama. The Trial Chamber finds from Kamara's testimony of her inability to refuse to submit to these acts and from the environment of violence and coercion that Kamara did not consent to these acts. The Trial Chamber finds that the five members of the AFRC/RUF who detained, raped and forced Kamara to carry loads intended to exercise these acts. Based on the evidence, the Trial Chamber finds beyond reasonable doubt that members of the RUF and AFRC intentionally engaged in non-consensual intercourse with Kamara in approximately March/April 1998 in Kono District. Given the coercive environment in which the sexual intercourse occurred, the Trial Chamber finds that perpetrators knew that Kamara did not consent to sexual intercourse.

g. Conclusion – Kono District - Rape

2775. para. 931: The Trial Chamber finds the elements of the crime of rape have been proved beyond reasonable doubt for each of the following incidents:

(i) Finda Gbamanja was raped in Koidu Town by an RUF rebel named Peppe in February 1998;

(ii) Finda Gbamanja was raped by RUF Sergeant Foday in Koidu Town and at Superman Ground in 1998;

(iii) TF1-189 was raped in Koidu Town by her SLA and RUF captors between March and August 1998;

(iv) AFRC commanders, including Alimamy Bobson Sesay, raped an unknown number of women and girls in Tombodu between March and June 1998;

(v) Sia Lappia was raped by RUF Staff Alhaji in Tombodu in approximately April 1998.

(vi) Rebecca and an unknown number of women were raped at Wondedu by RUF men under the command of Rocky in 1998;

(vii) An unknown number of women were raped in Superman Ground by RUF, AFRC and STF fighters in or about April 1998;

(viii) An unknown number of women and girls were raped at PC Ground by RUF, AFRC and STF fighters including Isaac Mongor in or about April 1998;

(ix) Sia Kamara was repeatedly raped by AFRC and RUF fighters in approximately March/April 1998 in Kono District.

2776. para. 932: The Trial Chamber recalls that the Prosecution has established beyond reasonable doubt that at all times relevant to the Indictment, the RUF and/or AFRC forces directed both a widespread and systematic attack against the civilian population of Sierra Leone.[2407] The Trial Chamber is satisfied that each of the rapes proved by the Prosecution in respect of Kono District formed part of the said attack and that the perpetrators were aware of this fact. Therefore, the Trial Chamber is satisfied that the aforementioned rapes in Kono District constitute rape as a crime against humanity under Article 2 of the Statute.

(v) Kailahun District – Rape

a. Rape of women by the RUF throughout Kailahun District – Kailahun District

2777. para. 954: Given the inconsistencies in Bangura's testimony regarding the time of the alleged rapes in 1994-1998, the Trial Chamber is unable to find beyond reasonable doubt that these events occurred after 30 November 1996.

b. Rape of women in Buedu that were abducted in Kenema in the wake of "Operation Pay Yourself" – Kailahun District

2778. para. 961: Based on the evidence of Augustine Mallah and Aruna Gbonda, the Trial Chamber is satisfied beyond reasonable doubt that in Buedu and Kailahun Town beginning in February 1998, AFRC and RUF fighters held an unknown number of women in captivity, and intentionally engaged in non-consensual sexual intercourse with them. Given the coercive circumstances that resulted from the women being held captive, the Trial Chamber is satisfied beyond reasonable doubt that the perpetrators knew of the victims' non-consent.

c. Rape after February 1998 of captured women in Buedu from March to December 1999 – Kailahun District

2779. para. 966: Based on Koker's evidence, the Trial Chamber finds beyond reasonable doubt that AFRC/RUF members detained women in a coercive environment and intentionally engaged in non-consensual sexual intercourse with them from March 1998 to December 1999. Given that they were forcibly detained against their will, the Trial Chamber finds beyond reasonable doubt that the perpetrators knew of the women's non-consent.

d. TF1-189 raped by RUF members in Kailahun Town – Kailahun District

2780. para. 970: The Trial Chamber finds beyond reasonable doubt that between August and September 1998 in Kailahun, an RUF rebel named Commander A intentionally engaged in non-consensual sexual intercourse with TF1-189, and that Commander A knew of TF1-189's non-consent to these sexual acts.

e. Conclusion – Kailahun District - Rape

2781. para. 971: Based on the evidence above the Trial Chamber finds beyond reasonable doubt that between about 30 November 1996 and about 18 January 2002 members of the AFRC/RUF raped TF1-189 and an unknown number of women in the Kailahun District.

2782. para. 972: The Trial Chamber recalls that the Prosecution has established beyond reasonable doubt that at all times relevant to the Indictment, the RUF and/or AFRC forces directed both a widespread and systematic attack against the civilian population of Sierra Leone.[2491] The Trial Chamber is satisfied that each of the rapes proved by the Prosecution in respect of Kailahun District formed part of the said attack and that the perpetrators were aware of this fact. Therefore, the Trial Chamber is satisfied that the aforementioned rapes in Kailahun District constitute rape as a crime against humanity under Article 2 of the Statute.

(vi) Freetown and the Western Area – Rape

a. Rape in Freetown – Freetown and the Western Area

2783. para. 980: Mansaray was cross-examined on his tendered evidence but not on that part of his evidence cited above, which the Trial Chamber finds credible. On the basis of his direct observations, the Trial Chamber finds beyond reasonable doubt that "rebels", which included AFRC, RUF, STF and Liberian fighters under Gullit's command, intentionally engaged in sexual intercourse with an unknown number of women and girls on the grounds of the State House, over a period of three nights in January 1999. The Trial Chamber further notes that these instances of sexual intercourse occurred in a public area, perpetrated by rebels who had just invaded the city. Considering the evidence that the women and girls were crying and protesting, the Trial Chamber finds beyond reasonable doubt that the sexual intercourse was non-consensual, and that the perpetrators knew of the victims' non-consent.

2784. para. 983: The Trial Chamber finds that it is clear from Alimamy Bobson Sesay's testimony that the girls who were brought to State House were captured by members of the AFRC, RUF, STF and Liberian fighters who intentionally engaged in sexual intercourse with them. Based on his statement that the girls "were forced to do anything, so they accepted to have sexual intercourse with the commanders" and in light of the coercive circumstances of their capture by these forces, the Trial Chamber finds beyond reasonable doubt that the girls did not consent to sexual intercourse with the forces and that the perpetrators knew of their non-consent.

2785. para. 984: The Trial Chamber further finds Alimamy Bobson Sesay, a commander in the AFRC, captured and intentionally had sexual intercourse with a young girl in Freetown during the 1999 attack. Given the coercive environment and the fact that the girl was captured the Trial Chamber finds that she did not consent to the sexual intercourse and that Bobson Sesay knew of her non-consent.

2786. para. 989: TF1-028's evidence that members of the RUF intentionally engaged in sexual intercourse with young girls is based on her direct observations while in the same room as the victims, and is credible. The witness provided an estimate of the ages of the victims. Given that this was a situation in which young girls were captured by rebel forces in the context of an attack on a city, and noting that the rebels had sexual intercourse with them in the presence of others including TF1-028, who pleaded with them, the Trial Chamber finds beyond reasonable doubt that the victims did not consent, and that the perpetrators knew of their non-consent.

b. Kissy – Freetown and the Western Area – Rape

2787. para. 992: Based on Wai's direct observation, the Trial Chamber finds beyond reasonable doubt that AFRC rebels under the Command of Captain Blood intentionally engaged in sexual intercourse with young girls, aged 13-15 years, in an open area, despite resistance by at least one victim, in circumstances in which there was violent coercion. The Trial Chamber is satisfied beyond reasonable doubt that, given the coercive environment and threats, there was no consent by the girls and that the perpetrators knew that the victims did not consent.

c. Rape of TF1-029 in Wellington, Calaba Town and Benguema – Freetown and the Western Area

2788. para. 999: On the basis of this evidence, the Trial Chamber finds beyond reasonable doubt that between 22 January 1999 and 10 March 1999, which is during and after the

Indictment period, in Wellington, Calaba Town and Benguema, Major Arif, an SLA soldier, intentionally engaged in sexual intercourse with TF1-029. Based on the evidence of the environment of violence and abduction, as well as the witness's testimony that she was "forced to have sex", the Trial Chamber finds beyond reasonable doubt that she did not consent to these acts of sexual intercourse and that Major Arif knew of her non-consent.

d. Rape of Akiatu Tholley in Allen Town and Waterloo – Freetown and the Western Area

2789. para. 1007: On the basis of this evidence, the Trial Chamber finds beyond reasonable doubt that between late January and early April 1999, James, an STF fighter, intentionally engaged in sexual intercourse with Tholley in Allen Town and in Waterloo. Based on the evidence of the environment of violence and her abduction, as well as the witness's testimony that she was "forced to have sex", the Trial Chamber finds beyond reasonable doubt that Tholley did not consent to these sexual acts and that James knew of her non-consent.

e. Rape of TF1-023 in Calaba Town, Benguema and Four Mile by a member of the AFRC from late January until March, 1999 – Freetown and the Western Area

2790. para. 1015: The Trial Chamber finds beyond reasonable doubt that between 22 January and approximately March 1999, which extends beyond the Indictment period for Freetown and the Western Area, Colonel B, a member of the AFRC, intentionally engaged in sexual intercourse with TF1-023. The Trial Chamber finds, based on the evidence of the environment of violence and coercion to which TF1-023 testified, that she did not consent to these sexual acts, and that Colonel B knew that she did not consent.

f. Conclusion – Freetown and Western Area - Rape

2791. para. 1016: Based on the evidence above, the Trial Chamber finds that the Prosecution has established beyond reasonable doubt that:

(i) Men and boys, members of AFRC, RUF, STF and Liberian fighters, under the command of Gullit, raped an unknown number of women and girls in the grounds of the State House over three nights in January 1999;

(ii) AFRC, RUF, STF and Liberian commanders and fighters raped an unknown number of girls inside State House during the Freetown attack of January 1999;

(iii) Alimamy Bobson Sesay, a commander in the AFRC, captured and raped a young girl in Freetown during the 1999 attack;

(iv) RUF fighters raped an unknown number of girls in a house on Blackhall Road during the Freetown attack of January 1999;

(v) Rebels under the command of Captain Blood raped an unknown number of girls in Kissy on or about 22 January 1999;

(vi) Major Arif, an SLA soldier, raped TF1-029 between 22 January 1999 and 10 March 1999, which is during and after the Indictment period, in Wellington, Calaba Town and Benguema;

(vii) James, an STF fighter, between late January and early April 1999 raped Akiatu Tholley in Allen Town and in Waterloo;

(viii) Colonel B, a member of the AFRC, raped TF1-023 between 22 January and approximately March 1999.The Trial Chamber recalls that the Prosecution has established beyond reasonable doubt that at all times relevant to the Indictment, the RUF and/or AFRC forces directed both a widespread and systematic attack against the civilian population of Sierra Leone.2597 The Trial Chamber is satisfied that each of the rapes proved by the Prosecution in respect of Freetown and the Western Area formed part of the said attack and that the perpetrators were aware of this fact. Therefore, the Trial Chamber is satisfied that the aforementioned rapes in Freetown and the Western Area constitute rape as a crime against humanity under Article 2 of the Statute.

2792. Regarding Taylor's individual criminal responsibility (Aiding and Abetting), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Aiding and Abetting - paras. 6904-6906 [6351], 6910-6915 [6354], 6918-6924 [6360], 6927-6937 [6367], 6940-6946 [6378], 6947-6952 [6385], 6953 [6391].

2793. Regarding Taylor's individual criminal responsibility (Planning), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Planning - paras. 6957 [6392], 6958-6968 [6393], 6969-6970 [6404], 6971 [6406].

2794. Regarding Taylor's individual criminal responsibility (Instigating), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Instigating - para. 6972 [6407].

2795. Regarding Taylor's individual criminal responsibility (Ordering), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Ordering - para. 6973 [6408].

2796. Regarding Taylor's superior responsibility, see below: Chapter 13 (Article 6.3 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.3 of the Statute - Superior Responsibility - paras. 6977 - 6986 [8613].

3. Appellate Judgment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-A, Judgment, 26 September 2013

(a) Factual Findings

2797. para. 253: The Trial Chamber found that the RUF/AFRC's operational strategy was characterised by a campaign of crimes against the Sierra Leonean population, including the crimes charged in all 11 Counts of the Indictment,[578] which were inextricably linked to the strategy of the military operations themselves. This strategy entailed a campaign of terror against civilians as a primary *modus operandi*, to achieve military gains at any civilian cost and political gains in order to attract the attention of the international community and improve the RUF/AFRC's negotiating stance with the Sierra Leonean government (the "Operational Strategy").[579]

2798. para. 254: In assessing Taylor's alleged criminal liability, the Trial Chamber found that Taylor, by his acts and conduct, was "critical in enabling" the RUF/AFRC's Operational Strategy, "supported, sustained and enhanced" the functioning of the RUF/AFRC and its capacity to implement its Operational Strategy, planned an attack of terror as the *modus operandi* of the attack on Freetown and had a substantial effect on the crimes committed by the RUF/AFRC.[580] It further found that Taylor knew of the RUF/AFRC's Operational Strategy, knew that his acts and conduct assisted the commission of crimes in the implementation of that Operational Strategy and knew the essential elements of the crimes in which he was participating.[581]

2799. Regarding the RUF/AFRC's Operational Strategy, see below: Chapter 12 (Article 6.1. Liability) -Taylor - Appellate Judgment - Findings and Conclusions - The RUF/AFRC's Operational Strategy - paras. 257-302 [6411].

2800. para. 303: The Appeals Chamber has reviewed the Trial Chamber's assessment of the evidence and affirmed the findings in the Judgment.[821] It has further affirmed the Trial Chamber's finding that the RUF/AFRC leadership pursued an Operational Strategy to commit the crimes charged in Counts 1-11 of the Indictment.[822]

2801. Regarding Taylor's Acts, Conduct and Mental State, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Acts, Conduct and Mental State - paras. 303 - 343 [6457].

(b) Legal Conclusions

2802. See below: Annex B encompasses the discussion of the evaluation of evidence relating to all the crimes [Annex B].

2803. Regarding Taylor's Criminal Liability, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Criminal Liability - paras. 497-595 [6630].

B. RUF

1. Indictment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-2004-15-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

2804. Paragraph 19 through 39 are incorporated by reference.[115]

2805. These attacks [para.41: 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] were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property.[116]

[115] RUF Indictment, para. 40.
[116] RUF Indictment, para. 42.

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

2806. Members of the AFRC/RUF subordinate to and/or acting in concert with Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, committed crimes set forth below in paragraphs 45 through 82, and charged in counts 3 through 14, as part of a campaign to terrorize the civilian population. The AFRC/RUF also committed the crimes to punish the civilian population or 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.[117]

(iii) Counts 6-9: Sexual Violence

2807. 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:[118]

> i. Kono District: Between about 14 February 1998 and 30 June 1998, members of the AFRC/RUF raped hundreds of women and girls at various locations throughout the district including Koidu, Tombodu, Kissi-Town, Foender (or Foendu), Tomenduh, Fokoiya, Wondedu, and AFRC/RUF camps such as "superman camp" and 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";[119]
>
> ii. Koinadugu District: Between about 14 February 1998 and 30 June 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." The "wives were forced to perform a number of conjugal duties under coercion by their "husbands";[120]
>
> iii. Bombali District: 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 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";[121]
>
> iv. Kailahun District: At all times relevant to this indictment, an unknown number of women and girls at various locations in the District were subjected to

[117] RUF Indictment, para. 44.
[118] RUF Indictment, para. 54.
[119] RUF Indictment, para. 55.
[120] RUF Indictment, para. 56.
[121] RUF Indictment, para. 57.

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";[122]

v. Freetown and Western Area: Between 6 January 1999 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 sex slaves and/or forced them into "marriages," and/or forced them into other forms of sexual violence. The "wives were forced to perform a number of conjugal duties under coercion by their "husbands";[123]

vi. Port Loko District: About the month of February 1999, AFRC/RUF forces fled to various locations in Porto Loko District. Between February 1999 and April 1999, members of the AFRC/RUF raped an unknown number of women and girls at 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." The "wives were forced to perform a number of conjugal duties under coercion by their "husbands";[124]

2808. 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 inhuman 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.[125]

[122] RUF Indictment, para. 58.
[123] RUF Indictment, para. 59.
[124] RUF Indictment, para. 60.
[125] RUF Indictment, para. 60.

2. Trial Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-T, Judgement, 2 March 2009

(a) Factual Findings

(i) Kono District – Crimes

a. Background to Kono District – Kono District – Crimes

2809. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Background to Kono District – paras. 1136 – 1139 [208].

b. Koidu Town – Kono District – Crimes

2810. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Koidu Town – Rapes in Koidu Town – paras. 1152 - 1153 [224].

c. Tombodu – Kono District – Crimes

2811. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Tombodu - Rape of a woman by Staff Alhaji – para. 1171 [243].

d. Sawao – Kono District – Crimes

2812. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Sawao – Rapes, beatings and amputations – paras. 1180 – 1185 [252].

e. Penduma – Kono District – Crimes

2813. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Penduma – Rapes, killings and amputations – paras. 1191 – 1195 [263].

f. Bumpeh – Kono District – Crimes

2814. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Bumpeh – Rapes and sexual violence – paras. 1205 - 1206 [274].

g. Bomboafuidu – Kono District – Crimes

2815. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Bomboafuidu – Rape and sexual violence – paras. 1207 -1208 [276].

(ii) Kailahun District – Crimes

a. Background to Kailahun District – Kailahun District – Crimes

2816. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Background to Kailahun District – paras. 1380 – 1385 [413].

2817. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Sexual violence – para. 1405 [438].

2818. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Sexual violence – 'Forced Marriage' of TF1-093 – para. 1408 [441].

(iii) Freetown and the Western Area – Crimes

a. Background to Freetown and the Western Area – Freetown and the Western Area – Crimes

2819. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area– para. 1510 [477].

2820. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Perpetrators of the Attack on Freetown – paras. 1511 – 1515 [478].

2821. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Targeting of the civilian population in Freetown – paras. 1516 – 1520 [483], 1522 [489].

b. State House – Freetown and the Western Area – Crimes

2822. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – State House – para. 1523 [490].

c. Upgun and Fourah Bay – Freetown and the Western Area – Crimes

2823. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Upgun and Fourah Bay – para. 1529 [496].

d. Kissy – Freetown and the Western Area – Crimes

2824. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Amputations and Looting of TF1-097 and others – para. 1556 [523].

e. Allan Town, Calaba Town and Benguema – Freetown and the Western Area – Crimes

2825. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes - Allan Town, Calaba Town and Benguema - 'Forced Marriage' of TF1-029 – paras. 1562- 1564 [529].

(iv) Koindugu District – Crimes

2826. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 – 1505 [533].

(v) Bombali District – Crimes

2827. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 – 1509 [543].

(vi) Port Loko District – Crimes

2828. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras. 1609 - [547].

(b) Legal Conclusions

(i) Applicable law - CAH

2829. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Applicable law - CAH – paras. 75 – 90 [1582].

(ii) CAH – Findings on general requirements

2830. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – CAH – Findings on general requirements – paras. 942 – 963 [1598].

(iii) Applicable law – Rape

2831. para. 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]

2832. para. 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]

2833. para. 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 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]

2834. para. 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]

2835. para. 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 nonconsent, 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 possible."[292]

2836. para. 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]

2837. para. 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]

2838. para. 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.

2839. para. 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.

(iv) Pleading

a. Criminal acts and events - Pleading

2840. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Criminal acts and events – paras.411 – 414, 417 – 419 [604].

b. Locations – Pleading

2841. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Locations – paras. 420 – 422 [613].

c. Timeframes – Pleading

2842. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Timeframes – paras. 423 – 432 [616].

d. CAH – Pleading

2843. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Pleading – CAH – paras.448 - 449 [1628].

(v) Kono District – Rape

2844. See above: Chapter 2 – RUF – Trial Judgment – Legal Conclusions –Kono District – Unlawful killings - paras. 1266 – 1267 [1630].

2845. para. 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.

2846. para. 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.

2847. para. 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]

a. Koidu – Kono District – Rape

2848. para. 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]

2849. para. 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.

b. Tombodu – Kono District – Rape

2850. para. 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.

c. Sawao, Penduma and Bumpeh – Kono District – Rape

2851. para.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]

2852. para. 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.

(vi) Kailahun District – Rape

2853. para. 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).

2854. para. 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

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.

(vii) Freetown and the Western Area – Rape

2855. para. 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).

2856. para. 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.

2857. para. 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]

2858. para. 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.

2859. para. 1576: The Chamber recalls its findings that:

(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]

2860. para. 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.

2861. para. 1578: The Chamber accordingly finds that these acts constitute rape as charged under Count 6 of the Indictment.

(viii) Koindugu District – Rape

2862. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 - 1505 [533].

(ix) Bombali District – Rape

2863. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 – 1509 [543].

(x) Port Loko District – Rape

2864. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras. 1609 – 1613 [547].

3. Appellate Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-A, Judgment, 26 October 2009

(a) Factual Findings

(i) Kono District

2865. See above: Chapter 1 – RUF – Appellate Judgment – Factual Findings – Kono District – para. 428 [712].

(b) Legal Conclusions

(i) Pleading

2866. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Pleading – para. 492 [1693].

(ii) Pleading – Dissents

a. Justice Fisher:

2867. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Pleading-Dissents – Justice Fisher – para. 20 (p.517), para. 22 (p.518), para. 23 (p.518), para. 24 (p.518-519) [1715].

(iii) Crimes charged as criminal means of furthering Common Criminal Purpose - Rape

2868. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 333, 348 [751].

2869. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 377 - 378 [754].

(iv) Crimes charged and JCE *mens rea* (short review) - Rape

2870. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged and JCE *mens rea* (short review) – paras. 467 - 468, 482, 492 - 493 [756] and see, also, Justice Fisher's and Justice Winter's Dissenting Opinions in that regard.

(v) CAH – Attack against civilian population

a. Kailahun District – CAH – Attach against civilian population

2871. See above – Chapter 2 – RUF – Appellate judgment – Legal conclusions – CAH – Attack against civilian population – Kailahun District – paras. 714, 719 – 724 [1715].

(vi) Kono District - Rape

2872. para. 439: Sesay and Gbao submit that the Trial Chamber failed to explain how it imputed to the JCE members the following crimes of sexual violence committed in Kono District:[1101] (i) the rapes and outrages on personal dignity in Bumpeh on or about March 1998;[1102] (ii) the rape of a woman in Tombodu by Staff Alhaji in April 1998;[1103] (iii) the rapes of TF1-127's wife and of an unknown number of women in Penduma in April 1998;[1104] (iv) the rapes and genital mutilations in Bomboafuidu;[1105] (v) the rapes of TF1-195 and of five other women in Sawao between February and April 1998;[1106] [1107] and (vi) the forcible marriage of an unknown number of women in the civilian camp at Wendedu on or about April 1998.

2873. para. 440: The Appeals Chamber notes that the Trial Chamber's finding that the rapes in Kono District "were not intended merely for personal satisfaction or [as] a means of sexual gratification for the fighter."[1108] Rather, these acts were committed "in order to break the will of the population and ensure their submission to AFRC/RUF control."[1109] The Trial Chamber further found that the rebel forces "systematically engage[ed] in sexual violence in order to demonstrate that the communities were unable to protect their on wives, daughters, mothers and sisters."[1110] It also held that "countless women of all ages were routinely" subjected to the practice of forced marriage and sexual slavery.[1111] "[T]he pattern of sexual enslavement employed by the RUF was a deliberate system."[1112] These findings are reflected in the Trial Chamber's findings on the JCE in Kono District, where it held that the "widespread commission by RUF and AFRC fighters of [*inter alia*] rapes, sexual slavery, 'forced marriages'… 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."[1113]

2874. para. 441: In other words, the AFRC/RUF leadership, which included most of the JCE members,[1114] availed themselves[1115] of their fighters to commit sexual violence, including forced marriages, in Kono District in order to achieve the objective of controlling the territory of Sierra Leone. Although not expressed in those exact terms, the Trial Chamber's reasons why it imputed

these crimes to the JCE members are nonetheless clear. Sesay's and Gbao's submissions that the Trial Chamber failed to provide a reasoned opinion in this regard are therefore dismissed.

2875. para. 442: Sesay also challenges the imputation of the rapes and genital mutilations in Bomboafuidu on the basis that the perpetrators were unidentified.[1116] However, as he does not point to the evidence to contest the Trial Chamber's finding that the perpetrators were "AFRC/RUF rebels,"[1117] his argument is rejected.

2876. Regarding Sesay's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Sesay – paras. 624, 627 – 634 [7658].

2877. Regarding Kallon's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Kallon – paras. 806, 810 – 815 [7667].

2878. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Gbao – paras. 946 – 948, 951 – 955 [7615].

2879. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

2880. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras. 4 – 28 [7454].

2881. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

(vii) Kailahun District - Rape

2882. Regarding Sesay's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Sesay – para. 635 [7694].

2883. See above – Chapter 2 – RUF – Appellate judgment – Legal conclusions – CAH – Attack against civilian population – Kailahun District – paras. 714, 719 – 724 [1715].

2884. Regarding Kallon's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Kallon – paras. 817, 820 – 824 [7759].

2885. Regarding Gbao's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Gbao – paras. 967, 972 - 983, 986 – 994 [7780].

C. AFRC

1. Indictment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

2886. Paragraphs 21 through 36 are incorporated by reference.[126]

2887. 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 ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, conducted armed attacks throughout the territory of the Republic of Sierra Leone, including Bo, Kono, Kenema,

[126] AFRC Indictment, para. 37.

Koinadugu, Bombali and Kailahun and Port Loko Districts and the city of Freetown and the Western Area. Targets of the armed attacks included civilians. [127]

2888. These attacks were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property. [128]

2889. 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. [129]

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

2890. Members of the AFRC/RUF subordinate to and/or acting in concert with ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, committed the crimes set forth below in paragraphs 42 through 79 and charged in Counts 3 through 14, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF.[130]

[127] AFRC Indictment, para. 38.
[128] AFRC Indictment, para. 39.
[129] AFRC Indictment, para. 40.
[130] AFRC Indictment, para. 50.

(iii) Counts 6-9: Sexual Violence

2891. 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:[131]

> i. Kono District - 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" 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";[132]
>
> ii. Koinadugu District - 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";[133]
>
> iii. Bombali District - 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";[134]
>
> iv. Kailahun District - 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" 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";[135]
>
> v. Freetown and the Western Area - 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

[131] AFRC Indictment, para. 51.
[132] AFRC Indictment, para. 52.
[133] AFRC Indictment, para. 53.
[134] AFRC Indictment, para. 54.
[135] AFRC Indictment, para. 55.

subjected them to other forms of sexual violence. The "wives" were forced to perform a number of conjugal duties under coercion by their "husbands";[136]

vi. Port Loko District - 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".[137]

2892. By their acts or omissions in relation to these events, ALEX T AMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, 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.

2. Trial Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-T, Judgement, 20 June 2007

[136] AFRC Indictment, para. 56.
[137] AFRC Indictment, para. 57.

(a) Factual Findings

(i) Kono District - Crimes

2893. para. 969: The Indictment alleges that between about 14 February 1998 and 30 June 1998 members of the AFRC/RUF raped hundreds of women and girls at various locations throughout Kono District including Koidu, Tombodu, Kissi-town (or Kissi Town), Foendor (or Foendu), Tomenueh, Fokoiya, Wondedu, and AFRC/RUF camps such as "Superman camp" and Kissi-town (or Kissi Town) camp.[1813]

2894. para. 970: The Prosecution has conceded that there was no evidence of rape in respect of Tomendeh, Fokoiya, "Superman Camp"/Kissi Town Camp, Kissi Town, or Tombodu.[1814]

2895. para. 971: The Trial Chamber has carefully considered the evidence on rape, a crime against humanity, relative to Kono District of Prosecution witnesses TF1-198, TF1-206, TF1-272, TF1-019, TF1-033, and TF1-217 and Defence witnesses DBK-129, DAB-025, DAB-l15, DAB-114, DBA-113, DAB-123, DAB-128, DSK-103, DAB-127, DAB-134, DAB-129, DAB-101, DAB-125, and DAB-124. The Trial Chamber finds the evidence given by these witnesses with regards to the commission of crimes under Count 6 relates to locations not specified in the Indictment and therefore makes no findings on the basis of their evidence.

2896. para. 972: In arriving at its factual findings, the Trial Chamber has taken into consideration the evidence of Prosecution witnesses TF1-217, TF1-019, TF1-076 and Defence witnesses DBK-117.

a. Koidu Town – Kono District - Crimes

2897. para. 973: Prosecution witness TF1-217 testified that "juntas" and "rebels" under the command of a certain 'Akim Sesay' attacked Koidu Town and raped young girls in February or March 1998.[1815] On cross-examination, witness DBK-117 gave similar evidence. The witness, who was based in Koidu from April 1998 until it was overtaken by ECOMOG[1816] and again when Koidu was recaptured by 'Superman' in December 1998, testified that the RUF raped women and girls when they went on patrols in Kono District.[1817] The Trial Chamber finds that the evidence of both Prosecution witness TF1-217 and Defence witness DBK-117 to be vague and insufficient to satisfy the *actus reus* and *mens rea* elements of the crime of rape.

2898. para. 974: The Trial Chamber also notes the evidence of Prosecution witness TF1-019 but finds that the relevant aspects fall outside of the indicted period for Kono District and therefore makes no findings in this regard.[1818]

b. Foendor/Foendu – Kono District - Crimes

2899. para. 975: Witness TF1-076 testified that on an unknown date in 1998, when she was approximately 15 years old, she fled her village of Tombodu and went towards Foendor with her sister, her brother-in-law and her uncle. They were captured by three "rebels" in the bush just outside of Foendor. The witness described the rebels as wearing combat trousers or shorts and t-shirts. They were carrying guns and a cutlass and were speaking Liberian English. One of the rebels raped the witness. He cut off her skirt and underwear with a knife and penetrated her with his penis. The witness bled and became light-headed.[1819] On cross-examination, the Defence put to the witness a prior statement in which she stated that the rebel removed her "lappa".[1820] The Trial Chamber finds that there is no meaningful difference between a "lappa" and a skirt and therefore this inconsistency does not undermine the credibility of the witness.

2900. para. 976: The Trial Chamber is satisfied on the basis of the witness's description of the perpetrators as "rebels", wearing combat trousers or shorts and t-shirts, carrying guns and a cutlass and speaking Liberian English that they were members of either the AFRC or the RUF.

2901. para. 977: The Prosecution argues that it did not attempt to identify specifically the attacker of witness TF1-076, but submits that the attacker was a member of the Junta under the command of both AFRC and RUF commanders. [1821]

2902. para. 978: The Trial Chamber notes that the Prosecution in its Final Brief listed the preceding evidence of witness TF1-076 as having occurred in Tombodu.[1822] The Trial Chamber finds this is a mischaracterisation of the evidence. The witness clearly testified that she left Tombodu and was in the bush near Foendor when she was attacked. The Trial Chamber also notes that the- Prosecution conceded that it did not lead evidence on Count 6 in Tombodu.[1823]

2903. para. 979: The Trial Chamber finds the testimony of witness TF1-076 to be credible; however, the Prosecution failed to establish that the evidence of the witness falls within the indicted period for Kono District (14 February through 30 June 1998). The witness testified that the events occurred in 1998 but did not provide any further direct or circumstantial evidence to guide the Chamber. Where two reasonable inferences are possible on the available evidence, the

Trial Chamber is bound to interpret the evidence to the benefit of the Accused. The Trial Chamber therefore makes no further findings on the evidence of witness TF1-076.

c. Wondedu – Kono District – Crimes

2904. para. 980: In making its factual findings in Wondedu, the Trial Chamber takes into consideration the evidence of Prosecution witness TF1-217 who testified that women, including his sister, were abducted from Wondedu.[1824] However, no further evidence was adduced which would suggest that the women he knew were raped.

(ii) Koinadugu District - Crimes

2905. para. 982: The Indictment alleges that between about 14 February and 30 September 1998 members of the AFRC/RUF raped an unknown number of women and girls in locations in Koinadugu District including Kabala, Koinadugu, Heremakono and Fadugu.[1825]

2906. para. 983: The Prosecution has conceded that it did not lead evidence of rape in respect of Heremakono.[1826]

2907. para. 984: The Trial Chamber has carefully considered the evidence on rape, a crime against humanity, relative to Koinadugu District of Prosecution witnesses TFl-153, TF1-033, TFl-199 and Defence witnesses DAB-090, DAB-086, DAB-088 and DAB-089. The Trial Chamber finds the evidence given by these witnesses relates to locations not specified in the Indictment and therefore makes no findings on the basis of their evidence.

2908. para. 985: In coming to its findings in relation to Koinadugu District, the Trial Chamber has examined the evidence of Prosecution witnesses TFl-199 and TFl-209 and Defence witnesses DBK-083 DAB-079, DAB-081, DAB-078, DAB-085 and DBK-156.

a. Kabala – Koinadugu District - Crimes

2909. para. 986: Defence witness DAB-156 testified that after the AFRC was overthrown in Freetown in February 1998 but before the rainy season, she was raped by 'Junior Lion'[1827] in Kabala. He held her, raped her, banged her on the forehead where she still has a scar, and knocked out some of her teeth.[1828] The Trial Chamber is satisfied that the actus reus and mens rea of rape are satisfied on the basis of this evidence.

2910. para. 987: Witness DBK-083 testified that sometime after the AFRC and RUF were forced to withdraw from Freetown,[1829] a column of troops passed by his farm outside of Kabala. The witness testified that the troops were led by SA] Musa and Superman. At that time, the witness heard reports of rapes.[1830]

2911. para. 988: The Trial Chamber also notes, but does not rely on, the testimony of witness TF1-199 with regards to a possible incident of rape in Kabala. The Trial Chamber finds that the relevant evidence falls outside of the indicted period. The witness testified that he came to Kabala in 1998. While no specific date was given by the witness of his arrival, the Trial Chamber notes the witness stated that he was abducted by the AFRC/RUF in Bombali District at Christmas time 1998 and travelled with the AFRC/RUF to several places prior to arriving in Kabala.[1831] As such, he could not have been in Kabala prior to 30 September 1998, the end of the indicted period for Koinadugu.

b. Koinadugu Town – Koinadugu District - Crimes

2912. para. 989: Witness TFl-209 testified that she was "in Kabala in Koinadugu Town" in August of 1998 when the witness heard and saw "rebels" carrying guns shooting outside her home. The "rebels" were dressed in combat and civilian clothes with pieces of red and white cloth tied around their heads.[1832] The witness fled. The next day, the witness was at her mother's farm when she, her husband, her six year old child and some neighbours were attacked by "rebels".

2913. para. 990: The Trial Chamber notes that the witness testified in chief that the timeframe of these events was August 1998 but that on cross-examination, when asked whether she remembered when she was captured, she stated that she was not sure of the dates because she had never been to school, and that she could not remember the year. When asked if she remembered August 1998, the witness stated that she remembered August was in the rainy season and that was the time in which she was captured.[1833] The Trial Chamber notes, in light of the repeated evidence and references before it, that the annual rainy season in Sierra Leone extends from May to September. The Trial Chamber accepts that witness TFl-209 has little formal education and that her indication of August is not inconsistent with the Chamber's determination of the rainy season. The Trial Chamber is therefore satisfied that it can rely upon the timeframe adduced of August 1998.

2914. para. 991: The witness described the persons who attacked her as "rebels and soldiers" and as "juntas". They were armed.[1834] The witness saw four rebels arrive; two went towards a neighbouring farm and two remained at the witness's mother's farm.[1835] Two rebels raped the

witness in the presence of her husband. The two rebels told her to "bow down" and they removed her "pants" and "lappa". The witness stated that the rebels and raped her "as their wife." The witness was pregnant at the time of the rapes. She stated that her "pregnancy was wasted"[1836] which the Trial Chamber understands to mean that she miscarried as a result of the rapes.

2915. para. 992: The witness testified that the rebels beat her husband to death with a mortar pestle and shot her child dead. A rebel cut the witness's hand with a knife when she tried to hold on to her child.[1837] The witness also testified that she saw the rebels rape other women and children during the attack. She was unable to estimate how many persons were raped. She estimated that the children who were raped were approximately nine to ten years old.[1838]

2916. para. 993: After the attack, the rebels looted some belongings, such as rice, and forced civilians to carry those belongings to town. In town, the witness learned that the men who raped her belonged to Superman and SAJ Musa's groups.[1839]

2917. para. 994: The Trial Chamber notes that the witness's testimony was unclear with regards to her location at the time of the attacks. She testified that she was "in Kabala in Koinadugu" at the time that she first saw rebels in August 1998, but then continued to respond to the Prosecutor's questions with regards to "Koinadugu."[1840] She also testified that the rebels she saw at this time told her they were going to Kabala.[1841] On cross-examination, the witness clarified that in August 1998 in the rainy season she was not in Kabala, but in Koinadugu.[1842]

2918. para. 995: On the second occasion the witness saw rebels, at the time that according to her testimony she was raped, the witness testified she had fled to her mother's farm but did not give the precise location of the farm. She subsequently testified that after the attack she was brought "to town" by the rebels.[1843] Although she did not explicitly specify which town she was referring to, the Trial Chamber infers, as discussed below, that she was taken to Koinadugu Town. The Trial Chamber similarly infers that witness's mother's farm is located in the environs of Koinadugu Town.

2919. para. 996: The Trial Chamber finds the witness's evidence with regards to this attack credible and not significantly shaken on cross-examination. From the description of her attackers as armed "rebels and soldiers", as "juntas", and as members of 'Superman' and SAJ Musa's groups, known commanders of the RUF and the AFRC respectively, the Trial Chamber is satisfied that the perpetrators of the attack belonged to either the AFRC or the RUF. The Trial Chamber infers from the context of violence and coercion that the witness did not and could not have

validly consented to the sexual intercourse. The Trial Chamber is thus satisfied that the *actus reus* and *mens rea* elements of rape are met with regards to this incident.

2920. para. 997: The Trial Chamber also considers the further evidence of witness TF1-209 suggesting acts of sexual violence occurred subsequent to this attack. The witness testified that captured civilians, including herself, were taken "to town" where the witness indicated that she was then held by two persons she named as 'Jabie' and 'Allusein'. The witness testified that the person who captured her took her to a house where the witness cooked and laundered for him. The witness testified that he turned her into his "wife" which she explained meant that he would have sex with her whenever he felt like it.[1844] The witness indicated that this person was 'Jabie'. The witness testified that following 'Jabie's death, she was held and abused by 'Allusein'.[1845]

2921. para. 998: The witness testified that she had seen 'Jabie' and 'Allusein' before, when she was captured and raped at her mother's farm outside of Koinadugu Town. The witness testified that she recognised them as the rebels who had beaten her husband to death and 'Jabie' as the rebel who had shot her child dead.[1846]

2922. para. 999: The witness was strenuously challenged on the periods of time and sequence of her interactions with 'Jabie' and 'Allusein'. She remained calm and unshaken in her answers but appeared to have some difficulty in conveying what exactly she meant. However, the Trial Chamber is satisfied that the witness did not resile from her evidence in chief that she entered into relationships by force or duress with 'Jabie' for three months from the time of her capture to the time of' Jabie's' death and subsequently with Allusein for one month.[1847]

2923. para. 1000: With regards to the affiliations of the two men, the witness first testified that' Jabie' was a member of SAJ Musa's group and that 'Allusein' was a member of 'Superman's group.[1848] The witness subsequently testified that the person who took her to his house and made hereinto his wife upon her arrival in Koinadugu Town was a member of 'Superman's group.[1849] This is inconsistent with her statement that she was first with 'Jabie' and that he belonged to SAJ Musa's group. The witness later reiterated that' Allusein' was part of Superman's group.[1850] She also testified that after she was captured and taken to Koinadugu Town, she frequently saw a man she referred to as 'Five-Five', who was one of several rebels who told her about atrocities they had committed together, but that this man had left Koinadugu Town by the time the witness was with 'Allusein'.[1851] On cross-examination Counsel put it to the witness that she changed her reference in a prior statement from "Fire-Fire" to 'Five-Five'. The Trial Chamber is satisfied by the witness's clear statements that 'Five-Five' and "Fire-Fire" were separate persons with different

names and that "Fire-Fire" was a small, short boy who was known for killing and to whom she had never spoken.

2924. para. 1001: With regards to her location during these events, the Trial Chamber notes that witness TF1-209's testimony was at times unclear. The Trial Chamber has found that following the attack at her mother's farm the witness was brought to Koinadugu Town by the rebels. The witness testified that some time after she had been held for four months, she was present in Koinadugu when members of the CDF came from Kabala and there was a fight in which two members of the CDF were killed[1852] and that sometime following that Koinadugu was completely burnt.[1853] The witness testified that following this she went to a village near Koinadugu called Kalkoya.[1854] 1002. On cross-examination when asked by Counsel where she was when she was with the rebels 'Allusein' and 'Jabie' the witness replied, "Koinadugu. In the Koinadugu District or Kabala." Counsel for Kanu then asked if she was in Kabala, and the witness replied, "Yes, in my village."[1855]

2925. para. 1003: Later on cross-examination the witness stated that she was in Koinadugu at the time after SAJ Musa and Superman fought and when SAJ Musa went to Morya.[1856] Counsel and the witness then had the following exchange:

> Q: Madam Witness, when you say Koinadugu, do you mean the district or a town in Koinadugu District?
>
> A: It was a town. The town is also called Koinadugu District. When you talk of Kabala, it is in the Koinadugu District. Kabala. That has the name Koinadugu District. They only say it is Kabala.
>
> Q: You see what I am asking you, when you talk about Koinadugu, do you mean Kabala2
>
> A: No. The Koinadugu District in Kabala.
>
> Q: Is there a separate town, apart from Kabala, called Koinadugu2
>
> A: Yes, that is my own village. That is where my father was born.
>
> Q: Your village is called Koinadugu2
>
> A: Yes.[1857]

2926. para. 1004: On further cross-examination by Counsel for Kanu the witness stated that she stayed with 'Jabie' and 'Allusein' in Koinadugu Town[1858] and that during the whole of the three months she was with' Jabie' she stayed primarily in one house in Koinadugu Town, occasionally going during the day to farms in the bush.[1859]

2927. para. 1005: The Trial Chamber accepts that the witness may have been nervous to appear before it and that it may have been difficult for her to testify to events that would have been extremely traumatic. The Trial Chamber also notes that the witness's testimony was being translated and that the witness is uneducated, all of which may account for some apparent inconsistencies in her testimony. The Trial Chamber found her to be reliable and unshaken in her testimony and having carefully reviewed the evidence of the witness, is satisfied of the following:

2928. para. 1006: Witness TFl-209 was abducted and brought to Koinadugu Town in approximately August, 1998, by members of the AFRCIRUF. In Koinadugu Town she stayed first with a certain 'Jabie' for a period of three months and subsequently with a certain' Allusein' for one month.

2929. para. 1007: The Trial Chamber is satisfied that the witness's identification of 'Jabie' as one of the persons present when she was attacked at her mother's farm; her description of attackers at her mother's farm as armed "rebels and soldiers", "juntas"; and her description of 'Jabie' as being a member of SAJ Musa's group or Superman's group; are consistent with a finding that 'Jabie' was a member of the AFRC or RUF.

2930. para. 1008: The Trial Chamber is satisfied from the repeated references to Koinadugu Town and the witness's detailed descriptions of events that occurred there in her presence, that she was held by 'Jabie' in Koinadugu Town.

2931. para. 1009: Finally, the Trial Chamber is satisfied on the basis of the testimony of the witness that 'Jabie' repeatedly had sex with her and that given the context of violence, to wit, the previous attacks against the witness, the death of her husband and her child at the hands of 'Jabie', her abduction and her subsequent confinement, that the witness could not have validly consented to the repeated acts of sexual intercourse. The Trial Chamber is thus satisfied that the *actus reus* and *mens rea* elements of rape are met with regards to this incident.

2932. para. 1010: The Trial Chamber notes that further evidence was given by witness TF1-209 regarding possible acts of sexual violence perpetrated by 'Allusein' in Koinadugu Town following the death of' Jabie'. However, the Trial Chamber finds that this evidence falls out of the indictment period. The Trial Chamber has accepted that the witness was attacked in or about August, 1998 and after this attack she was held by 'Jabie' until he was killed, a period of three months. The Trial Chamber therefore concludes that' Jabie's death must have occurred some time in November, 1998 and that any events testified to by the witness occurring in the month after this point fall well outside of the indicted period for Koinadugu District which ends on 30 September

1998. The Trial Chamber therefore makes no findings with regards to Count 6 on the basis of this testimony.

2933. para. 1011: The Trial Chamber finds that the evidence of witness TF1-209 is generally supported by that of Defence witness DAB-079 who testified that he was based in Kabala and was operating with the CDF shortly after the AFRC Coup in May 1997.[1860] The witness's professional capacity, given to the Trial Chamber in closed session,[1861] put him in a position to receive information from CDF contacts about the activities of other parties in the region including SLA, AFRC and ECOMOG forces. The Trial Chamber is satisfied that the witness had indirect access to approximately 1000-1700 people and received weekly reports from Koinadugu Town as well as other locations such as Kabala, Yifin and Geberefed. The witness testified that on the basis of these reports and his own knowledge that members of the RUF committed rapes but that the SLAs were more disciplined.[1862]

2934. para. 1012: The witness testified that in Kabala, the "SLA"s, including the commanders KIS Kamara and SAJ Musa, arrived after the AFRC was driven out of Freetown by ECOMOG in February 1998.[1863] They arrived on approximately the 15th of February.[1864] A week after the SLAs arrived, starting on approximately February 22nd, the RUF also began to arrive, followed by Sam Bockarie on approximately 24 May.[1865]

2935. para. 1013: The witness testified that prior to the arrival of the RUF, the relationship between the civilians and the SLAs in Kabala was "cordial." In particular, the witness recalled that SAJ Musa held a meeting in the late Chief s compound in Sengbe in which he told his soldiers not to intimidate civilians.[1866] The witness was present at this meeting and testified that there were a large number of SLA officers at the meeting. The witness understood the meeting was called by SAJ Musa in response to reports to him from civilians in Kabala that an SLA officer had attempted to steal money from a civilian.

2936. para. 1014: The witness testified that by contrast, when the RUF arrived, Kabala became "extremely chaotic". The RUF contingent included 'Superman', 'Johnny Hemoe' and Captain Rahman D. Kobah a.k.a. 'Blackman'. The witness testified that during this time, the RUF were known to loot property, beat civilians, enter houses without permission and steal food and that there were a number of children with weapons among them. On cross-examination the witness testified that the RUF committed rapes. The witness testified that he knew of one rape in particular as he was informed of it by a woman who had been raped by 'Superman'. The witness estimated that members of the RUF raped approximately four to five women. The witness stated that the rapes motivated some civilians in Kabala to form the CDF.[1867]

2937. para. 1015: Later in his evidence in chief, the witness suggested that rape was a trademark of the RUF. The witness testified that in the reports he received on the activities of groups in the area his sources often referred generally to "rebels" which could denote either the AFRC or the RUF. Nevertheless, the witness testified that although the groups were together, each group had its trademark. The SLAs were more restrained whereas the RUF would attack more indiscriminately and more rampantly. The SLA tended to loot food while the RUF tended to burn down houses and to rape.[1868]

2938. para. 1016: Witness DAB-079 also testified that some SLAs stayed in Kabala for eight to nine months and that during that time he did not see any SLAs perpetrating sexual violence.[1869]

2939. para. 1017: The Trial Chamber finds the evidence of witness DAB-079, although largely hearsay, to be credible and consistent. The witness was not significantly shaken on cross-examination. The Trial Chamber is of the opinion that the testimony given by the witness relating to rapes alleged to have been committed by members of the RUF is insufficient to support the *actus reus* and *mens rea* elements of the crime, and does not rely upon it in this regard.

2940. para. 1018: While the Trial Chamber does not make any findings which would support a finding of rape on the basis of witness DAB-079's evidence, the Trial Chamber notes that the implication that the RUF may have committed rapes in Koinadugu District, including Koinadugu Town, during this time period generally supports the evidence of rapes committed against witness TF1-209 and others, the perpetrators of which the Trial Chamber has found belonged to the RUF or the AFRC.

2941. para. 1019: The Trial Chamber accepts the evidence of witness DAB-079 that SAJ Musa instructed his troops not to intimidate civilians but notes that this general prohibition, in and of itself, does not create a reasonable doubt with regards to the veracity of the incidents of rape described by described by witness TFl-209. Similarly, the Trial Chamber finds that the fact that witness DAB-079 did not witness any acts of violence committed in Kabala by SLAs does not in and of itself create a reasonable doubt that in fact no rapes were committed by members of the AFRC during this time period either in Kabala or elsewhere in the District. The Trial Chamber accepts that the witness was in a particular position to receive wide-ranging information on the activities of parties to the conflict in and around Kabala, including Koinadugu Town, but the Defence has not demonstrated that this information network was in any way exhaustive. Nor has the Defence demonstrated that the information network systematically collected information on possible crimes committed by the parties to the conflict. The witness's testimony therefore does

not create a reasonable doubt with regards to the specific incidents of rape to which witness TF1-209 testified in great detail.

2942. para. 1020: Finally, the Trial Chamber notes that the evidence of both witness TF1-209 and witness DAB-079 is generally supported by that of Defence witness DAB-08l who testified that while he was in captivity in Koinadugu Town after August 1998, he did not hear of SAJ Musa ordering any harassment of civilians; however, he heard that the RUF were committing rapes.

c. Fadugu – Koinadugu District - Crimes

2943. para. 1021: The Prosecution asserts that there were two attacks in Fadugu; one in May and one in September, 1998.[1870] Noting the evidence of witness DAB-078 who testified that he did not see or hear about any rapes when Fadugu was attacked on 22 May 1998,[1871] the Trial Chamber finds no evidence was led of rape in Fadugu during the May attack.

2944. para. 1022: With regards to the attack in September, the Trial Chamber has carefully reviewed the testimony of witness DAB-078 who also testified that he was in Fadugu Town when ECOMOG forces in the town were attacked on 11 September 1998. The witness testified that he hid during the attack and when the gunfire subsided he ran to a house. When he arrived he found four men who were attempting to rape a girl. The witness described two of the men as wearing soldier's uniforms and two in civilian clothes. Three of the men were armed with guns.[1872] The Trial Chamber is satisfied from this description and from the context of the attack that the men were members of the AFRC or RUF.

2945. para. 1023: The men detained the witness and forced him to watch as they raped the girl.[1873] The witness testified that the girl died from the rape due to excessive bleeding. After the attack, the witness did not see the men again. The witness later met a woman in the bush who told him that the rebels had called a meeting where 'Savage' introduced himself as the commander of the attack. His second in command was 'Ishmael'.[1874] The witness knew that 'Savage' and 'Ishmael' were SLAs "from the discussion with the men."[1875] The Trial Chamber finds the testimony of witness DAB-078 to be detailed, consistent and credible and that the *actus reus* and *mens rea* of rape are satisfied with regards to this incident.

2946. para. 1024: The Trial Chamber has carefully reviewed the testimony of Defence witness DAB-085 who testified that between February and September 1998, he did not see or hear about any rapes or sexual violence by members of the AFRC.[1876] The Trial Chamber finds that this evidence, though credible, does not raise reasonable doubt as to the testimony given by witness

DAB-078 as the witness did not provide any evidence that he would have been in a position to know whether or not the incident described by witness DAB-078 in fact occurred.

2947. para. 1025: The Trial Chamber notes that Prosecution witness TF1-199 also gave evidence of rape in Fadugu[1877] but the Chamber has not taken this evidence into consideration in its factual findings on Count 6 as the evidence relates to events which fall outside of the indicted period. The witness testified that he was abducted at Christmas time, 1998, in Bombali District and travelled to several places before arriving in Fadugu.[1878] As such, it is impossible that he could have been in Fadugu prior to the end of the indicted period, 30 September, 1998.

(iii) Bombali District – Crimes

2948. para. 1027: The Indictment alleges that between about 1 May 1998 and 30 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).[1879]

2949. para. 1028: At the Motion for Acquittal stage the Prosecution conceded that there was no evidence of rape in respect of Mandaha.[1880]

2950. para. 1029: The Trial Chamber has carefully considered evidence relevant to the crime of rape in Bombali District of Prosecution witnesses TF1-334 and TF1-033 and Defence witnesses DBK-090, DBK-094, DBK-086, DBK-I02, DBK-089 and DBK-101. The Trial Chamber finds the evidence given by these witnesses relates to locations not specified in the Indictment and therefore makes no findings on the basis of their evidence.

2951. para. 1030: In arriving at its factual findings, the Trial Chamber has taken into consideration the evidence given by Prosecution witnesses TFl-269, TF1-267, TF1-033 and George Johnson and Defence witness DBK-113.

a. Rosos – Bombali District - Crimes

2952. para. 1031: Prosecution witness TF1-269 testified that she was living in Rosos during the war when, during the rainy season, "rebels" entered the town and captured her. The Trial Chamber is satisfied that the time period described by the witness is May through July 1998. The witness testified that some of the rebels were wearing vests and some were wearing combat. Three of the rebels raped her. One of the rebels had a gun and the other had a knife. After they had raped her, a rebel pushed her to the ground and cut her in the back of the neck.[1881] The existence of a scar on

the witness's body was noted by the Chamber.[1882] The witness testified that two of the rebels convinced the others not to kill her.

2953. para. 1032: The three rebels spoke to the witness in Temne and asked her to show them where the other civilians were hiding. The witness took them to a nearby area; however the civilians were not there. Rather, there were only more rebels. One of these rebels, whom the witness described as wearing a T -shirt, told the witness to take his penis in her mouth. She refused and the rebel said he would have her killed. The rebel put his penis in her mouth and tried to rape her vaginally. When the witness resisted the rebel brought her over to another group of rebels. The witness testified that some of these rebels were armed with guns, some with sticks and some with knives and they were wearing a mix of combat and civilian clothes. One of these rebels hit the witness's head and left shin with a stick. The witness was unable to walk and her leg remains scarred. The scar on the witness's left shin was noted by the Trial Chamber.[1883] After she was beaten the witness was raped twice more. The witness described the last rebel who raped her as wearing civilian dress.[1884] Altogether, the witness was raped by five rebels.[1885]

2954. para. 1033: The Trial Chamber finds the evidence of witness TFl-269 to be detailed and consistent. The Defence was unable to adduce any major inconsistencies in her testimony during cross-examination. As such, the Trial Chamber finds the evidence described to be credible and that the *actus reus* and *mens rea* of rape are satisfied on the basis of her evidence.

2955. para. 1034: Prosecution witness TF1-267 testified that she was at her home in Rosos in 1998, during the time when farms were being burnt in the countryside, when people from the neighbouring village came and told her and the other villagers that "rebels" were attacking the area and urged them to leave. The witness left Rosos with her family and hid in the bush.[1886] Several days later, when the witness and her family were drying their belongings after a "big rain"[1887] in a nearby area called Rotu, rebels and soldiers attacked. The witness testified that one of the attackers wore a soldier's fatigue cap, another wore trousers and combat fatigue, and another had "big shoes that they wore".[1888] On cross-examination, the witness stated that she was able to identify SLA soldiers even though she had not seen them before and she clarified that one of the soldiers was wearing a cap and trousers which were both "military fatigue" and that others were wearing big black boots.[1889] The witness explained that others wore civilian clothes.[1890]

2956. para. 1035: The witness tried to run away, but a soldier kicked her and she fell down. The soldier tore off all her clothes, including her "knicker"[1891] - which the Trial Chamber understands to mean underwear - and brutally raped her. The witness stated, "he took his penis and thrust it into my vagina and started pounding me like he was pounding mud ... he did not sex me as people

do normally. He did it abnormally".[1892] The witness was then raped by another rebel. She tried to fight him but he pinned her back on the ground. A third rebel - who was armed, came and told the witness, "If you open your mouth, I will shoot you dead" and then raped her. The witness testified that she experienced great pain. A fourth rebel came and the witness tried to get up, but as she bent to rise "somebody" pushed her back down onto her back. The fourth rebel also raped the witness. She was afraid he would kill her and she could not resist. The witness testified that the last rape was particularly painful. She stated, "it seem[ed] as though all my guts were coming out".[1893] When the rebels left, the witness tried to get up but she fell back down again as she was so weak.[1894] The Trial Chamber is satisfied on the basis of this evidence that the actus reus and mens rea of rape are proven.

2957. para. 1036: The witness testified further that when the rebels left the village, her daughter ran to her and told her that she too had been raped by two rebels from the same group - the only group of rebels to come to Rosos that day.[1895] The witness's daughter told her that "they" stuffed her mouth with cloth and raped her one after the other. The witness saw that her daughter was bleeding from her vagina. Prior to this incident, her daughter was a virgin.[1896]

2958. para. 1037: The Trial Chamber notes that in her evidence-in-chief, the witness refers to her daughter alternately as her "sibling", "daughter" and "lady".[1897] On cross-examination the witness adopted prior statements which use the term "daughter".[1898] The Trial Chamber notes that the witness testified in Krio which was translated into English. The Chamber is satisfied that the various terms used do not undermine the credibility of the witness and that a girl that the witness knew very well was raped that day. The Trial Chamber finds the evidence given by witness TF1-267 in chief to be highly detailed and coherent and the witness was not shaken on cross-examination. The Trial Chamber therefore finds the evidence to be credible and is satisfied on the basis of this evidence that the *actus reus* and *mens rea* of rape are satisfied.

2959. para. 1038: The evidence of Prosecution witnesses TFl-269 and TFl-267 is supported generally by that of Prosecution witness TF1-033 who testified to being with AFRC troops at Rosos during the rainy season in 1998.[1899] He testified that rape was widespread throughout the time he was in captivity with the AFRC troops.[1900]

2960. para. 1039: Prosecution witness, George Johnson aka' Junior Lion', testified that towards the end of April or early May 1998, when the AFRC advanced to Rosos, he was appointed as a Provost Marshal in charge of discipline to ensure that "jungle justice" was adhered to. The witness testified that "jungle justice" included a prohibition against rape during operations. Punishment for breaching "jungle justice" included public flogging or death.[1901] The Trial Chamber finds that the

mere prohibition of rape does not create any doubt as to whether the incidents of rape testified to in great detail by Prosecution witnesses TF1-269 and TF1-267 in fact occurred.

2961. para. 1040: The Trial Chamber has carefully examined the evidence of witness DBK-113, who testified that he went to Rosos with the AFRC and stayed there for about three or four months.[1902] On cross-examination, the witness testified that he did not see or hear about any rapes of female civilians at Rosos.[1903] In the absence of evidence establishing that the witness was in a position to broadly determine whether rapes were or were not occurring and given the highly detailed and credible evidence of Prosecution witnesses to the contrary, the Trial Chamber finds that this evidence does not raise reasonable doubt that rapes did in fact occur in Rosos at this time.

(iv) Freetown and Western Area – Crimes

2962. para. 1042: The Indictment alleges that between 6 January 1999 and 28 February 1999 members of the AFRC/RUF raped hundreds of women and girls throughout the city of Freetown and the Western Area.[1904]

2963. para. 1043: In arriving at its factual findings in Freetown and the Western Area, the Trial Chamber has taken into consideration the evidence given by Prosecution witnesses TF1-334, TF1-024, Gibril Massaquoi, TF1-033, TF1-153, TF1-083 and Defence witnesses DBK-012 and DBK-126.

a. State House – Freetown and Western Area - Crimes

2964. para. 1044: The Prosecution submits that there is evidence that all three Accused committed rape or instigated or aided and abetted the sexual violence at the State House and elsewhere during the invasion and retreat.[1905] The Prosecution further submits that in January 1999, the three Accused were at State House where soldiers brought and engaged women in forceful sexual intercourse.[1906]

2965. para. 1045: Witness TF1-334 testified that on 6 January 1999, he saw "soldiers" bring an unknown number of abducted women to rooms within the State House and rape them there.[1907] He testified that the most beautiful ones were brought to the senior commanders, including 'Gullit', 'Bazzy' and '55,.[1908] Witness TFl-334 saw 'Gullit' with a girl who told the witness that she was in Form Two;[1909] that is, approximately 12 years old.[1910] The witness did not see 'Gullit' abduct the girl.[1911] The girls with '55' and 'Bazzy' were also very young school girls.[1912] The girl with Bazzy was approximately 12-15 years old.[1913] Gullit was with his girl up to Makeni; '55' stayed with his

girl until the retreat from Freetown; and 'Bazzy' was with his girl until Westside.[1914] The Trial Chamber has previously considered general issues of credibility with regards to witness TFl-334 and finds the evidence given by him with regards to rapes at the State House to be reliable. However, the Trial Chamber finds this evidence insufficient to prove the *actus reus* and *mens rea* of rape.

2966. para. 1046: The evidence of witness TF1-334 is generally supported by that of witness TF1-024 who testified that on 8 January 1999,[1915] he was captured by a group of rebels and soldiers.[1916] The Trial Chamber notes that the witness describes his abductors variously as "rebels and soldiers [...] combin[ed] together", as "rebel boys", as "rebels and soldiers [...] all mixed together". The witness also describes them as wearing "ECOMOG" uniforms and speaking Liberian English.[1917] The rebels and soldiers took the witness to State House where he was detained for four nights in a kitchen on the ground level.[1918] Through the kitchen window, the witness testified that he could see women and girls being raped[1919] by "Gullit's boys" every night in the compound.[1920] He heard the women cry and heard the girls saying "We do not agree. We are school-going girls." ("A no de gri Mi na small pikin.")[1921]

2967. para. 1047: The witness testified that he saw 'Gullit' twice at the State House.[1922] The rebels called him "Honorable Gullit" and he was "commanding his boys."[1923] When ECOMOG forces approached the State House, 'Gullit' ordered the rebels to leave and left together with them.[1924]

2968. para. 1048: The Trial Chamber notes that on cross-examination, the witness testified that the girls who were raped were given 5000 leones, but that this was not pay.[1925] The Trial Chamber finds that given the overwhelmingly coercive environment and the suggestion of the young age of the victims, no attribution of consent to the sexual acts can be derived from this payment. The Trial Chamber is of the opinion that the testimony of witness TF1-024 is detailed and coherent. The witness was not shaken on this evidence on cross-examination. The Trial Chamber accepts this evidence as credible. The Trial Chamber is satisfied that the *actus reus* and *mens rea* elements of rape are satisfied on the basis of this evidence.

2969. para. 1049: The evidence of witnesses TFl-334 and TF1-024 is also generally supported by Prosecution witness Gibril Massaquoi who testified that while the three Accused were in command at State House in January 1999, he heard complaints from civilians that "Military Police" came into people's homes "to look for girls".[1926] The witness heard a civilian complain to the Accused Kamara about looting and entering homes at night. The witness did not see or hear of anyone being punished for looting or entering houses looking for women in Freetown.

2970. para. 1050: By contrast, the Trial Chamber notes that a number of witnesses testified that they were not aware of any rapes occurring at State House in early January, 1999.

2971. para. 1051: Prosecution witness TF1-033 testified that he was at State House with the AFRC troops on 6 January 1999[1927] and that he did not witness any rapes while he was there.[1928]

2972. para. 1052: Defence witness DBK-012, an ex-SLA who was a member of the AFRC during the war, similarly testified that he did not see or hear of any raping going on at State House during the invasion of Freetown in January 1999.[1929] He was neither able to confirm or deny that young girls were brought to State House by the AFRC to be raped.[1930]

2973. para. 1053: Witness DBK-126 testified that she was captured in Koidu Town by a "boy" whom the witness referred to as 'Bravo' shortly after the AFRC was overthrown in Freetown in February 1998. The witness testified that 'Bravo's' boss was Junior Johnson also known as Junior Lion.[1931] The witness testified that she was with the troops when the AFRC invaded Freetown. In Freetown Junior Lion made the witness cook for him and bring him food at the Adelaide Police Station. Three days later, the government troops moved Junior Lion to State House. The witness continued to take food to him there. The witness testified that 'FAT Sesay' was in charge of the State House. She testified that the Accused Kamara was not at State House during this period and that she did not see the soldiers rape anyone.[1932] On cross-examination, however, the witness admitted that she had brought food to the Accused Kamara at the State House.[1933]

2974. para. l054: The Prosecution notes that this witness has already pleaded guilty to contempt of Court for attempting to intimidate Prosecution witnesses.[1934]

2975. para. 1055: The Trial Chamber recalls its discussion of the evidence of witnesses who did not see atrocities committed in Freetown, wherein it found that in light of the overwhelming evidence to the contrary, no weight was to be afforded to this aspect of their testimony.

b. PWD - Freetown and Western Area - Crimes

2976. para. 1056: Prosecution witness TFl-153 testified that 'Gullit' called him to the AFRC Headquarters at PWD during the time of the AFRC invasion. The witness testified that he saw young civilian women at the PWD several times. The witness testified that "soldiers" had abducted the girls from the Annie Walsh School near the East End Police Station. Tina Musa told the witness later that the girls had told her that they were all raped at the place they were caught.[1935]

2977. para. 1057: Witness TFl-153 also testified that around this same time, 'Gullit' called him and told him he "had strangers" for him at PWD.[1936] The witness went upstairs and saw a group of priests and nuns locked in a room. The witness spoke to a priest who told him that they had been captured and brought to the PWD. The priest said that all the nuns had been raped. The witness approached 'Gullit' to ask him to release the priests and nuns, but 'Gullit' said "They are all involved. They are making us suffer."[1937]

2978. para. 1058: The Brima Defence asserts that witness TFl-153 abandoned portions of his statement and was desirous of impressing the bench by giving evidence damaging to the Accused as he had received a witness allowance.[1938] The Trial Chamber has previously addressed general issues of credibility with regards to witness TF1-l53. The Trial Chamber notes that the evidence given by the witness with regards to rapes of young girls and nuns at PWD is hearsay evidence.

2979. para. 1059: The evidence of witness TF1-153 is generally supported by Prosecution witness TF1-334 who testified that roughly three weeks after the 6 January 1999 invasion of Freetown, Brima, Kamara and Kanu went to PWD Junction[1939] to call for reinforcements from the RUF.[1940] Around that time, Brima ordered the "troops" to abduct civilians in order to attract the attention of the international community.[1941] Kamara and Kanu were present also.[1942] Civilians, including a number of young girls were then abducted by the rebels and the commanders[1943] from Freetown and brought to the headquarters at PWD.[1944]

2980. para. 1060: The Trial Chamber finds that the hearsay evidence of witness TF1-153 that women and girls were raped at PWD and the general evidence of witness TF1-334 that young girls were abducted and brought to PWD is insufficient to satisfy the actus reus and mens rea elements of rape.

c. Greater Freetown - Freetown and Western Area - Crimes

2981. para. 1061: The Trial Chamber has carefully considered the evidence of Prosecution witnesses TF1-104 who testified that "RUF junta guys" tried to rape his colleague, a certain 'Saata' at the Good Shepherd Clinic in Freetown sometime between 6 January 1999 and 14 January 1999.[1945] The Trial Chamber makes no findings on this evidence, as it goes to proof of a crime, namely attempted rape, over which this Court has no jurisdiction.

2982. para. 1062: Prosecution witness TF1-083 testified that in "Freetown" on about 16 January 1999, "rebels" whom the witness described as wearing "combat" but who were not ECOMOG came at night and took his sister-in-law out of their house. The witness and his brother ran and hid

in nearby plantations. When the witness's sister-in-law returned later that evening, she told the witness and his brother that she had been raped.[1946]

2983. para. 1063: The evidence of witness TF1-083 is generally supported by that of Prosecution witness TF1-033 who testified that after the AFRC lost the battle in Freetown he remained with the AFRC troops during their retreat for three weeks. During this time the eastern part of Freetown was occupied by AFRC "fighters" under the command of 'Gullit'. The witness testified that 'Gullit' ordered his men to commit atrocities as they were retreating and that women and girls were raped by the fighters.[1947]

2984. para. 1064: The Trial Chamber has carefully considered the objections of the Defence with regards to the credibility of witness TF1-033.[1948] The Trial Chamber has previously considered the credibility of witness TF1-033 in general terms.[1949]

2985. para. 1065: Defence witness DAB-100 testified that he heard that there were rapes by the AFRC/RUF during the invasion of Freetown in 1999. The Trial Chamber gives this statement little weight as no specific incidents were elaborated by the witness.

2986. para. 1066: By contrast, Defence witness DBK -012 testified that there were no rapes during the attack on Freetown in January 1999 because this was against the ideology of SAJ Musa, to whom he referred as the "Five Star General". Anyone who would rape a civilian would have been executed.[1950] The Trial Chamber finds that this evidence does not raise a reasonable doubt as to the veracity of the overwhelming and detailed evidence to the contrary.

2987. para. 1067: The Trial Chamber also notes, but does not rely on, the evidence of Defence witness DSK-113 who testified that he was taken with the AFRC to Freetown during the January 1999 invasion. He testified that during the journey from Benguema to Freetown he did not see any SLA soldiers carrying out any rapes.[1951] This evidence relates to time periods not indicted.

(b) Legal Conclusions

(i) Applicable law – Crimes against humanity ("CAH")

2988. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Applicable law – Crimes against humanity – The Law - paras. 211 – 213 [1941].

a. Attack – Applicable law - CAH

2989. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Applicable law – Crimes against humanity – Attack - para. 214 [1944].

b. Widespread or systematic – Applicable law - CAH

2990. See above: Chapter 2 – AFRC – Trial Judgment- Legal Conclusions – Widespread - Applicable Law – CAH - para. 215 [1945].

c. Directed against any civilian population – Applicable law - CAH

2991. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Directed against any civilian population - Applicable law – CAH - paras. 216 – 219 [1946].

d. The acts of the perpetrator must form part of the attack – Applicable law - CAH

2992. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions –The acts of the perpetrator must form part of the attack – Applicable law – CAH - para. 220 [1950].

e. *Mens rea* – Applicable law - CAH

2993. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – *Mens rea* - Applicable law – Crimes against humanity - paras. 221 - 222 [1951].

(ii) CAH - Findings on general requirements

2994. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Applicable law – Crimes against humanity – CAH – Findings on general requirements - paras. 224 – 226 [1954].

a. AFRC/RUF Government period

2995. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Applicable law – Crimes against humanity – CAH – Findings on general requirements - AFRC/RUF Government period - paras. 227 – 232 [1957].

b. Post AFRC/RUF Government Period (February 1998 January 2000

2996. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Applicable law – CAH – Findings on general requirements - Post AFRC/RUF Government Period (February 1998 January 2000) - paras. 233 – 239 [1963].

(iii) Applicable law – Rape

2997. para. 692: The prohibition of the crime of rape in armed conflict is firmly enshrined in customary international law.[1351] Rape was proscribed as a crime against humanity in the Allied Control Council Law No. 10 and prosecuted as 'inhuman acts' before the Tokyo Tribunal.[1352] Rape as a crime against humanity is found in the statutes of the ICTY, the ICTR and the ICC[1353] and has been defined largely through the jurisprudence of the ICTY and the ICTR.[1354]

2998. para. 693: In addition to the *chapeau* requirements of Crimes against Humanity pursuant to Article 2 of the Statute, the Trial Chamber adopts the following elements of the crime of rape:

> 1. The non-consensual penetration, however slight, of the vagina or anus of the victim by the penis of the perpetrator or by any other object used by the perpetrator, or of the mouth of the victim by the penis of the perpetrator; and
>
> 2. The intent to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.[1355]

2999. para. 694: Consent of the victim must be given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances.[1356] Force or threat of force provides clear evidence of non-consent, but force is not an element per se of rape and there are factors other than force which would render an act of sexual penetration non-consensual or non-voluntary on the part of the victim.[1357] This is necessarily a contextual assessment. However, in situations of armed conflict or detention, coercion is almost universal. 'Continuous resistance' by the victim, and physical force, or even threat of force by the perpetrator are not required to establish coercion.[1358] Children below the age of 14 cannot give valid consent.[1359]

3000. para. 695: The Trial Chamber acknowledges 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.[1360]

(iv) Pleadings – CAH

3001. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions –Pleadings - Crimes against humanity - para. 223 [1953].

(v) Kono District – Rape

a. Koidu – Foendor/Foendu and Wondedu – Kono District - Rape

3002. para. 981: By virtue of the foregoing the Trial Chamber is not satisfied that the elements of rape are established in relation to Kono District.

3003. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Kono District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment -Findings and Conclusions - Kono District - paras. 1665-1668 [8017], 1856-1861 [8021], 1997-2000 [8027].

3004. Regarding Brima's, Kamara's, and Kanu's superior responsibility in relation to Kono District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Kono District - paras. 1665 [8868], 1669-1673 [8869], 1856 [8874], 1862-1893 [8875], 1997 [8907], 2001-2005 [8908].

(vi) Koinadugu District - Rape

a. Kabala, Koinadugu Town and Fadugu – Koinadugu District - Rape

3005. para. 1026: By virtue of the foregoing the Trial Chamber is satisfied that the elements of rape are established in relation to Koinadugu District.

3006. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Koinadugu District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions – Koinadugu District - paras. 1686-1696 [8045], 1904-1906 [8056], 2015-2018 [8060].

3007. Regarding Brima's, Kamara's and Kanu's superior responsibility in relation to Koinadugu District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Koinadugu District - paras. 1686 [8933], 1697-1699 [8934], 1904 [8937], 1907-1910 [8938], 2015 [8942], 2019-2024 [8943].

(vii) Bombali District

a. Rosos – Bombali District - Rape

3008. para. 1041: By virtue of the foregoing the Trial Chamber is satisfied that the elements of rape are established in relation to Bombali District.

3009. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Bombali District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bombali District - paras. 1700-1720 [8064], 1911-1920 [8085], 2025-2031 [8095].

3010. Regarding Brima's, Kamara's, and Kanu's superior responsibility in relation to Bombali District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bombali District - paras. 1700 [8949], 1721-1744 [8950], 1911 [8974], 1921-1928 [8975], 2025 [8983], 2032-2044 [8984].

(viii) Freetown and Western Area

a. State House – PWD and Greater Freetown - Rape

3011. para. 1068: By virtue of the foregoing, and without predetermining the individual criminal responsibility of the three Accused, the Trial Chamber is satisfied that the elements of rape are established in relation to Freetown and the Western Area.

3012. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Freetown and Western Area, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment – Findings and Conclusions - Freetown and Western Area - paras. 1745-1786 [8102], 1929-1941 [8144], 2045-2064 [8157].

3013. Regarding Brima's, Kamara's, and Kanu's superior responsibility in relation to Freetown and Western Area, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Freetown and Western Area - paras. 1745 [8997], 1787-1810 [8998], 1929 [9022], 1942-1950 [9023], 2045 [9032], 2065-2080 [9033].

3. Appellate Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-A, Judgement, 22 February 2008

(a) Factual Findings

3014. Not applicable.

(b) Legal Conclusions

3015. Regarding Bimba's, Kamara's and Kanu's individual criminal responsibility, see below: Chapter 12 (Article 6.1 Liability) –AFRC – Appellate Judgment – Findings and Conclusions - paras.72 - 87 [8234], 171 – 174 [8261], 231 – 232 [8265], 301 – 306 [8270].

3016. Regarding Bimba's, Kamara's and Kanu's superior responsibility, see below: Chapter 13 (Article 6.3 Liability) –AFRC – Appellate Judgment – Findings and Conclusions. 225 - 230 [9082], 259 – 271 [9093], 289 – 292 [9109].

D. CDF

1. Indictment

The Prosecutor v. Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa, SCSL-03-14-I, Indictment, 4 February 2004

3017. Not applicable.

2. Trial Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-T, Judgement, 2 August 2007

(a) Factual Findings

3018. Not applicable.

(b) Legal Conclusions

3019. Not applicable.

3. Appellate Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-A, Judgment, 28 May 2008

(a) Factual Findings

3020. Not applicable.

(b) Legal Conclusions

3021. Not applicable.

CHAPTER 5 – SEXUAL SLAVERY

A. CHARLES TAYLOR

1. Indictment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-I, Indictment, 16 March 2006

(a) Particulars

(i) Charges

3022. By his acts or omissions in relation to the below described events, the ACCUSED, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:[138]

(ii) Count 1: Terrorizing the civilian population

3023. Members of the Revolutionary United Front (RUF), Armed Forces Revolutionary Council (AFRC), AFRC/RUF Junta or alliance, and/or Liberian fighters, including members and ex-members of the NPFL (Liberian fighters), assisted or encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, burned civilian property, and committed the crimes set forth below in paragraphs 6 through 31 and charged in Counts 2 through 11, as part of a campaign to terrorize the civilian population of Sierra Leone.[139]

(iii) Counts 4-6: Sexual Violence

> Count 4: Rape, a CRIME AGAINST HUMANITY, punishable under Article 2.g. of the Statute;
>
> And:
>
> **Count 5: Sexual slavery, a CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;
>
> In addition, or in the alternative:
>
> Count 6: 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.

[138] Taylor Indictment, Charges, p. 2.
[139] Taylor Indictment, para. 5.

3024. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or Alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, committed widespread acts of sexual violence against civilian women and girls, including the following:[140]

> i. Kono District: Between 1 February 1998 and about 31 December 1998, raped an unknown number of women and girls in various locations, including Koidu, Tombodu or Tumbodu, Wondedu, and AFRC and/or RUF camps, such as "Superman Ground," "Guinea Highway," and "PC Ground"; abducted an unknown number of women and girls from various locations within the District, or brought them from locations outside the District, and used them as sex slaves;[141]
>
> ii. Kailahun District: Between about 30 November 1996 and about 18 January 2002, raped an unknown number of women and girls in locations throughout Kailahun District; abducted many victims from other areas of the Republic of Sierra Leone, brought them to locations throughout the District and used them as sex slaves;[142]
>
> iii. Freetown and Western Area: Between about 21 December 1998 and about 28 February 2002, raped and unknown number of women and girls throughout Freetown and the Western area, and abducted an unknown number of women and girls and used them as sex slaves.[143]

2. Trial Judgment

The Prosecutor v. *Charles Ghankay Taylor*, SCSL-03-01-T, Judgement, 18 May 2012

(a) Factual Findings

(i) Kailahun District – Crimes

a. Women used as sexual slaves by the RUF throughout Kailahun District – Kailahun District – Crimes

3025. para. 1026: Witnesses Mustapha M. Mansaray, Perry Kamara, Isaac Mongor, Dennis Koker, Finda Gbamanja, TF1-375, TF1-371, TF1-189 Edna Bangura, Issa Sesay, and DCT 068

[140] Taylor Indictment, para. 14.
[141] Taylor Indictment, para. 15.
[142] Taylor Indictment, para. 16.
[143] Taylor Indictment, para. 17.

gave evidence relevant to allegations of sexual slavery in Kailahun District, in addition to Exhibits P-073, P-078, P-077 and P-277.

3026. para. 1027: The expert report of Beth Vann stated that Sierra Leonean refugees fled AFRC and RUF forces in approximately March-April 1998 and arrived in camps along the border in neighbouring Guinea.[2608] The largest concentration of camps was in Gueckedou-Kissidougou prefectures, which borders Kono and Kailahun Districts in Sierra Leone.[2609] The refugees described atrocities committed by armed groups, including the AFRC and RUF in Kono and Kailahun Districts.[2610] Vann reported that the refugees included many victims of war-related sexual violence.[2611]

3027. para. 1028: Vann further reported that according to the victims she interviewed, sexual slavery was a common practice, especially amongst the RUF and AFRC. The report explains that sexual slavery "involves the abduction of females – whether young girls or old women – who are then forced to serve as *de facto* 'wives' to officers and troops. Serving as a 'wife' includes finding food, cooking, cleaning, washing clothes, complying with forced sexual relations, bearing and caring for children".[2612] The majority of rape victims from Sierra Leone that she interviewed in Gueckedou Camp named the perpetrators as members of the AFRC/RUF or "rebels".[2613] The majority of documented incidents of sexual violence reported took place between 1997 and 1999.[2614]

3028. para. 1029: In 1998, Amnesty International reported that "[i]n those areas of the country which remained under the control of rebel forces thousands of civilians, including women and children, effectively remained captive, many of them in Kailahun District, a stronghold of the RUF since the beginning of the internal armed conflict. Some estimates put this number as high as 10,000. They were used to carry goods, as human shields or for sexual slavery".[2615]

3029. para. 1030: Expert witness TF1-150 documented human rights abuses in Sierra Leone from May 1998 through 2000. This witness had published a report by July 1998 which documented that "rebels" were holding large numbers of civilian captives, including civilians who were being used for forced sexual activity, in various areas of Sierra Leone, but mostly in Kailahun District.[2616]

3030. para. 1031: Prosecution Witness TF1-174 worked at an interim care centre in Makeni where captured girls were provided with assistance. TF1-174 stated that the girls at the centre had been captured from different districts and brought against their will to Kailahun District, where they were forced to satisfy the fighters' "sexual desires". The girls that TF1-174 worked

with had been raped and turned into "wives" of RUF commanders. One girl was said to have been a wife of Issa Sesay, a senior RUF commander. She was 14 or 15 years old.[2617]

3031. para. 1032: While this evidence is not sufficiently specific to prove any individual instances of sexual slavery, it demonstrates that sexual slavery was committed on a widespread basis in Kailahun District and may be relevant as corroboration for specific instances of sexual slavery described by witnesses testifying before the Trial Chamber.

3032. para. 1033: Prosecution Witness Isaac Mongor testified that he would visit Kailahun District at unspecified times.[2618] Mongor stated that RUF fighters used captured women in Kailahun District for sexual purposes and some were trained as soldiers.[2619] Mongor explained that captured women had no choice but to remain with the RUF fighters and submit to them, but did not indicate what duties "wives" were expected to perform.[2620]

3033. para. 1034: Prosecution Witness TF1-371 testified that after the 1991 attacks on Sierra Leone by RUF and NPFL fighters, captured women and girls would involuntarily become the "bush wives" of RUF commanders.[2621] These women and girls would be the sexual partners of the commanders and have children by them, and would also do domestic chores, such as cooking and laundry.[2622]

3034. para. 1035: Defence Witness Issa Sesay testified that rape was not allowed and that rape was punishable by death[2623] and that he did not see or hear about any instances of rape in Kailahun from 1992 through to the time of disarmament.[2624] Sesay stated that he did hear about rape occurring in other parts of Sierra Leone, but said that disciplinary action was taken against the perpetrators.[2625]

3035. para. 1036: Defence Witness DCT-068, who had been a member of the RUF from August 1992,2626 and who was in Kailahun District from 1992 to 1998[2627] testified that he had never seen women being raped or assigned to commanders. DCT-068 gave the example of Sam Bockarie, and explained that if Bockarie wanted a woman for love, he would talk to that woman in respect of love.[2628]

3036. para. 1037: DCT-068 insisted that women were not coerced into working as domestic servants to commanders but did acknowledge that women, other than the wives of commanders, were relied upon when the RUF needed people to assist with domestic work or farming.[2629]

b. Captured civilians used as sexual slaves in Pendembu – Kailahun District – Crimes

3037. para. 1039: Prosecution Witness Mustapha M. Mansaray was a member of the RUF Defence Unit (IDU) in Kailahun District from approximately November 1996 until July 2000, with the exception of a two-week assignment in Makeni.[2630] Mansaray testified that the IDU was responsible for investigating violations of RUF laws. Investigations were undertaken by a panel of the Joint Security Board of Investigation composed of an IDU representative, an Intelligence Officer of the G5 (responsible for protection of civilians), a representative of the Military Police and representatives from other units.[2631]

3038. para. 1040: Mansaray testified that while he was assigned as 1st Brigade IDU chief in Pendembu in May/June 1999, one of his duties was to "screen" civilians who had been captured by fighters.[2632] He recorded their names, dates of birth, their village or town of origin in addition to records of the numbers of captured civilians.[2633] Civilians were captured from the areas around Daru and Segbwema[2634] and others were "returnees" from Liberia.[2635] Mansaray estimated that there were about 500 captured civilians staying with the fighters at Pendembu.[2636]

3039. para. 1041: Mansaray testified that after the captured civilians had been screened, their captured family members already in Pendembu, if any, could "sign for them" and take them to live with them as the fighters did not have enough space to keep them or to provide food for them.[2637] Some of the civilians without family members were signed for by fighters who took the civilians to their houses to do domestic work.[2638] Mansaray testified that some of these fighters took the captured women to their homes to have sexual intercourse with them and would tell him that they had "married" them.[2639] Mansaray also testified that some fighters did not report the women they had captured.[2640] Rather, they took the women directly to their houses. Mansaray is not aware of what happened to such women.[2641]

3040. para. 1042: On cross-examination, Mansaray testified that after having been captured, some women were willing to stay with the fighters and others were not.[2642]

c. Evidence of sexual slavery in Buedu from November 1996 until 1998 – Kailahun District – Crimes

3041. para. 1044: The Trial Chamber has considered the evidence of witness Edna Bangura, Issa Sesay, TF1-168 and Exhibit P-277 in relation to alleged instances of sexual slavery in Buedu.

3042. para. 1046: The evidence of witness Edna Bangura of her capture and subsequent detention in Buedu has been recited in the section dealing with rape.[2645]

3043. para. 1047: Bangura testified that women would be captured by fighters when they went to the war front and that these women became "wives" or would stay with fighters as either house help or as bodyguards.[2646] Bangura explained that when a woman became a "wife" in the context of rebels capturing women, they did not go to perform marriage rites anywhere. They would just capture them and bring them and consider them to be their wives and the women in return would do everything to them just like a husband and wife.[2647]

3044. para. 1048: In relation to her own experience, Bangura stated from the day CO Ray "invited" her to his room to have sex with her; he regarded her as his "wife".[2648] CO Ray died at an unspecified time before the witness left Buedu.[2649] Bangura also testified that CO Musa became her "husband" in Buedu after CO Ray died.[2650] She did not provide any details during her direct examination as to the length or nature of her relationship with CO Musa, other than that he was her "husband".

3045. para. 1049: The Defence challenged the witness on the record of an interview with the Prosecution which records her as saying, "CO Musa was killed some time in 1994 during one of the attacks, after which the witness was raped by one CO Ali, an RUF rebel. The witness was taken as a wife by CO Ali, and not CO Musa",[2651] and on a number of inconsistencies between her testimony and the statement that she gave to Prosecution investigators on 29 October 2003 concerning CO Musa.

3046. para. 1050: During cross-examination before this Trial Chamber, Bangura stated that CO Ali and CO Musa was one and the same person. It was only when Defence counsel confronted the witness with exhibits and testimony in a prior case before the Special Court for Sierra Leone which indicated that CO Ali and CO Musa were different people that the witness agreed,[2652] admitting that Counsel's question confused her.[2653]

3047. para. 1051: Issa Sesay testified that Bangura could not have been taken to Buedu to be used as a sexual slave from 1994 to 1998 because the NPRC, not the RUF, controlled Buedu from October/November 1993 until April 1995.[2654] Sesay further testified that people were not brought from Kangari Hills to Kailahun until the AFRC coup in 1997.[2655]

3048. para. 1052: Issa Sesay's testimony on this point is corroborated by the testimony of TF1-168 and by Exhibit P-277, which reports that "[t]owards the end of 1993, the RUF was almost pushed out of Kailahun district by the government forces and early in 1994 Cpl. Sankoh was

forced to move out of Kailahun district for Kenema district".[2656] The remaining RUF fighters in Kailahun were concentrated in Ngeima town, Luawa Chiefdom and other jungle hideouts, while government troops controlled the major villages and towns, including Buedu.[2657]

d. Evidence of sexual slavery in Kailahun District after February 1998 – Kailahun District – Crimes

3049. para. 1055: The Trial Chamber has considered the testimony of Augustine Mallah and Aruna Gbonda in making its findings.

3050. para. 1056: The testimony of witness Augustine Mallah of the capture of women and their forcible transfer and detention in locations controlled by the AFRC and RUF throughout Kailahun District, including Kailahun Town, Pendembu and Dodo[2661] has been recited in the section on rape.[2662]

3051. para. 1057: Mallah stayed in Buedu for approximately two months.[2663] Both the AFRC and RUF were in Buedu and everyone reported to Bockarie.[2664] Mallah testified that the captured civilians in Buedu were there to cook and have sexual intercourse with the AFRC and RUF soldiers who captured them.[2665] Mallah did not witness women refusing sexual intercourse, although he stated that it may have been possible for a woman who had been with the RUF for a long time to leave the man if she had a good reason[2666] but

> [t]he moment you would be, say for example, leaving Vandi you should get married to Momoh, because if you did not do that you would just be there like a football […] When Musa comes he will kick you and you will go to Vandi and he too will kick you. Like me, if I come and I want to have an affair to have sex with a woman and I don't have a woman and you are there without a husband, I would just go to you.[2667]

3052. para. 1058: Mallah explained that the women were forced by their captors to have sex[2668] if the women did not want to die. "[T]hey just have to do it, whether they were willing or not".[2669] Mallah also testified that there was a pass system in Buedu which controlled the movements of captured civilians.[2670]

3053. para. 1059: Witness Aruna Gbonda testified that after Tejan Kabbah had been reinstated,[2671] which was in March 1998,[2672] he saw Mosquito and the other rebels come to Kailahun District from Kenema District with male and female civilians.[2673] The captured civilians included adult women and girls who were from Kenema.[2674] The women were taken to Kailahun Town and other villages.[2675] When the rebels and the civilians arrived in Kailahun

Town, food was scarce and Gbonda stated that they would ask him where they could find bananas.[2676] When Gbonda spoke to the women and girls, they said that the rebels under Mosquito and Issa Sesay had forcefully captured them and that when they were dislodged from Freetown, some were brought by the rebels to Buedu and some to Kailahun Town.[2677] The women told Gbonda that the rebels had turned them into their wives and "put them into their homes forcefully".[2678] Gbonda stated that there were many captured women and girls, and that he had personally spoken to about twenty.[2679]

e. Evidence of Sexual Slavery after February 1998 to December 1999 in Buedu – Kailahun District – Crimes

3054. para. 1061: The Trial Chamber has considered the evidence of Dennis Koker in relation to evidence of sexual slavery in Buedu from February 1998 to December 1999.

3055. para. 1062: The testimony of Witness Dennis Koker that he left Koidu Town in February 1998 and went to Kailahun District where he was appointed as a military policeman and adjutant has been recited in the section on rape.[2680]

3056. para. 1063: Koker testified that during the period 1998-1999 many women were captured by the RUF and AFRC and detained in Buedu and that the captors "would marry them without paying bride price".[2681] Sometimes, commanders would often come to Koker's office with captured women and ask him to "confine" or discipline the women because they had "overlooked the commanders", i.e. been disrespectful.[2682] While in detention, the women would in the absence of their captors, explain to Koker that the RUF commanders had captured them on the front line and forcibly "turned them into wives" but that in fact the commanders were not their real husbands.[2683]

3057. para. 1064: Koker recalled one incident when "CO Victor Kallon", an RUF Major, brought a girl to the office and said she had disrespected him. CO Kallon had stripped the girl down to her underwear and given her 50 lashes with a long cable made from a vehicle tyre, before asking Koker to lock her up.[2684] CO Kallon asked Koker to detain her. When CO Kallon left, the girl explained to Koker that CO Kallon had captured her in Kono and taken her "as his wife", but that the commander was in fact not her husband. When she refused to have intercourse with him he beat her and brought to Koker's MP office.[2685]

3058. para. 1065: Koker testified about the various things he observed happening to civilians in Buedu throughout the time he was there, some 21 months,[2686] until the ceasefire. Koker left Buedu

on 16 December 1999, the day after Sam Bockarie left for Liberia.[2687] During the entire time he was at the MP office, he believes there may have been up to 1300 civilians captured, including men, women and children.[2688]

f. TF1-189 used as a sexual slave by RUF members in Kailahun Town from August 1998 until September 1998 – Kailahun District – Crimes

3059. para. 1067: TF1-189, whom the Trial Chamber has found was captured by RUF/AFRC rebels in Kono District in March 1998 and subjected to sexual slavery in Koidu Town by Commander A (named by the witness in closed session) and other RUF rebels from March through August 1998, testified that she was taken by the rebels and "SLA Juntas" to Kailahun Town when Koidu Town was attacked by ECOMOG in August 1998. The overall leader of the group that left was an RUF commander named Superman.[2689]

3060. para. 1068: TF1-189 testified that they arrived in Kailahun Town in August 1998, during the rainy season and remained there less than two months until September 1998. TF1-189 was forced to stay with a commander named Gogomeh, together with five other female captives and four rebels.[2690] TF1-189 testified that during this time, she and the other captured women and girls were forced to perform the following duties, namely to cook, wash the clothes of male and female rebels, and to be "wives" to the rebels.[2691] In private session, TF1-189 testified that in addition Commander A had continued to have sex with her in Kailahun Town.[2692]

3061. para. 1069: TF1-189 testified that she was allowed to leave Gogomeh's place only twice, on both occasions to accompany a female rebel to shop for food items.[2693] She did not try to escape because she was warned that if she tried to do so "it would not be good for her". None of the other captured women and girls escaped.[2694] The witness learned from Commander A[2695] that the commanders in Kailahun Town included Colonel Mike Lamin and Issa Sesay who were both members of the RUF, "Akim" who was an "AFRC Junta", CO Gogomeh and Superman.[2696] Other commanders included CO Koko and "Old Ma Fatty".[2697]

3062. para. 1070: In September, TF1-189 left Kailahun Town because it was being attacked by ECOMOG jets. She went to another location in Kailahun District that she named in private session,[2698] together with other 40 captives and a rebel.[2699]

(ii) Kono District – Crimes

a. Evidence of sexual slavery in Kono District – Kono District – Crimes

3063. para. 1080: The Trial Chamber finds the evidence of Dennis Koker, TF1-375, Alimamy Bobson Sesay, Perry Kamara, Isaac Mongor, Alice Pyne and Alex Tamba Teh to be relevant to allegations of sexual slavery in Kono District, in addition to Exhibits P-051, P-073, P-77, P-78 and P-366.

3064. para. 1081: The Report of Expert Witness Beth Vann[2705] documenting accounts by refugees of sexual slavery committed by the AFRC/RUF in Kono and Kailahun Districts has been referred to above.

3065. para. 1082: An Amnesty International report entitled "Sierra Leone, 1998 – a year of atrocities against civilians" reports that as the AFRC and RUF rebels were pursued eastwards by ECOMOG forces to towns, including Koidu, from February through April 1998, the rebels were responsible for widespread rape, other forms of sexual assault and abduction.[2706]

b. Abducted Women from Bombali and Kono Districts used as sexual slaves in Koidu Town and Superman Ground – Kono District – Crimes

3066. para. 1083: Witness Perry Kamara testified that following the retreat from Freetown in February, 1998, the leadership of the RUF and AFRC including Johnny Paul Koroma, Issa Sesay, Isaac Mongor, SAJ Musa, Brigadier Mani, General Bropleh, Denis Mingo a.k.a. Superman, Morris Kallon, Five-Five, Gullit, Bazzy and Colonel Tee, convened a meeting in Makeni, Bombali District.[2707] At the meeting it was decided to conduct "Operation Pay Yourself". Kamara testified that this meant that the fighters were free to take anything they wanted from the civilians and to abduct them. Following the meeting, fighters were permitted to gather food, abduct people and to "take people's wives away from them". They burned houses and raped many women. Women who resisted were killed.[2708]

3067. para. 1084: Following the meeting, SAJ Musa led a break-away group to Kabala, Koinadugu District and the rest of the commanders and fighters broke into three groups and went to Koidu Town.[2709] Kamara's group passed through Magburaka, Matotoka, Makali, Sewafe, and Bumpe before reaching Koidu Town. Kamara testified that throughout this route, the AFRC, RUF and STF fighters looted civilian's food, abducted children and "women from their

husbands", and killed civilians.[2710] Although not categorically stated, the Trial Chamber is satisfied on the evidence that civilians abducted en route were in the group that reached Koidu Town. They remained in Koidu Town for approximately a week[2711] and then retreated to Superman Ground, one or two miles away along the highway towards Guinea.[2712] In the areas surrounding Superman Ground and the various nearby camps, including Banya Ground, Sewafe bypass, Yomandu, Tombodu, and Gandorhun Highway, fighters would go on food-finding missions and abduct civilians, including men, women and children for various purposes including doing domestic chores[2713] and mining diamonds.[2714] Kamara testified that "forceful marriage" occurred, because the fighters needed civilian women to "marry them as bush wives".[2715]

3068. para. 1085: Kamara identified Exhibit P-051 as a record of various lists that were normally kept by Superman and the Joint Security.[2716] The witness recognised his own name amongst a list of soldiers and their ranks at Superman Ground.[2717] Other RUF/AFRC commanders listed include Denis Mingo, Isaac Mongor, Morris Kallon, RUF Rambo a.k.a. "Premo", Peter B. Vandi, Hector B. Lahai (AFRC), Lansana Conteh, Major Bai Bureh, Matthew Barbue, Martin George and CO Rocky.[2718]

3069. para. 1086: The document includes another hand-written list entitled "Name of Civilians at Banya Ground" dated 13 July 1998[2719] and "Name of Civilians from Banya Ground and Their Care Taker" (undated).[2720] Kamara explained that the civilian women named in the list lived with commanders against whom their names were listed. He stated that some of the women were used as labourers and others were "wives" to the commanders with whom they stayed.[2721]

3070. para. 1087: Exhibit P-051 also includes hand-written lists entitled "Names of Civilians from Banya Ground", dated 30 November 1998;[2722] "Names of new captives along Guinea/Sierra Leone highway", dated 6 December 1998;[2723] and "Names of Civilian Women and Officers in charge", dated 15 July 1998.[2724] Kamara confirmed that the latter list indicates civilians under the control of RUF and AFRC fighters who were used for domestic work, hard labour and as sex slaves.[2725] Kamara testified that the Joint Security sent a copy of this document to all the various commanders within the RUF units comprising of G5, MP, IO and IDU.[2726]

3071. para. 1088: DCT-068, a G5 in Buedu at the relevant time, to whom this document was shown, denied that it indicated that women were assigned to commanders and ventured the opinion that "it's possible that these women knew what these commanders did for them…so they decided to stay with this commander"[2727] He denied that they were "wives".[2728]

c. Abducted Women from Koidu Town and Mortema used as sexual slaves – Kono District – Crimes

3072. para. 1090: TF1-375, an RUF rebel under the command of Superman, testified that in March 1998 a second attack on Koidu Town was organised and led by Superman, hours after a previous failed attempt to take the town by the RUF forces under the command of Rambo and Isaac Mongor.[2729] TF1-375 testified that during this second attack, "some of the commanders captured girls and made them into their wives".[2730]

3073. para. 1091: Following this attack, there were other attacks in Kono District. TF1-375 testified that approximately three months after the attack on Koidu,[2731] a joint AFRC and RUF attack was launched against Mortema under the command of Short Bai Bureh.[2732] TF1-375 did not participate in this attack but some of his friends told him what happened.[2733] He observed that some of those who returned brought some girls with them as their wives.[2734] TF1-375 did not ask the ages of the girls, but stated that some were 14, 15 and 20 years old.[2735] Some of the girls remained in Koidu Town with the troops and some were taken to a combat camp.[2736] All of the women and girls were detained by the men who captured them "as wives" and these women and girls were forced to retreat with their captors. The witness explained that the captured women and girls were called "wives" because if captured "whether you like it or not" (they) were treated as wives.[2737]

d. Evidence of Sexual Slavery at Wondedu – Kono District – Crimes

3074. para. 1093: Witness Alex Tamba Teh testified that after he was captured in approximately April 1998,[2738] an RUF commander named Rocky took Teh to his base in Wondedu.[2739] Upon his arrival, Teh saw other captured civilians there.[2740] The captured women were forcibly used as "sexual objects" or "sex slaves".[2741] Teh heard women screaming at night and spoke to them during the day.[2742] One of the women told him that she and other women had been abducted at gun point and forced to have sex with their captors.[2743] It was at this time that Teh realised they were being raped.[2744]

e. Women used as sexual slaves in Koidu Town in February 1998 – Kono District – Crimes

3075. para. 1095: Witness Dennis Koker retreated with the AFRC[2745] when they were driven out of Freetown in February 1998[2746] and fled with a group led by Johnny Paul Koroma, Eldred Collins and other commanders[2747] to Tombo,[2748] Fogbo,[2749] Masiaka,[2750] Port Loko District;[2751] and then Makeni, Bombali District[2752] where Issa Sesay was also present.[2753] Koker testified that the soldiers and rebels captured civilians from the villages surrounding Masiaka[2754] and in Makeni.[2755] The civilians included men, women and children. He testified that the RUF and juntas would sometimes "marry" captured women which meant that they would make them their "wives".[2756]

3076. para. 1096: Koker testified that the group then travelled to Koidu Town, Kono District.[2757] He estimated that they arrived in Koidu Town approximately one week after leaving Freetown.[2758] Koker remained in Koidu Town for a week[2759] and resided with Eldred Collins and Morris Kallon at Guinea Highway, about 200 yards from the centre of town. "Isaac", Issa Sesay, Denis Mingo (a.k.a. Superman),[2760] Gullit, Alex Tamba Brima, Johnny Paul Koroma and others commanders were all present in Koidu Town at that time.[2761]

3077. para. 1097: Koker testified that while he was in Koidu Town he observed that AFRC and RUF "operations people"[2762] captured civilians, including women and children, from Koidu Town and the surrounding villages[2763] and that, as in Makeni, women were captured to be wives. He stated that this happened from the start of the war, it was common and happened "wherever they went". He saw it occur in Freetown, Masiaka, Makeni and it continued in Kono.[2764] On cross-examination, Koker admitted that he did not hear an order given by commanders to capture civilians in Kono in February 1998, but explained that it was a common practice by every fighter as well as junior and senior commanders.[2765] It was put to Koker on cross-examination that he did not mention abduction of women and children from Kono District in his first three interviews with the Prosecution but he was not given an opportunity to explain this discrepancy.[2766] As Koker was interviewed 10 times by the Prosecution about numerous subjects, the Trial Chamber finds that not mentioning abduction in the earliest interviews does not significantly affect his credibility.

f. Women used as sexual slaves in Koidu Town from March to June 1998 – Kono District – Crimes

3078. para. 1099: Witness Alimamy Bobson Sesay testified that young women and girls were among the civilians captured by the troops in Kono District during the RUF and SLA attacks of March to June 1998.[2767] These women lived with junior and senior SLA and RUF commanders, some of whom made the women their wives.[2768] The witness explained that the commanders did not actually marry the women; rather, the commanders captured the women and forced them to have sex with them.[2769] Some became pregnant and later gave birth to children for the commanders.[2770] The women were responsible for cooking for the commanders and some of the men.[2771] Some helped to pound rice and did laundry.[2772]

3079. para. 1100: Alimamy Bobson Sesay testified that he himself had his own sex slave whom he referred to as his "wife" whom he had captured in Kono District and who stayed with him.[2773] On cross-examination, he explained that he did not in fact "marry" the girl he had in Kono; rather he captured her and "we would go and sleep together because she was under captivity. It was against her will. I was using her against her will. So I was taking it that I was raping her, because I was carrying on and she had to agree to what I said. If I say, 'Let us lie down', she will lie down".[2774] Alimamy Bobson Sesay referred to this woman as his "bush wife".[2775]

3080. para. 1101: The witness testified that the ages of the captured women who were taken as wives ranged from about 8 to 20 years old. Alimamy Bobson Sesay's own "wife" was about 15 or 16 years old.[2776] Members of the Small Boys Unit took the younger girls, aged 8 to 10.[2777] The SBUs lived with the captured girls and had sex with them.[2778] Alimamy Bobson Sesay testified that he saw this himself.[2779] The commanders including Superman, Bazzy and Bomb Blast were aware of this but did not discipline "the boys" for these acts.[2780] The witness stated that the commanders "were aware but nobody did anything about it. They told them, 'Boys, enjoy yourselves'. They said, 'This is your own time'".[2781]

g. RUF and AFRC fighters brought sexual slaves from Koidu Town to PC Ground and Superman Ground in 1998 – Kono District – Crimes

3081. para. 1103: TF1-375, an RUF rebel under the command of Superman, testified that after Koidu Town was lost by the RUF and the AFRC to ECOMOG, the AFRC/RUF troops retreated to PC Ground and then to Superman Ground which was about six or seven miles from Koidu Town.[2782] The girls and women who had been abducted and brought to Koidu Town were also brought by those who abducted them to PC Ground and later to Superman Ground as their

"wives".[2783] TF1-375 describes these women as "wives" because "they were with us as husband and wife, so we used to call them our wives. Whether you like it or not, if somebody captured you and liked you, you would become his wife".[2784]

3082. para. 1104: Witness Isaac Mongor, at the time a frontline RUF commander under Superman,[2785] testified that in 1998, members of the RUF, SLA and STF, including Mongor himself, took captured civilian women in Kono District and detained them against their will.[2786] The women were under the sole control of the fighters and could not refuse.[2787] Mongor testified that this meant they would take the women, use them and have sex with them.[2788] They took the women to PC Ground which was at Guinea Highway, behind Superman Ground, and which was under the command of Major Konowa.[2789] Mongor testified that civilian women who were captured on attacks were also taken to Superman Ground and given and used there as "wives".[2790]

3083. para. 1105: Mongor testified that when the RUF would attack a village or town, they would capture women.[2791] They would turn some of them into their wives and some would be sent to be trained to fight.[2792] The women did not have a choice.[2793]

3084. para. 1106: In cross-examination, Mongor confirmed a prior statement to the Prosecution in which he said that rape was very common amongst RUF soldiers and that this remained the case for a long time, starting during the early stages of the war.[2794] Mongor confirmed that the RUF had rules against raping and looting, but it happened nonetheless.[2795] If commanders tried to stop it, soldiers would have gone to other commanders who tolerated it.[2796] He testified that some RUF combatants were disciplined for sexual assaults and that he personally witnessed Issa Sesay execute three young combatants in Makeni who allegedly gang raped a girl.[2797] Mongor described this incident in a different interview as an "exception to the rule" and stated that rapes occurred all the time and that "bush wives" were forced to have sex.[2798] Mongor testified that there was a disciplinary system in place, but that its implementation was limited primarily to offences by one soldier against another. He testified that with regard to serious offences, "the laws were there, but its implementation was limited".[2799]

3085. para. 1107: Witness Alice Pyne gave corroborating evidence of women brought from Kono District used as "wives" at PC Ground. She testified that she came to PC Ground in March 1998 after ECOMOG took over Koidu and worked as a radio operator for Superman and remained there for five months.[2800] At that time, she observed that RUF fighters captured civilians in areas around Kono District and brought them to the training base at PC Ground. She

testified that the captured female civilians were made bush wives to the commanders and were forced to have sex and perform domestic chores.[2801]

h. TF1-189 used as a sexual slave by RUF members at Koidu Town – Kono District – Crimes

3086. para. 1110: TF1-189, whose evidence was discussed above in relation to Counts 2, 3 and 4, was captured and raped in a location in Kono District revealed in private session[2803] by rebels who identified themselves as RUF and Junta in March 1998.[2804] The witness testified as to the identity of one the rebels in private session.[2805] For the purpose of this Judgement, the Trial Chamber will refer to this person as "Rebel A".

3087. para. 1111: Rebel A and other rebels took TF1-189 to Superman's compound in Koidu Town.[2806] TF1-189 testified that she saw Superman at this compound.[2807] She stated that she heard Rebel A address him as "C.O. Superman" and told Superman that they had brought a "wife" for him.[2808] Superman responded that he did not want a wife and told them to take the witness away.[2809]

3088. para. 1112: The rebels took her to a hall where other people were held.[2810] After one attempted escape she was taken to the compound where Rebel A stayed, she remained at Rebel A's "place" in Koidu Town until August 1998.[2811] TF1-189 also testified that 13 other girls and women were there.[2812] They told her that they were captives and had all been abducted from around Kono District.[2813]

3089. para. 1113: TF1-189 testified that she and the other captured women and girls were made to cook and pound rice.[2814] She was afraid that she would be killed if she refused to perform these duties.[2815] TF1-189 further testified that she and five of the captured women and girls were forced to be "wives" to the rebels.[2816] TF1-189 explained that being a "wife" meant that the rebels would have sexual intercourse with them and they could not refuse.[2817]

3090. para. 1114: TF1-189 did not leave Rebel A's "place" until August 1998 as he told her that she would be killed if she tried to do so.[2818] In private session, the witness testified that she was made to be "a wife" to three of the rebels, Rebel A and two RUF rebels whose names she did not know.[2819] The witness also testified that to her knowledge, neither the rebels who used her sexually nor anyone else was ever punished for this abuse.[2820]

3091. para. 1115: TF1-189 stated that Rebel A told her that the commanders in Koidu Town at this time included C.O. Superman, Gogomeh and Gibril Massaquoi, who belonged to the RUF and Five-Five who was an "SLA Junta".[2821] She was taken to Gibril Massaquoi's compound where the commander was CO Gogomeh. Commander A worked for Gibril Massaquoi[2822] but TF1-189 did not state that Gibril Massaquoi was present and named Gogomeh as the commander.

i. Use of Finda Gbamanja as sexual slave by a RUF member in Koidu Town – Kono District – Crimes

3092. para. 1120: Witness Finda Gbamanja testified that after "Paul Koroma" was removed from power in Freetown,[2824] between the dry season and the rainy season,[2825] she and her family left Koidu Town because it was attacked by "rebels".[2826] They fled first to Baiama, then to the "bush" when Baiama was taken over by rebels[2827] and then returned again to Baiama.[2828] The witness was young at the time and did not remember her age.[2829]

3093. para. 1121: The Trial Chamber notes that the ECOMOG invasion which ousted Johnny Paul Koroma from power was launched on 14 February 1998[2830] and that Koidu Town was captured by the AFRC/RUF on in late February or early March 1998.[2831] On the basis of the evidence set out in the proceeding paragraph, the Trial Chamber is satisfied that Gbamanja and her family left Koidu Town in or after March 1998 and returned to Baiama Town shortly thereafter.

3094. para. 1122: Gbamanja testified that three days after arriving in Baiama Town, she was captured while she and her family were sleeping by a rebel named "Peppe"[2832] who wore black and green "combat", a red shirt[2833] and a camouflage hat.[2834] She later learned that he was a member of Superman's group.[2835] In cross-examination, Gbamanja confirmed a prior statement taken by the Prosecution in which she stated that although Peppe was older than her, he was a "small boy" and not an adult.[2836]

3095. para. 1123: As detailed in the section on Rape[2837] Gbamanja testified that she was captured by Peppe who detained and raped her, causing her injury, and then took her and left her with his sister where she was forced to launder and cook.[2838] She was subsequently captured and detained by Sergeant Foday who threatened to kill her if she did not go with him. Foday had earlier fought Peppe for possession of her.

3096. para. 1124: Under duress Gbamanja followed Foday to his house in Koidu Town and he made her his "wife". Gbamanja remained at Sergeant Foday's house "for some time" and was forced to have sex with him every night[2839] and forced to launder, cook and fetch water for Sergeant Foday. She could not run away.[2840] Gbamanja testified that she remained in Koidu Town until it was attacked by ECOMOG, at which point Sergeant Foday and other rebels took her with them to Superman Ground, Kailahun District. Gbamanja stated that this occurred when "it was close to the dry season".[2841] On cross-examination, Gbamanja testified that she could not recall how long she stayed with Sergeant Foday but that "it was a long time". She denied prior statements taken by the Prosecution which stated that she only stayed with him a week.[2842]

3097. para. 1125: The RUF/AFRC lost control of Koidu Town to ECOMOG, and RUF troops loyal to Superman reassembled at Superman Ground around April 1998.[2843] Considering Gbamanja's evidence as a whole, including her evidence of prior and subsequent events, the Trial Chamber is satisfied that Gbamanja left Koidu Town to go to Superman Ground in approximately April, 1998.

3098. para. 1126: On cross-examination, Gbamanja explained that Sergeant Foday kept her hidden in his house even though he was more senior than Peppe. She testified that this was because of the system whereby captured women were normally "kept" by the rebel who captured them irrespective of the rebel's rank.[2844]

j. Use of Finda Gbamanja as a sexual slave by rebels at Superman Ground – Kono District – Crimes

3099. para. 1129: Witness Finda Gbamanja, whom the Trial Chamber has found was subjected to sexual slavery in Koidu Town between approximately March and April 1998, by Sergeant Foday, a rebel loyal to Superman, also testified that after Koidu Town was attacked by ECOMOG, she was taken to Superman Ground, located at Meiyor, by rebels including Sergeant Foday, Well Man and a rebel named Sidique.[2846]

3100. para. 1130: Gbamanja testified that she stayed at Superman Ground for a "long time" with Sergeant Foday. During this time, she continued to cook and launder for Sergeant Foday and he continued to force her to have sex with him.[2847] Following the arrival of Foday's wife, Fatty, Gbamanja was taken to the house of a rebel named "Mamie" who was Sidique's wife[2848] where she stayed for "some time". Gbamanja testified that while she was at Mamie's house, Sergeant Foday continued to rape her and she was forced to pound rice, launder and harvest palm oil for Mamie.[2849] On cross-examination, Gbamanja testified that although it was a long

time, she did not know how many weeks or months she stayed with Mamie.[2850] She denied a prior statement taken by the Prosecution in which it was recorded that she stayed with Mamie for three months.[2851] Gbamanja testified that in the dry season, Sergeant Foday forcibly sent her to work for his mother and the RUF "government" in Giema.[2852] She was there during Christmas.[2853] On the basis of this evidence, the Trial Chamber finds that Gbamanja was held in Superman Ground first directly by Sergeant Foday and later by Mamie from approximately April until at least October, 1998.

3101. para. 1131: Gbamanja testified on cross-examination that she did not know the difference between the RUF and the AFRC[2854] but that Peppe himself told her the rebels were RUF.[2855] The Trial Chamber is satisfied from Gbamanja's description of the rebels and the events that both Peppe and Sergeant Foday were rebels loyal to Superman. The Trial Chamber finds that Gbamanja's evidence is corroborated by the record in Exhibit P-051 which was identified by witness Perry Kamara as a record of civilians captured and under the control of commanders who were used for domestic work, hard labour and as sexual slaves.

k. Use of Sia Kamara as a sexual slave by rebels near Yegbema and Sawoa – Kono District – Crimes

3102. para. 1133: Witness Sia Kamara, whose testimony in the RUF trial was received pursuant to Rule 92*bis*, was cross-examined in the present trial on 15 October 2008. In her prior testimony Kamara testified that she, her husband and his younger brother fled Tongo when it was attacked by Kamajors. They fled to Segbwema, Bunumbu, and Gandorhun and arrived in Kainako, Kono "Chiefdom" in the dry season. Two days later they fled to the bush when they were informed by other civilians that Kamajors "who had transformed into soldiers/rebels" had entered Koidu. Kamara explained that she meant that "they ran away from Kamajors", but later they were told that "it was now rebels and not Kamajors again".[2856] On cross-examination, she explained that she had encountered civilians fleeing from Koidu Town who told her that Kamajors had entered Koidu Town.[2857] Kamara testified that the bush she fled to was close to Yegbema,[2858] about two and a half miles from Gandorhun and about one and a half miles from Kainako.[2859]

3103. para. 1134: Approximately three weeks later, Kamara saw about seven vehicles passing by. She "heard" that it was Johnny Paul Koroma heading towards the "Guinea end". She saw the same vehicles "coming towards Koidu end" about a week later.[2860] On cross-examination, Kamara confirmed that she first saw Johnny Paul Koroma after the ECOMOG intervention,

when the AFRC and RUF were driven out of Freetown and he passed through the area where she was living. He was disguised as a woman.[2861]

3104. para. 1135: As the ECOMOG Intervention that ousted the AFRC and RUF from Freetown occurred in February 1998; Koidu Town was captured by the RUF in late February/early March 1998;[2862] the Trial Chamber is satisfied that Kamara was in the bush near Yegbema in approximately March/April, 1998.

3105. para. 1136: Kamara testified that while her husband was away finding food, she was discovered by two "rebels". The first was wearing a soldier's uniform and was armed with a gun. The second was wearing civilian clothing with combat khaki trousers and was armed with a stick with red cloth tied to it. The rebel with the gun pointed it at Kamara and ordered her to undress and lie down, which she did. He raped her. Kamara was unable to refuse due to the coercive circumstances. As this was happening, a third rebel, also armed with a stick, arrived. The other two rebels stood by as the rape occurred. After the first rebel raped her, Kamara was raped by "the other one". She testified that she did not agree to have sex with him, but the rebel with the gun was standing by them so she could not fight. After she had been raped by the second rebel, she was raped by the third. Kamara testified that these rapes happened in the "middle of the forest in the open".[2863]

3106. para. 1137: After the three rapes, the rebels took Kamara "into the hills" where she saw a number of other civilians who had been captured, some of whom she recognised. She and the other civilians were given loads to carry to Sawoa while the rebels walked in front and behind them. Kamara testified that she thought the rebels were going to kill her and could not think of escaping. Kamara estimates that it was over two and a half miles to Sawoa which was in the Kono "area".[2864]

3107. para. 1138: In Sawoa, Kamara heard the rebels address a man as "Lieutenant T" and heard him say that ECOMOG had captured Kailahun Town and Kono, that they were going to "show them that we own the country" and that it was now Operation No Living Thing. Lieutenant T ordered the rebels to kill the civilians.[2865] The Trial Chamber has found that the AFRC forces lost control of Kono District in around April 1998.[2866]

3108. para. 1139: Kamara testified that the rebels asked one of the captured civilians about Kamajors and Kabbah. When the civilian replied that she knew nothing, the rebels beat the civilians. Kamara testified that a boy of approximately 14 years brought a mortar and cut off the right hands of all the captured men, five in total, including Kamara's brother, who was seated

next to her. After the five men had their hands amputated, Kamara was also struck on the upper arm. The rebels then separated out the young "virgins" from the women and took them away.[2867]

3109. para. 1140: Kamara testified that the rebels took her and the remaining captured women, six in total, in the direction of Benguema Fiama. Some of the rebels were armed with guns and some with sticks. At Fall Road, the rebels ordered the women to undress and lie down, which they did. Kamara thought that the rebels were going to kill them. A rebel with a gun undressed and had sex with her. She was unable to refuse. There were many other rebels standing by. Then another rebel, armed with a stick, also had sex with her. When he had finished, he took the stick and shoved it into her vagina. Kamara testified that she experienced great pain and bleeding and that she continued to feel pain at the time of her testimony some years later. Kamara testified that she then heard another rebel say that the women were to be killed.[2868] She then fled to a swamp, where she spent the night. She was bleeding and became unconscious. The following day, she was able to find her husband and three days later, she was brought to Connaught Hospital in Freetown by ECOMOG. She testified that she remained there "until the time the rebels entered Freetown".[2869]

3110. para. 1141: On cross-examination, Kamara admitted that she could not distinguish between the SLA and RUF, and that she considered anyone who was carried a gun and who "terrorised" civilians was a rebel.[2870] She insisted, however, that she was captured by "rebels" and not Kamajors and testified that the persons who captured her threatened to amputate her hand because they suspected her of being a Kamajor or a Kamajor supporter. She was unable to say who Lieutenant T's "boss" was but testified that the rebels said they had come from Freetown and were heading for Fiama. She stated that the men spoke Krio, Mende and "Liberian".[2871] By "Liberian" Kamara clarified that she heard them use the phrase "My meh, let's go" which she testified is the way Liberian people speak.[2872]

(iii) Freetown and the Western Area – Crimes

a. Evidence of sexual slavery in Freetown and the Western Area – Freetown and the Western Area – Crimes

3111. para. 1150: Prosecution expert witness Beth Vann, as already discussed in relation to Kailahun and Kono Districts, reported that Sierra Leonean refugees fled the RUF and AFRC forces approximately March-April, 1998 and arrived in camps along the border in neighbouring Guinea.[2875] Vann reported that, according to the victims she interviewed, sexual slavery was a common practice, especially amongst the RUF and AFRC.[2876] Vann reported that "[a]ll of the

newly arriving refugees I spoke with during this period clearly identified the perpetrators of these attacks as RUF and AFRC; […] the most commonly used term was "rebels".[2877] As with the victims of sexual violence from Kono and Kailahun interviewed in Guinea by Vann, victims from the Freetown area who fled in January (1999) suffered from mental health problems and sexually transmitted diseases. Some were socially isolated.[2878]

3112. para. 1151: Vann also worked with the Sierra Leonean Chapter of the Forum for African Women Educationalists (FAWE) from February-March 2002.[2879] The FAWE sexual violence counselling and health care programme, initiated after the 1999 Freetown invasion, cared for 1,862 female abductees within its first six months of operation, most from Freetown and some from Makeni and Kono.[2880] As a result of the sexual violence to which they were subjected, many women and girls treated by FAWE were pregnant or had babies, were rejected by their families and had no prospects for the future.[2881]

3113. para. 1152: Prosecution Witness TF1-081, a gynaecologist working with FAWE following the 6 January 1999 attack on Freetown, whose evidence was received pursuant to Rule 92*bis*, testified that in addition to the counselling team, a medical team was set up to give medical treatment to abductees who had returned to Freetown.[2882] From March through December, 1999, the program treated 1164 patients, 99% of whom had been abducted, the majority from Freetown and a few from Makeni and Kono.[2883] Of the 1168[2884] treated patients, 684 were victims of sexual abuse or rape.[2885] TF1-081 was not able to specify the exact number of patients who had been abducted during the January 6 invasion and did not know how the patients returned to Freetown.[2886]

3114. para. 1153: In a report prepared by the witness based on data collected monthly between March and December 1999,[2887] TF1-081 reported that 77% of patients were women;[2888] 58.5% had been sexually abused or raped; 52% suffered from sexually transmitted diseases and 17.1% had become pregnant.[2889] He explained that the report was compiled as a scientific paper[2890] with the purpose of documenting patient reports and illnesses and was not conducted for the purposes of scientific or sociological research.[2891]

3115. para. 1154: TF1-081 testified that as a gynaecologist, the majority of gynaecological and obstetric cases in the program were sent to him[2892] and that the "vast majority" of the patients he examined suffered from sexually transmitted diseases or other gynaecological problems or were pregnant.[2893] TF1-081 testified that it was not the purpose of his interactions with his patients to discover the identity of the perpetrators of the reported acts or to assess the truth of what they

said,[2894] but he recorded that his patients had been abducted by the RUF and AFRC and that some had been "married" in the bush.[2895]

3116. para. 1155: TF1-150, who documented human rights abuses during the Freetown attack,[2896] reported that rape was a "standard practice" of the rebel combatants during the invasion and that some girls were subsequently abducted and taken away by the retreating rebels. TF1-150 documented reports of former abductees who indicated that women captives were raped "as a matter of course".[2897] Escapees reported that women and children were detained to cook and used for sexual purposes.[2898] Reports that boys and girls had been taken for sexual purposes or to cook food continued into February 1999.[2899]

3117. para. 1156: Reports by Human Rights Watch and Amnesty International, tendered into evidence by the Prosecution, also document instances of civilian women and girls having been abducted and subjected to sexual slavery by members of the AFRC and/or RUF or by "rebels" during the attack on Freetown in similar circumstances to the incidents detailed above.

b. Captured girls and women used as sexual slaves in Benguema from approximately mid-February to March 1999 – Freetown and the Western Area – Crimes

3118. para. 1157: Witness Alimamy Bobson Sesay, a member of the AFRC,[2900] testified that following the retreat from Freetown, his troops attacked Tombo in mid-February and thereafter were based in Benguema until approximately March 1999.[2901] He testified that captured civilians brought by the troops to Benguema included young girls and women. The troops used the captured girls and women to pound rice, to cook, to carry loads and as "jungle wives". The women and girls were captured while the troops were in Kono and while *en route* to Benguema. Alimamy Bobson Sesay testified that the women were "subdued" with weapons and would do whatever the troops wanted them to do, including having sexual intercourse with them. This happened throughout Benguema.[2902] The girls and women were not free to leave. Commanders who had "women under" them were required to monitor their movements and would be required to produce "whosoever was missing".[2903]

3119. para. 1158: Alimamy Bobson Sesay also testified that the SBUs in Benguema used the younger girls to cook, launder and pound rice. They also "used them as wives" meaning that they had sexual intercourse with them. The witness testified that he saw "things like that" happen while he was with the group in Benguema.[2904]

3120. para. 1159: Alex Tamba Brima, Five-Five, Hassan Papa Bangura, Abdul Sesay, Bioh Sesay, SLA Rambo Red Goat, Foday Bah Marah aka Bulldoze, Saidu Kambolai aka Basky, Tarawalli a.k.a. Goldteeth, O-Five, Junior Sherif and the witness were the commanders in Benguema at that time.[2905]

3121. para. 1160: TF1-375, a bodyguard attached to Superman, was with RUF Rambo under the command of Issa Sesay in Jui during the time of the Freetown invasion.[2906] He testified that his group received reports from the forces in Freetown during the invasion.[2907] The forces stayed in Freetown for two weeks. As the forces retreated, they started to burn down houses and abducted a large number of girls.[2908]

3122. para. 1161: TF1-029, whose evidence is discussed in further detail below**,** was abducted from Wellington and used as a sexual slave in Calaba Town and Benguema by a member of the AFRC. She testified that she heard that over a thousand other women had been abducted were also raped by the SLAs and the RUF. This was explained to the witness by a friend who told her that if they abducted a girl, "they have the right to rape you and [take] you to be their wives".[2909]

3123. para. 1162: Witness Perry Kamara, an RUF radio operator who testified that he was sent by Morris Kallon and Sam Bockarie to join SAJ Musa and Gullit in order to establish effective communications between the two groups prior to the invasion,[2910] testified that he was among the troops who attacked Freetown on 6 January 1999.[2911] He testified that when the troops retreated he gathered information from commercial radio and BBC media that the rebels in Freetown raped and abducted civilians.[2912] He stated that he heard a "radio communication" that Rambo's group and the Red Lion battalion had retreated and joined those who were retreating along the main highway to Waterloo and Masiaka.[2913] The group was comprised of combatants as well as abducted civilians from Freetown, including women who were being used as "bush wives".[2914]

c. TF1-029 used as a sexual slave in Wellington, Calaba Town and Benguema – Freetown and the Western Area – Crimes

3124. para. 1165: As noted in the section on Rape Witness TF1-029's evidence in the RUF trial was introduced through Rule 92*bis.* She was called for cross-examination in the instant trial on 22 October 2008 and testified to her abduction and rape by Major Arif as particularised above. The mixed group of RUF and SLA fighters brought the witness, together with 50 other civilians who were captured in the same house, to Calaba Town.[2916] The witness was held there against her will for two weeks[2917] and while she was forced to live in Major Arif's house together with

his cousins and other RUF and SLA soldiers[2918] she was raped there by Major Arif ten times.[2919] The witness was sixteen years old when this occurred.[2920] TF1-029 further testified that she saw that the other women who were abducted were also raped.[2921]

3125. para. 1166: The rebels then took the witness to Benguema.[2922] She testified that when they arrived in Benguema, she was raped by Major Arif and that, again, she was raped ten times.[2923]

3126. para. 1167: TF1-029 testified that the RUF and "SLAs" also raped other girls while in Benguema. The witness knows this because the girls who had been captured and raped told her what had happened to them.[2924]

3127. para. 1168: Major Arif permitted the witness to leave Benguema on 10 March 1999.[2925] On-cross-examination, TF1-029 insisted that the rebels were mixed RUF and "SLA" but that most of the people she "dealt with" were SLAs, including Colonel O-Five, Brigadier Five-Five, Colonel Tito, and Colonel Rambo. O-Five, Tito and Five-Five were in control of the soldiers from Calaba Town up to Four Mile.[2926]

d. Akiatu Tholley used as a sexual slave in Allen Town and Waterloo – Freetown and the Western Area – Crimes

3128. para. 1171: The evidence of Witness Akiatu Tholley of the invasion of her home and her subsequent abduction and rape has been recited in the sections on Unlawful Killings and Rape.[2928]

3129. para. 1172: Tholley was captured by a rebel named James. Tholley testified that James was accompanied by his "boys" whom he had captured and who carried his ammunition. James' boys gave Tholley and other captured civilians ammunition to carry and took them to Allen Town. James also had his "wives" with him.[2929]

3130. para. 1173: In Allen Town, James' boys stripped all the civilians naked and made them lie down on the ground, threatening to kill them. Tholley testified that in the same moment, an Alpha jet flew over head and Tholley, the rebels and the other captured civilians all fled.[2930] Tholley fled to a house where she encountered a woman named Fatmatta, one of James' wives, who gave her a dress to wear because she was naked. James soon discovered Tholley at the house.[2931]

3131. para. 1174: Tholley testified that James took her to the Mammy Dumbuya Church[2932] where she saw rebels raping, beating and killing many young girls, and that he raped her there.[2933]

3132. para. 1175: James took Tholley to Waterloo, Western Area together with his "wives" and "boys", the other rebels and other captured civilians.[2934] The group was led by Five-Five.[2935] Tholley testified that she remained with James in Waterloo for a "long time" but was unable to say how long.[2936] After Waterloo, James took Tholley to Masiaka, Bombali District[2937] where he was the ground commander and where the other commanders were Five-Five, Gold Teeth, Daramy and Cartel.[2938] Tholley testified that Gold Teeth and Daramy were also among the rebels who came to her house in Wellington during the Freetown invasion.[2939] Tholley testified that she stayed in Masiaka for more than two months and that Issa Sesay was present.[2940]

3133. para. 1176: Tholley testified that the rebels she was with were a "mixed group" and the leader was Five-Five.[2941] James told Tholley that he belonged to the STF and ULIMO and that he had been part of the Liberian war until "the time they joined the rebels". She did not know to which group Five-Five belonged.[2942]

3134. para. 1177: Five-Five, Gold Teeth, Daramy and Cartel are known members of the AFRC. The AFRC passed through the villages of Waterloo, Hastings, Wellington and Kissy and invaded Freetown on 6 January 1999; they retreated approximately three weeks later first to Benguema and then Waterloo.[2943] The Trial Chamber finds that Tholley's evidence of her movements with the rebels is consistent with other evidence of the pattern of AFRC movements at this time. The Trial Chamber is satisfied that James was a STF member and that he captured Tholley prior to the retreat from Freetown in late January 1999 and that she remained under his control in the Western Area until early April 1999.

3135. para. 1178: Tholley testified that James was her "husband" because he had captured her and because from the time he raped her in the Mammy Dumbuya Church, he continued to have sex with her against her will.[2944] Tholley did not want to be his wife.[2945] During the entirety of her capture, Tholley became pregnant three times.[2946] Tholley testified that some of James's other "wives" had also been captured during the fighting. Two were Liberian, one was from Kono and five were captured in Freetown.[2947]

e. Evidence that TF1-023 was used as a sexual slave in Calaba Town, Benguema and Four Mile by a member of the AFRC from late January until March, 1999 – Freetown and the Western Area – Crimes

3136. para. 1181: The evidence of TF1-023, whose evidence in the AFRC trial was introduced through Rule 92*bis*, was cross-examined in the present case on 22 October 2008. In her prior testimony she testified about her abduction and detention by Captain A and subsequent "handing over" to and rape by Colonel B as detailed in the foregoing paragraphs.

3137. para. 1182: TF1-023 remained in Calaba Town for three days. On the third day, she and the rebels walked to Allen Town, Waterloo and then Benguema where they remained for about four days. They then continued on to Lumpa and Four Mile where they stayed for about a month.[2949] On cross-examination, the witness clarified that she remained with "the armed men" in Freetown from 22 to 29 January. She left Freetown on 29 January, it took about two days to reach Benguema. After three days at Benguema they went to Four Mile where they stayed for approximately a month.[2950] Colonel B was not always with the witness; he joined her in Benguema and again in Four Mile. The witness does not know where he was the interim.[2951]

3138. para. 1183: The witness lived with Colonel B for about three weeks in Four Mile, after which time he left her and went to Makeni. During those three weeks, he asked her to cook, but she did not as she did not know how. During the three weeks she continued to "sleep" with him because he told her that she was his "wife". He never asked her consent before sex. The witness was not able to leave.[2952] There were approximately 400 armed rebels at Four Mile. Some "people" at Four Mile tried to escape but they were beaten. This made the witness afraid and she decided not to try to run away.[2953] Colonel B also had an armed guard follow her so she could not escape.[2954]

3139. para. 1184: When Colonel B left for Makeni, he left the witness in the "care of" a captain, whom the witness identified in a Confidential Exhibit.[2955] The Trial Chamber will refer to this person as "Captain C". The witness remained in the custody of Captain C from approximately March through August.[2956]

3140. para. 1185: TF1-023 testified that she knew of other captured women in Lumpa who had been given to rebels as "wives".[2957] In Lumpa, she knew ten others whose "husbands" were lieutenants or ordinary soldiers, but none of the other women's rebel "husbands" were commanders. As a commander's wife, the witness was given special treatment. She was not forced to do "anything" and those with lower ranks gave her respect. To show her respect, they

would call her "de mammy".[2958] The witness testified that her cousin was also captured in Calaba Town and that Captain A took her cousin as his "wife".[2959]

3141. para. 1186: TF1-023 testified that the rebels she named in the exhibits told her that they were members of the AFRC. She first saw their senior commander, Brima or "Gullit" in Benguema. He was a Brigadier at the time. At Four Mile, Colonel B told her that the senior commander was "Bazzy". He used to visit Colonel B and the witness would see him regularly.[2960] On cross-examination, TF1-023 testified that a boy called Alhassan identified Bazzy to her at Four Mile, but that "everyone told" her that Bazzy was the senior commander. She did not talk with Bazzy.[2961] On cross-examination, TF1-023 testified that throughout her "journey" the rebels were a mixed group of AFRC and RUF, but that the ones she had direct contact with were all AFRC.[2962]

(b) Legal Conclusions

(i) Applicable law – Crimes Against Humanity ("CAH")

3142. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Applicable Law – CAH – paras. 504 – 515 [1383].

(ii) CAH – Findings on general requirements

3143. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Applicable Law – CAH – Findings on general requirements – paras. 547 – 559 [1395].

(iii) Applicable law – Sexual Slavery

3144. para. 418: In addition to the *chapeau* requirements of Crimes against Humanity pursuant to Article 2 of the Statute, the following elements of the crime of sexual slavery must be proved beyond reasonable doubt:

i. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.

ii. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature;

iii. The perpetrator intended to engage in the act of sexual slavery or acted with the reasonable knowledge that this was likely to occur.[1029]

3145. para. 419: The *actus reus* of the offence of sexual slavery comprises two elements, first, that the Accused exercised any or all of the powers attaching to the right of ownership of a person or persons (the slavery element) and second, that the enslavement involved sexual acts (the sexual element).[1030] The *mens rea* for the violation consists in the intentional exercise of any or all of the powers attaching to the right of ownership, over the victim.[1031]

3146. para. 420: The primary characteristic of enslavement is the absence of the consent or free will of the victim.[1032] In determining whether the perpetrator exercised a power attaching to the right of ownership over the victim, the Chamber will take into account the existence of such factors or indicia as "control of the victim's movement, control of their physical environment, psychological control, measures taken to deter escape, use or threat of force or coercion against the victim, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour", a list that is by no means exhaustive.[1033] There is no requirement that there be any payment or exchange in order to establish the exercise of ownership.[1034] The deprivation of liberty may include exacting forced labour or otherwise reducing a person to servile status.[1035] The Chamber also notes that the expression "similar deprivation of liberty" has been interpreted to cover situations in which the victims may not have been physically confined, but were otherwise unable to leave the perpetrator's custody as they would have nowhere else to go and feared for their lives.[1036]

3147. para. 421: In addition to proving enslavement, the Prosecution must also prove that the Accused caused the enslaved person to engage in an act or acts of a sexual nature. The acts of sexual violence are the additional element that, when combined with evidence of slavery, constitutes sexual slavery.[1037]

3148. para. 422: The Trial Chamber notes that in this case, unlike the AFRC case and the RUF case, "forced marriage" is not charged in the Indictment. Nevertheless, the evidence adduced by the Prosecution under the charges related to Sexual Violence includes extensive testimony by women and girls regarding forced conjugal association to which they were subjected. In the absence of the charge of "forced marriage", the Trial Chamber has considered this evidence with regard to the charges in the Indictment, as well as the past jurisprudence of the SCSL with regard to this issue.

3149. para. 423: The Trial Chamber notes that the review of this issue by the Court has been hampered by the erroneous pleadings of the Prosecution with regard to various forms of sexual violence. The Trial Chamber recalls that in the AFRC case it was faced with a procedural challenge raised by the failure of the Prosecution to distinguish between the crime of sexual

violence and the crime of sexual slavery. Count 7 of the Indictment in that case, sexual slavery, was dismissed as duplicitous. Justice Doherty opined that the count need not have been dismissed in its entirety. Justice Sebutinde expressed the view that the defect in the indictment could be cured by an amendment dividing the offences into separate counts. In its Judgement in the AFRC case, the Trial Chamber noted that the Prosecution had not availed itself of Justice Sebutinde's suggested remedy.[1038]

3150. para. 424: In the Trial Chamber's view, the Prosecution erred in other Indictments by charging "forced marriage" as a crime that falls within the scope of the crime against humanity of other inhumane acts. Because it was charged in this manner, the Trial Chamber was required to review the charge in this manner. In her dissent in the AFRC Judgement, Justice Doherty observed, "the abduction of girls and their coercion into marital unions, as described by the Prosecution expert and by witnesses, is not the same nor comparable to arranged or traditional marriages".[1039] She defined the crucial element of "forced marriage" to be "the imposition, by threat or physical force arising from the perpetrator's words or other conduct, of a forced conjugal association by the perpetrator over the victim".[1040] Similarly Justice Sebutinde, in her concurrence in the AFRC Judgement, described this phenomenon as "the forceful abduction and holding in captivity of women and girls ('bush wives') against their will, for purposes of sexual gratification of their 'bush husbands' and for gender-specific forms of labour including cooking cleaning, washing clothes (conjugal duties)".[1041] The Trial Chamber considers, as expressed by both Justice Doherty and Justice Sebutinde in the AFRC case, that the sexual and non-sexual acts involved in this forced conjugal association cannot be considered separately as they are integrated in this form of abuse.

3151. para. 425: The Trial Chamber considers that, in the absence of a charge of "forced marriage", the evidence adduced by the witnesses of forced conjugal association can be considered afresh with their testimony as a starting point. In the Trial Chamber's view the term "forced marriage" is a misnomer for the forced conjugal association that was imposed on women and girls in the circumstances of armed conflict, and which involved both sexual slavery and forced labour in the form of domestic work such as cooking and cleaning.

3152. para. 426: The Trial Chamber notes that in the absence of any specific charge relating to forced conjugal association, which was extensively testified to in this case, the elements of sexual slavery are satisfied, that is the deprivation of liberty and the imposition of non-consensual sex. The Appeals Chamber decision in the AFRC case noted other elements that go beyond sexual slavery as the basis for its decision, namely the "forced conjugal association with

another person resulting in great suffering, or serious physical or mental injury on the part of the victim" and "a relationship of exclusivity between the 'husband' and 'wife'".[1042] The Trial Chamber does not consider the nomenclature of "marriage" to be helpful in describing what happened to the victims of this forced conjugal association and finds it inappropriate to refer to their perpetrators as "husbands".

3153. para. 427: What happened to the girls and women abducted in Sierra Leone and forced into this conjugal association was not marriage in the universally understood sense of a consensual and sacrosanct union, and should rather, in the Trial Chamber's view, be considered a conjugal form of enslavement. While noting that all forms of forced marriage violate human rights under international law, the abuses perpetrated on women and girls in this context is clearly criminal in nature, and of sufficient gravity as to constitute a crime against humanity. It constitutes a form of enslavement in that the perpetrator exercised the powers attaching to the right of ownership over their "bush wives" and imposed on them a deprivation of liberty, causing them to engage in sexual acts as well as other acts. The Trial Chamber notes that conjugal relations involve both sexual and non-sexual acts. All of these forced acts, both sexual and non-sexual acts, fall within the definition of enslavement in the view of the Trial Chamber. As noted by the Appeals Chamber, "bush wives" were "coerced to perform a variety of conjugal duties including regular sexual intercourse, forced domestic labour such as cleaning and cooking for the 'husband', endure forced pregnancy, and to care for and bring up children of the 'marriage'".[1043]

3154. para. 428: With respect to the powers of ownership, the Trial Chamber notes that there is no differentiation between the forced sexual and non-sexual acts described, and the Appeals Chamber did not express the view that these acts did not constitute enslavement, but merely that they were not limited to sexual forms of slavery. The Trial Chamber is of the view that the conjugal slavery best describes these acts, and while they may constitute more than sexual slavery, they nevertheless satisfy the elements of sexual slavery.

3155. para. 429: The Trial Chamber considers that part of the confusion created by the Prosecution's charge of "forced marriage" was its presentation as the conceptualization of a new crime. In light of the above considerations, the Trial Chamber considers that conjugal slavery is better conceptualized as a distinctive form of the crime of sexual slavery, with the additional component described by the Appeals Chamber. However, the Trial Chamber is of the view that this additional component, which relates to forced conjugal labour, is simply a descriptive component of a distinctive form of sexual slavery. It is not a definitional element of a new

crime, in the same way that gang rape is a distinctive form of rape, yet nevertheless falls within the scope of the crime of rape.

3156. para. 430: The Trial Chamber considers that unlike the concept of "forced marriage", as it was presented by the Prosecution in the AFRC and other cases before this Court, conjugal slavery is not a new crime with additional elements. Rather it is a practice with certain additional and distinctive features that relate to the conjugal aspects of the relationship between the perpetrator and the victim, such as the claim by the perpetrator to a particular victim as his "wife" and the exercise of exclusive sexual control over her, barring others from sexual access to the victim, as well as the compulsion of the victim to perform domestic work such as cooking and cleaning. In the Trial Chamber's view, these are not new elements that require the conceptualization of a new crime.

(iv) Kailahun District – Sexual Slavery

a. Women used as sexual slaves by the RUF throughout Kailahun District – Kailahun District – Sexual Slavery

3157. para. 1038: Based on the witness's admission that women were in an environment of fear and his evasive demeanour while giving evidence on this topic the Trial Chamber finds the witness's statements that abducted women were treated with "love" and not forced to have sexual relations, to be contrary to the overwhelming volume of evidence and to be disingenuous and unreliable.

b. Captured civilians used as sexual slaves in Pendembu – Kailahun District – Sexual Slavery

3158. para. 1043: The Trial Chamber finds that by depriving the women of their liberty, forcing them to engage in sexual acts, and in some cases forcing them to do labour, the perpetrators intentionally exercised powers of ownership over them, thus committing the crime of sexual slavery in Pendembu from November 1996 to July 2001.

c. Evidence of sexual slavery in Buedu from November 1996 until 1998 – Kailahun District – Sexual Slavery

3159. para. 1053: Given the inconsistencies in Bangura's testimony regarding the time of her alleged sexual enslavement(s) in 1994-1998, the Trial Chamber is unable to find beyond

reasonable doubt that these events occurred after 30 November 1996. Further, due to inconsistencies relating to the perpetrators and the location of the alleged crimes, the Trial Chamber is also unable to determine the identity of the person or persons who committed the crimes alleged or the location in which they occurred. However the Trial Chamber accepts Bangura's evidence that women would be captured by fighters when they went to the war front and that these women became "wives" or would stay with fighters as either house help or as bodyguards.[2658] The Trial Chamber therefore finds that the Prosecution has not proved the required elements for the crime of sexual slavery in relation to this witness from November 1996 through November or December 1998 but that Banguara's evidence that women were captured and used as "wives" and house help demonstrates that sexual slavery was widespread in Buedu and may be relevant as corroboration for specific instances of sexual slavery described by witnesses testifying before the Trial Chamber.

d. Evidence of sexual slavery in Kailahun District after February 1998 – Kailahun District – Sexual Slavery

3160. para. 1060: Based on the evidence of Augustine Mallah and Aruna Gbonda, the Trial Chamber is satisfied beyond reasonable doubt that an unknown number of women were held in captivity by AFRC and RUF fighters, who thereby exercised powers of ownership over them and forced to work for them and to have sexual intercourse with them in Buedu and Kailahun Town. The Trial Chamber is further satisfied beyond reasonable doubt that the perpetrators intended to use the captured women and girls as sexual slaves as shown by the restriction on their movements and the repeated sexual acts perpetrated upon them under the threat of force. The Trial Chamber therefore finds that the Prosecution has established beyond reasonable doubt the elements of sexual slavery in Kailahun District from February to April 1998.

e. Evidence of Sexual Slavery after February 1998 to December 1999 in Buedu – Kailahun District – Sexual Slavery

3161. para. 1066: Based on Koker's evidence, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between 1998 and 1999 AFRC/RUF members in Buedu captured and detained women and girls for long periods thereby exercising powers of ownership over them, and that while in captivity, these women and girls were used for sexual purposes by their captors. The Trial Chamber further finds beyond reasonable doubt that the AFRC/RUF members intended to use the captured women as sexual slaves. The Trial Chamber therefore finds that the Prosecution has established beyond reasonable doubt that AFRC/RUF members in Buedu

committed acts of sexual slavery against an unknown number of women and girls from March 1998 to December 1999.

f. TF1-189 used as a sexual slave by RUF members in Kailahun Town from August 1998 until September 1998 – Kailahun District – Sexual Slavery

3162. para. 1071: The Trial Chamber finds that between August and September, 1998 in Kailahun, an RUF rebel named Commander A, named by TF1-189 in private session and loyal to Superman, together with Gogomeh and/or other rebels, exercised the powers of ownership over TF1-189 by holding her in captivity and forcing her to labour for their benefit. The Trial Chamber also finds that Commander A forced TF1-189 to have sexual intercourse with him, as he had done previously in Koidu Town. The Trial Chamber finds that Commander A intended to use TF1-189 as a sexual slave. Accordingly the Trial Chamber is satisfied that the elements of the crime of sexual slavery have been proved beyond reasonable doubt.

3163. para. 1072: Given the coercive capture of female civilians, their forced detention and inability to leave, and the forced sexual acts perpetrated upon them during their capture the Trial Chamber finds beyond a reasonable doubt that AFRC/RUF members used and intended to use the captured women and girls as sexual slaves. Accordingly the Trial Chamber finds that the Prosecution has proved, beyond a reasonable doubt that sexual slavery occurred in the Kailahun District from November 1996 to 18 January 2002.

3164. para. 1073: The Trial Chamber finds in each of the aforementioned crimes mentioned in this section concerning Kailahun District, that the perpetrators intentionally exercised powers of ownership over their victims by depriving them of their liberty, and in some cases forcing them to work, and in all cases the victims were forced to engage in acts of a sexual nature thus constituting the crime of sexual slavery.

3165. para. 1074: Based on the foregoing, the Trial Chamber is satisfied that the Prosecution has proved beyond reasonable doubt that:

(i) An unknown number of women and girls captured in Kenema District were used by AFRC and RUF members as sexual slaves between February and March 1998 in Buedu and Kailahun Town;

(ii) Between March 1998 and December 1999, an unknown number of captured women and girls were used as sexual slaves by AFRC/RUF members in Buedu;

(iii) TF1-189 was used as a sexual slave by a member of the RUF at Kailahun Town from August to September 1998.

3166. para. 1075: The Trial Chamber recalls that the Prosecution has established beyond reasonable doubt that at all times relevant to the Indictment, the RUF and/or AFRC forces directed both a widespread and systematic attack against the civilian population of Sierra Leone.[2700] The Trial Chamber is satisfied that each of the incidences of sexual slavery proved by the Prosecution in respect of Kailahun District formed part of the said attack and that the perpetrators were aware of this fact. Therefore, the Trial Chamber is satisfied that the aforementioned incidences of sexual slavery in Kailahun District constitute sexual slavery as a crime against humanity under Article 2 of the Statute.

(v) Kono District – Sexual Slavery

a. Abducted Women from Bombali and Kono Districts used as sexual slaves in Koidu Town and Superman Ground – Kono District – Sexual Slavery

3167. para. 1089: The Trial Chamber finds that between 1 February 1998 and 31 December 1998 in Koidu Town and at such camps as Superman Ground members of the AFRC, RUF, AFRC/RUF Junta and Liberian fighters abducted an unknown number of women and girls and forcefully detained them and forced them to have sexual relations. The Trial Chamber finds that the Commanders of the RUF and AFRC knew, promoted and encouraged these acts by promulgating Operation Pay Yourself. Based on the evidence and the context in which the crimes occurred, the Trial Chamber finds that the acts of the perpetrators formed part of both a widespread and systematic attack against the civilian population and that the perpetrators had knowledge that their acts formed part of a widespread attack against a civilian population. However the Trial Chamber finds that the evidence is not sufficiently specific to return a finding of guilt but that it may be considered as corroboration for specific instances of sexual slavery described by witnesses testifying before the Trial Chamber.

b. Abducted Women from Koidu Town and Mortema used as sexual slaves – Kono District – Sexual Slavery

3168. para. 1092: The Trial Chamber finds that between 1 February 1998 and 31 December 1998 in Koidu members of the AFRC, RUF, AFRC/RUF Junta and Liberian fighters abducted an unknown number of women and girls and forcefully detained them and forced them to have

sexual relations. Given the context in which the crimes occurred, the Trial Chamber finds that the acts of the perpetrators formed part of both a widespread and systematic attack against the civilian population and that the perpetrators had knowledge that their acts formed part of such an attack against a civilian population. However the Trial Chamber finds that the evidence is not sufficiently specific to return a finding of guilt but that it may be considered as corroboration for specific instances of sexual slavery described by witnesses testifying before the Trial Chamber.

c. Evidence of Sexual Slavery at Wondedu – Kono District – Sexual Slavery

3169. para. 1094: Based on Teh's evidence, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that RUF members detained an unknown number of women thereby exercising powers of ownership over them and caused the women they had captured to engage in acts of a sexual nature. The Trial Chamber further finds beyond reasonable doubt that RUF members intended to use the captured women as sexual slaves. The Trial Chamber therefore finds that the Prosecution has established beyond reasonable doubt that RUF members in Wondedu committed acts of sexual slavery against an unknown number of women and girls in April 1998.

d. Women used as sexual slaves in Koidu Town in February 1998 – Kono District – Sexual Slavery

3170. para. 1098: The Trial Chamber finds Koker's evidence that he travelled with the group of captured civilians and was in Koidu Town where he observed AFRC and RUF fighters take captured civilians as "wives" to be reliable. Based on Koker's evidence, the Trial Chamber finds that an unknown number of women were captured in Masiaka, Makeni and Koidu Town and detained by their captors and were forced to have sexual intercourse with them. The Trial Chamber finds that these women were used as sexual slaves by the retreating AFRC and RUF fighters in Kono District and further finds that AFRC/RUF members intended to use the captured women and girls as sexual slaves. Therefore, the Trial Chamber finds that the elements of the crime of sexual slavery have been established beyond reasonable doubt.

e. Women used as sexual slaves in Koidu Town from March to June 1998 – Kono District – Sexual Slavery

3171. para. 1102: Alimamy Bobson Sesay, as an SLA commander who travelled throughout Kono District, saw and knew about the conduct of fighters. He also stated that he had his own sexual slave. The Trial Chamber finds his evidence to be reliable. The Trial Chamber finds beyond reasonable doubt that members of the AFRC/RUF intentionally exercised powers of ownership over an unknown number of women and girls by depriving them of their liberty and forced them to engage in acts of a sexual nature. Therefore, the Trial Chamber is satisfied that the elements of the crime of sexual slavery have been established beyond reasonable doubt.

f. RUF and AFRC fighters brought sexual slaves from Koidu Town to PC Ground and Superman Ground in 1998 – Kono District – Sexual Slavery

3172. para. 1108: Based on the consistent evidence of Isaac Mongor, TF1-375 and Alice Pyne, in addition to the evidence of Perry Kamara referred to above, the Trial Chamber finds beyond reasonable doubt that an unknown number of women were intentionally abducted, held in captivity and forced to have sexual intercourse with their AFRC, RUF and STF captors throughout Kono District and in particular at PC Ground and Superman Ground.. The Trial Chamber finds that these women were used as sexual slaves by their AFRC, RUF and STF captors who intended to use the detained women and girls as sexual slaves. Therefore, the Trial Chamber finds that the elements of the crime of sexual slavery have been established beyond reasonable doubt.

g. TF1-189 used as a sexual slave by RUF members at Koidu Town – Kono District – Sexual Slavery

3173. para. 1116: On the basis of this evidence, the Trial Chamber finds that between March and August 1998 in Koidu Town, Rebel A, a member of the RUF, exercised powers of ownership over TF1-189 by holding her in captivity either independently or with the assistance of other rebels and thereby deprived her of her liberty. Rebel A and/or the other rebels working with Rebel A, forced TF1-189 to labour for their benefit.

3174. para. 1117: The Trial Chamber also finds that during this period, Rebel A and two other RUF rebels engaged in acts of a sexual nature with TF1-189. From her evidence describing the environment of violence and coercion, the Trial Chamber finds that TF1-189 did not consent to

these sexual acts and that Rebel A and the two other RUF rebels intended to use TF1-189 as a sexual slave.

3175. para. 1118: The Trial Chamber therefore finds that the elements of sexual slavery have been proved beyond reasonable doubt.

h. Use of Finda Gbamanja as sexual slave by a RUF member in Koidu Town – Kono District – Sexual Slavery

3176. para. 1127: On the basis of this evidence, the Trial Chamber finds that between approximately March and April 1998, in Koidu Town, Peppe and Sergeant Foday, RUF rebels loyal to Superman, exercised powers of ownership over Gbamanja by holding her in captivity, depriving her of her liberty and by forcing her to labour for their benefit. The Trial Chamber also finds that Peppe and Sergeant Foday forced Gbamanja to engage repeatedly in acts of a sexual nature. The Trial Chamber infers from the environment of violence and coercion, Gbamanja's young age at the time of the events, in addition to her evidence of capture following the killing of her father, that Gbamanja did not consent to these sexual acts. The Trial Chamber finds Peppe and Sergeant Foday intended these acts. The Trial Chamber further finds the witness's evidence is indicative of a recognised system of ownership and distribution of captured girls as sexual slaves among the AFRC/RUF troops loyal to Superman. The Trial Chamber is accordingly satisfied that the elements of the crime of sexual slavery have been proved beyond reasonable doubt.

i. Use of Finda Gbamanja as a sexual slave by rebels at Superman Ground – Kono District – Sexual Slavery

3177. para. 1132: On the basis of this evidence, the Trial Chamber finds that between approximately April and October 1998, at Superman Ground, Gbamanja was held in captivity by Sergeant Foday and Mamie, both of whom forced her to labour for their benefit. During this time Sergeant Foday, with the assistance of Mamie, continued to intentionally exercise powers of ownership over Gbamanja by depriving her of her liberty, forcing her to have sex, and by ultimately sending her to work in Giema. The Trial Chamber is accordingly satisfied that the elements of the crime of sexual slavery have been proved beyond reasonable doubt.

j. Use of Sia Kamara as a sexual slave by rebels near Yegbema and Sawoa – Kono District – Sexual Slavery

3178. para. 1142: Kamara's description of events corresponds with the movements of the AFRC and RUF. Given her testimony that one of the rebels who captured her was dressed in a soldier's uniform; that "Lieutenant T" stated that they would show ECOMOG that "we own the country" and that it was now Operation No Living Thing; that the rebels asked the civilians about Kamajors and Kabbah and that they suspected Kamara of being a Kamajor; and her testimony that the rebels stated that they had come from Freetown, the Trial Chamber is satisfied beyond reasonable doubt that Kamara was abducted by members of the AFRC/RUF and not Kamajors.

3179. para. 1143: On the basis of Kamara's testimony, the Trial Chamber finds that Kamara was abducted from a location in the bush near Yegbema in March/April 1998 by members of the AFRC/RUF, that she was forced to engage in sexual acts by three members of the AFRC/RUF in this same location, and that she was later forced to engage in sexual acts and sexually brutalised by two other members of the same group of AFRC/RUF at Fall Road between Sawoa and Benguema Fiama. The Trial Chamber finds that the members of the AFRC/RUF intentionally exercised powers of ownership over Kamara by depriving her of her liberty through her abduction and detention; by exacting forced labour from her by forcing her to carry a load; and that she was forced to engage repeatedly in acts of a sexual nature by multiple members of the group. The Trial Chamber finds from Kamara's testimony of her inability to refuse to submit to these acts and from the environment of violence and coercion that Kamara did not consent to these acts. The Trial Chamber finds that the five members of the AFRC/RUF who detained, raped and forced Kamara to carry loads intended to exercise these acts. The Trial Chamber accordingly finds that the elements of the crime of sexual slavery have been proved beyond reasonable doubt.

3180. para. 1144: The Trial Chamber finds in each of the aforementioned crimes mentioned in this section concerning Kono District, that the perpetrators intentionally exercised powers of ownership over their victims by depriving them of their liberty, and in some cases forcing them to work, and in all cases the victims were forced to engage in acts of a sexual nature thus constituting the crime of sexual slavery.

3181. para. 1145: The Trial Chamber has found the elements of sexual slavery have been satisfied beyond reasonable doubt for the following acts:

(i) An unknown number of women were used as sexual slaves by RUF and AFRC fighters in Koidu Town in February 1998;

(ii) An unknown number of women were used as sexual slaves by RUF and AFRC fighters in Koidu Town in March to June 1998;

(iii) An unknown number of women were used as sexual slaves by RUF, AFRC and STF fighters at Superman Ground and PC Ground in around April 1998;

(iv) TF1-189 was used as sexual slave by members of the RUF in Koidu Town between 12 March 1998 and August 1998;

(v) An unknown number of women were used as sexual slaves by members of the RUF in Wondedu in April 1998;

(vi) Finda Gbamanja was used as a sexual slave by a member of the RUF in Koidu Town from approximately March/April 1998;

(vii) Finda Gbamanja was used as a sexual slave by rebels loyal to Superman at Superman Ground from approximately April to October 1998;

(viii) Sia Kamara was used as a sexual slave by members of the AFRC/RUF loyal to Superman near Yegbema and Sawoa in approximately March/April 1998.

3182. para. 1146: The Trial Chamber recalls that the Prosecution has established beyond reasonable doubt that at all times relevant to the Indictment, the RUF and/or AFRC forces directed both a widespread and systematic attack against the civilian population of Sierra Leone.[2873] The Trial Chamber is satisfied that each of the incidences of sexual slavery proved by the Prosecution in respect of Kono District formed part of the said attack and that the perpetrators were aware of this fact. Therefore, the Trial Chamber is satisfied that the aforementioned incidences of sexual slavery in Kono District constitute sexual slavery as a crime against humanity under Article 2 of the Statute.

(vi) Freetown and the Western Area – Sexual Slavery

a. Captured girls and women used as sexual slaves in Benguema from approximately mid-February to March 1999 – Freetown and the Western Area – Sexual Slavery

3183. para. 1163: As discussed in relation to his evidence of sexual slavery in Kono District, the Trial Chamber notes that Alimamy Bobson Sesay was a commander who was present in locations where crimes were occurring and finds his evidence to be reliable. Based on his evidence, the Trial Chamber is satisfied that members of the AFRC/RUF, the STF and Liberian fighters intentionally exercised powers of ownership over an unknown number of women and

girls by depriving them of their liberty and controlling their movements in Benguema until approximately March 1999. The Trial Chamber further finds that the women and girls were forced to engage in acts of a sexual nature with their captors and that their captors intended to use these women and girls as sexual slaves. The Trial Chamber therefore finds that the elements of the crime of sexual slavery have been established beyond reasonable doubt.

b. TF1-029 used as a sexual slave in Wellington, Calaba Town and Benguema – Freetown and the Western Area – Sexual Slavery

3184. para. 1169: On the basis of this evidence, the Trial Chamber finds that between 22 January 1999 and 10 March 1999, which is during and after the indictment period, in Wellington, Calaba Town and Benguema, members of the AFRC/RUF including Major Arif, an AFRC soldier, exercised powers of ownership over an unknown number of women including TF1-029 by abducting them and holding them in captivity either independently or with the assistance of other rebels and thereby depriving them of their liberty. The Trial Chamber also finds that during this period, members of the AFRC/RUF, including Major Arif, engaged in acts of a sexual nature with an unknown number of women and girls including TF1-029, namely repeated rape. The Trial Chamber is satisfied from the evidence of the environment of violence and coercion, together with the testimony of TF1-029 that she was "forced to have sex", that she did not consent to these sexual acts. The Trial Chamber finds that Major Arif intended to use TF1-028 and an unknown number of women and girls as sexual slaves. The Trial Chamber accordingly finds that the elements of the crime of sexual slavery have been satisfied beyond reasonable doubt.

c. Akiatu Tholley used as a sexual slave in Allen Town and Waterloo – Freetown and the Western Area – Sexual Slavery

3185. para. 1179: On the basis of this evidence, the Trial Chamber finds that between late January and early April, 1999 James, an STF fighter, exercised powers of ownership over Tholley by holding her in captivity and depriving her of her liberty. The Trial Chamber finds that during this period James caused Tholley to engage in acts of a sexual nature, namely rape, by having sex with Tholley against her will. The Trial Chamber finds that James intended to use Tholley as a sexual slave. The Trial Chamber accordingly finds that the elements of the crime of sexual slavery have been satisfied beyond reasonable doubt.

d. Evidence that TF1-023 was used as a sexual slave in Calaba Town, Benguema and Four Mile by a member of the AFRC from late January until March, 1999 – Freetown and the Western Area – Sexual Slavery

3186. para. 1187: The Trial Chamber finds that between 22 January and approximately March, 1999, which extends beyond the Indictment period for sexual slavery in Freetown and the Western Area, Colonel B, a member of the AFRC under the command of Alex Tamba Brima and Brima Bazzy Kamara, exercised powers of ownership over TF1-023 by holding her in captivity and depriving her of her liberty. The Trial Chamber finds that during this period, Colonel B caused TF1-023 to engage in acts of a sexual nature, namely rape, by having sexual intercourse with TF1-023 against her will. The Trial Chamber finds that Colonel B intended to use Tholley as a sexual slave. The Trial Chamber is accordingly satisfied that the elements of the crime of sexual slavery have been proved beyond reasonable doubt.

e. Conclusion – Sexual Slavery

3187. para. 1188: The Trial Chamber finds in each of the aforementioned crimes mentioned in this section concerning Kono District, that the perpetrators intentionally exercised powers of ownership over their victims by depriving them of their liberty, and in some cases forcing them to work, and in all cases the victims were forced to engage in acts of a sexual nature thus constituting the crime of sexual slavery.

3188. para. 1189: The Trial Chamber finds that the Prosecution has proved the following instances of sexual slavery beyond a reasonable doubt:

(i) An unknown number of women and girls were used as sexual slaves by AFRC fighters in Benguema until approximately March 1999;

(ii) TF1-029 was used as a sexual slave by Major Arif, an ex-SLA/AFRC soldier, in Wellington, Calaba Town and Benguema from late January to March 1999;

(iii) Akiatu Tholley was used as a sexual slave by an STF fighter named James in Allen Town and Waterloo from approximately late January through early April 1999;

(iv) TF1-023 was used as a sexual slave by a member of the AFRC in Calaba Town, Benguema and Four Mile from late January through March 1999.

3189. para. 1190: The Trial Chamber finds in each of the aforementioned crimes mentioned in this section concerning Kailahun District, that the perpetrators intentionally exercised powers of

ownership over their victims by depriving them of their liberty, and in some cases forcing them to work, and in all cases the victims were forced to engage in acts of a sexual nature thus constituting the crime of sexual slavery.

3190. para. 1191: The Trial Chamber recalls that the Prosecution has established beyond reasonable doubt that at all times relevant to the Indictment, the RUF and/or AFRC forces directed both a widespread and systematic attack against the civilian population of Sierra Leone.[2963] The Trial Chamber is satisfied that each of the incidences of sexual slavery proved by the Prosecution in respect of Freetown and the Western Area formed part of the said attack and that the perpetrators were aware of this fact. Therefore, the Trial Chamber is satisfied that the aforementioned incidences of sexual slavery in Freetown and the Western Area constitute sexual slavery as a crime against humanity under Article 2 of the Statute.

3191. Regarding Taylor's individual criminal responsibility (Aiding and Abetting), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Aiding and Abetting - paras. 6904-6906 [6351], 6910-6915 [6354], 6918-6924 [6360], 6927-6937 [6367], 6940-6946 [6378], 6947-6952 [6385], 6953 [6391].

3192. Regarding Taylor's individual criminal responsibility (Planning), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Planning - paras. 6957 [6392], 6958-6968 [6393], 6969-6970 [6404], 6971 [6406].

3193. Regarding Taylor's individual criminal responsibility (Instigating), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Instigating - para. 6972 [6407].

3194. Regarding Taylor's individual criminal responsibility (Ordering), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Ordering - para. 6973 [6408].

3195. Regarding Taylor's superior responsibility, see below: Chapter 13 (Article 6.3 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.3 of the Statute - Superior Responsibility - paras. 6977 - 6986 [8613].

3. Appellate Judgment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-A, Judgment, 26 September 2013

(b) Factual Findings

3196. para. 253: The Trial Chamber found that the RUF/AFRC's operational strategy was characterised by a campaign of crimes against the Sierra Leonean population, including the crimes charged in all 11 Counts of the Indictment,[578] which were inextricably linked to the strategy of the military operations themselves. This strategy entailed a campaign of terror against civilians as a primary *modus operandi*, to achieve military gains at any civilian cost and political gains in order to attract the attention of the international community and improve the RUF/AFRC's negotiating stance with the Sierra Leonean government (the "Operational Strategy").[579]

3197. para. 254: In assessing Taylor's alleged criminal liability, the Trial Chamber found that Taylor, by his acts and conduct, was "critical in enabling" the RUF/AFRC's Operational Strategy, "supported, sustained and enhanced" the functioning of the RUF/AFRC and its capacity to implement its Operational Strategy, planned an attack of terror as the *modus operandi* of the attack on Freetown and had a substantial effect on the crimes committed by the RUF/AFRC.[580] It further found that Taylor knew of the RUF/AFRC's Operational Strategy, knew that his acts and conduct assisted the commission of crimes in the implementation of that Operational Strategy and knew the essential elements of the crimes in which he was participating.[581]

3198. Regarding the RUF/AFRC's Operational Strategy, see below: Chapter 12 (Article 6.1. Liability) -Taylor - Appellate Judgment - Findings and Conclusions - The RUF/AFRC's Operational Strategy - paras. 257-302 [6411].

3199. para. 303: The Appeals Chamber has reviewed the Trial Chamber's assessment of the evidence and affirmed the findings in the Judgment.[821] It has further affirmed the Trial Chamber's finding that the RUF/AFRC leadership pursued an Operational Strategy to commit the crimes charged in Counts 1-11 of the Indictment.[822]

3200. Regarding Taylor's Acts, Conduct and Mental State, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Acts, Conduct and Mental State - paras. 303 - 343 [6457].

(c) Legal Conclusions

3201. See below: Annex B encompasses the discussion of the evaluation of evidence relating to all the crimes [Annex B].

3202. Regarding Taylor's Criminal Liability, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Criminal Liability - paras. 497-595 [6630].

B. RUF

1. Indictment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-2004-15-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

3203. Paragraph 19 through 39 are incorporated by reference.[144]

3204. These attacks [para.41: 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] were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property.[145]

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

3205. Members of the AFRC/RUF subordinate to and/or acting in concert with Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, committed crimes set forth below in paragraphs 45 through 82, and charged in counts 3 through 14, as part of a campaign to terrorize the civilian

[144] RUF Indictment, para. 40.

population. The AFRC/RUF also committed the crimes to punish the civilian population or 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.[146]

(iii) Counts 6-9: Sexual Violence

3206. 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:[147]

> i. Kono District: Between about 14 February 1998 and 30 June 1998, members of the AFRC/RUF raped hundreds of women and girls at various locations throughout the district including Koidu, Tombodu, Kissi-Town, Foender (or Foendu), Tomenduh, Fokoiya, Wondedu, and AFRC/RUF camps such as "superman camp" and 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";[148]
>
> ii. Koinadugu District: Between about 14 February 1998 and 30 June 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." The "wives were forced to perform a number of conjugal duties under coercion by their "husbands";[149]
>
> iii. Bombali District: 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 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";[150]
>
> iv. Kailahun District: At all times relevant to this indictment, an unknown number of women and girls at *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";[151]

[145] RUF Indictment, para. 42.
[146] RUF Indictment, para. 44.
[147] RUF Indictment, para. 54.
[148] RUF Indictment, para. 55.
[149] RUF Indictment, para. 56.
[150] RUF Indictment, para. 57.
[151] RUF Indictment, para. 58.

v. Freetown and Western Area: Between 6 January 1999 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 sex slaves and/or forced them into "marriages," and/or forced them into other forms of sexual violence. The "wives were forced to perform a number of conjugal duties under coercion by their "husbands";[152]

vi. Port Loko District: About the month of February 1999, AFRC/RUF forces fled to various locations in Porto Loko District. Between February 1999 and April 1999, members of the AFRC/RUF raped an unknown number of women and girls at 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." The "wives were forced to perform a number of conjugal duties under coercion by their "husbands";[153]

3207. 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 inhuman 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.[154]

2. Trial Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-T, Judgement, 2 March 2009

[152] RUF Indictment, para. 59.
[153] RUF Indictment, para. 60.
[154] RUF Indictment, para. 60.

(a) Factual Findings

(i) Kono District – Crimes

a. Background to Kono District – Kono District – Crimes

3208. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Background to Kono District – paras. 1136 – 1139 [208].

b. Koidu Town – Kono District – Crimes

3209. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Koidu Town – Sexual slavery and 'forced marriages' – paras. 1154 1155 [226].

c. Wendedu – Kono District – Crimes

3210. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Wendedu - Sexual slavery and 'forced marriages' – paras. 1778 - 1779 [250].

d. Bumpeh – Kono District – Crimes

3211. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Bumpeh – Rapes and sexual violence – paras. 1205 - 1206 [274].

e. Bomboafuidu – Kono District – Crimes

3212. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Bomboafuidu – Rape and sexual violence – paras. 1207 - 1208 [276].

f. Kissi Town – Kono District – Crimes

3213. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Kissi Town - 'Forced marriages' of TF1-016 and her daughter – paras. 1211 – 1214 [280].

(ii) Kailahun District – Crimes

a. Background to Kailahun District – Kailahun District – Crimes

3214. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Background to Kailahun District – paras. 1380 -1385 [413].

3215. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Sexual violence – para. 1405 [438].

b. 'Forced Marriage' of TF1-314 – Kailahun District – Crimes

3216. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Sexual violence – 'Forced Marriage' of TF1-314 – paras. 1406 - 1407 [439].

c. 'Forced Marriage' of TF1-093 – Kailahun District – Crimes

3217. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Sexual violence – 'Forced Marriage' of TF1-093 – para. 1408 [441].

d. 'Forced Marriages' of an unknown number of women – Kailahun District – Crimes

3218. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Sexual violence – 'Forced Marriages' of an unknown number of women – paras. 1409 – 1413 [442].

(iii) Freetown and the Western Area – Crimes

a. Background to Freetown and the Western Area – Freetown and the Western Area – Crimes

3219. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area– para. 1510 [477].

3220. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Perpetrators of the Attack on Freetown – paras. 1511 – 1515 [478].

3221. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Targeting of the civilian population in Freetown – paras. 1516 – 1520 [483], 1522 [489].

b. State House – Freetown and the Western Area – Crimes

3222. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – State House – para. 1523 [490].

c. Kissy – Freetown and the Western Area – Crimes

3223. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings, Amputations and Looting of TF1-022 and others – para. 1553 [520].

d. Allan Town, Calaba Town and Benguema – Freetown and the Western Area – Crimes

3224. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes - Allan Town, Calaba Town and Benguema - 'Forced Marriage' of TF1-023 – paras. 1558 – 1561 [525].

3225. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes - Allan Town, Calaba Town and Benguema - 'Forced Marriage' of TF1-029 – paras. 1562 – 1565 [529].

(iv) Koindugu District – Crimes

3226. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 – 1505 [533].

(v) Bombali District – Crimes

3227. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 – 1509 [543].

(vi) Port Loko District – Crimes

3228. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras.1609 – 1613 [547].

(b) Legal Conclusions

(i) Applicable law - CAH

3229. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Applicable law - CAH – paras. 75 – 90 [1582].

(ii) CAH – Findings on general requirements

3230. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – CAH – Findings on general requirements – paras. 942 – 963 [1598].

(iii) Applicable law – Sexual slavery

3231. para. 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]

3232. para. 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]

3233. para. 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.

3234. para. 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]

3235. para. 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]

3236. para. 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]

3237. para. 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]

3238. para. 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).

3239. para. 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 to cruel treatment and abuse, control of sexuality and forced labour."[305]

3240. para. 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]

3241. para. 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]

3242. para. 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]

(iv) Pleading

a. Criminal acts and events - Pleading

3243. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Criminal acts and events – paras. 411 – 414, 417 – 419 [604].

b. Locations – Pleading

3244. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Locations – paras.420 – 422 [613].

c. Timeframes – Pleading

3245. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Timeframes – paras. 423 – 432 [616].

d. CAH – Pleading

3246. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Pleading – CAH – paras. 448 - 449 [1628].

e. Sexual slavery and any other form of sexual violence – Pleading

3247. para.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 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]

3248. para.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.

3249. para.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.

3250. Separate Concurring Opinion – Justice B.Thompson – para. 24 (p.704): 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.

3251. Separate Concurring Opinion – Justice B. Thompson – para. 25 (p.704): 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

3252. Separate Concurring Opinion – Justice B.Thompson – para. 26 (p.704): 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.

3253. Separate Concurring Opinion – Justice B. Thompson – para. 27 (p.704-705): 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 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.

3254. Separate Concurring Opinion – Justice B. Thompson – para. 28 (p.705): 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."

(v) Kono District – Sexual slavery and 'forced marriages'

3255. See above: Chapter 2 – RUF – Trial Judgment – Legal Conclusions –Kono District – Unlawful killings - paras. 1266 – 1267 [1630].

3256. para. 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]

3257. para. 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.

3258. para. 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.

3259. para. 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 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.

3260. para. 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.

3261. para. 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.

3262. para. 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.

(vi) Kailahun District – Sexual slavery and 'forced marriages'

3263. para. 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).

3264. para. 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.

3265. para. 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 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.

a. Sexual Slavery and 'Forced Marriage' of TF1-314 – Kailahun District – Sexual slavery and 'forced marriages'

3266. para. 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.

3267. para. 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.

b. Sexual Slavery and 'Forced Marriage' of TF1-093 – Kailahun District – Sexual slavery and 'forced marriages'

3268. para. 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.

3269. para. 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.

3270. para. 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.

c. Sexual Slavery and 'Forced Marriages' of other civilians – Kailahun District – Sexual slavery and 'forced marriages'

3271. para. 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]

3272. para. 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.

3273. para. 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 therebels. 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.

3274. para. 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.

3275. para. 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.

3276. para. 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.

3277. para. 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.

3278. para. 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.

3279. para. 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 number of women were subjected to sexual slavery and 'forced marriages' in Kailahun District, as charged under Counts 7 and 8 of the Indictment.

(vii) Freetown and the Western Area – Sexual slavery and 'forced marriages'

3280. para. 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).

3281. para. 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.

3282. para. 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 sexual relations with him.[3022]

3283. para. 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.

3284. para. 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.

3285. para. 1582: The Chamber therefore finds that these acts constitute sexual slavery and 'forced marriages,' as charged under Counts 7 and 8 of the Indictment.

(viii) Koindugu District – Sexual slavery

3286. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 – 1505 [533].

(ix) Bombali District – Sexual slavery

3287. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 – 1509 [543].

(x) Port Loko District – Sexual slavery

3288. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras. 1609 – 1613 [547].

3. Appellate Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-A, Judgment, 26 October 2009

(a) Factual Findings

(i) Kono District

3289. See above: Chapter 1 – RUF – Appellate Judgment – Factual Findings – Kono District – para. 428 [712].

(b) Legal Conclusions

(i) Pleading

3290. para. 132: Kallon challenges the pleading of his liability as a superior for crimes in Kono District. The Appeals Chamber notes that he was convicted pursuant to Article 6(3) of the Statute of the following crimes in Kono District:

> (i) Acts of terrorism (Count 1), for sexual slavery in Kissi Town, Kono District;
>
> (ii) Sexual slavery (Count 7) in Kissi Town, Kono District;
>
> (iii) Other inhumane acts (forced marriage) (Count 8) in Kissi Town, Kono District;
>
> (iv) Outrages upon personal dignity (Count 9) in Kissi Town, Kono District;
>
> (v) Enslavement (Count 13) in relation to events in unspecified locations in Kono District;

3291. para. 133: Kallon makes general submissions that he lacked notice that he was alleged to have superior responsibility for crimes committed in Kono District, but he fails to provide substantiating arguments.[257] His submissions are at odds with a plain reading of the Indictment. It charges that Kallon "was a senior officer and Commander in the RUF, Junta and AFRC/RUF forces,"[258] and that when he was a "Battle Field Inspector, … he was subordinate only to the RUF Battle Group Commander, the Battlefield Commander, the leader of the RUF … and the leader of the AFRC."[259] Kallon was BFI at the times relevant to his convictions for crimes in Kono.[260] The Indictment further charges that in his position, Kallon "exercised authority, command and control over all subordinate members of the RUF, Junta and AFRC/RUF forces"[261] and that he "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 … failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof."[262] The Indictment expressly lists locations in Kono District as those at which the crimes charged under Counts 6-9

and 13 were committed[263] and states that by his "acts or omissions in relation to these events, … MORRIS KALLON …, pursuant to … Article 6.3. of the Statute, [is] individually criminally responsible for" the crimes charged under Counts 6-9 and 13.[264]

3292. para. 134: In relation to sexual violence, forced marriages and acts of terrorism at Kissi Town in Kono District, Kallon additionally argues that his subordinates at Kissi Town "were never sufficiently or at all particularized."[265] The Appeals Chamber notes, however, that in addition to the pleading of Kallon's superior position, discussed above, the Indictment states that the crimes were committed by "members of AFRC/RUF" at "Kissi-town (or Kissi Town)… and AFRC/RUF camps such as … Kissi-town (or Kissi Town) camp."[266] The Indictment, therefore, puts Kallon on notice of the charge that ARFC/RUF members who were his subordinates at Kissi Town committed the crimes charged in Counts 6-9. Kallon fails to argue how this pleading did not sufficiently identify his subordinates.

3293. para. 492: The Appeals Chamber holds that so long as Gbao agreed to the Common Criminal Purpose and was, therefore, a member of the JCE as the Trial Chamber found,[1256] he is responsible for all crimes that he either intended, or were naturally foreseeable would be committed by members of the JCE or persons under their control. This is consistent with the pleading of the crimes in the Indictment (which must be read in its entirety) and which pleaded each of the crimes in Count 1 to 14 as either within the JCE or as a reasonably foreseeable consequence of the JCE.[1257]

(ii) Pleading – Dissents

a. Justice Fisher:

3294. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Pleading-Dissents – Justice Fisher – para. 20 (p.517), para. 22 (p.518), para. 23 (p.518), para. 24 (p.518-519) [1715].

(iii) Crimes charged as criminal means of furthering Common Criminal Purpose – Sexual slavery

3295. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 333, 348 [751].

3296. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 377 -378 [754].

3297. para. 356: Indeed, Sesay himself recognises the finding that the Supreme Council was involved in the planning and organisation of the enslavement at Tongo Fields in Kenema from August 1997. However, he argues, the only crimes committed before that point in time were the terror attacks in Bo in June 1997, and so there were no crimes on the basis of which the Trial Chamber could infer the existence of a JCE.[852] However, although the enslavement at Tongo Fields commenced in August 1997,[853] it is evident from the Trial Chamber's findings that the "planned and … systematic policy of the Junta" which devised the large scale enslavement and implemented it "pursuant to a centralised system" must have started much earlier.[854] Indeed, "[w]ithin a week of the coup of 25 May 1997, RUF rebels and the military Junta were in full control of" Kenema Town.[855] Moreover, whether or not it amounted to acts of terrorism,[856] sexual violence in Kailahun was a means to achieve the AFRC/RUF objective throughout the Junta period.[857] The fact that the victims of the forced marriages were initially captured before the Indictment period does not detract from the finding that these crimes were "for the benefit… of the Junta" throughout their continuous commission.[858]

(iv) Crimes charged and JCE *mens rea* (short review) – Sexual slavery

3298. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged and JCE *mens rea* (short review) – paras. 467, 468, 482, 492, 493 [756] and see, also, Justice Fisher's and Justice Winter's Dissenting Opinions in that regard.

(v) CAH – Attack against civilian population

a. Kailahun District – CAH – Attack against civilian population

3299. See above – Chapter 2 – RUF – Appellate judgment – Legal conclusions – CAH – Attack against civilian population – Kailahun District – paras. 714, 719 – 724 [1715].

(vi) Sexual slavery – Legal requirements

3300. para. 726: The Trial Chamber convicted Sesay for committing sexual slavery (Count 7), "other inhumane acts" (forced marriage, Count 8) and outrages upon personal dignity (Count 9) against Witnesses TF1-093 and TF1-314, and "an unknown number" of other women in Kailahun District.1882

3301. para. 732: Sesay raises several arguments concerning the Trial Chamber's consideration of coercive circumstances and the absence of the victim's consent to the acts. He contends, in part, that the Trial Chamber erred in law in presuming the absence of consent of an unknown number of women.

3302. para. 733: In paragraphs 1465 through 1473 of the Trial Judgment, the Trial Chamber found that the circumstances surrounding the sexual relations and marriages included that (i) the women and girls were "forcefully captured and abducted" from "throughout Sierra Leone" and taken to Kailahun District,[1898] (ii) that these abductions took place "in the context of a hostile and coercive war environment,"[1899] (iii) that the women and girls could not leave for fear of being killed or sent into armed conflict,[1900] and (iv) that women and girls were subjected to "threats, intimidation, manipulation and other forms of duress which were predicated on the victims' fear and their desperate situation."[1901] The Trial Chamber found that the hostile and coercive circumstances were such that "*genuine consent was not possible*,"[1902] and it concluded that "[i]n light of the foregoing and given the violent, hostile and coercive environment in which these women suddenly found themselves … the sexual relations with the rebels … *was*, in [the] circumstances, *not consensual* because of the state of uncertainty and subjugation in which they lived in captivity."[1903]

3303. para.734: The Trial Chamber's reasoning led to a finding of the exercise of rights of ownership and of the force, threats of force and coercion used to compel victims. In part, the reasoning results in a finding of the absence of consent, not a presumption thereof, however, the absence of consent is neither an element of sexual slavery nor of forced marriage. Sexual slavery, a form of enslavement,[1904] "flows from claimed rights of ownership"[1905] to which consent is impossible.

3304. para.735: With respect to forced marriage, the Appeals Chamber recalls that the offence "describes a situation in which the perpetrator[,] … compels a person by force, threat of force, or coercion to serve as a conjugal partner."[1906] The conduct must constitute an "other inhumane act," which entails that the perpetrator: (i) inflict great suffering, or serious injury to body or to mental or physical health; (ii) sufficiently similar in gravity to the acts referred to in Article 2.a through Article 2.h of the Statute; and that (iii) the perpetrator was aware of the factual circumstances that established the character of the gravity of the act.[1907] As a crime against humanity, the offence also requires that the acts of the accused formed part of a widespread or systematic attack against the civilian population, and that the accused knew that his crimes were so related.[1908]

3305. para. 736: The Appeals Chamber considers that where the Prosecution has proved the legal requirements of the offence, that is, that an accused, by force, threat of force, or coercion, or by taking advantage of coercive circumstances, causes one or more persons to serve as a conjugal partner, and the perpetrator's acts are knowingly part of a widespread or systematic attack against a civilian population and amount to the infliction of great suffering, or serious injury to body or to mental or physical health sufficiently similar in gravity to the enumerated crimes against humanity, then consent is impossible[1909] and therefore is not a relevant consideration. As found by the Trial Chamber, "given the violent, hostile and coercive environment in which these women suddenly found themselves … the sexual relations with the rebels … could not [be], and was, in [the] circumstances, not consensual because of the state of uncertainty and subjugation in which they lived in captivity."[1910] Such captivity in itself would have vitiated consent in the circumstances under consideration.[1911]

3306. para. 737: After finding the absence of consent, the Trial Chamber went on to opine generally that, in circumstances such as the ones it had just found, "there *should be* a presumption of absence of genuine consent to having sexual relations or contracting marriages with the said RUF fighters."[1912] This additional statement did not provide the framework for its analysis and nothing suggests that it informed its findings on the elements of the offences. Rather, it is precatory, conditional, and follows the Trial Chamber's analysis of the circumstances that eliminated the possibility of genuine consent. The impugned statement is therefore an *obiter dicta*. The Appeals Chamber finds no error of law in the Trial Chamber's approach.

(vii) Kono District – Sexual slavery

3307. See above: Chapter 4 – RUF – Appellate Judgment – Legal Conclusions – Kono District – paras. 439 – 442 [2872].

3308. Regarding Sesay's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Sesay – paras. 624, 627 – 634 [7658].

3309. Regarding Kallon's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Kallon – paras. 806, 810 – 815 [7667].

3310. Regarding Kallon's superior responsibility in relation to forced marriages in Kono District, see below: Chapter 13 (Article 6.3. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – Superior responsibility – Kallon – paras. 838 – 839, 841 – 861 [8776].

3311. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Gbao – paras. 946-948, 951– 955 [7615].

3312. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

3313. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras. 4 – 28 [7454].

3314. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

(viii) Kailahun District – Sexual slavery

3315. para. 386: The Trial Chamber found that the RUF sustained a widespread and systematic pattern of conduct in Kailahun which included military training, child recruitment, enslavement of civilians and sexual slavery.[949] These 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.[950]

3316. para. 387: Sesay submits that the evidence concerning Kailahun District supports that no common criminal purpose existed during the Junta period.[951] He argues that paragraph 2047 of the Trial Judgment appeared to conclude that the RUF and AFRC forces did not act jointly in Kailahun.[952] Furthermore, there was no evidence that AFRC/RUF commanders were involved in Kailahun or that any RUF member committed or used others to commit acts of terror and

collective punishment there during the Junta period.[953] No additional arguments are offered, either in response or reply.

3317. para. 388: The Appeals Chamber is not persuaded by Sesay's submission. The Trial Chamber made extensive findings on RUF members and Commanders, including Superman,[954] committing acts of sexual slavery and forced marriage[955] as well as enslavement[956] in Kailahun District. Whereas only the former two crimes also amounted to acts of terrorism,[957] the Appeals Chamber recalls that it was not required that the crimes constituted either such acts or collective punishment in order to fall within the Common Criminal Purpose.[958]

3318. para. 389: As to whether the AFRC and RUF acted in concert in Kailahun, the Appeals Chamber notes that the relevant part of paragraph 2047 of the Trial Judgment reads:

> 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 [than Kailahun] in the country during the period in question.

This finding by a Majority of the Trial Chamber neither affirms nor rejects that the AFRC and RUF acted jointly in Kailahun.

3319. para. 390: However, whether the leaders of the AFRC and RUF acted in concert in the specific geographical area of Kailahun District was not determinative for the Trial Chamber's conclusion that they shared a common criminal purpose which encompassed that District. Rather, what mattered for the Trial Chamber was whether the two groups acted in concert on a country-wide level:

> The widespread and systematic crimes [by the RUF in Kailahun [959]] 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.[960]

3320. para. 391: Sesay does not argue that these findings are erroneous, either in law or in fact. His submission is therefore rejected.

3321. para. 453: Sesay contends that the Trial Chamber failed to identify the perpetrators or the victims of the forced marriages in Kailahun, and to identify the necessary link between the direct perpetrators and the JCE members.[1158]

3322. para. 454: The Trial Chamber considered that its findings on the acts of sexual violence and forced marriage in Kono District apply also to the forced marriages in Kailahun District now at issue.[1159] Those findings, which have been set out above, clarify how the perpetrators of these crimes were used by members of the JCE.[1160] Furthermore, with respect to Kailahun District specifically, the Trial Chamber held that the "widespread and systematic pattern" of crimes such as forced marriages "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."[1161] Sesay's argument that the Trial Chamber failed to identify the link between the perpetrators of the forced marriages in Kailahun and JCE members acting in furtherance of the Common Criminal Purpose therefore fails. Given the widespread and systematic pattern of these crimes, the fact that some of the victims were unidentified, or that the perpetrators were identified only as "RUF fighters,"[1162] does not render the Trial Chamber's finding on that link unreasonable. In addition, the Appeals Chamber notes that Superman, himself a JCE member,[1163] committed one of the forced marriages in Kailahun District,[1164] and that Bockarie also had a captured "wife."[1165] Sesay's submission is therefore rejected.

3323. Regarding Sesay's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Sesay – para.635 [7694].

3324. See above – Chapter 2 – RUF – Appellate judgment – Legal conclusions – CAH – Attack against civilian population – Kailahun District – paras. 714, 719 – 724 [1715].

3325. para. 726: The Trial Chamber convicted Sesay for committing sexual slavery (Count 7), "other inhumane acts" (forced marriage, Count 8) and outrages upon personal dignity (Count 9) against Witnesses TF1-093 and TF1-314, and "an unknown number" of other women in Kailahun District.[1882]

3326. para. 732: Sesay raises several arguments concerning the Trial Chamber's consideration of coercive circumstances and the absence of the victim's consent to the acts. He contends, in part, that the Trial Chamber erred in law in presuming the absence of consent of an unknown number of women.

3327. para. 733: In paragraphs 1465 through 1473 of the Trial Judgment, the Trial Chamber found that the circumstances surrounding the sexual relations and marriages included that (i) the women and girls were "forcefully captured and abducted" from "throughout Sierra Leone" and

taken to Kailahun District,[1898] (ii) that these abductions took place "in the context of a hostile and coercive war environment,"[1899] (iii) that the women and girls could not leave for fear of being killed or sent into armed conflict,[1900] and (iv) that women and girls were subjected to "threats, intimidation, manipulation and other forms of duress which were predicated on the victims' fear and their desperate situation."[1901] The Trial Chamber found that the hostile and coercive circumstances were such that "*genuine consent was not possible*,"[1902] and it concluded that "[i]n light of the foregoing and given the violent, hostile and coercive environment in which these women suddenly found themselves … the sexual relations with the rebels … *was*, in [the] circumstances, *not consensual* because of the state of uncertainty and subjugation in which they lived in captivity."[1903]

3328. para. 734: The Trial Chamber's reasoning led to a finding of the exercise of rights of ownership and of the force, threats of force and coercion used to compel victims. In part, the reasoning results in a finding of the absence of consent, not a presumption thereof, however, the absence of consent is neither an element of sexual slavery nor of forced marriage. Sexual slavery, a form of enslavement,1904 "flows from claimed rights of ownership"[1905] to which consent is impossible.

3329. para. 735: With respect to forced marriage, the Appeals Chamber recalls that the offence "describes a situation in which the perpetrator[,] … compels a person by force, threat of force, or coercion to serve as a conjugal partner."[1906] The conduct must constitute an "other inhumane act," which entails that the perpetrator: (i) inflict great suffering, or serious injury to body or to mental or physical health; (ii) sufficiently similar in gravity to the acts referred to in Article 2.a through Article 2.h of the Statute; and that (iii) the perpetrator was aware of the factual circumstances that established the character of the gravity of the act.[1907] As a crime against humanity, the offence also requires that the acts of the accused formed part of a widespread or systematic attack against the civilian population, and that the accused knew that his crimes were so related.[1908]

3330. para. 736: The Appeals Chamber considers that where the Prosecution has proved the legal requirements of the offence, that is, that an accused, by force, threat of force, or coercion, or by taking advantage of coercive circumstances, causes one or more persons to serve as a conjugal partner, and the perpetrator's acts are knowingly part of a widespread or systematic attack against a civilian population and amount to the infliction of great suffering, or serious injury to body or to mental or physical health sufficiently similar in gravity to the enumerated crimes against humanity, then consent is impossible[1909] and therefore is not a relevant consideration. As found by the Trial Chamber, "given the violent, hostile and coercive environment in which these women

suddenly found themselves … the sexual relations with the rebels … could not [be], and was, in [the] circumstances, not consensual because of the state of uncertainty and subjugation in which they lived in captivity."[1910] Such captivity in itself would have vitiated consent in the circumstances under consideration.[1911]

3331. para. 737: After finding the absence of consent, the Trial Chamber went on to opine generally that, in circumstances such as the ones it had just found, "there *should be* a presumption of absence of genuine consent to having sexual relations or contracting marriages with the said RUF fighters."[1912] This additional statement did not provide the framework for its analysis and nothing suggests that it informed its findings on the elements of the offences. Rather, it is precatory, conditional, and follows the Trial Chamber's analysis of the circumstances that eliminated the possibility of genuine consent. The impugned statement is therefore an *obiter dicta*. The Appeals Chamber finds no error of law in the Trial Chamber's approach.

3332. para. 738: Sesay also contends the Trial Chamber erred in fact in finding that there was an absence of consent. He made similar submissions at trial, and these arguments were expressly rejected.[1913] On appeal, Sesay fails to show that the Trial Chamber could not reasonably have found the absence of consent on the basis of its findings of fact. He fails to show that any of the women and girls found to have been the victims of sexual slavery were not in fact subjected to the forms of violence and coercion that were the basis of the Trial Chamber's findings on the absence of consent. Accordingly, his submissions fail to demonstrate the Trial Chamber's finding was unreasonable.

3333. para. 739: Sesay further contends that, based on the evidence, the absence of consent should not have been found with respect to all sexual relations and "marriages" in Kailahun.[1914] The Trial Chamber made no such finding regarding *all marriages* in Kailahun. Instead, the Trial Chamber confined its analysis to situations in which women and girls were forced into "marriages." It found that TF1-314 was raped twice before being "married" to an RUF commander.[1915] The Trial Chamber also accepted the testimony of TF1-314 that other girls between 10 and 15 years of age were taken as "wives" by rebels in *Buedu*.[1916] The Trial Chamber found that TF1-093 became Superman's "wife" because she feared she would have been killed.[1917] A senior RUF Commander testified that when a Commander conquered a particular territory young girls would be abducted. These girls would find it extremely difficult to escape.[1918] Denis 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."[1919] The Trial Chamber found that the women and girls were abducted from various

locations throughout Sierra Leone and subjected to hostile and coercive circumstances in which "genuine consent was not possible."[1920]

3334. para. 740: The Trial Chamber's findings were sufficient to establish the *actus reus* of sexual slavery and forced marriage. Having thus found, *inter alia*, that the victims were subject to enslavement, force and coercion, the Trial Chamber did not have to examine the issue of consent, and in particular to have assessed whether every victim did not consent. Sesay's argument is thus without merit. The Appeals Chamber also rejects Sesay's speculative contention that the coercive circumstances were created in part by "outside forces" rather than by the RUF/AFRC forces that perpetrated the crimes.

3335. Regarding Kallon's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Kallon – paras. 817, 820 – 824 [7759].

3336. Regarding Gbao's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Gbao – paras. 967, 972- 983, 986 – 994 [7780].

C. AFRC

1. Indictment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

3337. Paragraphs 21 through 36 are incorporated by reference.[155]

3338. 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 ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, 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. [156]

3339. These attacks were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property. [157]

3340. 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. [158]

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

3341. Members of the AFRC/RUF subordinate to and/or acting in concert with ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, committed the crimes set forth below in paragraphs 42 through 79 and charged in Counts 3 through 14, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF. [159]

[155] AFRC Indictment, para. 37.
[156] AFRC Indictment, para. 38.
[157] AFRC Indictment, para. 39.
[158] AFRC Indictment, para. 40.
[159] AFRC Indictment, para. 50.

(iii) Counts 6-9: Sexual Violence

3342. 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: [160]

> i. Kono District - 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" 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";[161]
>
> ii. Koinadugu District - 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";[162]
>
> iii. Bombali District - 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";[163]
>
> iv. Kailahun District - 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" 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";[164]
>
> v. Freetown and the Western Area - 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

[160] AFRC Indictment, para. 51.
[161] AFRC Indictment, para. 52.
[162] AFRC Indictment, para. 53.
[163] AFRC Indictment, para. 54.
[164] AFRC Indictment, para. 55.

subjected them to other forms of sexual violence. The "wives" were forced to perform a number of conjugal duties under coercion by their "husbands";[165]

vi. Port Loko District - 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".[166]

3343. By their acts or omissions in relation to these events, ALEX T AMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, 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.

2. Trial Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-T, Judgement, 20 June 2007

[165] AFRC Indictment, para. 56.
[166] AFRC Indictment, para. 57.

(a) Factual Findings

(i) Preliminary Remarks

3344. para. 969: Count 9 (Outrages on Personal Dignity) has been charged in addition to or in the alternative to Count 6 (Rape), Count 7 (Sexual Slavery and Any Other Form of Sexual Violence) and Count 8 (Other Inhumane Act, Forced Marriage). As discussed, *supra*, in Chapter II, Defects in the Indictment, the Trial Chamber has dismissed Count 7 for duplicity[1952] and as discussed, *supra*, in Chapter IX, Applicable Law, the Trial Chamber has dismissed Count 8 for redundancy.[1953] As additionally discussed, supra, in Chapter IX, Applicable Law, the Trial Chamber is satisfied that the acts of rape and sexual slavery are encompassed by the definition of outrages on personal dignity and will consider evidence to this effect presently.

3345. para. 1070: In coming to its findings in relation to Count 9, the Trial Chamber relies on the findings made in relation to Count 6, supra, as well as its findings on the chapeau elements of war crimes.[1954]

(ii) Kono District – Crimes

3346. See above: Chapter 4 – AFRC – Trial Judgment – Factual Findings – Kono District (14 February 1998 – 30 June 1998) – Crimes - paras. 969 – 972 [2893].

3347. See below: Chapter 6 – AFRC – Trial Judgment – Factual Findings - Kono District (14 February 1998 – 30 June 1998) – Crimes - paras. 1100 - 1108 [3593].

(iii) Koinadugu District – Crimes

3348. See above: Chapter 4 – AFRC – Trial Judgment – Factual Findings - Koinadugu District (14 February 1998 – 30 September 1998) – Crimes - paras. 982 – 985 [2905].

3349. See below: Chapter 6 – AFRC – Trial Judgment – Factual Findings - Koinadugu District (14 February 1998 – 30 September 1998) – Crimes - paras. 1110 – 1132 [3606].

(iv) Bombali District – Crimes

3350. See above: Chapter 4 – AFRC – Trial Judgment – Factual Findings - Bombali District (1 May 1998 – 30 November 1998) – Crimes - paras. 1027 – 1030 [2948].

3351. See below: Chapter 6 – AFRC – Trial Judgment – Factual Findings - Bombali District (14 February 1998 – 30 September 1998) – Crimes - paras. 1134 – 1144 [3633].

(v) Kailahun District - Crimes

3352. See below: Chapter 6 – AFRC – Trial Judgment – Factual Findings - Kailahun District – (At all times relevant to the Indictment) – Crimes – paras. 1146 – 1148 [3645].

(vi) Freetown and Western Area – Crimes

3353. See above: Chapter 4 – AFRC – Trial Judgment – Factual Findings – Freetown and Western Area– Crimes – paras. 1042 – 1043 [2962].

3354. See below: Chapter 6 – AFRC – Trial Judgment – Factual Findings – Freetown and Western Area – Crimes – paras. 1150 – 1151, 1153 -1155, 1157 – 1169 [3649].

(vii) Port Loko District – Crimes

3355. See below: Chapter 6 – AFRC – Trial Judgment – Factual Findings – Port Loko District – Crimes – paras. 1171 -1172, 1174 – 1186 [3671].

(viii) Evidence of sexual slavery not limited to a particular place or a particular time

3356. See below: Chapter 6 – AFRC – Trial Judgment – Factual Findings – Evidence of Witnesses TF1 – 094, DAB – 156 and TF1-085 – paras. 1076 - 1099 [3687].

(b) Legal Conclusions

(i) Applicable law – Crimes against humanity ("CAH")

3357. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Applicable law – Crimes against humanity – The Law - paras. 211 – 213 [1941].

a. Attack – Applicable law - CAH

3358. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Applicable law – Crimes against humanity – Attack - para. 214 [1944].

b. Widespread or systematic – Applicable law - CAH

3359. See above: Chapter 2 – AFRC – Trial Judgment- Legal Conclusions – Widespread - Applicable Law – CAH - para. 215 [1945].

c. Directed against any civilian population – Applicable law - CAH

3360. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Directed against any civilian population - Applicable law – CAH - paras. 216 – 219 [1946].

d. The acts of the perpetrator must form part of the attack – Applicable law - CAH

3361. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions –The acts of the perpetrator must form part of the attack – Applicable law – CAH - para. 220 [1950].

e. *Mens rea* – Applicable law - CAH

3362. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – *Mens rea* - Applicable law – Crimes against humanity - paras. 221 - 222 [1951].

(i) CAH - Findings on general requirements

3363. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Applicable law – Crimes against humanity – CAH – Findings on general requirements - paras. 224 – 226 [1954].

a. AFRC/RUF Government period

3364. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Applicable law – Crimes against humanity – CAH – Findings on general requirements - AFRC/RUF Government period - paras. 227 – 232 [1957].

b. Post AFRC/RUF Government Period (February 1998 January 2000

3365. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Applicable law – CAH – Findings on general requirements - Post AFRC/RUF Government Period (February 1998 January 2000) - paras. 233 – 239 [1963].

(ii) Applicable law – Sexual slavery

3366. para. 708: In addition to the *chapeau* requirements of Crimes Against Humanity pursuant to Article 2 of the Statute, the elements of the crime of sexual slavery are as follows:

> 1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.
>
> 2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature;
>
> 3. The perpetrator committed such conduct intending to engage in the act of sexual slavery or in the reasonable knowledge that it was likely to occur.[1380]

3367. para. 709: The powers of ownership listed in the first element of sexual slavery are non-exhaustive. There is no requirement for any payment or exchange in order to establish the exercise of ownership.[1381] Deprivation of liberty may include extracting forced labour or otherwise reducing a person to servile status.[1382] Further, ownership, as indicated by possession, does not require confinement to a particular place but may include situations in which those who are captured remain in the control of their captors because they have no where else to go and fear for their lives.[1383] The consent or free will of the victim is absent under conditions of enslavement.[1384]

3368. para. 710: The Prosecution evidence in the present case does not point to even one instance of a woman or girl having had a bogus marriage forced upon her in circumstances which did not amount to sexual slavery. Not one of the victims of sexual slavery gave evidence that the mere fact that a rebel had declared her to be his wife had caused her any particular trauma, whether physical or mental. Moreover, in the opinion of the Trial Chamber, had there been such evidence, it would not by itself have amounted to a crime against humanity, since it would not have been of similar gravity to the acts referred to in Article 2(a) to (h) of the Statute.

3369. para. 711: The Trial Chamber finds that the totality of the evidence adduced by the Prosecution as proof of "forced marriage" goes to proof of elements subsumed by the crime of sexual slavery. As exhaustively examined in *Chapter X Factual Findings*, infra,[1385] so-called "forced marriages" involved the forceful abduction of girls and women from their homes or other places of refuge and their detention with the AFRC troops as they attacked and moved through various districts. The girls and women were taken against their will as "wives" by individual rebels.[1386] The evidence, showed that the relationship of the perpetrators to their "wives" was one of ownership and involved the exercise of control by the perpetrator over the victim, including

control of the victim's sexuality, her movements and her labour; for example, the "wife" was expected to carry the rebel's possessions as they moved from one location to the next, to cook for him and to wash his clothes.[1387] Similarly, the Trial Chamber is satisfied that the use of the term "wife" by the perpetrator in reference to the victim is indicative of the intent of the perpetrator to exercise ownership over the victim, and not an intent to assume a marital or quasi-marital status with the victim in the sense of establishing mutual obligations inherent in a husband wife relationship. In fact, while the relationship of the rebels to their "wives" was generally one of exclusive ownership, the victim could be passed on or given to another rebel at the discretion of the perpetrator.[1388]

3370. para. 712: None of the witnesses gave evidence that they considered themselves to be in fact "married". (One witness testified that she had been "married" to her rebel "husband" in a ceremony,[1389] but no consent could be inferred given the environment of violence and coercion.) Rather, the repeated assertion of the witnesses was that they had been "taken as wives".[1390] They were held against their will and a number tried to escape.[1391] There was no evidence that any of the women taken as "wives" stayed on with their rebel "husbands" following the end of hostilities.[1392]

3371. para. 713: In light of the foregoing, the Trial Chamber finds, by a majority,[1393] that the evidence adduced by the Prosecution is completely subsumed by the crime of sexual slavery and that there is no lacuna in the law which would necessitate a separate crime of "forced marriage" as an 'other inhumane act'. In view of the Trial Chamber's findings that Count 7 is bad for duplicity, the Trial will in the interests of justice consider the evidence of Sexual Slavery under Count 9.

3372. para. 714: The Trial Chamber further finds that alleged offences of a residual, non-sexual nature do not belong under the part of the Indictment entitled "Counts 6-9: Sexual Violence". The Trial Chamber finds by a majority[1394] that Count 8 is redundant insofar as the crime of sexual slavery will be dealt with in Count 9. Other residual crimes of a non-sexual nature are dealt with in Count 11. Count 8 is therefore dismissed.[1395]

(iii) Pleadings

a. Pleading of Count 7 - Duplicity

3373. para. 92: The Brima and Kamara Defence submit that Count 7 "offends the rule against duplicity" as the Accused are charged with two separate offences under the same count.[142] The Prosecution submits that the Defence has left it too late to raise the argument that the Indictment is

defective. It cites as authorities Rule 72 of the Rules and *Brdanin* Trial Judgement, which held that "normally, an allegation pertaining to the vagueness of an indictment is dealt with at the pre-trial stage."[143]

3374. para. 93: This argument has not been previously raised by the Defence and although an alleged defect III an indictment should be primarily raised by way of a preliminary motion pursuant to Rule 72(B)(ii), the Trial Chamber, as mentioned above, is not precluded from reviewing in this Judgement whether shortcomings in the form of the Indictment have actually resulted in prejudice to the rights of the Accused.[144] Furthermore, the Trial Chamber notes that the Defence did not raise the objections at such a late stage for tactical advantages, but merely followed the opinion of Justice Sebutinde in her "Separate and Concurring Opinion" to the Rule 98 Decision.[145] Justice Sebutinde expressed the view that Count 7 was "duplex and defective in as far as it does not enable the accused persons to know precisely which of the two crimes (sexual slavery or sexual violence) they should be defending themselves against" and that the situation could "prejudice a fair trial of the accused persons if left uncorrected."[146] Justice Sebutinde did not think that Count 7 was incurably defective, at that stage, and could be cured by an amendment dividing the offences into two separate counts.[147] Since then, the Prosecution has not availed itself of Justice Sebutinde's suggested remedy.

3375. para. 94: At the Rule 98 stage the question was not considered by the majority since no such question was before the Trial Chamber and it confined itself to considering the prima facie state of the evidence to establish Count 7.[148] Both the Brima and Kamara Defence allege that Count 7 in its current form has made it difficult for the Accused to fully understand the nature and the cause of the charges brought against them.[149] The Trial Chamber has accordingly reviewed the pleading of Count 7 and agrees with the opinion of Justice Sebutinde that it is bad for duplicity, for the reasons set out in her opinion previously mentioned and that such a pleading prejudices the rights of the Accused.

3376. para. 95: The Trial Chamber by majority finds that Count 7 is bad for duplicity and is accordingly dismissed in its entirety.[150]

b. Pleading – Dissent

3377. Separate Partly Dissenting Opinion – Justice Doherty – para. 1 (p.582): I agree with my learned colleagues on the findings of the Judgement on Counts 1 to 6 and 9 to 14. However, my concerned about their findings on Counts 7 and 8 compels me to write this dissenting opinion on those counts.

3378. Separate Partly Dissenting Opinion – Justice Doherty – para. 2 (p.582): The majority rejects Count 7 as bad for duplicity and my learned colleagues provide compelling arguments for such a conclusion. However, in my respectful opinion, their reasons are formalistic and disregard the fundamental issue, which is whether the right of the Accused to be informed promptly and in detail about the nature and the cause of the charges against them has been violated.[1]

3379. Separate Partly Dissenting Opinion – Justice Doherty – para. 3 (p.582): I share the majority's view that the second limb of Count 7 viz "other forms of sexual violence" was not particularised by the Prosecution. I do not, with respect, agree that if Count 7 as pleaded is duplicitous, the Trial Chamber must dismiss it in its entirety.

3380. Separate Partly Dissenting Opinion – Justice Doherty – para. 4 (p.582): The history of the challenges to the Indictments is detailed in Chapter II of this Judgement and I do not need to repeat it here.[2]

3381. Separate Partly Dissenting Opinion – Justice Doherty – para. 5 (p.582): In their Final Briefs, the Accused Kamara and Brima submit, for the first time and in almost identical terms, that Count 7 offends the rule against duplicity. Counsel rely on the decision of the *Prosecutor v. Kamerera* to support the general principle that the allegations within an indictment are defective if they are not sufficiently clear and precise to enable an accused to fully understand the nature and the cause of the charges against him.[3] Counsel further cite the Separate Opinion of Honourable Justice Sebutinde in the Rule 98 Decision, arguing that Count 7 in its current state has made it difficult for the Accused Kamara and Brima to "fully understand the nature and the cause of the charges against him".[4]

3382. Separate Partly Dissenting Opinion – Justice Doherty – para. 6 (p.583): Despite this submission, neither Counsel made any applications relating to Count 7 before opening the Defence case. Instead the Defence presented evidence on all counts, including Count 7.

3383. Separate Partly Dissenting Opinion – Justice Doherty – para. 7 (p.583): The Prosecution did not deal with the issue of duplicity in Count 7 of its Final Brief but orally addressed the Trial Chamber in Closing Arguments, stating "[...] we say, barring exceptional circumstances, and the Defence has not demonstrated any, and barring a showing of actual prejudice to the Defence, and, we would add, barring and showing that this has been raised at the earliest opportunity, we would submit that it is far too late to raise this at this stage of the proceedings [...] but as Judge Sebutinde pointed out in paragraph 9 of her Separate Opinion in the Rule 98 Decision, no prejudice to the Defence has been established arising out ofthis".[5]

3384. Separate Partly Dissenting Opinion – Justice Doherty – para. 8 (p.583): The rule against duplicity is one of elementary fairness. The accused must know the nature of the case against him. Hence the rule evolved that a count must allege one offence and a count alleging more than one offence should be quashed before arraignment. Objections on the ground of duplicity are normally made prior to the indictment being put but can be made in the course of the hearing. As stated in Blackstone's on Criminal Practice, "rejection of a Defence motion to quash a count bad for duplicity is a good ground of appeal, although it may be open to the Court of Appeal to apply the proviso and dismiss the appeal if there has been no miscarriage of justice".[6]

3385. Separate Partly Dissenting Opinion – Justice Doherty – para. 9 (p.583): The learned author further noted "that although the objection can be taken at a later stage, the Court of the Appeal has disapproved of the Defence postponing the application to quash for purely tactical reasons".[7]

3386. Separate Partly Dissenting Opinion – Justice Doherty – para. 10 (p.583): Whilst I do have no doubt of the fundamental nature of the accused's right to be informed of the nature and cause of the charge against him, the defence is under a corresponding duty to raise the issue prior to the commencement of trial or at the earliest opportunity thereafter. I do not consider it to be in the interests of justice to allow the accused to invoke this right to quash an indictment after the case has closed, without showing that he was materially prejudiced. This is particularly so in cases such as the present, when the Accused were not only silent on the issue throughout the trial, but proceeded to adduce evidence and defended themselves on the charge.

3387. Separate Partly Dissenting Opinion – Justice Doherty – para. 11 (p.584): I am accordingly obliged to disagree with my learned colleagues, who have held that justice in this case is met by dismissing Count 7 in its entirety. As stated by the Trial Chamber in *Prosecutor v. Kupreskic*, "[...] the efficient discharge of the Tribunal's functions in the interest of justice warrants the conclusion that any possible errors of the Prosecution should not stultify criminal proceedings whenever a case nevertheless appears to have been made by the Prosecution and its possible flaws in the formulation of the charge are not such as to impair or curtail the rights of the Defence".[8]

3388. Separate Partly Dissenting Opinion – Justice Doherty – para. 12 (p.584): On the facts and submissions before me, I do not consider that there has been a miscarriage of justice. I would not have dismissed the count but would have considered evidence relating to sexual slavery only.

3389. Separate Partly Dissenting Opinion – Justice Doherty – para. 13 (p.584): I regret that the very short time available has precluded me from more fully addressing this Issue.

c. Pleading – Separate Concurring Opinion – Forced Marriage

3390. Separate Concurring Opinion – Justice Sebutinde – para. 1 (p.574): Let me begin by stating that I agree fully and unreservedly with the findings and disposition of the Trial Chamber in the Judgement on all Counts in the Indictment. This opinion only examines the phenomenon of "forced marriage" in the context of the Sierra Leone Conflict and its characterisation as a crime under international humanitarian law.

3391. Separate Concurring Opinion – Justice Sebutinde – para. 2 (p.574): I do however, feel compelled to expound on one area in the Judgment, namely the phenomenon of "forced marriage" in the context of the Sierra Leone conflict. The Trial Chamber has, to some extent, dealt with this subject in the Chapter on Applicable Law. It is my considered view however, that given the fact that the subject of "forced marriage" as a crime committed in the context of an armed conflict is a relatively novel area that has hitherto not received much attention in the jurisprudence of the International Tribunals,[1] it merits a deeper analysis of the evidence adduced before the Trial Chamber during the trial in order to appreciate the Trial Chamber's characterisation of this crime as a form of Sexual Slavery as defined in Article 7(1)(g)2 of the Rome Statute. That is what I seek to do in this Separate opinion.

3392. Separate Concurring Opinion – Justice Sebutinde – para. 16 (p.580): From the above excerpts of the Report, as well as the oral evidence of numerous Prosecution witnesses that testified before the Trial Chamber, I am of the firm view that the phenomenon of forced 'marriage' during the Sierra Leone conflict bears all the hallmarks or characteristics of the crime against humanity of Sexual Slavery. The general and specific elements of the crime against humanity of Sexual Slavery are satisfied in that forced 'marriage' invariably occurred as part of a widespread or systematic attack on the civilian population in Sierra Leone. In addition-

(i) The 'bush husband' exercised any or all the powers attaching to the right of ownership over his 'bush wife' whereby not only was she was held under captivity and not at liberty to leave but, in addition, she was forced to render gender-specific forms of labour (conjugal duties) including cooking, cleaning, washing clothes and carrying loads for him, for no genuine reward.

(ii) Invariably, the 'bush husband' regularly subjected his 'bush wife' to sexual intercourse, often without her genuine consent and to the exclusion of all other persons;

(iii) The 'bush husband' abducted and forcibly kept his 'bush wife' in captivity and sexual servitude with the intention of holding her indefinitely in that state or in the reasonable knowledge that it was likely to occur.[12]

3393. Separate Concurring Opinion – Justice Sebutinde – para. 17 (p.580): Neither the Prosecution nor the Defence in their respective submissions draw the same conclusions from Mrs. Bangura's Report.[13] Interestingly, the Prosecution who called Mrs Bangura as its Expert witness on the subject did not once, refer to her Report or testimony in support of its case, insisting instead, that the crime of 'forced marriage' is subsumed under the crime against humanity of "other inhumane act", a view the Trial Chamber has dismissed.

3394. Separate Concurring Opinion – Justice Sebutinde – para. 18 (p.580-581): I would conclude this Separate Concurring Opinion by reiterating that I fully endorse the Trial Chamber's finding that the crime of "forced marriage" is completely subsumed in the crime against humanity of Sexual Slavery and that there is no lacuna in the law which would necessitate a separate crime of "forced marriage" as an "other inhumane act". I further endorse the Trial Chamber's decision, in the interests of justice, to consider the overwhelming body of evidence of sexual slavery under Count 9 (Outrages upon Personal Dignity). Although it would ideally have been more appropriate to consider the evidence of forced marriage under a count of Sexual Slavery, that option does not arise in this case as Count 7 of the Indictment was dismissed as bad for duplicity. To throw out the overwhelming body of evidence of 'forced marriage' as a consequence of the Prosecution's procedural error would, in my opinion, be doing a great injustice to the hundreds of victims of 'forced marriage' who look to this Court for redress.

d. Pleading – Partly Dissenting Opinion – Forced Marriage

3395. Separate Partly Dissenting Opinion – Justice Doherty – para. 14 (p.584): I dissent on the majority decision on Count 8, other inhumane acts, particularised as forced marriage. The majority, after considered deliberations, held that the evidence pleaded by the Prosecution is completely subsumed by the crime of sexual slavery and accordingly dismissed Count 8 for redundancy. Having considered the evidence, I respectfully disagree.

3396. Separate Partly Dissenting Opinion – Justice Doherty – para. 15 (p.584): The majority, in adopting this approach, has consequently declined to determine whether 'forced marriage' is of sufficient gravity to meet the requirements of an 'other inhumane act' as per Article 2(i) of the Statute.

3397. Separate Partly Dissenting Opinion – Justice Doherty – para. 22 (p.586): Both the Prosecution and Defence called expert evidence, tendering reports by Mrs. Zainab Bangura and Ms Dorte Thorsen respectively.[18]

3398. Separate Partly Dissenting Opinion – Justice Doherty – para. 36 (p.588): Having considered the description of traditional marriage in parts of West Africa given by the Defence expert and the evidence of both the Prosecution expert and the witnesses, I am of the view that the abduction of girls and their coercion into marital unions, as described by the Prosecution expert and by witnesses, is not the same nor comparable to arranged or traditional marriages. In particular the consent of the girl and/or her parents are not sought, there is no involvement of the family of either "spouse" and there is no ceremony or ritual fulfilled. Hence I do not agree with the Kanu Defence submission that the phenomenon of "bush wives" is a replication of customary marriage.[24] On the evidence of traditional marriages described by both experts, I find the phenomenon of forced marriage has little or no similarity to traditional marriage.

3399. Separate Partly Dissenting Opinion – Justice Doherty – para. 37 (p.589): Witnesses were called by both the Prosecution and Defence, who gave evidence of being abducted and forced into marriage. Given the detailed recount of their testimony in the majority Judgement,[25] I will give only a brief synopsis of particular witnesses.

3400. Separate Partly Dissenting Opinion – Justice Doherty – para. 50 (p.591): I would therefore distinguish the phenomenon from sexual slavery. The evidence of witnesses shows victims had no protection from rape and were available to any rebel but were not stigmatised as "rebel wives" or "bush wives".

3401. Separate Partly Dissenting Opinion – Justice Doherty – para. 51 (p.591): Additionally, I am satisfied on the basis of the testimony of the Prosecution expert witness that the use of the term 'wife' is indicative of forced marital status which had lasting and serious impacts on the victims. I find the label of 'wife' to a rebel caused mental trauma, stigmatised the victims and negatively impacted their ability to reintegrate into their communities.[32] I would therefore have found that the *actus reus* and *mens rea* of an Other Inhumane Act, Forced Marriage, are satisfied with regards to the foregoing evidence.

3402. Separate Partly Dissenting Opinion – Justice Doherty – para. 52 (p.592): I reiterate that the conduct contemplated as "forced marriage" does not necessarily involve elements of physical violence such as abduction, enslavement or rape, although the presence of these elements may go to proof of the lack of consent of the victim. The crime is concerned primarily with the mental and moral suffering of the victim. As stated by the Trial Chamber in *Akayesu*:

> An attack may also be non violent in nature, like imposing a system of apartheid, which is declared a crime against humanity in Article 1 of the Apartheid Convention of 1973, or exerting pressure on the population to act in a particular

manner, may come under the purview of an attack, if orchestrated on a massive scale or in a systematic manner.[33]

3403. Separate Partly Dissenting Opinion – Justice Doherty – para. 53 (p.592): The crucial element of 'forced marriage' is the imposition, by threat or physical force arising from the perpetrator's words or other conduct, of a forced conjugal association by the perpetrator over the victim.

3404. Separate Partly Dissenting Opinion – Justice Doherty – para. 54 (p.592): As set out in the majority Judgement, the crime of 'other inhumane acts' exists as a residual category so that the Statute's application is not unduly limited with regard to crimes against humanity.[34] When presented with pleadings which suggest that certain conduct falls within this category, the fundamental question which falls to the Trial Chamber is whether such conduct inflicts great suffering, or serious injury to body or to mental or physical health, and is of a gravity similar to the acts referred to in Article 2(a) to (h) of the Statute.

3405. Separate Partly Dissenting Opinion – Justice Doherty – para. 55 (p.592): In assessing the seriousness of an act or omission the factual circumstances must be taken into account. The assessment includes the nature of the act or omission which forms the factual basis of the charges, the context in which it occurred, the personal circumstances of the victim including sex, age, and health as well as the mental, physical and moral effect upon the victim.[35]

3406. Separate Partly Dissenting Opinion – Justice Doherty – para. 56 (p.592): As the suffering of the alleged victim is inherently subjective, the personal circumstances of the victim must include the cultural environment in which the act or omission took place and in which the effects of the act are felt.

3407. Separate Partly Dissenting Opinion – Justice Doherty – para. 57 (p.592): I am satisfied on the evidence that the conduct considered as 'forced marriage' results in serious harm to the mental and physical health of the victim and meets this threshold.

3408. Separate Partly Dissenting Opinion – Justice Doherty – para. 69 (p.595): I consider that international treaties and domestic law provide that marriage is a relationship founded on the mutual consent of both spouses. In 'forced marriage' the consent of the victim is absent. In the absence of such consent, the victim is forced into a relationship of a conjugal nature with the perpetrator thereby subsuming the victim's will and undermining the victim's exercise of their right to self-determination.

3409. Separate Partly Dissenting Opinion – Justice Doherty – para. 70 (p.595): I reiterate that the conduct contemplated as 'forced marriage' does not necessarily involve elements of physical violence such as abduction, enslavement or rape, although the presence of these elements may go to prove the lack of consent of the victim. The crime is concerned primarily with the mental and moral suffering of the victim.

3410. Separate Partly Dissenting Opinion – Justice Doherty – para. 71 (p.595): By vitiating the will of one party and forcing him or her to enter into and remain in a marital union the victim is subject to physical and mental suffering the phenomenon of forced marriage transgresses the internationally accepted conventions that both parties must consent to a marriage. It is contrary to principles of criminal law shared by common law and civil law systems alike, as well as Islamic law and the legal systems of some Asian and African states. I consider, on the evidence before me, that the act of forced marriage is of similar gravity and nature to the other enumerated crimes against humanity and that the act causes serious bodily or mental harm. Accordingly, I consider and hold that forced marriage constitutes a crime against humanity.

(iv) Kono District – Sexual Slavery

3411. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Kono District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment -Findings and Conclusions - Kono District - paras. 1665-1668 [8017], 1856-1861 [8021], 1997-2000 [8027].

363. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Kono District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Kono District - paras. 1665 [8868], 1669-1673 [8869], 1856 [8874], 1862-1893 [8875], 1997 [8907], 2001-2005 [8908].

(v) Koinadugu District – Sexual Slavery

3412. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Koinadugu District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Koinadugu District - paras1686-1696[8045], 1904-1906[8056], 2015-2018 [8060].

3413. Regarding Brima's, Kamara's and Kanu's superior responsibility in relation to Koinadugu District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Koinadugu District - paras. 1686 [8933], 1697-1699 [8934], 1904 [8937], 1907-1910 [8938], 2015 [8942], 2019-2024 [8943].

(vi) Bombali District – Sexual Slavery

3414. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Bombali District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bombali District - paras. 1700-1720 [8064], 1911-1920 [8085], 2025-2031 [8095].

3415. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Bombali District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bombali District - paras. 1700 [8949], 1721-1744 [8950], 1911 [8974], 1921-1928 [8975], 2025 [8983], 2032-2044 [8984].

(vii) Kailahun District – Sexual Slavery

3416. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Kailahun District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Kailahun District - paras. 1674-1679 [8031], 1894-1897 [8037], 2006-2009 [8041].

3417. Regarding Brima's, Kamara's and Kanu's superior responsibility in relation to Kailahun District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Kailahun District - paras. 1674 [8913], 1680-1685 [8914], 1894 [8920], 1898-1903 [8921], 2006 [8927], 2010-2014 [8928].

(viii) Freetown and Western Area – Sexual Slavery

3418. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Freetown and Western Area, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment -Findings and Conclusions - Freetown and Western Area - paras. 1745-1786 [8102], 1929-1941 [8144], 2045-2064 [8157].

3419. Regarding Brima's, Kamara's, and Kanu's superior responsibility in relation to Freetown and Western Area, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Freetown and Western Area - paras. 1745 [8997], 1787-1810 [8998], 1929 [9022], 1942-1950 [9023], 2045 [9032], 2065-2080 [9033].

(ix) Port Loko District – Sexual Slavery

3420. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Port Loko District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Port Loko District - paras. 1811-1814 [8177], 1951-1955 [8181], 2081-2084 [8187].

3421. Regarding Brima's, Kamara's, and Kanu's superior responsibility in relation to Port Loko District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Port Loko District - paras. 1811 [9049], 1815-1819 [9050], 1951-1952 [9055], 1956-1969 [9056], 2081 [9070], 2085-2088 [9071].

(x) Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers

3422. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment – Findings and Conclusions - Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers - paras. 1820-1837 [8191], 1970-1972 [8208], 2089-2098 [8211].

3423. Regarding Brima's, Kamara's, and Kanu's superior responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers - paras. 1820-1834 [9075], 1838 [9076], 1973-1975 [9078], 1977 [9081].

3. Appellate Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-A, Judgement, 22 February 2008

(a) Factual Findings

3424. Not applicable.

(b) Legal Conclusions

(i) Pleadings

a. Prosecution's Sixth Ground of Appeal: The Duplicity of Count 7

3425. para. 88: In its Sixth Ground of Appeal, the Prosecution challenges the Trial Chamber's finding that Count 7 of the Indictment violated the "rule against duplicity" and prejudiced the rights of the Appellant. Count 7 of the Indictment alleged that the Accused bore individual criminal responsibility for "sexual slavery and any other form of sexual violence, a crime against humanity punishable under Article 2.g of the Statute."[149]

3426. para. 89: The Trial Chamber found that Count 7 violated the rule against duplicity and dismissed the count in its entirety.[150] It noted that the argument that the Count was bad for duplicity, should have been raised by a Preliminary Motion under Rule 72(B)(ii). Nonetheless, the Trial Chamber considered that it was "not precluded from reviewing in the [Trial Judgment] whether shortcomings in the Form of the Indictment have actually resulted in prejudice to the rights of the Accused."[151] The Trial Chamber was satisfied that the Appellant did not delay raising the objection for tactical advantages, but had merely followed the "Separate and Concurring Opinion" of Justice Sebutinde to the Rule 98 Decision.[152] In Justice Sebutinde's Rule 98 Opinion, she held that Count 7 was duplicitous, duplex and defective and could "prejudice a fair trial of accused persons if uncorrected."[153] Justice Sebutinde was of the opinion that Count 7 was not incurably defective (at the Rule 98 stage), and suggested that it could be cured by an amendment dividing the offences into two separate counts.[154] However, the Trial Chamber indicated that it was not considering the question of duplicity and would instead confine itself to considering the prima facie state of the evidence to establish Count 7.[155]

3427. para. 90: In its Judgment, the Trial Chamber revisited Count 7 and endorsed Justice Sebutinde's Rule 98 Opinion that the Count offended the rule against duplicity.[156] It adopted her Rule 98 Opinion that Article 2.g of the Statute "encapsulates five distinct categories of sexual offences... each of which is comprised of separate and distinct elements."[157] It held that Count 7 of the Indictment charged the Appellant with two distinct crimes against humanity in one count, namely "sexual slavery" and "any other form of sexual violence."[158]

3428. para. 91: On appeal, the Prosecution first argues that the Trial Chamber committed procedural and legal error by reconsidering earlier interlocutory decisions concerning defects in

the form of the Indictment at the final judgment stage without first reopening hearings on the issue.[159] Second, the Prosecution argues that the Trial Chamber committed legal, factual or procedural error in finding that Count 7 was defectively pleaded.[160] In the alternative, the Prosecution argues that even if Count 7 was defectively pleaded, any defects were subsequently cured or did not prejudice the Appellant.[161] The Prosecution requests the Appeals Chamber to reverse the Trial Chamber's decision and to revise the Trial Judgment to enter convictions against Brima, Kamara and Kanu under Count 7 for sexual slavery as well as under Count 9 for the war crime of "Outrages upon Personal Dignity."[162]

3429. para. 92: The issues that arise for determination in this Ground of Appeal are:

(i) whether the Trial Chamber erred in reconsidering the question of duplicity without reopening the issue to the Parties;

(ii) whether Count 7 violates the rule against duplicity;

(iii) if it does, whether the defect has been cured and whether the Trial Chamber erred in its choice of remedy.

3430. para. 93: In respect of the first issue, the Prosecution submits that it was entitled to proceed on the basis that the form of pleading of Count 7 was not an issue because the Trial Chamber had settled issues of defects in the form of the Indictment in earlier interlocutory decisions, none of which challenged the manner in which the Prosecution pleaded Count 7.[163] Furthermore, it submits that it is impermissible for an accused to raise a challenge to the form of the Indictment at the end of a trial.[164]

3431. para. 94: In response, Brima and Kamara submit that the Trial Chamber is empowered to reconsider its earlier decisions approving the Indictment without reopening hearings because the Prosecution had an opportunity in its closing arguments to address Count 7 but chose to do so only in a very cursory manner.[165] They further argue that the Prosecution failed to take advantage of an opportunity to amend the Indictment pursuant to Rule 50, as suggested by Justice Sebutinde's Rule 98 Opinion.[166]

3432. para. 95: In respect of the second issue, the Prosecution argues that:

(i) "[t]he rule against duplicity, as it exists in national legal systems, does not, and cannot, apply in the same way in proceedings before international criminal courts;"[167]

(ii) a single count may permissibly charge all violations of a single provision of the Statute;[168]

(iii) that even if sexual slavery and "any other form of sexual violence" constitute separate crimes, "[t]here was no ambiguity as to the legal characterisation of what the Accused were charged with, or the material facts underpinning those charges;"[169]

(iv) that while a formal amendment to the Indictment, as suggested in Justice Sebutinde's Rule 98 Opinion, would have cured Count 7 by recasting it in two separate counts, it "would have been of no practical or substantive consequence whatsoever" because the Defence was in no way prejudiced by the manner in which Count 7 was pleaded.[170]

3433. para. 96: In their respective response briefs, Brima and Kamara argue that Count 7 is entirely unclear as to what crimes were allegedly committed.[171] Kanu submits that he was "severely prejudiced in so far as he was not able to tell precisely which of the two crimes in the Count he should have defended himself against, and that materially affected the conduct of his defence."[172]

3434. para. 97: In respect of the third issue, the Prosecution submits that the Trial Chamber erred by failing to consider whether the defective pleading of Count 7 was subsequently cured by timely, clear, and consistent information.[173] In the alternative, it argues that even if the Appellant were not given timely, clear and consistent information, the appropriate remedy, as stated by Justice Doherty in her Partly Dissenting Opinion[174], would have been to sever the allegation of "any other form of sexual violence" from Count 7, leaving only the allegation of sexual slavery.[175]

3435. para. 98: In response, Brima and Kamara submit that the Trial Chamber's power to cure defects in the Indictment may be used only where the material facts supporting those charges have not been pleaded with sufficient precision.[176] They argue that this power simply allows the Prosecution "to introduce material facts at a later stage in order to give the indictment a sufficient factual basis, and has no relevance to a legal flaw in the wording of the charges."[177] Kanu submits that "the nature of the defect in this instance was such that, short of amending the Indictment, [it] could not be cured" and that the disclosures made by the Prosecution subsequent to the filing of the Indictment actually made his understanding of the charges even less clear.[178]

3436. para. 99: The Appeals Chamber is of the opinion that the Prosecution's argument that the Trial Chamber reconsidered its prior decision is misconceived. Until its final judgment, the Trial Chamber did not rule on whether Count 7 was defective, even though Justice Sebutinde did point out that the Count was duplicitous in her Rule 98 Opinion.

3437. para. 100: Objections relating to defects in the form of the indictment should normally be raised at the pre-trial stage by way of a preliminary motion.[179] Where issues of defect in the form

of an indictment are raised after the trial, it is incumbent on the party to show that its preparation of its case was materially impaired by the defect in the Indictment.

3438. para. 101: The rule against duplicity is not about vagueness but about a failure to plead with specificity the offences charged in the Count.

3439. para. 102: The Appeals Chamber agrees with the Trial Chamber that Article 2.g of the Statute provides for five distinct crimes against humanity, each of which is of a sexual nature, among which are "sexual slavery" and "any other form of sexual violence." "Sexual slavery" requires the exercise of rights of ownership over the victim, which is not the case for "other forms of sexual violence." Consequently, Count 7 of the Indictment, which charges the commission of "sexual slavery and any other form of sexual violence," offends the rule against duplicity by charging two offences in the same count. The dispositive question, therefore, is not whether the rule was violated, but what are the consequences. In *Bizimungu*, the ICTR Appeals Chamber stated that "[t]he rule against duplicity generally forbids the charging of two separate offences in a single count, although a single count may charge different means of committing the same offence."[180] In *Naletilić & Martinović* the ICTY Trial Chamber noted that common law jurisdictions developed the rule against duplicity in order to ensure precision and certainty in charging.[181]

3440. para. 103: The Appeals Chamber holds that the rule against duplicity applies to international criminal tribunals such that the charging of two separate offences in a single count renders the count defective, although a single count may charge different means of committing the same offence. Accordingly, Count 7 of the Indictment, which charges the commission of "sexual slavery and any other form of sexual violence," violates the rule against duplicity.

3441. para. 104: The Prosecution urges that upon finding defect in the form of the Indictment, the Appeals Chamber should examine whether the Appellants were materially impaired in the preparation of their defence.

3442. para. 105: Upon its finding that Count 7 violated the rule against duplicity, the Trial Chamber dismissed the count in its entirety. The Trial Chamber's choice of remedy was premised on its finding that any proceedings on the basis of a duplicitous count would render the trial unfair to the Appellants.

3443. para. 106: The duplicitous pleading of Count 7 placed the Appellants in the position of having to defend two crimes in the same count. The residual nature of the crime of "any other

form of sexual violence" requires clarification of the conduct the Prosecution would rely upon to prove the offence.

3444. para. 107: A review of case law on this issue reveals that Courts typically quashed convictions entered on duplicitous counts.[182] According to other case law, a duplicitous count does not necessarily require the conviction to be quashed.[183] Courts have used other remedies which vary, depending on the particular harm to be avoided and the stage at which the threatened harm arises. Some Courts have held that an accused person who has been indicted on the basis of a duplicitous count may nonetheless be properly prosecuted and convicted if either the Prosecutor elects which of the charges in the offending Count he will proceed with, or the Court instructs the jury to agree as to which of the distinct offences the defendant actually committed.[184]

3445. para. 108: In light of the foregoing, the Appeals Chamber considers that the remedies available to the Trial Chamber included:

(i) quashing the count;

(ii) ordering that the Indictment be amended;

(iii) directing the Prosecution to elect to proceed on the basis of one of the two offences in the duplicitous count;

(iv) upon a review of the entire case, determining which of the two offences charged in the count the Appellant had defended fully, having regard to the manner in which the defence case had been conducted;[185] and

(v) refusing to consider evidence of one of the two charges so as to eliminate the duplicity of Count 7.[186]

Each case is to be considered on its own merits.

3446. para. 109: In the instant case, from the evidence accepted by the Trial Chamber and the findings it had made, it should have chosen the option to proceed on the basis that the offence of sexual slavery had been properly charged in Count 7, return appropriate verdict on that Count in respect of the crime of sexual slavery and struck out the charge of "any other form of sexual violence."

3447. para. 110: Although the Trial Chamber had not chosen that option, no miscarriage of justice has resulted therefrom. It is not necessary for the Appeals Chamber to substitute a conviction for sexual slavery as the Trial Chamber relied upon the evidence of sexual slavery to enter convictions for Count 9 which charged the offence of "outrages upon personal dignity."

3448. Regarding Kanu's responsibility for planning the commission of sexual slavery, see below: Chapter 12 (Article 6.1 Liability) – AFRC – Appellate Judgment – Findings and Conclusions – paras. 298 – 302 [7225], 305 – 306 [7232].

b. Prosecution's Seventh Ground of Appeal: Forced Marriage – Other Inhumae Acts

3449. para. 175: Under its Seventh Ground of Appeal, the Prosecution challenges the Trial Chamber's dismissal of Count 8 of the Indictment, which charged Brima, Kanara and Kanu with the crime of "Other Inhumane Acts" (forced marriage), punishable under Article 2.i of the Statute.

3450. para. 176: In dismissing Count 8 for redundancy, the Trial Chamber found that Article 2. i of the Statute ("Other Inhumane Acts") must be restrictively interpreted to exclude crimes of a sexual nature, because Article 2.g of the Statute, which encompasses'[r]ape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence," exhaustively enumerates sexual crimes.[258] The Trial Chamber found that the Prosecution did not adduce any evidence that forced marriage was a non-sexual crime; that the Prosecution evidence with respect to forced marriages was completely subsumed in the crime of sexual slavery; and that there is no lacuna in the law which would necessitate a separate crime of forced marriage as an "Other Inhumane Acts."[259] The Trial Chamber also found that use of the term "wife" by the perpetrator signified an intention to exercise ownership over the victim rather then to assume a marital or quasi-marital status with the victim.[260]

3451. See below: Chapter 8 - AFRC –Appellate Judgment – Legal Conclusions – Prosecution's Seventh Ground of Appeal: Forced Marriages – paras. 181 – 203 [4509].

D. CDF

1. Indictment

The Prosecutor v. Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa, SCSL-03-14-I, Indictment, 4 February 2004

3452. Not applicable.

2. Trial Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-T, Judgement, 2 August 2007

(a) Factual Findings

3453. Not applicable.

(b) Legal Conclusions

3454. Not applicable.

3. Appellate Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-A, Judgment, 28 May 2008

(a) Factual Findings

3455. Not applicable.

(b) Legal Conclusions

3456. Not applicable.

CHAPTER 6 – OUTRAGES UPON PERSONAL DIGNITY

A. CHARLES TAYLOR

1. Indictment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-I, Indictment, 16 March 2006

(a) Particulars

(i) Charges

3457. By his acts or omissions in relation to the below described events, the ACCUSED, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:[167]

(ii) Count 1: Terrorizing the civilian population

3458. Members of the Revolutionary United Front (RUF), Armed Forces Revolutionary Council (AFRC), AFRC/RUF Junta or alliance, and/or Liberian fighters, including members and ex-members of the NPFL (Liberian fighters), assisted or encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, burned civilian property, and committed the crimes set forth below in paragraphs 6 through 31 and charged in Counts 2 through 11, as part of a campaign to terrorize the civilian population of Sierra Leone.[168]

(iii) Counts 4-6: Sexual Violence

> Count 4: Rape, a CRIME AGAINST HUMANITY, punishable under Article 2.g. of the Statute;
>
> And:
>
> Count 5: Sexual slavery, a CRIME AGAINST HUMANITY, punishable under Article 2.g. of the Statute;
>
> In addition, or in the alternative:
>
> **Count 6: 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.

[167] Taylor Indictment, Charges, p. 2.
[168] Taylor Indictment, para. 5.

3459. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or Alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, committed widespread acts of sexual violence against civilian women and girls, including the following:[169]

> i. Kono District: Between 1 February 1998 and about 31 December 1998, raped an unknown number of women and girls in various locations, including Koidu, Tombodu or Tumbodu, Wondedu, and AFRC and/or RUF camps, such as "Superman Ground," "Guinea Highway," and "PC Ground"; abducted an unknown number of women and girls from various locations within the District, or brought them from locations outside the District, and used them as sex slaves;[170]
>
> ii. Kailahun District: Between about 30 November 1996 and about 18 January 2002, raped an unknown number of women and girls in locations throughout Kailahun District; abducted many victims from other areas of the Republic of Sierra Leone, brought them to locations throughout the District and used them as sex slaves;[171]
>
> iii. Freetown and Western Area: Between about 21 December 1998 and about 28 February 2002, raped and unknown number of women and girls throughout Freetown and the Western area, and abducted an unknown number of women and girls and used them as sex slaves.[172]

2. Trial Judgment

The Prosecutor v. *Charles Ghankay Taylor*, SCSL-03-01-T, Judgement, 18 May 2012

(a) Factual Findings

3460. para. 1194: The Trial Chamber has found in the Preliminary Issues Section that it would not consider evidence of sexual violence other than rape and sexual slavery under Count 6, Outrages Upon Personal Dignity,[2968] as the Accused was not provided with notice that any other forms of sexual violence were charged under this count.[2969]

3461. para. 1195: The Trial Chamber has therefore considered, for each district, the acts of rape and sexual slavery that it has found have been proved beyond reasonable doubt as the crimes

[169] Taylor Indictment, para. 14.
[170] Taylor Indictment, para. 15.
[171] Taylor Indictment, para. 16.
[172] Taylor Indictment, para. 17.

against humanity of rape, Count 4, and sexual slavery, Count 5, to determine whether they also constitute war crimes under Outrages upon Personal Dignity, Count 6, and found that they do in each case.

3462. para. 1196: Further, witnesses testified that the perpetrators of rape or sexual slavery forced women and girls to undress, sometimes in public, as a prelude to the rape; that many women and girls were raped or gang raped in public, frequently in front of neighbours or members of their community and/or in the presence of husbands and/or relatives who were forced to watch. Several witnesses testified that an object, such as a piece of wood, was inserted into the vaginas of victims after the rape or gang rape. The Trial Chamber considers that these actions resulted in further humiliation and degradation of the victims, thus aggravating the crime of outrages upon personal dignity. Therefore the Trial Chamber has indicated where instances of rape and sexual slavery involved any such additional elements of humiliation and degradation, such as forced undressing, sexual mutilation and/or public humiliation.

3463. para. 1197: The Trial Chamber has also further examined relevant documentary evidence. Exhibit P-073, an expert report entitled "Conflict-Related Sexual Violence in Sierra Leone" authored by Beth Vann, recorded that:

> Rape was reported by 84 of the 94 women reporting sexual violence in the PHR [Physicians for Human Rights] study. Approximately one third of these women reported experiencing gang rape, abduction, stripped of clothing, forced to undress. Respondents also reported sexual slavery, molestation, forced marriage, and insertion of foreign objects into the genital opening or anus.[2970]

3464. para. 1198: The expert report also states that, in relation to focus group sessions conducted by the author, "[a]ll participants described witnessing at least one public rape of a civilian female in or near their home town/village just before flight or during the time they were running to refuge in Guinea".[2971]

(b) Legal Conclusions

(i) Applicable law – War Crimes / Violations of Common Article 3

3465. See above: Chapter 1 – Taylor – Trial Judgment – Legal Conclusions – Applicable Law – War Crimes / Violations of Common Article 3 – paras. 561 – 568 [111].

(ii) Applicable law – War Crimes / Violations of Common Article 3 – Findings on general requirements

3466. See above: Chapter 3 – Taylor – Trial Judgment – Legal Conclusions – Applicable Law – War Crimes / Violations of Common Article 3 – Findings on general requirements – paras. 571 – 574 [119].

(iii) Applicable law – Outrages upon Personal Dignity

3467. para. 431: In addition to the *chapeau* requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute, the following specific elements of the crime of outrages upon personal dignity must be proved beyond reasonable doubt:

(i) The perpetrator humiliated, degraded or otherwise violated the personal dignity of the victim;

(ii) The humiliation, degradation or other violation was so serious as to be generally considered as an outrage upon personal dignity;

(iii) The perpetrator intentionally committed or participated in an act or omission which would be generally considered to cause serious humiliation, degradation or otherwise be a serious attack on human dignity; and

(iv) The perpetrator knew that the act or omission could have such an effect.[1044]

3468. para. 432: The Trial Chamber considers that sexual slavery, including the abduction of women and girls as "bush wives", a conjugal form of sexual slavery, is humiliating and degrading to its victims and constitutes a serious attack on human dignity, falling within the scope of outrages upon personal dignity.

(iv) Kono District – Outrages upon personal dignity

3469. para. 1199: The Trial Chamber finds that the acts of rape and sexual slavery that it has found to be proved beyond reasonable doubt in Kono District also constitute in each case a serious humiliation, degradation and violation of the personal dignity of the victims, and that the perpetrators intentionally committed these acts and knew that their acts would produce this effect.

3470. para. 1200: The Trial Chamber thus finds that it has been proved beyond reasonable doubt that:

(i) An RUF rebel named Peppe committed an outrage upon personal dignity by raping Finda Gbamanja in Koidu Town in February 1998;

(ii) SLA and RUF fighters committed outrages upon personal dignity by gang raping TF1-189 in Koidu Town between March and August 1998;

(iii) RUF Staff Alhaji committed an outrage upon personal dignity on Sia Lappia, who had her clothes removed, was hit in her private parts and then raped at gun point in the presence of other captured persons, including her child, in approximately April 1998;

(iv) AFRC commanders, including Alimamy Bobson Sesay, committed outrages upon personal dignity by raping an unknown number of women and girls in Tombodu between March and June 1998;

(v) RUF fighters committed outrages upon personal dignity by raping Rebecca and an unknown number of women in Wondedu in 1998;

(vi) RUF, AFRC and STF fighters committed outrages upon personal dignity by raping an unknown number of women at Superman Ground in April 1998;

(vii) RUF, AFRC and STF fighters committed outrages upon personal dignity by raping an unknown number of women at PC Ground in or about April 1998;

(viii) Sergeant Foday committed an outrage upon personal dignity by raping Finda Gbamanja in Koidu Town and at Superman Ground in 1998;

(ix) A member of the RUF committed an outrage upon personal dignity on TF1-189 who was used as sexual slave in Koidu Town between 12 March 1998 and August 1998;

(x) Sergeant Foday committed an outrage upon personal dignity on Finda Gbamanja who was used as a sexual slave in Koidu Town from approximately March/April 1998;

(xi) Rebels loyal to Superman committed an outrage upon personal on Finda Gbamanja who was used as a sexual slave at Superman Ground from approximately April to October 1998;

(xii) AFRC and RUF fighters committed an outrage upon personal dignity on Sia Kamara who was repeatedly raped and used as a sexual slave in approximately March/April 1998 in Kono District.

3471. para. 1201: The Trial Chamber recalls that the Prosecution has proved beyond reasonable doubt that there was an armed conflict in Sierra Leone at all times relevant to the Indictment, involving among others, members of the RUF, AFRC and CDF.[2972] The Trial Chamber is satisfied that for all of the aforementioned acts of sexual violence in Kono District there was a nexus between the acts of sexual violence and the armed conflict, that each of the victims was not taking an active part in the hostilities at the time of the sexual violence, and that the

perpetrators knew this fact. Therefore, the Trial Chamber is satisfied that the aforementioned acts of sexual violence in Kono District constitute outrages upon personal dignity as a war crime under Article 3 of the Statute.

(v) Kailahun District – Outrages upon personal dignity

3472. para. 1202: The Trial Chamber finds that the acts of rape and sexual slavery that it has found to be proved beyond reasonable doubt in Kailahun District also constitute in each case a serious humiliation, degradation and violation of the personal dignity of the victims, and that the perpetrators intentionally committed these acts and knew that their acts would produce this effect. However, as no locations were pleaded in the Indictment for Chapter 6 in relation to Kailahun District such evidence does not fall within the scope of the Indictment, and is relevant only insofar as it demonstrates that the activity was widespread or systematic, and therefore assists in establishing the chapeau requirements.

3473. para. 1203: The Trial Chamber thus finds that it has been proved beyond reasonable doubt that:

(i) AFRC and RUF fighters committed outrages upon personal dignity on an unknown number of women captured in Kenema who were used as sexual slaves after February 1998 in Buedu and Kailahun Town;

(ii) AFRC and RUF fighters committed outrages upon personal dignity on an unknown number of women used as sexual slaves in Buedu, including an incident of a woman who was considered to be "disrespectful" being stripped down to her underwear and beaten, between February 1998 and December 1999 in Buedu;

(iii) An RUF member committed an outrage upon personal dignity on TF1-189 who was used as a sexual slave in Kailahun Town from August to September 1998.

3474. para. 1204: The Trial Chamber recalls that the Prosecution has proved beyond reasonable doubt that there was an armed conflict in Sierra Leone at all times relevant to the Indictment, involving among others, members of the RUF, AFRC and CDF.[2973] The Trial Chamber is satisfied that for all of the aforementioned acts of sexual violence in Kailahun District there was a nexus between the acts of sexual violence and the armed conflict, that each of the victims was not taking an active part in the hostilities at the time of the sexual violence, and that the perpetrators knew this fact. Therefore, the Trial Chamber is satisfied that the aforementioned acts of sexual violence in Kailahun District constitute outrages upon personal dignity as a war crime under Article 3 of the Statute.

(vi) Freetown and the Western Area – Outrages upon personal dignity

3475. para. 1205: The Trial Chamber finds that the acts of rape and sexual slavery that it has found to be proved beyond reasonable doubt in Freetown and the Western Area also constitute in each case a serious humiliation, degradation and violation of the personal dignity of the victims, and that the perpetrators intentionally committed these acts and knew that their acts would produce this effect.

3476. para. 1206: The Trial Chamber thus finds that it has been proved beyond reasonable doubt that:

(i) Men and boys, members of AFRC, RUF, STF and Liberian fighters, under the command of Gullit, committed outrages upon personal dignity on an unknown number of women and girls who were raped in public in the grounds of the State House where others viewed the acts over three nights in January 1999;

(ii) AFRC, RUF, STF and Liberian commanders and fighters committed outrages upon personal dignity on an unknown number of girls who were raped inside State House during the Freetown attack of January 1999;

(iii) Alimamy Bobson Sesay, a commander in the AFRC, committed an outrage upon personal dignity by raping a young girl captured in Freetown during the January 1999 attack;

(iv) RUF fighters committed outrages upon personal dignity on an unknown number of girls in a house, in the presence of other persons, on Blackhall Road during the Freetown attack in January 1999;

(v) Rebels under the command of Captain Blood committed outrages upon personal dignity on an unknown number of girls, who were raped in public and in view of other persons, in Kissy on or about 22 January 1999;

(vi) Major Arif, an SLA soldier, committed an outrage upon personal dignity on TF1-029 who was used as a sexual slave in Wellington, Calaba Town and Benguema from late January to March 1999;

(vii) James, an STF fighter, committed an outrage upon personal dignity on Akiatu Tholley who was used as a sexual slave in Allen Town, where she and others were undressed and raped in the view of other people, and in Waterloo from approximately late January through early April 1999;

(viii) A member of the AFRC committed an outrage upon personal dignity on TF1-023 who was used as a sexual slave in Calaba Town, Benguema and Four Mile from late January through March 1999.

3477. para. 1207: The Trial Chamber recalls that the Prosecution has proved beyond reasonable doubt that there was an armed conflict in Sierra Leone at all times relevant to the Indictment,

involving among others, members of the RUF, AFRC and CDF.[2974] The Trial Chamber is satisfied that for all of the aforementioned acts of sexual violence in Freetown and the Western Area there was a nexus between the acts of sexual violence and the armed conflict, that each of the victims was not taking an active part in the hostilities at the time of the sexual violence, and that the perpetrators knew this fact. Therefore, the Trial Chamber is satisfied that the aforementioned acts of sexual violence in Freetown and the Western Area constitute outrages upon personal dignity as a war crime under Article 3 of the Statute.

3478. Regarding Taylor's individual criminal responsibility (Aiding and Abetting), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Aiding and Abetting - paras. 6904-6906 [6351], 6910-6915 [6354], 6918-6924 [6360], 6927-6937 [6367], 6940-6946 [6378], 6947-6952 [6385], 6953 [6391].

3479. Regarding Taylor's individual criminal responsibility (Planning), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Planning - paras. 6957 [6392], 6958-6968 [6393], 6969-6970 [6404], 6971 [6406].

3480. Regarding Taylor's individual criminal responsibility (Instigating), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Instigating - para. 6972 [6407].

3481. Regarding Taylor's individual criminal responsibility (Ordering), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Ordering - para. 6973 [6408].

3482. Regarding Taylor's superior responsibility, see below: Chapter 13 (Article 6.3 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.3 of the Statute - Superior Responsibility - paras. 6977 - 6986 [8613].

3. Appellate Judgment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-A, Judgment, 26 September 2013

(a) Factual Findings

3483. para. 253: The Trial Chamber found that the RUF/AFRC's operational strategy was characterised by a campaign of crimes against the Sierra Leonean population, including the crimes

charged in all 11 Counts of the Indictment,[578] which were inextricably linked to the strategy of the military operations themselves. This strategy entailed a campaign of terror against civilians as a primary *modus operandi*, to achieve military gains at any civilian cost and political gains in order to attract the attention of the international community and improve the RUF/AFRC's negotiating stance with the Sierra Leonean government (the "Operational Strategy").[579]

3484. para. 254: In assessing Taylor's alleged criminal liability, the Trial Chamber found that Taylor, by his acts and conduct, was "critical in enabling" the RUF/AFRC's Operational Strategy, "supported, sustained and enhanced" the functioning of the RUF/AFRC and its capacity to implement its Operational Strategy, planned an attack of terror as the *modus operandi* of the attack on Freetown and had a substantial effect on the crimes committed by the RUF/AFRC.[580] It further found that Taylor knew of the RUF/AFRC's Operational Strategy, knew that his acts and conduct assisted the commission of crimes in the implementation of that Operational Strategy and knew the essential elements of the crimes in which he was participating.[581]

3485. Regarding the RUF/AFRC's Operational Strategy, see below: Chapter 12 (Article 6.1. Liability) -Taylor - Appellate Judgment - Findings and Conclusions - The RUF/AFRC's Operational Strategy - paras. 257-302 [6411].

3486. para. 303: The Appeals Chamber has reviewed the Trial Chamber's assessment of the evidence and affirmed the findings in the Judgment.[821] It has further affirmed the Trial Chamber's finding that the RUF/AFRC leadership pursued an Operational Strategy to commit the crimes charged in Counts 1-11 of the Indictment.[822]

3487. Regarding Taylor's Acts, Conduct and Mental State, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Acts, Conduct and Mental State - paras. 303 - 343 [6457].

(b) Legal Conclusions

3488. See below: Annex B encompasses the discussion of the evaluation of evidence relating to all the crimes [Annex B].

3489. Regarding Taylor's Criminal Liability, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Criminal Liability - paras. 497-595 [6630].

B. RUF

1. Indictment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-2004-15-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

3490. Paragraph 19 through 39 are incorporated by reference.[173]

3491. These attacks [para. 41: 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] were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property.[174]

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

3492. Members of the AFRC/RUF subordinate to and/or acting in concert with Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, committed crimes set forth below in paragraphs 45 through 82, and charged in counts 3 through 14, as part of a campaign to terrorize the civilian population. The AFRC/RUF also committed the crimes to punish the civilian population or 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.[175]

[173] RUF Indictment, para. 40.
[174] RUF Indictment, para. 42.
[175] RUF Indictment, para. 44.

(iii) Counts 6-9: Sexual Violence

3493. 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:[176]

> i. Kono District: Between about 14 February 1998 and 30 June 1998, members of the AFRC/RUF raped hundreds of women and girls at various locations throughout the district including Koidu, Tombodu, Kissi-Town, Foender (or Foendu), Tomenduh, Fokoiya, Wondedu, and AFRC/RUF camps such as "superman camp" and 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";[177]
>
> ii. Koinadugu District: Between about 14 February 1998 and 30 June 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." The "wives were forced to perform a number of conjugal duties under coercion by their "husbands";[178]
>
> iii. Bombali District: 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 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";[179]
>
> iv. Kailahun District: At all times relevant to this indictment, an unknown number of women and girls at 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";[180]
>
> v. Freetown and Western Area: Between 6 January 1999 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 sex slaves and/or forced them into "marriages," and/or forced them into other forms of sexual violence. The "wives were forced to perform a number of conjugal duties under coercion by their "husbands";[181]

[176] RUF Indictment, para. 54.
[177] RUF Indictment, para. 55.
[178] RUF Indictment, para. 56.
[179] RUF Indictment, para. 57.
[180] RUF Indictment, para. 58.
[181] RUF Indictment, para. 59.

vi. Port Loko District: About the month of February 1999, AFRC/RUF forces fled to various locations in Porto Loko District. Between February 1999 and April 1999, members of the AFRC/RUF raped an unknown number of women and girls at 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." The "wives were forced to perform a number of conjugal duties under coercion by their "husbands";[182]

3494. 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 inhuman 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.[183]

2. Trial Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-T, Judgement, 2 March 2009

[182] RUF Indictment, para. 60.
[183] RUF Indictment, para. 60.

(a) Factual Findings

(i) Kono District – Crimes

a. Background to Kono District – Kono District – Crimes

3495. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Background to Kono District – paras. 1136 – 1139 [208].

b. Koidu Town – Kono District – Crimes

3496. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Koidu Town – Rapes in Koidu Town – paras. 1152- 1153 [224].

3497. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Koidu Town – Sexual slavery and 'forced marriages' – paras. 1154 - 1155 [243].

c. Tombodu – Kono District – Crimes

3498. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Tombodu - Rape of a woman by Staff Alhaji – para. 1171 [243].

d. Wendedu – Kono District – Crimes

3499. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Wendedu - Sexual slavery and 'forced marriages' – paras. 1778 - 1779 [250].

e. Sawao – Kono District – Crimes

3500. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Sawao – Rapes, beatings and amputations – paras. 1180 – 1185 [252].

f. Penduma – Kono District – Crimes

3501. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Penduma – Rapes, killings and amputations – paras. 1191 – 1195 [263].

g. Bumpeh – Kono District – Crimes

3502. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Bumpeh – Rapes and sexual violence – paras. 1205 - 1206 [274].

h. Bomboafuidu – Kono District – Crimes

3503. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Bomboafuidu – Rape and sexual violence – paras. 1207 - 1208 [276].

i. Kissi Town – Kono District – Crimes

3504. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Kissi Town - 'Forced marriages' of TF1-016 and her daughter – paras.1211 – 1214 [280].

(ii) Kailahun District – Crimes

a. Background to Kailahun District – Kailahun District – Crimes

3505. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Background to Kailahun District – paras. 1380 – 1385 [413].

3506. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Sexual violence – para. 1405 [438].

b. 'Forced Marriage' of TF1-314 – Kailahun District – Crimes

3507. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Sexual violence – 'Forced Marriage' of TF1-314 – paras. 1406 – 1407 [439].

c. 'Forced Marriage' of TF1-093 – Kailahun District – Crimes

3508. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Sexual violence – 'Forced Marriage' of TF1-093 – para. 1408 [441].

d. ‘Forced Marriages’ of an unknown number of women – Kailahun District – Crimes

3509. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Sexual violence – ‘Forced Marriages’ of an unknown number of women – paras.1409 – 1413 [442].

(iii) Freetown and the Western Area – Crimes

a. Background to Freetown and the Western Area – Freetown and the Western Area – Crimes

3510. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area– para. 1510 [477].

3511. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Perpetrators of the Attack on Freetown – paras. 1511 – 1515 [478].

3512. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Targeting of the civilian population in Freetown – paras. 1516 – 1520 [483], 1522 [489].

b. State House – Freetown and the Western Area – Crimes

3513. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – State House – para. 1523 [490].

c. Upgun and Fourah Bay – Freetown and the Western Area – Crimes

3514. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Upgun and Fourah Bay – para. 1529 [496].

d. Kissy – Freetown and the Western Area – Crimes

3515. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings, Amputations and Looting of TF1-022 and others – para. 1553 [520].

3516. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Amputations and Looting of TF1-097 and others – para. 1556 [523].

e. Allan Town, Calaba Town and Benguema – Freetown and the Western Area – Crimes

3517. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes - Allan Town, Calaba Town and Benguema - 'Forced Marriage' of TF1-023 – paras. 1558 – 1561 [525].

3518. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes - Allan Town, Calaba Town and Benguema - 'Forced Marriage' of TF1-029 – paras. 1562 – 1565 [529].

(iv) Koindugu District – Crimes

3519. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 – 1505 [533].

(v) Bombali District – Crimes

3520. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 – 1509 [543].

(vi) Port Loko District – Crimes

3521. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras. 1609 – 1613 [547].

(b) Legal Conclusions

(i) Applicable law - War crimes / Violations of Common Article 3

3522. See above: Chapter 1 – RUF – Trial Judgment – Legal conclusions – Applicable law - War crimes / Violations of Common Article 3 – paras. 91 - 105 [552].

(ii) War Crimes / Violations of Common Article 3 – Findings on general requirements

3523. See above: Chapter 1 – RUF – Trial Judgment – Legal conclusions – War crimes / Violations of Common Article 3 – Findings on general requirements – paras. 964 – 988 [567].

(iii) Applicable law – Outrages upon personal dignity

3524. para. 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.

3525. para. 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]

3526. para. 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;

(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.

3527. para. 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]

3528. para. 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]

(iv) Pleading

a. Criminal acts and events - Pleading

3529. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Criminal acts and events – paras. 411-414, 417– 419 [604].

b. Locations – Pleading

3530. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Locations – paras. 420 – 422 [613].

c. Timeframes – Pleading

3531. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Timeframes – paras. 423 – 432 [616].

d. Conduct charged under Common Article 3 and Additional Protocol II – Pleading

3532. See above: Chapter 1 – RUF – Trial Judgment – Legal conclusions – Pleading - Conduct charged under Common Article 3 and Additional Protocol II – paras. 436 – 447 [626].

e. Outrages upon personal dignity – Pleading

3533. para. 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 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.

3534. para. 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".

3535. para. 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.

f. Forced marriages – Pleading

3536. para. 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]

3537. para. 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]

3538. para. 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".

3539. para. 466: The Sesay Defence also argued in its Final Trial Brief that the crime of 'forced marriage' 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]

3540. para. 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.

(v) Kono District – Outrages upon personal dignity

3541. See above: Chapter 2 – RUF – Trial Judgment – Legal Conclusions –Kono District – Unlawful killings - paras. 1266 – 1267 [1630].

a. Rapes, sexual slavery and 'forced marriages' – Kono District – Outrages upon personal dignity

3542. para. 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]

3543. para. 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.

3544. para. 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]

3545. para. 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.

b. Bumpeh – Kono District – Outrages upon personal dignity

3546. para. 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]

3547. para. 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 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.

3548. para. 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.

3549. para. 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.

3550. para. 1306: The Chamber accordingly finds that AFRC/RUF rebels committed two outrages upon personal dignity, as charged in Count 9 of the Indictment.

c. Bomboafuidu - Kono District – Outrages upon personal dignity

3551. para. 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.

3552. para. 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.

3553. para. 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.

(vi) Kailahun District – Outrages upon personal dignity

3554. para. 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).

3555. para. 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.

3556. para. 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]

3557. para. 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.

(vii) Freetown and the Western Area – Outrages upon personal dignity

3558. para. 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).

3559. para. 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.

3560. para. 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 Chapter 9 of the Indictment.

(viii) Koindugu District – Outrages upon personal dignity

3561. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 – 1505 [533].

(ix) Bombali District – Outrages upon personal dignity

3562. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 – 1509 [543].

(x) Port Loko District – Outrages upon personal dignity

3563. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras. 1609 – 1613 [547].

3. Appellate Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-A, Judgment, 26 October 2009

(a) Factual Findings

(i) Kono District

3564. See above: Chapter 1 – RUF – Appellate Judgment – Factual Findings – Kono District – para. 428 [712].

(b) Legal Conclusions

(i) Pleading

3565. See above: Chapter 5 – RUF – Appellate Judgment – Legal Conclusions – Pleading – paras. 132 - 134, 492 [3290].

(ii) Pleading – Dissents

a. Justice Fisher:

3566. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Pleading-Dissents – Justice Fisher – para. 20 (p.517), para. 22 (p.518), para. 23 (p.518), para. 24 (p.518-519) [1715].

(iii) Crimes charged as criminal means of furthering Common Criminal Purpose - Outrages upon personal dignity

3567. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 333, 348 [751].

3568. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 377 - 378 [754].

3569. See above: Chapter 5 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal purpose – para. 356 [3297].

(iv) Crimes charged and JCE *mens rea* (short review) - Outrages upon personal dignity

3570. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged and JCE *mens rea* (short review) – paras. 467, 468, 482, 492, 493 [756] and see, also, Justice Fisher's and Justice Winter's Dissenting Opinions in that regard.

(v) Kono District - Outrages upon personal dignity

3571. See above: Chapter 4 – RUF – Appellate Judgment – Legal Conclusions – Kono District – paras. 439 - 440, 442 [2872].

3572. Regarding Sesay's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Sesay – paras.624, 627 – 634 [7658].

3573. Regarding Kallon's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings

and Conclusions – Kono District – JCE – Participation in and shared intent – Kallon – paras.806, 810 – 815 [7667].

3574. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Gbao – paras. 946-948, 951– 955 [7615].

3575. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – paras.480 – 493 [7440].

3576. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras.4 – 28 [7454].

3577. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

(vi) Kailahun District - Outrages upon personal dignity

3578. See above: Chapter 5 – RUF – Appellate Judgment – Legal Conclusions – Kailahun District – paras. 386 391, 453 – 454 [3315].

3579. Regarding Sesay's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Sesay – para. 635 [7694].

3580. See above – Chapter 5 – RUF – Appeallate Judgment – Legal conclusions – Kailahun District – paras. 726, 732 – 740 [3325].

3581. Regarding Kallon's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Kallon – paras.817, 820 – 824 [7759].

3582. Regarding Gbao's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Gbao – paras. 967 - 983, 986 – 994 [7780].

C. AFRC

1. Indictment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

3583. Paragraphs 21 through 36 are incorporated by reference.[184]

3584. 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 ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, 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. [185]

3585. These attacks were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property. [186]

3586. 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

[184] AFRC Indictment, para. 37.
[185] AFRC Indictment, para. 38.
[186] AFRC Indictment, para. 39.

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. [187]

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

3587. Members of the AFRC/RUF subordinate to and/or acting in concert with ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, committed the crimes set forth below in paragraphs 42 through 79 and charged in Counts 3 through 14, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF. [188]

(iii) Counts 6-9: Sexual Violence

3588. 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: [189]

> i. Kono District - 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" 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";[190]
>
> ii. Koinadugu District - 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

[187] AFRC Indictment, para. 40.
[188] AFRC Indictment, para. 50.
[189] AFRC Indictment, para. 51.
[190] AFRC Indictment, para. 52.

of sexual violence. The "wives" were forced to perform a number of conjugal duties under coercion by their "husbands";[191]

iii. Bombali District - 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";[192]

iv. Kailahun District - 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" 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";[193]

v. Freetown and the Western Area - 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";[194]

vi. Port Loko District - 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".[195]

3589. By their acts or omissions in relation to these events, ALEX T AMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, 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:

[191] AFRC Indictment, para. 53.
[192] AFRC Indictment, para. 54.
[193] AFRC Indictment, para. 55.
[194] AFRC Indictment, para. 56.
[195] AFRC Indictment, para. 57.

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.

2. Trial Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-T, Judgement, 20 June 2007

(a) Factual Findings

(i) Preliminary Remarks

3590. para. 969: Count 9 (Outrages on Personal Dignity) has been charged in addition to or in the alternative to Count 6 (Rape), Count 7 (Sexual Slavery and Any Other Form of Sexual Violence) and Count 8 (Other Inhumane Act, Forced Marriage). As discussed, *supra*, in Chapter II, Defects in the Indictment, the Trial Chamber has dismissed Count 7 for duplicity[1952] and as discussed, *supra*, in Chapter IX, Applicable Law, the Trial Chamber has dismissed Count 8 for redundancy.1953 As additionally discussed, supra, in Chapter IX, Applicable Law, the Trial Chamber is satisfied that the acts of rape and sexual slavery are encompassed by the definition of outrages on personal dignity and will consider evidence to this effect presently.

3591. para. 1070: In coming to its findings in relation to Count 9, the Trial Chamber relies on the findings made in relation to Count 6, *supra*, as well as its findings on the chapeau elements of war crimes.[1954]

(ii) Kono District - Crimes

3592. See above: Chapter 4 – AFRC – Trial Judgment – Factual Findings - Kono District (14 February 1998 - 30 June 1998) - Crimes paras. 969 – 972 [2893].

3593. para. 1100: The Indictment alleges that between 14 February 1998 and 30 June 1998 an unknown number of women and girls were abducted by members of the AFRC/RUF from various locations within the District and used as sex slaves.[2010]

3594. para. 1101: The Prosecution has conceded that it has not led evidence in respect of Tomendeh, Fokoiya, Superman Camp/Kissi Town Camp, Kissi Town or Tombodu.[2011]

3595. para. 1102: In making its findings in relation to Kono District, the Trial Chamber relies upon the evidence of Prosecution witness TF1-334 and Defence witnesses DAB-125 and DAB-W1.

3596. para. 1103: Prosecution witness TF1-334 testified that from the time Johnny Paul Koroma declared Koidu a "no go" area for civilians in early March, 1998, civilians were captured by "rebels" from the surrounding villages such as Tombodu and Yamadu. Civilians who tried to escape were executed.[2012] Women - particularly the young and beautiful ones - were placed under the full control of "commanders"; they became their "wives". As their "wives" the women cooked for the rebels and the other soldiers in Kono. They were also "used sexually."[2013] This was an open practice. Witness TF1-334, "Commander A" and other soldiers all "had sexual intercourse" with captured women.[2014]

3597. para. 1104: The Prosecution submits that this evidence has not been challenged by any Defence evidence and as such the Prosecution version of events must be accepted.[2015]

3598. para. 1105: The Trial Chamber is of the opinion that witness TF1-334' s testimony that women were captured; that captured civilians who tried to escape were executed; that captured women were place under the "full control" of commanders and became their "wives"; and that these women cooked for the commanders and other soldiers is indicative of the deprivation of the captured women's liberty and the exercise of ownership over them by members of the AFRC. The Trial Chamber is also satisfied on the evidence of the witness, namely that the women were "used sexually" and that soldiers, including himself, had sexual intercourse with captured women, that acts of sexual violence were committed against the captured women. The Trial Chamber infers from the environment of violence and coercion that the women did not consent to these sexual acts. The Trial Chamber is thus of the opinion that the actus reus and mens rea elements of the crime of sexual slavery are satisfied on the basis of this evidence.

3599. para. 1106: The evidence of witness TF1-334 is generally supported by that of witness DAB-101 who testified that after hearing on the radio about "Operation No Living Thing" he was captured and released three times by the RUF in Kono District. The "rebels" were based at

Mortema at this time. The witness was captured, together with two other civilians, by the RUF a fourth time. The rebels were armed and were wearing civilian clothing. The rebels told the witness that they would release him if he agreed to turn over two of his nieces to them to be their "wives". The witness testified that the nieces advised him to accept the offer so he did. The girls were 15 and 17 years old at the time. The witness then went back to the "bush". The witness saw the girls again after the war. The girls told the witness their "ordeal"; they said they were beaten but did not tell the witness anything else.[2016] The Trial Chamber is of the opinion that girls aged 15 and 17 years of age, in the context of coercion and violence, could not have validly consented to "marriage".

3600. para. 1107: Witness DAB-IOI also testified that, generally, women that were captured by the rebels were transformed into their 'wives'. They were usually sent to spy for the rebels or to find food. In Mortema, the witness did not hear about any rapes. He also never heard the name of the Accused Brima.[2017]

3601. para. 1108: The evidence of witness TF1-334 is also generally supported by that of witness DAB-125 who testified that around Wordu Town, if "they" saw a young girl they would hold and turn her into their wife.[2018]

a. Koidu – Kono District - Crimes

3602. See above: Chapter 4 – AFRC – Trial Judgment – Factual Findings - Kono District – Koidu - Crimes - paras. 973, 974[2897].

b. Foendor/Foendu – Kono District - Crimes

3603. See above: Chapter 4 – AFRC – Trial Judgment – Factual Findings - Kono District – Foendor/Foendu – Crimes - paras. 975-979 [2899].

c. Wondedu – Kono District - Crimes

3604. See above: Chapter 4 – AFRC – Trial Judgment – Factual Findings - Kono District – Wondedu – Crimes - para. 980[2904].

(iii) Koinadugu District – Crimes

3605. See above: Chapter 4 – AFRC – Trial Judgment – Factual Findings - Koinadugu District – Crimes - paras. 982-985 [2905]

3606. para. 1110: The Indictment alleges that between 14 February 1998 and 30 September 1998 an unknown number of women and girls were abducted and used as sex slaves by members of the AFRC/RUF.[2019]

3607. para. 1111: The Prosecution has conceded that it has not led evidence in respect of Heremakono.[2020]

3608. para. 1112: In making its findings in relation to Koinadugu District, the Trial Chamber relies on the evidence of Prosecution witnesses TF1-094, TF1-133, and TF1-209 and Defence witness DAB-079 and DAB-156.

3609. para. 1113: As examined, supra, in the evidence by witness section, witness TF1-094 testified that in August of 1998 she was abducted by a certain 'Andrew' from her village, Bambukura, Koinadugu District. The Trial Chamber is satisfied from the witness's description of 'Andrew' as an "SLA" dressed in combat that Andrew was a member of the AFRC or the RUF. The witness testified that after Andrew abducted her, he repeatedly raped her. The witness became pregnant within the first month of being with Andrew. She testified that she had to do his laundry and other chores and that Andrew considered the witness to be his "wife". The witness was taken with the troops as they travelled to Bombali District. They reached Rosos when the witness was four months pregnant.

3610. para. 1114: The Trial Chamber is of the opinion that the witness's testimony of her forcible abduction; the murder of her parents in her presence which established an context of fear and violence; her fear that she too would be killed if she did not have sex with 'Andrew'; the extraction of her forced labour by 'Andrew', namely laundering and other chores; the use of the term 'wife'; and her detention with the troops for approximately four to five months as they travelled through Koinadugu District to Bombali District are all indicative of the deprivation of her liberty and the exercise of ownership over her person by 'Andrew' which together with acts of sexual violence, namely, 'Andrew's repeated rape of the witness and her subsequent pregnancy, satisfies the *actus reus* and *mens rea* elements of the crime of sexual slavery.

3611. para. 1115: Prosecution witness TF1-133 testified that captured women in Koinadugu District were forced to be "wives" to members of the AFRC or RUF and that she was present in Krubola for a period of seven months and Serekolia for a period of three months during which time "forced marriages" were supervised and organised by herself for members of the AFRC and RUF.

3612. para. 1116: The witness testified that in Kumala, in April 1998, at the time that the villagers were "getting ready to make [their] farms" at the end of the dry season, she, her siblings and one of her husband's other wives, were captured by four "rebels" whom the witness named as 'Mohammed the Killer', 'Trouble', 'Arpick' and 'Cyborg'. Some of the rebels were in uniform and some were in civilian dress.[2021] The witness and her family members, together with some other captured civilians known to the witness - Bamba lalloh and Sialo Kamara - were taken by the rebels on a path towards Woronbiai. Before they reached town, 'Mohammed the Killer', who was armed, raped the witness. The witness testified that she was unable to refuse. At the same time, another rebel – whom the witness named as 'RPG' - raped the witness's husband's other wife.[2022]

3613. para. 1117: The witness was kept with the rebels at Woronbiai for eight days. There the witness learned that Mohammed the Killer's commander was named 'Cobra'.[2023] Other commanders at Woronbiai were 'Colonel Tee' who was SLA; 'Pa Mani' who was SLA; and 'Rambo'. 'Rambo' and 'Pa Mani' were the overall commanders at Woronbiai.[2024] At Woronbiai, 'Mohammed the Killer' wanted to marry the witness to 'Cobra'. The witness refused. 'Mohammed the Killer' said the witness should be killed and he wounded her with a bayonet. The witness was injured on her hip and buttocks.[2025] The witness was led away by a rebel to be killed, however, 'Rambo' intervened.[2026] ·Rambo' and 'Pa Mani' punished 'Mohammed the Killer' by having him beaten.[2027] 'Cobra' said "You have brought this woman for me. If she says she doesn't love me, leave her alone".[2028] The witness was treated for her injuries. For the eight days she was in Woronbiai, the witness lived with 'Cobra'.[2029]

3614. para. 1118: All of the women who were captured at the same time as the witness were given to "men" as their "wives" which meant that the women had to have sex with the men. The witness's husband's other wife was given to a "rebel" named Komba; Bamba Jalloh was given to a Mende "rebel" named Yubao. Sialo Kamara was made to work for the wives of the rebels. She laundered clothes and washed dishes.[2030]

3615. para. 1119: The Trial Chamber notes that in its Final Brief, the Prosecution cites the proceeding testimony of witness TFl-133 as evidence of crimes committed in Woronbiai, Kana District.[2031] The Trial Chamber finds that this is a mistaken assertion. Witness TF1-133 clearly testified that she was in the bush outside of Kumala, near Alikalia, when she was captured, and that she was raped in the bush on the way to Woronbiai. She also testified that immediately prior to the attack on Kumala, Yifin had been attacked.[2032] The Trial Chamber has no doubt that the proceeding events the witness describes took place in Koinadugu District.

3616. para. 1120: Witness TFl-133 testified that then she and an unknown number of other women who had been captured by "rebels" were taken with the rebels - including 'Cobra' and "Brigadier" Mani – to Krubola where they stayed for seven months. At Krubola, they "met" another group of rebels which included a "fighter" named 'Savage', a "rebel" named 'Komba Gbundema', and a "rebel" named 'Superman'. There were other men there, but the witness did not know their names. The men at Krubola were all "under" Komba Gbundema.[2033] The Trial Chamber is satisfied on the basis of this evidence that the rebels present at Krubola at this time were both members of the AFRC and RUF.

3617. para. 1121: In Krubola, the captured women cooked and "had sex" with the rebels and were forced to be their "wives". The witness stated that when a women was "betrothed" to a man, she became his "wife" which according to the witness, meant that "whoever you were with would have sex with you." The witness testified that when the rebels captured women, they would have sex with them before bringing them to where the rebels were based. When the captured women were taken to the base, they would be handed over to a person who would have sex with that woman all the time. The "bosses and stronger guys" all had wives who were captured but the subordinates were not allowed to have wives. The subordinates would be sent to the front and they would always bring back captured civilians, including women.

3618. para. 1122: The witness testified that in her presence the "elders" and "bosses" including 'Rambo', 'Colonel Tee' and 'Pa Mani' made a law that whoever was given a woman would be the sole owner over her and that a man should not covet his colleague's wife. "If you were caught, you will be killed". Captured children were made to work for the captured "wives" of the rebels.[2034] On cross-examination, the witness testified that the children were captured because older civilians wanted them to work for them.

3619. para. 1123: At the time that groundnuts were about to be harvested the rebels moved to Serekolia, Koinadugu District. On the way, the rebels travelled through Mongo which "was captured". The rebels that moved included Kombo Gbundema's group, 'Superman', 'Savage', 'Colonel Tee' and 'Pa Mani'. They remained in Serekolia for three months. While they were there the civilians voted for the witness to represent them. She was appointed the "Mammy Queen" by 'Pa Mani', 'Colonel Tee' and their clerk Alhaji. As the Mammy Queen, the witness would investigate captured civilians who had been mistreated and cases where husbands or wives had sex with someone else's spouse. If a woman was found guilty of having sex with someone else's husband she could be given 200 lashes. If a man raped another man's wife, he could be killed.[2035]

3620. para. 1124: The Prosecution asserts that the witness's position as a "Mammy Queen" did not in any way help her or the other "wives'" plight, as it did not affect the powers of the men over their abducted 'wives', or afford them any liberty to leave or refuse to engage in acts of a sexual nature with their so called husbands.[2036]

3621. para. 1125: The Prosecution also asserts that witness TFl-133 was not discredited on cross-examination and that her evidence has not been challenged by any Defence evidence and as such, the Prosecution version of events should be accepted.[2037]

3622. para. 1126: The Trial Chamber is satisfied on the evidence of witness TF1-133 that women captured in Koinadugu District were subject to repeated rape by members of the AFRC/RUF were made to labour for members of the AFRC/RUF, namely to cook, launder clothes and wash dishes; were labelled as "wives", in this context a label of possession, and placed in exclusive relationships of ownership by certain rebels; were punished with physical violence if the exclusive sexual relationship was violated; and were detained at rebel bases in Krubola and Serekolia and made to travel together with the troops; are all indicative of the deprivation of liberty and the exercise of ownership over captured women together with acts of sexual violence satisfying the *actus reus* and *mens rea* of the crime of sexual slavery.

3623. para. 1127: As found by the Trial Chamber, supra, Prosecution witness TFl-209 was raped at her mother's farm outside of Koinadugu Town by two members of the AFRC/RUF in or about August, 1998. Following this attack the rebels brought her to Koinadugu Town where over a period of three months she was repeatedly raped by 'Jabie', a member of the AFRC.[2038]

3624. para. 1128: In addition to these findings, the Trial Chamber also relies upon the evidence of witness TFl-209 that when she and other captured civilians were brought to Koinadugu Town, they were taken to the "MP's" office where their names were recorded by a person to whom the witness referred as 'Mongo.' The witness testified that this was done so that the captured civilians would not go missing. The witness described 'Mongo' as dressed in combat and stated that he was the boss of the Military Police.[2039]

3625. para. 1129: The witness testified that following this registration process she was taken by the "person" who captured her to 'Jabie's house where she cooked and laundered for him. The witness testified that he turned her into his "wife" which she explained meant that he would have sex with the witness whenever he felt like it.[2040] The witness also testified that with the exception of excursions during the day to farms in the bush, she stayed in the same house with 'Jabie' in Koinadugu Town for three months until he was killed.[2041]

3626. para. 1130: The Trial Chamber is satisfied that the witness's testimony of her forcible capture; the registration of her name by 'Mongo' when she arrived in Koinadugu Town and her perception that this was done to prevent her and other captured civilians from "going missing"; the extraction of her forced labour by 'Jabie', namely cooking and laundering; the use of the term 'wife', in this context a label of possession; and her detention in the same house as 'Jabie' is indicative of the , deprivation of her liberty and the exercise of ownership over her person which together with acts of sexual violence, namely, 'Jabie's repeated rape of the witness found previously by the Trial Chamber satisfies the *actus reus* and *mens rea* elements of the crime of sexual slavery.

3627. para. 1131: The evidence of Prosecution witnesses TF1-094, TF1-133, and TF1-209 IS generally supported by that of Defence witnesses DAB-156 and DAB-079. As found by the Trial Chamber with regards to Chapter 5, supra, Defence witness DAB-156 was raped by 'Junior Lion' in Kabala sometime after the AFRC was overthrown in Freetown in February 1998 but before the rainy season.[2042] The witness also testified that he took her as his "wife" by force and that he abducted her in Yuromia Town, near Foday Street.[2043]

3628. para. 1132: Witness DAB-079 testified that he did not receive any information about sexual violence in Kabala Town by the SLAs, although there were rumours of 'bush wives' in the interior. The witness was part of a CDF information network of 1000-1700 people and was receiving weekly reports from Kabala, Koinadugu, Yifin, Geberefe and other locations.[2044]

a. Kabala – Koinadugu District - Crimes

3629. See above: Chapter 4 – AFRC – Trial Judgment – Factual Findings - Koinadugu District – Kabala – Crimes - paras. 986, 987, 988[2909].

b. Koinadugu Town – Koinadugu District - Crimes

3630. See above: Chapter 4 – AFRC – Trial Judgment – Factual Findings - Koinadugu District – Kabala – Crimes - paras. 989 - 1020[2912].

c. Fadugu – Koinadugu District – Crimes

3631. See above: Chapter 4 – AFRC – Trial Judgment – Factual Findings - Koinadugu District – Fadugu – Crimes - paras. 1021-1025 [2943].

(iv) Bombali District – Crimes

3632. See above: Chapter 4 – AFRC – Trial Judgment – Factual Findings - Bombali District – Crimes - paras. 1027-1030 [2948].

3633. para. 1134: The Indictment alleges that between 1 May 1998 and 30 November 1998 an unknown number of women and girls were abducted and used as sex slaves by members of the AFRC/RUF.[2045]

3634. para. 1135: The Prosecution has conceded that it has not led evidence in respect of Mandaha.[2046]

3635. para. 1136: In coming to its findings in Bombali District, the Trial Chamber relies on the evidence of Prosecution witnesses TF1-334, TF1-094 and TF1-033 and Defence witness DAB-095.

3636. para. 1137: Witness TF1-334 testified that he and other "soldiers" under the command of "Woyoh"[2047] captured approximately 35 civilian women during the attack on Karina in June of 1998.[2048] The women were initially stripped naked but were later permitted to dress.[2049] When the soldiers left Karina they stopped at a temporary base in the jungle. There, Woyoh handed the women over to 'Five-Five' who was the Chief of Staff.[2050] 'Five-Five' distributed the women among the soldiers under his command by requiring them to "sign for" a woman. 'Five-Five' stated that if there were any problems the soldiers should immediately report directly to him. He also stated that if the soldiers "disturbed" the women, they would be removed from the soldier's control.[2051] The women were "wives to the soldiers"[2052] and they remained with their "husbands" until the soldiers invaded Freetown.[2053]

3637. para. 1138: Witness TF1-334 testified that the AFRC troops arrived in Rosos at the beginning of the rainy season in 1998 and stayed there for three months, leaving in September[2054] 'Five-Five' was in charge of overseeing that the captured women were trained for combat.[2055] 'Five-Five' continued to regulate the "marriages" of the women abducted in Karina at Camp Rosos. 'Gullit' appointed a "Mammy Queen" - a woman at the camp who looked after women's affairs, including pregnancy, birth and sickness.[2056] 'Five-Five' issued a "disciplinary order" regulating the conduct of women which was explained to supervisors in the camp and to the Mammy Queen. According to this order, women who were unfaithful to their husbands should be punished.[2057] Soldiers and their "wives" reported problems directly to 'Five-Five' and if 'Five-Five' determined that the woman deserved punishment this could be delegated to the Mammy Queen. Women found by 'Five-Five' to have misbehaved could be beaten or given lashes. Women

were also locked for long periods of time in a box meant for transporting rice.[2058] In one instance, witness TFl-334 observed a Staff Sergeant named "Junior" aka "General Bagehgeh" report to 'Five-Five' that he suspected his "wife" of misbehaving. 'Five-Five' called the woman before him and found her guilty. He ordered that she be sent to the Mammy Queen, be given a dozen lashes and be locked in the box. The witness escorted her to the box.[2059]

3638. para. 1139: The Trial Chamber considers the evidence of Prosecution witness TF1-334 together with that of Prosecution witness TF1-033 who testified to having been taken along with AFRC troops to Rosos during the rainy season in 1998.[2060] He testified that rape was widespread throughout the time he was in captivity with the AFRC troops and that the only thing done about sexual violence committed by ARFC troops by "the commanders" occurred at Rosos. The witness testified that according to the "jungle justice" rules at that time, any fighter who raped another fighter's abducted and forcefully married wife would be put to death. The witness specifically recalled an incident in which Alhaji Kamanda alias 'Gunboot' killed an AFRC fighter for raping another fighter's forcefully abducted and married wife.[2061]

3639. para. 1140: The evidence of Prosecution witnesses TF1-334 and TF1-033 is supported by that of Prosecution witness TF1-094, found by the Trial Chamber to have been subject to sexual slavery in Koinadugu District, who also testified that during the period of her sexual slavery, she was brought by the troops to Rosos.[2062]

3640. para. 1141: The Trial Chamber is satisfied that the testimony of Prosecution witnesses TF1-334, TFl-033 and TF1-094 that women captured by the AFRC/RUF were distributed to soldiers to be their "wives"; that captured women were brought to Rosos where they were subject to physical and psychological violence as a form of punishment; and that the women were detained with their "husbands" until the soldiers invaded Freetown is indicative of the deprivation of the captured women's liberty and the exercise of ownership over her person which taken together with acts of sexual violence committed against them, namely, rape at the hands of their rebel "husbands" or at the hands of other fighters satisfies the *actus reus* and *mens rea* elements of the crime of sexual slavery. The Trial Chamber finds further that this was a practice tolerated and regulated by the AFRC/RUF commanders.

3641. para. 1142: Prosecution witness TFl-334 also testified that in or about September 1998, after the troops left Rosos, SAJ Musa arrived in Major Eddie Town. During a meeting with the commanders there, he said that the troops would not be able to secure the women so the women should leave. The women did not leave.[2063]

3642. para. 1143: This evidence is generally supported by that of Defence witness DAB-095 who testified that he was in Colonel Eddie Town when it was used as a military camp for the SLAs under SAJ Musa. The witness was present during a muster parade held by SAJ Musa in Eddie Town when SAJ Musa gave an order that the SLAs should not attack civilians. Witness did not know about a Mammy Queen at Eddie Town. Soldiers were not allowed to rape civilians.[2064]

3643. para. 1144: The Prosecution argues that defence witnesses who gave insider type evidence such as DAB-095 lied in key parts of their evidence and colluded with each other and the Accused in order to ensure that their stories were the same.[2065] The Prosecution considers evidence given by such witnesses that they did not hear of any crimes, such as rape, being committed by the SLAs during the retreat from Freetown to be manifestly unreliable and untrue.[2066]

a. Rosos - Bombali District - Crimes

3644. See above: Chapter 4 – AFRC – Trial Judgment – Factual Findings - Bombali District (1 May 1998 - 30 November 1998) – Rosos – Crimes - paras. 1031-1040 [2952].

(v) Kailahun - Crimes

3645. para. 1146: The Indictment alleges that at all times relevant to the 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 and brought to AFRC/RUF camps in the District and used as sex slaves.[2067]

3646. para. 1147: No specific concessions with regards to locations in Kailahun were found to have been made by the Prosecution at the Motion for Acquittal stage.[2068]

3647. para. 1148: In making its findings in relation to Kailahun, the Trial Chamber has examined the evidence of Prosecution witnesses TF1-045 who testified that during the ECOMOG interventiol1 in Freetown in February 1998, he was in Kenema.[2069] "Operation Pay Yourself' was declared by Sam Bockarie during which time civilians were abducted by the troops and taken to Daru.[2070] The witness moved with the troops to Daru, where the next morning, he met his niece Aminata who was one of the captured civilians. Aminata told the witness that an "RUF" named Ibrahim captured her, raped her and told her she should be his "wife". Aminata was a young teenager at the time.[2071] The Trial Chamber finds on the basis of this evidence that the crime of sexual slavery is not proven as the evidence insufficiently establishes the exercise of ownership by the perpetrator over the victim.

(vi) Freetown and Western Area - Crimes

3648. See above: Chapter 4 – AFRC – Trial Judgment – Factual Findings - Freetown and Western Area - Crimes - paras. 1042 -1043 [2962].

3649. para. 1150: The Indictment alleges that between 6 January 1999 and 28 February 1999 throughout Freetown and the Western Area members of the AFRC/RUF abducted hundreds of women and girls and used them as sex slaves.[2072]

3650. para. 1151: No specific concessions with regards to locations in Freetown and the Western Area were found to have been made by the Prosecution at the Motion for Acquittal stage.[2073]

3651. para. 1152: In coming to its findings in relation to Freetown and the Western Area, the Trial Chamber relies on the evidence of Prosecution witnesses TF1-023, TF1-334, TF1-094 and Defence witnesses DBK-113 and DBK-126.

3652. para. 1153: Prosecution witness TF1-023 testified that she was 16[2074] when the AFRC invaded Freetown in January 1999. She and her family tried to hide; however, she was captured by "rebels"[2075] in Calaba Town on 22 January 1999.[2076] She was taken by the rebels first to Allen Town and then back to Calaba Town.[2077] At Calaba town, she was given to an AFRC rebel,[2078] hereinafter "the Captain" to be his "wife".[2079] The Captain told the witness he would not take her as his "wife" as he had already been given another woman - the witness's cousin - and could not take care of two women at the same time.[2080] Instead, the Captain handed the witness over to a known AFRC Colonel,[2081] hereinafter "Colonel X", who took her as his "wife".[2082] There was no ceremony and he did not ask her consent.[2083] The witness was afraid. That night, Colonel X came into the room where the witness was instructed to sleep. He told her to undress, threatened her and had sex with her without her consent. Prior to this incident, the witness was a virgin.[2084]

3653. para. 1154: After that night, the witness was taken along with the rebels as they attempted to evade ECOMOG attacks, travelling to Allen Town, Waterloo, Benguema, Lumpa and Four Mile.[2085] At Benguema, the witness saw a man whom the soldiers[2086] said was the senior commander, Brigadier 'Gullit'[2087] At Four Mile the witness spent three weeks with Colonel X.[2088] During this time Colonel X and the witness lived together and he continued to have sex with her frequently. He did not ask her consent when he had sex with her; he said she was his "wife". Colonel X asked the witness to cook for him, but she did not because she did not know how.[2089] The witness felt there was no way for her to escape from Colonel X.[2090] She was unfamiliar with the area in which she was being held[2091] and Colonel X sent an armed escort with her wherever she went.[2092] She was afraid.[2093] There were approximately 400 armed rebels at Four Mile and the

witness knew that those who tried to escape were caught and beaten by the rebels.[2094] The witness testified that Colonel X told her that the senior commander at Four Mile was Brigadier 'Bazzy'.[2095] She would see Brigadier 'Bazzy' regularly when he would visit Colonel X.[2096]

3654. para. 1155: There were other women given to soldiers as wives in Four Mile. In Lumpa, for example, the witness knew ten other women who had been captured and given as "wives" to AFRC rebels.[2097] Some were given to lieutenants and some were given to ordinary soldiers.[2098] The Prosecution asserts that this evidence was not challenged in cross-examination.[2099] 1156. As the "wife" of a commander, the witness was accorded certain privileges. The Trial Chamber notes that in chief the witness stated that she was not forced to do "anything". She clarified on cross-examination that she was not forced to do any work; she was not forced to cook or clean, for example.[2100] The witness testified that "people of lower ranks" respected her and deferentially called her "De Mammy" because of the Colonel.[2101] The Prosecution submits that this did not change the status of the witness who remained under sexual slavery because she had no way of leaving as an armed person watched over her and those who attempted to escape were caught and beaten.[2102] The Trial Chamber agrees with this submission. The fact that some individual abductees were treated less harshly than others does not, in our opinion, detract from the fact that they were forcibly taken and subjected to sexual slavery.

3655. para. 1157: Colonel X left the witness in Four Mile and went to Makeni. In his absence, Colonel X left her in the care of another AFRC captain,[2103] hereinafter "Captain Y", whom the witness accepted on cross-examination tried to look after her and to ensure that she did not come to any harm.[2104] The witness travelled with Captain Y and the rebels to Mile 38, Port Loko District and then to Magbeni[2105] where later, in August of 1999, the witness was able to escape. The witness was in the custody of Captain Y for approximately five months. During this time, Colonel X did not return.[2106] The witness saw 'Bazzy' several times in Mile 38.[2107] 'Bazzy' was the overall commander in Magbeni[2108]. In June or July, the witness also saw 'Gullit' in Magbeni.[2109]

3656. para. 1158: The Prosecution submits that the evidence of the witness remained consistent and was unsuccessfully challenged in cross-examination.[2110]

3657. para. 1159: The Trial Chamber is satisfied that the witness's testimony of her forcible capture; the use of the term 'wife', in this context a label of possession; her detention with the troops as they travelled through the Western Area; her detention with Colonel X for three weeks in Four Mile at which time she felt that she could not escape for fear of being beaten or killed by him; and her subsequent detention by Colonel X and the other rebels for a period of several months, are all indicative of the deprivation of her liberty and the exercise of ownership over her

person which, together with acts of sexual violence committed against her, namely 'Colonel X's repeated rape of the witness, satisfies the *actus reus* and *mens rea* of the crime of sexual slavery.

3658. para. 1160: The Trial Chamber notes that the witness testified that as the "wife" of Colonel X she was accorded certain benefits, for example, she was not forced to cook or clean and was deferentially called "De Mammy". The Trial Chamber is of the opinion that this is a relative benefit only and does not in any way undermine the absolute seriousness of the crime committed against the witness.

3659. para. 1161: The evidence of Prosecution witness TF1-023 is generally supported by that of Prosecution witness TF1-334 who testified that after the invasion of Freetown on 6 January 1999, a number of soldiers who did not "have women" before had new "wives".[2111] The soldiers gave the women food and clothing and the women cooked for the soldiers.[2112]

3660. para. 1162: Prosecution witness TFl-334 testified that civilians abducted during the retreat from Freetown[2113] were brought with the rebels to Benguema where the rebels were based for approximately one month.[2114] There were approximately 300 civilians at Benguema - men, women and children.[2115] During this time, the civilians that were abducted were "well-secured" meaning that they could not escape.[2116] Most of the young girls who were abducted from Freetown became the "wives" of "various commanders" meaning that they had sex with the commanders.[2117]

3661. para. 1163: In the Kissy area, where the witness knew some of the captured girls, they told the witness "what they would do with the men who captured them"; sometimes the witness would "see with my own eyes".[2118] The "wives" were also required to help with the cooking.[2119]

3662. para. 1164: Witness TFl-334 testified that "families", which the witness explained refers to the captured civilians travelling with the troops, travelled with the troops from Waterloo to Newton where they all stayed for about a month. The only civilians with the "troops" at Waterloo and Newton were those who arrived with them.[2120] The "women" were helping with the cooking and the "girls" were sleeping with the "commanders". The "commanders" would call them their "wives".[2121] 'Five-Five' was responsible for the women and girls in the camp at Newton. The soldiers would report problems with the women to 'Five-Five'.[2122]

3663. para. 1165: The Trial Chamber is of the opinion that witness TF1-334's testimony that civilian women were captured from Freetown and brought with the retreating troops to the Western Area, were held in Benguema for approximately one month and were taken to Kissy, Waterloo and Newton; that during their detention in Benguema the civilians were well secured so they could not escape; that young girls became the "wives" of various commanders; and that the

"wives" were required to cook for the soldiers is credible and is indicative of the deprivation of the captured women's liberty and the exercise of ownership over them by members of the AFRC/RUF. The Trial Chamber is also satisfied that acts of sexual violence described by the witness, namely that the "wives" had sex with the various commanders, were committed against the captured women. The Trial Chamber infers from the environment of violence and coercion that the women did not consent to these sexual acts. The Trial Chamber is thus of the opinion that the *actus reus* and *mens rea* elements of the crime of sexual slavery are satisfied on the basis of this evidence.

3664. para. 1166: The Trial Chamber also relies on the evidence of Prosecution witness TF1-094, found by the Trial Chamber to have been subject to sexual slavery in Koinadugu District, that during the period of her sexual slavery, she was brought by the troops to Freetown during the AFRC invasion of 6 January 1999 and was present during the retreat through the Western Area.[2123]

3665. para. 1167: Defence witness DBK-113 testified that he was with the troops during the invasion of Freetown in January, 1999.[2124] He testified that after SAJ Musa died, he remained with the troops in Hastings for three to four days. From Hastings, the witness passed through Allen Town, Wellington and Kissi and, on January 6th he came as far as Hill Cot Road. The witness cannot recall that a "Mammy Queen" was appointed during the move to Freetown.[2125] The Trial Chamber finds the evidence of witness DBK-113 to be credible and consistent. However, the fact that the witness could not recall a "Mammy Queen" does not raise a reasonable doubt with regards to the evidence of Prosecution witnesses TF1-023, TF1-094 and TF1-334 whose evidence indicates numerous incidents of sexual slavery following the 6 January 1999 invasion.

3666. para. 1168: The Trial Chamber has also carefully examined the evidence of witness DBK-126 who testified that when the AFRC entered Freetown, all the soldiers were with their wives. Only the detainees did not have wives.[2126] The Trial Chamber finds that in the face of overwhelming evidence to the contrary this statement is not credible.

3667. para. 1169: Witness DBK-126 also testified that she had a "boyfriend" who was a commander of a mortar platoon. The witness testified that from the time she and her "boyfriend" were in Kono at Masingbi Road, he had repeatedly proposed to her. He went to 'Junior Lion' whom the witness referred to as "the Chief,[2127] and told him he wanted the witness. 'Junior Lion' told the witness "this is your husband." She agreed because she had no option. They have a son together. After they left the bush, the witness told her "boyfriend" that she did not want him anymore.[2128] In Freetown, the witness was called a "rebel wife", but she testified that she does not

consider herself a "rebel wife", as she was with the SLA and not the RUF. Although the witness also stated she had not heard the term "forced marriage" the Trial Chamber is satisfied that her evidence shows the *actus reus* and *mens rea* of sexual slavery.[2129]

a. State House – Freetown and Western Area - Crimes

3668. See above: Chapter 4 – AFRC – Trial Judgment – Factual Findings - Freetown and Western Area – State House – Crimes paras. 1044-1055 [2964]PWD – Freetown and Western Area - Crimes

3669. See above: Chapter 5 – AFRC – Trial Judgment – Factual Findings - Freetown and Western Area – PWD- Crimes - paras. 1056-1060[3054].

b. Greater Freetown – Freetown and Western Area – Crimes

3670. See above: Chapter 4 – AFRC – Trial Judgment – Factual Findings - Freetown and Western Area – Greater Freetown – Crimes - paras. 1061-1067 [2981].

(vii) Port Loko District – Crimes

3671. para. 1171: The Indictment alleges that about the month of February 1999, AFRC/RUF fled from Freetown to various locations in the Port Loko District. Between February 1999 and April 1999 an unknown number of women and girls in various locations in the District were used as sex slaves by members of the AFRC/RUF.2130

3672. para 1172: No specific concessions with regards to locations in Port Loko District were found to have been made by the Prosecution at the Motion for Acquittal stage.[2131]

3673. para. 1173: In coming to its findings in Port Loko District, the Trial Chamber relies upon the evidence of Prosecution witnesses TF1-282 and TF1-285 and Defence witness DAB-156.

3674. para. 1174: Witness TFl-282 testified that during the dry season in early 1999, "rebels"[2132] entered her village in Port Loko District.[2133] The Trial Chamber notes that the witness testified in chief that the time period was "early in 1999" and in the "dry season".[2134] On cross-examination the witness accepted that the correct month was January but she could not say if it was towards the beginning or end of January.[2135]

3675. para. 1175: The witness hid in an uncultivated area outside of the Village. As she was hiding, the "rebels", whom the witness described as some wearing civilian attire, some in combat,

and some with guns, came a second time and captured the witness along with other civilians hiding in the uncultivated area. Witness TF1-282 was 14 at the time. The Trial Chamber notes that the witness stated that she was born in 1985 but on cross-examination testified that she does not know how old she was when she was captured.[2136] The Trial Chamber accepts that the witness is innumerate and finds that this does not undermine her credibility.

3676. para. 1176: The witness testified that the civilians were made to sit on the ground and were surrounded by the rebels. The witness watched as an armed rebel selected a woman from the group and led her away to another area. The rebel brought the woman back a short while later and then selected the witness and led her along the same route where a man the witness referred to as '55' and another armed rebel were waiting. The witness testified that she knew the man was called '55' because the rebel who brought her to the area called the name '55' and nodded at him. '55' told the witness to undress and to lie down and then he raped her. After the rape the witness was light-headed and was unable to get up for some time. '55' told her to stand up and brought her back to the group of civilians.[2137]

3677. para. 1177: Witness TFl-282 testified that she later heard '55' giving orders to fire and to move to Sumbuya, although on cross-examination she admitted that she did not hear '55' give these orders directly.[2138] The witness also stated that she was later told by her rebel husband, whose name was given in closed session and hereinafter referred to as 'Rebel A',[2139] that '55' was the "big man" in Sumbuya and gave orders to loot.[2140] On cross-examination the witness stated that she only saw '55' once, when he raped her, and could not describe him.[2141]

3678. para. 1178: The Kanu Defence submits that witness TFl-282 is highly unreliable. In cross-examination, the witness was presented with a prior statement in which she described the person 'Five-Five' who raped her as "tall, slim, and fair in complexion, which means not too black."[2142] When presented with this account of her description of 'Five-Five' the witness recanted stating that she was not able to describe the man who raped her, as she only saw him once, and that she did not describe him as tall, slim and fair in complexion.[2143] The Trial Chamber finds that the witness's identification evidence is therefore inconsistent and cannot be relied upon. The Trial Chamber makes no findings on the basis of this evidence with regards to the Accused Kanu.

3679. para. 1179: After she was raped, the rebels, some of whom the witness described as wearing civilian attire and some of whom were in combat and who had guns took the witness to Sumbuya, a two day march. On the way, 'Rebel A' told the witness that he "wanted" her. When they arrived at Sumbuya, the named rebel took the witness to a house where he raped her. After that, the named rebel asked the witness to be his "wife". The witness testified that she said "yes"

because saying no in the circumstances would make no difference and she was afraid she might have been killed.

3680. para. 1180: In cross-examination, a prior statement of witness TF1-282 was put to her in which she stated that the man who took her had asked the witness' brother to go and inform her parents that he had taken her as a wife and that after the war, he would go and see them. The witness testified that she could not remember saying this. It is the case of the Prosecution that, even if she had said so, it did not change the situation of the witness being in sexual slavery or forced 'marriage'.[2144] The Trial Chamber agrees that such retroactive action does not diminish the seriousness of the acts.

3681. para. 1181: The witness testified that the named rebel continued to rape her everyday.[2145] The witness and the named rebel lived in the house with two other rebels; all three rebels were armed. There were also many other rebels in Sumbuya. The witness was afraid of the named rebel and did not try to escape for fear of what he might do to her. The witness was kept in Sumbuya by the named rebel for less than a month.[2146] On cross examination, the witness stated that she did not know if she was with the rebels in Sumbuya during February.[2147]

3682. para. 1182: The Brima Defence asserts that the testimony of witness TF1-282 is not reliable as she testified on cross that by giving evidence at the Special Court her lifestyle had changed for the better.[2148] The Trial Chamber does not share this opinion. Any benefit received by the witness related to her short-term accommodation during the Trial and in no way changes the witness's overall lifestyle.

3683. para. 1183: The Trial Chamber is satisfied that the witness's testimony of her forcible capture; her detention in a house with her rebel husband and two other rebels for under a month; her feeling that she could not escape for fear of what her rebel husband might do to her; and the use of the term 'wife', in this context a label of possession; is indicative of the deprivation of her liberty and the exercise of ownership over her person which, together with acts of sexual violence committed against her, namely repeated rapes committed by her rebel husband, satisfies the *actus reus* and *mens rea* of the crime of sexual slavery.

3684. para. 1184: The Trial Chamber also relies on the evidence of Prosecution witness TF1-085, examined by the Trial Chamber, supra,[2149] that she was abducted from Wellington, Western Area by persons found by the Chamber to belong to the AFRC/RUF sometime shortly after the 6th of January 1999. She was forced by the rebels to carry a load and taken to Allen Town where a rebel, present at the time of the witness's abduction and whose name was given to the Court in closed

session [hereinafter "named rebel"], raped her and told her she was his 'wife.' The witness was taken with the troops during the retreat from Freetown to Waterloo and then Masiaka, Port Loko District, where the named rebel continued to repeatedly rape her. The witness became pregnant and miscarried twice as a result of the rapes. In Masiaka, the named rebel "married" the witness in a ceremony, although the Trial Chamber has held that given the environment of coercion, there could be no valid consent on the part of the witness and therefore, this "marriage" could not have been legal. The witness was not forced to do any work for the named rebel, but she was detained against her will for several months and punished and threatened with death by the named rebel when she tried to escape.

3685. para. 1185: The Trial Chamber is satisfied on the basis of the evidence above that the named rebel exercised ownership over the witness and committed acts of sexual violence against her. As such, the Trial Chamber is satisfied that the *actus reus* and *mens rea* of the crime of sexual slavery are satisfied with regards to the evidence of witness TF1-085.

3686. para. 1186: The Trial Chamber also notes the evidence of Defence witness DAB-156 who testified that 'Junior Lion' took her as his "wife" by force in Kabala District after the AFRC was overthrown in Freetown in February 1998, but before the rainy season and that he brought her to Kurubonla, Port Loko District some time after that. The witness testified that at Kurubonla, 'Junior Lion' released the witness and a person the witness referred to as 'Simon' took her as his second wife. The witness testified that he was good to her and that after Simon and 'Junior Lion' moved to another town Simon arranged that she would stay with his brother, a man known to the witness as 'Foyo'.[2150] The Trial Chamber is not satisfied on the basis of this evidence that sexual slavery is satisfied as there is no indication of the elements of ownership or sexual violence. The Trial Chamber is also of the opinion that this evidence indicates that the witness may have received some benefit from this particular arrangement. However, the Trial Chamber is not willing to infer that this was also the case for other witnesses who have testified to sexual slavery nor, in any event, that this relative benefit would create doubt as to the seriousness of the crime of sexual slavery where it has been found in relation to the evidence of other witnesses.

(viii) Evidence of Witnesses TF1-094, DAB-156 and TF1-085

3687. para. 1076: Evidence which may go to the proof of the elements of sexual slavery can not always be limited to a particular place or a particular instant in time. Rather, given the prolonged nature of the crime alleged, some of the evidence given by a number of witnesses relates to events which take place over time, sometimes running through the indicted period for one District into

the indicted period of other Districts. Similarly, some of the evidence given by these witnesses cover more than one location within a District and often more than one District.

3688. para. 1077: To maintain the coherence of such testimony, the Trial Chamber will first examine this evidence on a witness by witness basis. The Trial Chamber will then make findings on the whole of the evidence by District as set out in the Indictment.

(ix) Evidence of sexual slavery not limited to a particular place or a particular time

a. Prosecution Witness TF1-094

3689. para. 1078: Prosecution witness TF1-094 testified that she was with her parents in the village of Bamukura, Koinadugu District in August of 1998 when the village was attacked by "rebels and SLAs".[1959] The witness, her parents and other family members fled to the bush but they were captured. The "rebels and SLAs" killed her parents[1960] and "one of them" threatened to kill the witness as well.[1961] An "SLA", whom the witness described as wearing combat, and to whom she referred as 'Andrew' intervened and said that he would save her.[1962] On cross-examination the witness clarified that at the time 'Andrew' said that he would save her, he did not actually save her as "if you were saving somebody ... you would not rape that person."[1963]

3690. para. 1079: 'Andrew' captured the witness, brought her to Yamadugu and raped her there. The witness was in "Class Two" at the time and had not yet started menstruating. The Trial Chamber observes that a child in Class Two is approximately 12 years old. The witness testified that she believed that if she had refused to have sex with 'Andrew', "they" would have killed her.[1964] The Trial Chamber finds that the environment of violence and the murder of both the witness's parents substantiates this belief.

3691. para. 1080: The witness testified that after this, 'Andrew' continued to rape her and she became pregnant within a month of her capture. 'Andrew' told the witness not to abort the pregnancy and he would take care of her. The witness had to do his laundry and other chores. 'Andrew' considered the witness to be his "wife".[1965] The witness testified that the "boss" in Yamadugu was a certain 'Ojagu' who was an SLA. The witness also stated that 'Syllabug', 'Colonel Junior' and 'Rambo', whom she describes as all SLA, as well as other commanders whom the witness did not know, were also in Yamadugu.[1966]

3692. para. 1081: The Prosecution states that it was suggested to the witness in cross-examination that at the time she was pregnant, Andrew said he would marry her. In response, the

witness did not specifically rebut this statement, but clarified that she was pregnant at the time and 'Andrew' had asked her not to abort the pregnancy.[1967] The Prosecution asserts, and the Trial Chamber accepts, that this shows that at the time, she was not legally married to him. The witness testified in cross-examination that Andrew used to care for her.[1968] It is the case of the Prosecution, however, that the fact that the men cared for their abducted 'wives' did not change the fact that these women were under sexual slavery or forced marriage as the men exercised ownership over them, denied them liberty and engaged them in acts of a sexual nature under a coercive environment whereby they were unable to give genuine consent.[1969] The Trial Chamber notes the environment of violence and coercion in which the events testified to by the witness took place and it is satisfied that any benefit received by the witness is relative only and in no way diminishes the seriousness of the acts committed against her.

3693. para. 1082: Witness TF1-094 testified that she was taken with the troops as they travelled to Bamukoro, Koinadugu District; Badela; Tumanya or "Pumpkin Ground", Koinadugu District where the witness stated SAJ Musa was the commander; Bofodia, Koinadugu District and Rosos, Bombali District. When they reached Rosos, the witness was four months pregnant. The witness testified that "55" was at Rosos and that there were many civilians at Rosos including hundreds of women.[1970]

3694. para. 1083: After Rosos, the witness was taken with the troops to Kamaranka; Kamalo, Bombali District; and then to Waterloo, Western Area. The witness testified that "55" was with the troops on the way to Waterloo. She was six months pregnant at the time and "55" beat her with a stick.[1971] The witness was then taken with the troops to Benguema, Western Area; Hastings, Western Area; and to Freetown during the AFRC invasion of 6 January 1999.[1972] During the AFRC retreat from Freetown, the witness was taken to Calaba Town, Western Area; Waterloo, Western Area – where she met' Andrew'; and then to Makeni, Bombali District. Andrew was shot dead in Makeni when the witness was seven months pregnant. The witness gave birth in Makeni on 19 April 1999, however, the child had died in the womb.[1973]

b. Defence Witness DAB-156

3695. para. 1084: As found by the Trial Chamber with regards to Count 6, supra, Defence witness DAB-156 was raped by Junior Lion in Kabala, Koinadugu District sometime after the AFRC was overthrown in Freetown in February 1998 but before the rainy season. The witness testified that Junior Lion held her, raped her, banged her on the forehead where she still has a scar,

and knocked out some of her teeth.[1974] The witness testified that he took her as his "wife" by force. He abducted her in Yuromia Town, near Foday Street.[1975]

3696. para. 1085: The witness testified that she was taken by Junior Lion to Kono, Koidu, Kono District and Kurubonla, Port Loko District. In Kurubonla, the witness saw a large number of soldiers, their wives, and other civilians. The leader was SAJ Musa and his deputies were called FAT and King. Junior Lion was also a deputy. At Krubonla, Junior Lion released the witness and a person the witness referred to as 'Simon' took the witness as his second wife. The witness testified that he was good to her. After that Simon and Junior Lion moved to another town and Simon arranged that the witness would stay with his brother, a man known to the witness as 'Foyo'.[1976]

3697. para. 1086: Regarding witness DAB-156's evidence that she was captured and raped by George Johnson aka Junior Lion and taken to the Westside as a captive, the Prosecution submits that the witness's testimony ought to be completely disregarded because according to her own testimony she gave birth to her child in the Westside on 20 November 1999, and arrived in that area very shortly prior to the completion of her pregnancy.[1977] Thus, even if the events she has recounted in relation to Port Loko District are true (which the Prosecution disputes), her testimony falls well outside the relevant indictment period.[1978] The Trial Chamber agrees with this submission and makes no further findings on the basis of this evidence.

c. Prosecution Witness TF1-085

3698. para. 1087: Prosecution witness TF1-085 testified that she lived with her family in Wellington, Western Area when AFRC rebels invaded in early January 1999. The Trial Chamber notes that the witness testified in chief that the year was 1999 but stated on cross-examination that she does not know the year she was captured. She accepted from counsel that the year was "1999" but then remained inconsistent on the exact date, stating alternatively that it was the 5th, the 6th and "Thursday".[1979] The Trial Chamber finds that as the events happened many years ago and as the evidence of the witness is corroborated by the known date of the AFRC invasion of Freetown, 6 January 1999, the credibility of the witness is not undermined.

3699. para. 1088: The witness testified that she was approximately thirteen at the time.[1980] One day, shortly thereafter, the witness was warned by her neighbours that the rebels had arrived in Wellington. She hid in her house with her family but "rebels" whom the witness describes as "STF from Liberia" including a rebel whose name the witness gave to the Court in closed session,[1981] hereinafter 'Colonel Z', broke down the door. The rebels told the witness to come with

them and when she refused they beat her, put a pistol to her neck and threatened to cut off her mother's hands.[1982] The rebels gave her a load to carry and took her to Allen Town.[1983]

3700. para. 1089: The witness testified that 'Five-Five' led the group in Wellington. She was told by "others" that he was '55'. She described him as huge, fat, tall, fair, black, carrying a stick that shot bombs, and wearing ronko.[1984] On cross-examination, the witness testified that he was "huge", "tall", and had body guards.[1985] The Kanu Defence asserts that witness TF1-085's description of a "big boss" named 'Five-Five' does not correspond with the Accused Kanu and is not corroborated by any other Prosecution witnesses.[1986] The Trial Chamber notes that the description of 'Five-Five' given by the witness does not correspond with the physical features of the Accused Kanu who is a thin man of medium height and therefore does not rely on her evidence in this regard.

3701. para. 1090: 'Colonel Z' took the witness into the Mammy Dumbuya Church in Allen Town and told her he wanted to have sex with her. The witness refused. 'Colonel Z' beat her, tied her hands and raped her. The witness bled and lost consciousness. It took a month for her to heal.[1987] After 'Colonel Z' raped the witness, he told her she was his "wife".[1988]

3702. para. 1091: Witness TF1-085 was taken by the rebels from Allen Town to Waterloo which had been captured.[1989] The witness testified that a person she referred to as 'Five-Five' was in command in Allen Town[1990] and that in a village on the way to Waterloo, he ordered that the witness be beaten for cooking and making smoke.[1991] As discussed, supra, the Trial Chamber makes no findings with regards to the Accused Kanu on the basis of this evidence. The witness was then taken by the rebels to Masiaka, Port Loko District. The person the witness referred to as 'Five-Five' led the group to Masiaka.[1992] In Masiaka, 'Colonel Z' repeatedly forced the witness to have sex with him. As a result, the witness bled and 'Colonel Z' took her to the doctor. When she healed, 'Colonel Z' continued to have sex with her without her consent.[1993] The witness became pregnant and miscarried twice as a result of the rapes.[1994]

3703. para. 1092: In Masiaka, 'Colonel Z' "married" the witness in a ceremony and gave money to the person referred to by the witness as 'Five-Five' as a "father-in-law".[1995] The Prosecution submits that this did not create any valid marriage or change the witness's status of being under sexual slavery or in a forced marriage as she was not at liberty to leave and remained there under a coercive war environment. [l996] The Trial Chamber notes the environment of violence and coercion, namely, the witness's forcible abduction and her repeated rape by the rebel 'Colonel Z', and finds that given these circumstances the witness could not have validly consented to the "marriage". The Trial Chamber is therefore of the opinion that this was not a 'legal' marriage.

3704. para. 1093: 'Colonel Z' had more than six other captured wives in Masiaka.[1997] He did not force the witness to do any work around the house; however, his other wives were required to do so. The other wives beat the witness because they said that she took their husband away.[1998]

3705. para. 1094: 'Colonel Z' held the witness in Masiaka against her wil1.[1999] The witness begged 'Colonel Z' to let her return to Freetown. The witness testified that 'Colonel Z' gave her cocaine. She also stated that he gave her marijuana, a pistol and an AK -47 and taught her how to use the weapons for her security.[2000] On cross-examination, the witness stated that she carried the pistol with her. [2001]

3706. para. 1095: The witness tried to escape from Masiaka with two other women. They were approximately two miles away from town when they were caught by some "rebel boys". The rebels cut the two other women with a blade, marking their bodies with the acronym "AFRC/RUF". They took the witness to the police station in Masiaka where 'Colonel Z' picked her up. He brought her back to the house, beat her, and threatened to kill her.[2002]

3707. para. 1096: The witness was held Masiaka for several months after which time she, 'Colonel Z' and the rebels travelled to Lunsar, Port Loko District to avoid ECOMOG.[2003] The witness testified that 'Issa' went from Masiaka to Lunsar and that he was in charge together with the other rebels.[2004] 'Daramy' and 'Gold Teeth' were in Lunsar.[2005] They then travelled to Krubola Hill, Port Loko District where the witness and other civilians were trained to fight. They were trained on how to cock and fire a gun, how to evade enemies and how to attack.[2006] After the training, the witness and the other trained civilians were sent to fight in Kono. Some of the trained civilians were killed by ECOMOG during the attack.[2007] The Trial Chamber notes this evidence of witness TF1-085 will be addressed in the Factual Findings in relation to Count 12 (Child Soldiers). The Trial Chamber also notes that the Indicted period for Count 13 (Abductions and Forced Labour) for Kono District ends in January 2000 and thus makes no findings on the basis of this evidence in that regard.

3708. para. 1097: After the attack, the witness, the rebels and 'Colonel Z' returned to Port Loko District and then travelled to Makeni, Bombali District. Makeni was bombed and the witness was separated from 'Colonel Z' and she attempted to flee to Masiaka. She was detained by ECOMOG forces and then allowed to return to Freetown where she reunited with her mother. She was pregnant when she returned and underwent an abortion.[2008] The Trial Chamber makes no findings on the basis of this evidence in regards to Bombali District as the indicted period for sexual crimes in Bombali District ends on 30 November 1998, well before this evidence of the witness took place.

3709. para. 1098: The Trial Chamber notes that the witness testified that she was abducted by an "STF from Liberia" and that the Trial Chamber has no evidence before it to suggest with which faction, if any, these persons were affiliated. However, the witness's description of her abductors as "rebels"; and the route taken by the persons who captured the witness, namely from Wellington to Allen Town to Waterloo to Masiaka, Port Loko District where she was held for several months, which is consistent with the known route taken by AFRC/RUF forces on the retreat from Freetown; are consistent with a finding that her abductors were members of the AFRC/RUF.

3710. para. 1099: The Trial Chamber notes the Kanu Defence assertion that the evidence given by Prosecution witness TF1-085 can not be deemed reliable and should not be give any weight.[2009] The Trial Chamber found witness TF1-085 consistent and firm in her evidence and accepts her as a witness of truth.

(b) Legal Conclusions

(i) Applicable law - War crimes / Violations of Common Article 3

3711. See above: Chapter 1 – AFRC – Legal Conclusions – Applicable law - War crimes / Violations of Common Article 3 - paras. 241- 242 [1023].

a. There must have been an armed conflict whether non-international or international in character at the time the offences were allegedly committed

3712. See above: Chapter 1 – AFRC – Legal Conclusions – There must have been an armed conflict whether non-international or international in character at the time the offences were allegedly committed - paras. 243 – 245 [1025].

b. There must be a nexus between the armed conflict and the alleged offence

3713. See above: Chapter 1 – AFRC – Legal Conclusions – There must be a nexus between the armed conflict and the alleged offence - paras. 246 - 247 [1028].

c. The victims were not directly taking part in the hostilities at the time of the alleged violation

3714. See above: Chapter 1 – AFRC – Legal Conclusions – The victims were not directly taking part in the hostilities at the time of the alleged violation - para. 248 [1030].

(ii) War crimes / Violations of Common Article 3 – Findings on general requirements

3715. See above: Chapter 1 – AFRC – Legal Conclusions – War crimes / Violations of Common Article 3 – Findings on general requirements - paras. 249 – 254 [1031].

(iii) Applicable law – Outrages Upon Personal Dignity (Article 3(e) of the Statute)

a. Elements of the Crime

3716. para. 715: Article 3(e) of the Statute safeguards the highly important value of human dignity[1396] by prohibiting "[o]utrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault". The crime of outrages upon personal dignity must be interpreted in light of the purpose behind Common Article 3 of the Conventions, which is: "to uphold the inherent human dignity of the individual";[1397] or to safeguard "the principles of humane treatment."[1398] The said crime is formulated in a manner which ensures broad and flexible interpretation. The list of offences subsumed under outrages against personal dignity constitutes a "non-exhaustive list of conduct", with humiliating and degrading treatment, rape, enforced prostitution and indecent assaults of any kind given by way of example."[1399] The ICRC Commentary on the Fourth Geneva Convention notes that: "[i]t seems useless and even dangerous to attempt to make a list of all the factors that make treatment 'humane'" and that treatment which degrades human dignity can take innumerable forms[1400]. The crime of outrages upon personal dignity was first articulated in the 1949 Geneva Conventions and is firmly entrenched in customary interactional law.

3717. para. 716: In addition to the chapeau requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute, the Trial Chamber adopts the following elements of the crime of outrages upon personal dignity:

1. The perpetrator committed an outrage upon the personal dignity of the victim;

2. The humiliation and degradation was so serious as to be generally considered as an outrage upon personal dignity;

3. The perpetrator intentionally committed or participated in an act or omission which would be generally considered to cause serious humiliation, degradation or otherwise be a serious attack on human dignity; and

4. The perpetrator knew that the act or omission could have such an effect.[1401]

b. Findings

3718. para. 717: Count 9 has been charged in addition to or in the alternative to Count 6 (Rape), Count 7 (Sexual Slavery and Any Other Form of Sexual Violence) and Count 8 (Other Inhumane Act, Forced Marriage).[1402]

3719. para. 718: Rape (Count 6) is an offence which is specified in Article 3(e) of the Statute as being an outrage upon personal dignity. As stated by the ICTR Trial Chamber in *Akayesu*, "[l]ike torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity".[1403]

3720. para. 719: With reference to the elements of sexual slavery set out in the discussion of Count 8 above, the Trial Chamber is similarly satisfied that sexual slavery is an act of humiliation and degradation so serious as to be generally considered an outrage upon personal dignity. The Trial Chamber in *Kvocka* held that "perform[ing] subservient acts," and "endur[ing] the constant fear of being subjected to physical, mental or sexual violence" in camps were outrages upon personal dignity.[1404] Sexual slavery, which may encompasses rape and/or other types of sexual violence as well as enslavement, entails a similar humiliation and degradation of personal dignity.

3721. para. 720: "Any other form of Sexual Violence" in the context of crimes against humanity is a residual category of sexual crimes listed under Article 2(g) of the Statute, and may encompass an unlimited number of acts. The Trial Chamber agrees with the conclusion of the ICTY Trial Chamber in *Kvocka* that "sexual violence is broader than rape".[1405] The prohibition embraces all serious abuses of a sexual nature inflicted upon the physical and moral integrity of a person by means of coercion, threat of force or intimidation.[1406]

3722. para. 721: The Indictment fails to provide any particulars as to the specific form of sexual violence alleged. One of the fundamental rights guaranteed to an accused under Article 17(4)(a) of the Statute is the right to be informed "of the nature and cause of the charge against him". An Indictment is defective if it does not state the material facts underpinning the charges with enough detail to enable an accused to prepare his or her defence.[1407] In the present case, 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. The Trial Chamber finds that the Indictment is defective in this respect because it fails to plead material facts with sufficient specificity. For this reasons, the charge of 'any other form of sexual violence' is dismissed and thus will not be considered additionally or alternatively under Count 9.

3723. para. 722: Finally, as Count 8 has been dismissed for redundancy, the Trial Chamber will not consider it additionally or alternatively under Count 9.

(iv) Kono District - Outrages upon personal dignity

a. Koidu – Foendor/Foendu and Wondedu – Kono District – Outrages upon personal dignity

3724. See above: Chapter 4 – AFRC – Trial Judgment – Legal Conclusions - Kono District - Koidu – Foendor/Foendu and Wondedu - para. 981 [3002].

3725. para. 1109: By virtue of the foregoing the Trial Chamber is satisfied that the elements of sexual slavery are established in relation to Kono District.

3726. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Kono District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment -Findings and Conclusions - Kono District - paras. 1665-1668 [8017], 1856-1861 [8021], 1997-2000 [8027].

363. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Kono District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Kono District - paras. 1665 [8868], 1669-1673 [8869], 1856 [8874], 1862-1893 [8875], 1997 [8907], 2001-2005 [8908].

(v) Koinadugu District – Outrages upon personal dignity

a. Kabala – Koinadugu Town and Fadugu – Koinadugu District – Outrages upon personal dignity

3727. See above: Chapter 4 – AFRC – Trial Judgment – Legal Conclusions - Koinadugu District - Kabala – Koinadugu Town and Fadugu - para. 1026 [3005].

3728. para. 1133: By virtue of the foregoing the Trial Chamber is satisfied that the elements in relation to sexual slavery are established in relation to Koinadugu District.

3729. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Koinadugu District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Koinadugu District - paras. 1686-1696 [8045], 1904-1906 [8056], 2015-2018 [8060].

3730. Regarding Brima's, Kamara's and Kanu's superior responsibility in relation to Koinadugu District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Koinadugu District - paras. 1686 [8933], 1697-1699 [8934], 1904 [8937], 1907-1910 [8938], 2015 [8942], 2019-2024 [8943].

(vi) Bombali District – Outrages upon personal dignity

a. Rosos – Bombali District – Outrages upon personal dignity

3731. See above: Chapter 4 – AFRC – Trial Judgment – Legal Conclusions - Bombali District - Rosos - para. 1041 [3008].

3732. para. 1145: By virtue of the foregoing, and without predetermining the individual responsibility of the three Accused, the Trial Chamber is satisfied that the elements in relation to sexual slavery are established in relation to Bombali District.

3733. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Bombali District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bombali District - paras. 1700-1720 [8064], 1911-1920 [8085], 2025-2031 [8095].

3734. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Bombali District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bombali District - paras. 1700 [8949], 1721-1744 [8950], 1911 [8974], 1921-1928 [8975], 2025 [8983], 2032-2044 [8984].

(vii) Kailahun – Outrages upon personal dignity

3735. para. 1149: By virtue of the foregoing the Trial Chamber is not satisfied that the elements in relation to sexual slavery are established in relation to Kailahun District.

3736. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Kailahun District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Kailahun District - paras. 1674-1679 [8031], 1894-1897 [8037], 2006-2009 [8041].

3737. Regarding Brima's, Kamara's and Kanu's superior responsibility in relation to Kailahun District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and

Conclusions - Kailahun District - paras. 1674 [8913], 1680-1685 [8914], 1894 [8920], 1898-1903 [8921], 2006 [8927], 2010-2014 [8928].

(viii) Freetown and Western Area – Outrages upon personal dignity

a. State House – PWD and Greater Freetown – Outrages upon personal dignity

3738. See above: Chapter 4 – AFRC – Trial Judgment – Legal Conclusions - Freetown and Western Area – State House – PWD and Greater Freetown - para. 1068 [3011] .

3739. para. 1170: By virtue of the foregoing, and without predetermining the individual responsibility of the three Accused, the Trial Chamber is satisfied that the elements in relation to sexual slavery are established in relation to Freetown and the Western Area**.**

3740. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Freetown and Western Area, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment -Findings and Conclusions - Freetown and Western Area - paras. 1745-1786 [8102], 1929-1941 [8144], 2045-2064 [8157].

3741. Regarding Brima's, Kamara's, and Kanu's superior responsibility in relation to Freetown and Western Area, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Freetown and Western Area - paras. 1745 [8997], 1787-1810 [8998], 1929 [9022], 1942-1950 [9023], 2045 [9032], 2065-2080 [9033].

(ix) Port Loko District – Outrages upon personal dignity

3742. para. 1187: By virtue of the foregoing, and without predetermining the individual responsibility of the three Accused, the Trial Chamber is satisfied that the elements in relation to sexual slavery are established in relation to Port Loko District.

3743. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Port Loko District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Port Loko District - paras. 1811-1814 [8177], 1951-1955 [8181], 2081-2084 [8187].

3744. Regarding Brima's, Kamara's, and Kanu's superior responsibility in relation to Port Loko District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Port Loko District - paras. 1811 [9049], 1815-1819 [9050], 1951-1952 [9055], 1956-1969 [9056], 2081 [9070], 2085-2088 [9071].

(x) Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers

3745. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment -Findings and Conclusions - Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers - paras. 1820-1837 [8191], 1970-1972 [8208], 2089-2098 [8211].

3746. Regarding Brima's, Kamara's, and Kanu's superior responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers - paras. 1820-1834 [9075], 1838 [9076], 1973-1975 [9078], 1977 [9081].

(xi) Findings

3747. para. 1188: By virtue of the foregoing and of the Trial Chamber's findings with regards to Count 6 and the chapeau elements of war crimes, the Trial Chamber is satisfied that the elements in relation to Count 9 (Outrages on Personal Dignity) are established in Kono, Koinadugu, Bombali, Freetown and Western Area and Port Loko Districts.

3. Appellate Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-A, Judgement, 22 February 2008

(a) Factual Finding

3748. Not applicable.

(b) Legal Conclusions

3749. Not applicable.

D. CDF

1. Indictment

The Prosecutor v. Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa, SCSL-03-14-I, Indictment, 4 February 2004

3750. Not applicable.

2. Trial Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-T, Judgement, 2 August 2007

(a) Factual Findings

3751. Not applicable.

(b) Legal Conclusions

3752. Not applicable.

3. Appellate Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-A, Judgment, 28 May 2008

(a) Factual Findings

3753. Not applicable.

(b) Legal Conclusions

3754. Not applicable.

CHAPTER 7 – VIOLENCE TO LIFE, HEALTH AND PHYSICAL OR MENTAL WELL-BEING OF PERSONS, IN PARTICULAR, CRUEL TREATMENT

A. CHARLES TAYLOR

1. Indictment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-I, Indictment, 16 March 2006

(a) Particulars

(i) Charges

3755. By his acts or omissions in relation to the below described events, the ACCUSED, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:[196]

(ii) Count 1: Terrorizing the civilian population

3756. Members of the Revolutionary United Front (RUF), Armed Forces Revolutionary Council (AFRC), AFRC/RUF Junta or alliance, and/or Liberian fighters, including members and ex-members of the NPFL (Liberian fighters), assisted or encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, burned civilian property, and committed the crimes set forth below in paragraphs 6 through 31 and charged in Counts 2 through 11, as part of a campaign to terrorize the civilian population of Sierra Leone.[197]

(iii) Counts 7 and 8: Physical Violence

> **Count 7: Violence to life, health and physical or mental well/being of persons, in particular cruel treatment**, 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 8: Other inhumane acts, a CRIME AGAINST HUMANITY, punishable under Article 2.i. of the Statute.

3757. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in

[196] Taylor Indictment, Charges, p. 2.
[197] Taylor Indictment, para. 5.

concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, committed widespread acts of physical violence against civilians, including the following:[198]

> i. Kono District: Between about 1 February 1998 and about 31 December 1998, mutilated and beat an unknown number of civilians in various locations, including Tombodu or Tumbodu, Kaima or Kayima, and Wondedu. The mutilations included cutting off limbs and other body parts and carving "AFRC" and "RUF" on the bodies of the civilians;[199]
>
> ii. Kailahun District: Between about 30 November 1996 and about 18 January 2002, beat an unknown number of civilians in locations throughout the District;[200]
>
> iii. Freetown and Western Area: Between about 21 December 1998 and about 28 February 1999, mutilated and beat an unknown number of civilians in various areas of Freetown, including the northern and eastern areas of the city, the Kissy area around the State House, Fourah Bay, Upgun and the Kissy mental hospital, and Hastings, Wellington, Tumbo, Waterloo, and Benguema in the Western Area. The mutilations included cutting off limbs.[201]

2. Trial Judgment

The Prosecutor v. *Charles Ghankay Taylor*, SCSL-03-01-T, Judgement, 18 May 2012

(a) Factual Findings

(i) Kono District – Crimes

3758. para. 1210: The Indictment alleges that between about 1 February 1998 and about 31 December 1998 members of the RUF, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the Accused, "mutilated and beat an unknown number of civilians in various locations including Tombodu or Tumbodu, Kaima or Kayima and Wondedu. The mutilations included cutting off limbs and other body parts and carving "AFRC" and "RUF" on the bodies of civilians".[2978]

3759. para. 1211: In arriving at its factual findings in Kono District, the Trial Chamber has taken into consideration the evidence of witnesses Alimamy Bobson Sesay, Mustafa Mansaray, Ibrahim

[198] Taylor Indictment, para. 18.
[199] Taylor Indictment, para. 19.
[200] Taylor Indictment, para. 20.
[201] Taylor Indictment, para. 21.

Fofana, Samuel Komba, TFI-375, Sofie Kondeh and Alex Tamba, in addition to relevant documentary evidence.

a. Tombodu – Kono District – Crimes

3760. para. 1212: The Trial Chamber has considered the evidence of Alimamy Bobson Sesay, Mustafa Mansaray, Ibrahim Fofana and Samuel Komba in relation to these allegations.

3761. para. 1213: Alimamy Bobson Sesay testified that around March to June 1998, he and other AFRC and RUF commanders used and commanded small boy units to amputate the hands of civilians[2979] in Yomandu and Tombodu. He saw amputations at Guinea Highway, Superman Area, and Dabuneh Street. He and Bomb Blast targeted captured civilians and used SBUs to amputate their arms. The SBUs executed these commands. The witness stated that "it was a kind of message to the other civilians that they should fear us and they should tell ECOMOG about US"[2980] Fighters were ordered to perform amputations as a warning to ECOMOG troops not to come to Kono.[2981] The witness testified that Mohamed Savage also amputated the arms of civilians and was helped by SBUs.[2982] It is not clear from Sesay's testimony if he personally saw Savage amputate civilians or relied on reports. However given his active participation in amputations, his knowledge of the decision to send a message to civilians that they should be in fear, and his knowledge of the implementation of that decision, the Trial Chamber finds that Savage amputated the arms of an unknown number of civilians.

3762. para. 1214: Alimamy Bobson Sesay also testified that he was in Tombodu in March or April 1998 and saw Savage, Guitar Boy and Staff Alhaji, members of the Junta, amputate the hands of 15 civilians, young people, who had been rejoicing because "they thought we were ECOMOG people". Alimamy Bobson Sesay stated that the victims were urged to seek relief from ECOMOG troops.[2983] The Trial Chamber finds that Savage amputated the arms of 15 civilians.

3763. para. 1215: The Trial Chamber has considered the evidence of Mustapha Mansaray and Ibrahim Fofana, whose testimonies were discussed at length in the section on Unlawful Killings taking place in Tombodu.[2984] Both witnesses and four others had their hands amputated in Tombodu in April 1998 by Staff Alhaji, a member of the AFRC.[2985] While their testimonies diverged in some descriptions, the Trial Chamber finds that both witnesses were in Tombodu, and both witnesses had their hands amputated. Further both testified that Staff Alhaji was present and that 53 captured civilians were burnt in a house on Staff Alhaji's order. The Trial Chamber is satistied that the discrepancies in the witnesses' testimonies can be reasonably accounted for by the passage of time and the physical and emotional trauma suffered by both witnesses.

3764. para. 1216: Samuel Komba testified that after March 1998, he was captured by "fighters" while he was in the bush and forced to carry luggage to Tombodu.[2986] When Komba arrived in Tombodu, he and thirteen other captured persons were forced to lie on the ground.[2987] Fighters commanded by Savage, a member of the AFRC, put a mattress on top of the persons and lit the mattress on fire.[2988] Komba was able to free himself and kick the mattress away.[2989] As a consequence, Savage ordered that Komba's right hand be cut off with a cutlass.[2990] The attempted amputation failed, leaving the witness's fingers mangled.[2991] The Trial Chamber finds that Savage attempted to amputate the hand of Samuel Komba.

b. Kayima – Kono District – Crimes

3765. para. 1218: The Prosecution submits that around May 1998, civilian men, women and children were marked with the letters "RUF" and/or "AFRC" by mixed forces under the command of Komba Gbundema in Kayima.[2992] The Trial Chamber has considered the evidence of TFI-375 and Sorie Kondeh.

3766. para. 1219: TFI-375 testified that, immediately after the Fitti-Fatta Operation in mid-1998, he arrived in Wordu to meet RUF Commander Komba Gbundema, who had a number of captured civilians with him.[2993] The RUF fighters used razor blades or sharp knives to carve the letters "RUF" onto the chests of the captured civilians, some of whom were children aged five and older who had been abducted from Kayima and Wordu.[2994] Gbundema also had adult and child civilian captives, on whom the RUF fighters carved the letters "RUF" with knives and razors.[2995] TF 1-375 testified that fighters carved the letters "RUF" on to the bodies of all of their victims and that males, females, adults, and children were targeted indiscriminately.[2996] The witness did not explain the purpose of these markings. TFl-375 testified that these markings "started taking place in Kayima on to Wordu".[2997]

3767. para. 1220: Sorie Kondeh was captured in Bayawandu in May 1998.[2998] Kondeh was taken to Kayima, where the commander in charge was Komba Gbundema.[2999] Once there, he and seventeen others were lined up.[3000] An AFRC fighter named Bangali carved the letters "RUF" and "AFRC" into the chest of the witness with a surgical blade.[3001] The others were marked with "RUF" or "AFRC".[3002] The witness had visible scars of the letters "RUF" and "AFRC" on his upper chest.[3003]

c. Wondedu – Kono District – Crimes

3768. para. 1224: The Prosecution submits that captured civilians were marked with the letters "RUF" and "AFRC" in Wondedu.[3004] The Trial Chamber has considered the evidence of Alex Tamba Teh in relation to the allegations.

3769. para. 1225: Alex Tamba Teh, whose evidence was discussed above in relation to unlawful killings in Koidu Town,[3005] testified that at some time between April and November 1998,[3006] while he was being held captive by Rocky, an RUF commander, he saw rebels under Rocky's command use sharp objects to carve "RUF" and "AFRC" onto the bodies of an unknown number of captured civilian persons.[3007] Teh stated that the rebels "said the people shouldn't escape and go to ECOMOG. In fact they shouldn't escape and go, so with that carving if you go to the side of the ECOMOG they will kill you, so you never had anywhere else to go".[3008]

3770. para. 1226: The Trial Chamber is satisfied that Teh's first-hand evidence is reliable as to these incidents. While Teh did not indicate the number of persons whom he saw being marked with the letters ""RUF" and "AFRC", the Trial Chamber finds that an unknown number of civilians who were captured were mutilated in this manner.

3771. para. 1227: Teh also testified that some time between April and November 1998, AFRC commander Banya put a flat stick in Teh's mouth and used the butt of his gun to knock out his teeth.[3009] Teh stated that Banya did this because Teh was alleged to have advised some captured civilians to hide in the bush so that they could rest.[3010] Banya told him, "[y]ou are a very lucky man that I have been told not to kill you, but I will give you something, I will do something to you that will remain with you everlasting".[3011]

(ii) Kailahun District– Crimes

3772. para. 1233: The Indictment alleges that between about 30 November 1996 and about 18 January 2002, members of the RUF, AFRC, AFRC/RUF junta or alliance, and/or Liberian fighters beat an unknown number of civilians in locations throughout Kailahun District.[3015]

3773. para. 1234: No locations were pleaded in the Indictment for Counts 7 and 8 in relation to Kailahun District. As previously indicated, the Trial Chamber finds that while evidence may support proof of existence of crimes relating to physical violence on a widespread or systematic basis, no finding of guilt for those crimes may be made in respect of locations not pleaded in the Indictment.[3016]

3774. para. 1235: The Trial Chamber will, therefore, only consider testimonies regarding Kailahun District in relation to the *chapeau* requirements. For that purpose, the Trial Chamber has considered the testimonies of TF1-362, TF1-189, Komba Sumana, TF1-026, Aruna Gbonda, Augustine Mallah, Dennis Koker and Mustapha M. Mansaray.

a. Bunumbu– Kailahun District – Crimes

3775. para. 1236: The Prosecution submits that hundreds of captured civilians, who were trained at Camp Lion training base at Bunumbu, were subjected to physical violence during their training.[3017]

3776. para. 1237: The Trial Chamber has considered the evidence of TF 1-362, TF 1-189 and Komba Sumana, and Exhibits P-088 and D-013.

i. Beating of Recruits at Bunumbu Training Base – Bunumbu- Kailahun District – Crimes

3777. para. 1238: TF1-362 testified that the Bunumbu training base, also called "Camp Lion", was established after the ECOMOG Intervention,30l8 and operated until the end of 1998/1999.[3019]

3778. para. 1239: Exhibit P-088, a document dated 24 September 1998, lists roles for instructors and staff.

3779. para. 1240: Confidential Exhibit D-O 13, a document dated 21 May 1998, states that on that date there were 603 total recruits at Camp Lion Training base in Bunumbu.[3020]

3780. para. 1241: TF1-362 testified that captured civilians, trained at Camp Lion training base in Bunumbu, were required to undergo halaba/halaka training. This training was intended to train recruits to dodge bullets. Ittook place in a round area surrounded by bricks; the instructors stood around the circle holding canes. The recruits would enter the circle and would then have to dodge being beaten by the canes. Halaka training would sometimes last 1-1/2 to 2 hours, and recruits went through these exercises 2-3 times a week. Many incurred injuries or died, especially the SBUs, SGUs, and the elderly.[3021]

3781. para. 1242: TF1-362 also testified that the practice of physically disciplining recruits at the Bunumbu training base was well known to the RUF High Command. Instructions to beat, kill or mark recruits were passed from the high command to Pearson to Cooper, and then carried out.[3022]

In addition, the number of recruits who died on the base during training was regularly reported to the second in command, Issa Sesay.[3023]

3782. para. 1243: TF1-362 described how Monica Pearson flogged and cut the hair of a recruit who fell in love with Pearson's lover. Following this incident, Pearson was punished by Issa Sesay; she was flogged, dismissed and placed in a water dungeon. When Bockarie arrived, he was notified about the incident and promoted Pearson to the rank of full colonel.[3024]

3783. para. 1244: TF1-189 testified that she heard that recruits at the training base at which C.O. Monica was the commander in 1999 were flogged by C.O. Monica if they were not able to run long distances or refused to do so.[3025]

3784. para. 1245: Komba Sumana testified that he was trained at the training base in the bush outside of Buedu during the rainy season for two months where he was under an instructor named "Monica". The recruits at the training base in Kailahun were not treated well and were beaten with a cane. He showed the Court scars on his legs which he stated were a result of these beatings.[3026] The Trial Chamber is therefore satisfied that Sumana's military training ended in approximately July or August 1998.

ii. Attacks against civilians in Bunumbu Surrounding Area– Bunumbu - Kailahun District – Crimes

3785. para. 1246: The Prosecution submits that the recruits at Bunumbu training base were taught to commit acts of physical violence against others.[3027]

3786. para. 1247: The Trial Chamber has considered the evidence of TF1-362 and Komba Sumana.

3787. para. 1248: TF1-362 testified that recruits participating in "food finding missions" went to civilian houses to take food. The instructors and "base security" would carry arms while the recruits carried knives and sticks. If civilians resisted, the recruits and soldiers would beat the civilians or kill them and take the food by force.[3028]

3788. para. 1249: TF1-362 also described a method of training used at the base in which recruits were trained how to attack a city. During this training, villages near the base were alerted in advance that at a certain time they should not come outside. Then, at 5.00am in the morning, recruits and trainers would surround the village, lie in an ambush, and attack while the civilians

slept, entering their houses. tying them up, beating them with sticks, and taking their properties.[3029]

3789. para. 1250: Komba Sumana testified that he and other recruits at the training base in Kailahun District. where Monica was a trainer were taught how to attack a town and burn houses.3030

iii. Marking "RUF" Letters on Recruits at Bunumbu Training Base - Bunumbu -Kailahun District – Crimes

3790. para. 1251: The Prosecution submits that RUF recruits in Kailahun District were marked to prevent escape.3031

3791. para. 1252: The Trial Chamber has considered the evidence of TF1-362, TF 1-026 and TF 1-189.

3792. para. 1253: TF 1-362 testified that recruits who tried to escape from Bunumbu training camp were marked with the letters "RUF" on their foreheads and chests by the instructors. These markings were done publicly during formation so that the recruits' colleagues would see and be afraid.[3032]

3793. para. 1254: TF1-026 described how two girl recruits who were caught attempting to escape from the training base in Buedu were publicly shot and killed by Bockarie in order to deter other recruits from escaping. Bockarie then passed an order to mark the remaining 17 girls recruits with the letters "RUF" so that if they ran away and were caught they would be killed. The letters "RUF" were carved on TF1-026's chest with a knife. The other 16 recruits were carved as well.[3033] The Trial Chamber has found that TF1-026 was trained at Bunumbu training camp in Kailahun District from approximately February or March 1999 through approximately November or December 1999.[3034]

3794. para. 1255: TF1-189 testified that after she heard about the attack on Freetown on 6 January 1999, the rebels sent 20 captives, aged 12 to 18, both male and female, away from Mamboma village in Kailahun. The witness learned later on that they were sent to the training base in Kailahun on the route to Buedu, where C.O. Monica was in charge.[3035] She heard from her cousin that those recruits were carved with a razor blade for protection from gunshots and to classify them as part of the RUF. Males were carved on their backs with the letters "RUF" while females were carved differently on their backs and arms.[3036]

b. Violence towards Civilians who Resist Crimes Committed Against Them - Kailahun District – Crimes

3795. para. 1256: The Prosecution submits that civilians who were defiant or failed to comply with the forces' orders during the commission of crimes against them were beaten because of their resistance.[3037]

3796. para. 1257: The Trial Chamber has considered the evidence of Aruna Gbonda, Augustine Mallah, Dennis Koker and Mustapha M. Mansaray.

3797. para. 1258: Aruna Gbonda, a rice farmer and Deputy Chiefdom Commander, testified that he and other civilians at Talia were forced to farm rice for the RUF between 1996 and 2000. The civilians would give the RUF personnel the rice and were not paid. Those who were reluctant or delayed in doing so were beaten. Gbonda himself was beaten repeatedly by a person named Tom Sandi after bringing only 40-50 persons instead of 300 persons to clear a swamp in Gbaiama.[3038]

3798. para. 1259: Aruna Gbonda also described the violent treatment given to female civilians who were forced to fish for the RUF. The witness saw a beating of a woman twice for delaying collecting women to fish at Keyah River in Luawa Chiefdom, Kailahun, in March "1997', 1998".[3039]

3799. para. 1260: Augustine Mallah testified that civilians were flogged by RUF / AFRC forces in Buedu shortly after the ECOMOG Intervention in February 1998. Mallah testified that after the Intervention, the AFRC and RUF forces captured civilians mostly from Kenema and brought them to Buedu where they joined other civilians. The civilians performed domestic duties for the commanders and cultivated fields during the farming season. Civilians who refused to do those assignments and were not sick or very old were flogged until they were willing. Mallah personally witnessed civilians being beaten for refusing to work. He testified that flogging those who were defiant was needed in order to set an example for the other civilians.[3040]

3800. para. 1261: Dennis Koker, an adjutant at the Military Police office in Buedu from approximately March 1998 until approximately December 1999, testified that Victor Kallon from the RUF brought a girl, who was already stripped to her underpants to the police station. She subsequently told Koker that she had been beaten with 50 lashes. Kallon ordered that she be detained because, he said, she had "overlooked" him. The witness then spoke to the girl who told him that Kallon had kidnapped her from Kono and that he started beating her after she refused to have sex with him.[3041]

3801. para. 1262: Mustapha Mansaray, a member of the Internal Defence Unit (IOU) in Buedu from December 1996 until March/April 1997, testified that upon Sam Bockarie's and Issa Sesay's order, the RUF would order civilians to hand over to the RUF coffee, cocoa and Kola nuts. When civilians from villages in the surrounding areas of Buedu and Kailahun Town refused to do so, Bockarie's and Sesay's bodyguards would flog them and take the products forcefully. This conduct was reported to the District IOU, Francis Musa, but no action was taken thereafter.[3042]

(iii) Freetown and the Western Area– Crimes

3802. para. 1264: The Indictment alleges that, "between about 21 December 1998 and 28 February 1999, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters" mutilated and beat an unknown number of civilians. The Prosecution alleges that these acts were perpetrated in "various areas of Freetown, including the northern and eastern areas of the city, the Kissy area around the State House, Fourah Bay, Upgun and the Kissy Mental Hospital, and Hastings, Wellington, Turnbo, Waterloo, and Benguema in the Western Area". The alleged mutilations included cutting off limbs.[3043]

3803. para. 1265: The Trial Chamber has taken into consideration the evidence of witnesses TF1-358, Abu Bakarr Mansaray, TF1-104, Alimamy Bobson Sesay, TF1-026, Osman Jalloh, TF1-029, Paul Nabieu Conteh, Akiatu Tholley, TF1-143, James Kpumgbu, Ibrahim Wai, Alusine Conteh, Mohammed Sampson Bah, TF1-083, Mohamed Sesay, Corinne Dufka, TF1-028, Alpha lalloh, TF1-150 and Sarah Koroma, in addition to relevant documentary evidence.

a. Freetown, including the northern and eastern areas of the city – Freetown and the Western Area – Crimes

3804. para. 1266: The Trial Chamber has considered the evidence of TF 1-358, Abu Bakarr Mansaray and TF1-104, as well as Exhibits P-227, P-249, P-250, P-251 and Confidential Exhibits P-077 and P-232.

3805. para. 1267: TF1-358 was a medical doctor who ran a medical facility in Freetown.[3044] He testified that on 8 January 1999, he arrived at his hospital to find it overwhelmed with patients who were brought in on ECOMOG vehicles. in push carts and carried on people's backs.[3045] The witness was informed by ECOMOG as they brought victims to the hospital's triage point that these patients were arriving from Freetown and "its immediate environs". and later patients arrived from Kissy, Wellington and "the outskirts of Freetown".[3046] The witness testified that "90 of the patients were suffering from some form of war injury."[3047] The witness testified that he saw

a few "fresh amputations"[3048] and one case of a patient who suffered a failed amputation of his two hands.[3049] This flood of patients continued for two to three weeks, after which the main government hospital started to take cases.[3050]

3806. para. 1268: During this period, TF 1-358 treated two brothers who had each had one hand amputated by rebels in "the east end of town" while their parents watched.[3051] TF1-358 testified that the father of the boys told the witness that he was not able to intervene while his sons were being amputated because he knew that others had been killed for intervening.[3052]

3807. para. 1269: TF 1-358 also testified that the hospital had seen patients with tongue and eyeball amputations, but not many.[3053] TF 1-358 testified that a young male patient told him that he had been amputated by rebels entering Freetown in January 1999. The patient had both his right and left hands amputated. His assailants then cut off his tongue to prevent him from telling others who had committed these acts against him. The patient pleaded with his assailants to kill him because he would be useless in that physical condition. The rebels then slashed the patient's right temple with a blunt instrument. The patient lost consciousness and was taken for dead.[3054] The Trial Chamber has also considered Confidential Exhibit P-232, which depicts the bilateral amputee patient with TF1-358 at the entrance of the hospital.[3055]

3808. para. 1270: TF 1-358 treated a young nursing mother whose eyes had been pulled out in January but were still protruding from the sockets in January 1999. The incident occurred about seven to ten days before she was brought in for treatment, so they were badly infected. The patient stated that she had been gang raped by at least seven armed rebels while she was searching for food around King Harmon Road in central Freetown. They took out her eyes because if she could not see, she would be unable to identify them later.[3056] TF1-358 had to surgically remove both eyes. The victim was badly traumatised and became mentally unstable. The Trial Chamber has also considered Exhibits P-249 and P-250, which depict the patient and the injury to her eyes.[3057]

3809. para. 1271: Abu Bakarr Mansaray,3058 a mechanical engineer living in Freetown in January 1999,3059 testified that he was abducted by three "rebel boys" dressed in ECOMOG uniforms on 8 January 1999[3060] when he was living on Waterloo Street in Freetown. By the term "rebel", he testified that he meant a mixed group of rebels and soldiers.[3061] The three rebels were armed with AK-A7 rifles and spoke Liberian English.[3062] The rebels asked the witness to join them because they had lost men.[3063] Mansaray refused, so he was forcibly taken to State House, where Gullit was in command.[3064] The witness was beaten and then locked in the kitchen for four days without food and water with 50 other captives.[3065] On cross-examination, Mansaray testified that he sustained bruises from the beating.[3066]

b. Kissy – Freetown and the Western Area – Crimes

i. Beating of civilians outside Good Shepard Hospital in Kissy – Freetown and the Western Area – Crimes

3810. para. 1274: TF1-104[3067] was a nurse at the Good Shepherd Hospital in the Kissy District of Freetown in January 1999.[3068] He testified that when he went to work at 6.00am on the morning of 6 January 1999, there were five people waiting for treatment.[3069] The witness treated a Nigerian businessman named Ike, who had a very serious wound on his right wrist and an amputated ear. He reported that he had been shot by "these junta guys" when he attempted to escape.[3070] The witness also saw three other patients who had been shot by "RUF" or "juntas.[3071]

3811. para. 1275: As found in the preceding findings in Unlawful Killings,[3072] Junta and RUF fighters came into the hospital accusing the staff of treating ECOMOG and Kamajors, forced 200 patients outside, beat them and took them and others to Pa Zubay's house were 15 people were shot dead and others were wounded including the witness who was shot in the right arm, knee and right thigh.[3073] They also took the Nigerian, Ike, "out" and later shot him.[3074]

3812. para. 1276: The wounded people were taken to the hospital where four wounded civilians, including the witness, were treated. The witness was unable to count the number of people injured during this incident, but he testified that there were more than the four being treated in his unit.[3075]

ii. Amputations of two men's hands in Kissy Market – Kissy – Freetown and the Western Area – Crimes

3813. para. 1278: TF1-143, an RUF child soldier, testified that after joining Adama Cut Hand during the Freetown invasion, while on patrol in Kissy Market, he and another of "Adama Cut Hand's boys"[3077] approached a shop and knocked on the door. The two men inside did not open the door, so TF1-143 and his companion forced the door open and entered. After entering the shop, the other "boy" suggested that they should amputate the men's hands because they refused to open the door. The witness then used a machete to amputate one hand from each of the two civilian men inside the shop.[3078]

iii. Amputations of James Kpumgbu and others near Kissy Mental Hospital – Kissy – Freetown and the Western Area – Crimes

3814. para. 1280: James Kpumgbu testified that he lived in Kissy near the mental hospital when the rebels came to the area on 6 January 1999[3079] and that on that day, he was on Thompson Street on his way to the Kissy Mental Home with his child, sister and others in search of his parents. He passed by his house and saw that it had been burnt down and was told that the rebels had burned it.[3080] As he approached the door of the mental home four rebels, all dressed in black t-shirts, jeans, boots and some with headbands, called them.[3081] The rebels, three of whom had guns and one of whom had a machete, ordered the witness and two other men to sit beneath a mango tree outside the nearby St. Patrick's Church.[3082]

3815. para. 1281: The four rebels then surrounded Kpumgbu, and three of the rebels pointed guns at him while the rebel carrying the machete ordered him to put his arm on the root of the mango tree. The witness pleaded, but placed his arm as ordered and the rebel cut off his right hand.[3083] Kpumgbu testified that the rebel then chopped his left arm, leaving his hand still connected, but mutilated, and told him to ""go and tell Tejan Kabbah that they are fighting for power".[3084]

3816. para. 1282: After the amputation, Kpumgbu walked with difficulty down to Summertime, where he spent one night before continuing on to Connaught Hospital.[3085] While at Connaught Hospital, the witness met the two other men who had been detained with him outside the Mental Hospital by the rebels during that same incident. Kpumgbu testified that one of them, Mr Lansana, told him that the rebels had cut off his hands. The witness observed that Lansana was missing both of his hands and that the other man, Mr Babah, had both hands cut but not completely amputated.[3086]

3817. para. 1283: Kpumgbu testified that he is unable to fully use his left hand, he experiences pain, and his thumb and index finger do not function. He is unable to do anything to earn a living and people must assist him.[3087] The Trial Chamber has also considered Exhibits P-187 and P-188, which depict the witness's amputated right arm and mutilated left arm.[3088]

iv. Beating and amputation of Ibrahim Wai at Falcon Road in Kissy – Kissy – Freetown and the Western Area- Crimes

3818. para. 1286: Ibrahim Wai testified that in the early morning hours of 6 January 1999, he went out of his house on Falcon Street in Kissy and observed "blazing fires" and "civilians

coming with bundles on their heads".[3090] He fled with his brother to go to PWD, and they encountered many other people also fleeing until they were turned away by ECOMOG. However they managed to cross the barrier and proceed to Berry Street.[3091]

3819. para. 1287: Wai returned to Kissy alone after five days but en route a "30 years old RUF rebel" asked him for money.[3092] Wai showed the rebel his wallet telling him that he did not have any money, the rebel told him to stretch out his hand. Wai testified that the rebel then gave him a dozen lashes on his hand, using a cable that the witness described to be about 0.7 centimetres in diameter.[3093] After lashing him, the rebel told Wai to go.[3094] Then a 14 year old boy with a gun threatened to kill him. He then returned to Kissy. The Trial Chamber has found that while Wai was staying at his in-law's, rebels under the command of Captain Blood attacked the witness and the family and Captain Blood amputated Wai's hand and the hands of Wai's brother-in-law's younger brother. In cross-examination he confirmed he saw the amputation of "the boy's hand".[3095] He did not see his brother-in-law's younger brother come out of the house after that, and he observed that the house was later set on fire. Wai testified that his brother-in-law's younger brother was still in the house when it was set on fire, and that he died in the burning house.[3096]

3820. para. 1288: The witness testified that on his way to Brookfields Hospital for treatment, he met two other civilians whose hands had also been amputated.[3097] According to Wai by the time they reached Brookfields Hospital he saw that there were "many whose hands were cut off' and he named four other amputees in addition to himself.[3098]

v. Amputations by Changa Bulanga in Low Cost Area and Shell Old Road Area - Kissy – Freetown and the Western Area- Crimes

3821. para. 1294: Alimamy Bobson Sesay testified that in approximately the third week of January 1999,[3100] when he and his fighting force had retreated to the hills around Kissy Mental Home, they observed the civilians below dancing and singing that their brothers had come to steal and welcoming ECOMOG. Gullit told the witness and the other fighters that the civilians were betraying them by behaving this way. Thereafter, Gullit passed an order and reorganised the troops to form fighting teams.[3l01] He appointed one squad to move to Low Cost Housing area, instructing them to be sure to "amputate people and burn houses in that area".[3102] The witness testified that Gullit commanded the witness's group to "go as far as Ferry Junction and do these things".[3103]

3822. para. 1295: Osman, known as Changa Bulanga was part of the fighting force Gullit sent to Low Cost area. The witness testified that when Changa Bulanga returned to Kissy Market, he told

the witness that he had amputated arms and burned houses and he said he had completed his mission.[3104]

3823. para. 1296: Alimamy Bobson Sesay further testified that Changa Bulanga also performed amputations at Shell Old Road area.[3105] The witness testified that he saw Changa Bulanga amputate the arms of three civilians, two at the elbow and one at the wrist, before they moved to Crazy Yard to meet with Gullit and the brigade there. After amputating the civilians' arms, Changa Bulanga told the civilian victims to go see Pa Kabbah and ask him for hands.[3106]

vi. Amputations of Barrie and Alusine Conteh's hands at Parsonage and Leaden Streets in Kissy- Kissy – Freetown and the Western Area – Crimes

3824. para. 1298: Alusine Conteh, a double amputee, testified that on the morning of 20 January 1999, he was at the intersection of Parsonage and Leaden Hall Streets in Kissy with a group of other civilians, including his wife, sister, his children, a friend, Julius, and his tenant Boi Barrie.[3107] The witness and his group encountered five men who told the witness and the others to halt or they would shoot them.[3108] Four of the five men wore combat uniforms and one wore civilian clothing and "disguised himself' with a "black cap like a net".[3109]

3825. para. 1299: Alusine Conteh testified that the men ordered Barrie to put down the things he was carrying. One of them. dressed in combat unifonn. who referred to himself as "Captain Two Hand No Mercy" ordered the "civilian" with them to "take care of' Barrie.[3110] The "civilian" took an axe and he chopped Barrie's left hand once. As he chopped again, one of Barrie's children walked behind him. One of the "soldiers" kicked her and she fell. Barrie's right arm was struck twice with the axe leaving his hands dangling by the flesh[3111] and he told him "go and tell Tejan Kabbah, no more politics, no more votes".[3112]

3826. para. 1300: The soldiers then called Alusine Conteh to come, and he placed his left hand on the slab. The "civilian" among the soldiers then hacked once at the witness's arm, severing his hand.[3113] Following Conteh's amputation, they tried to take the witness's son. who was strapped to his mother's back. Conteh pleaded with the soldiers to amputate his other hand instead of amputating his son's hands.[3114] The soldiers then told the witness to place his right hand. and as he did, they severed his hand from his arm.[3115] Before departing, the soldiers told the witness that he should go to Tejan Kabbah and tell Kabbah that he was "a messenger".[3116]

vii. Amputations of Mohamed Sampson Bah's hand on Rowe Street in Kissy- Kissy – Freetown and the Western Area – Crimes

3827. para. 1303: Mohamed Sampson Bah's testimony in the AFRC trial was tendered into evidence pursuant to rule 92*bis* and he was cross examined in the instant trial. He testified that he saw rebels beating people with belts and sticks and houses, including his house, being burnt.[3118] He and seven other people were captured by the rebels on Rowe Street in January 1999 and taken to the commando Tafaiko. They were "placed in a queue", searched and their belongings were confiscated. The commando ordered the other seven to be killed "at a stretch". They were shot and Bah witnessed all seven die.[3119] The commando took Bah's gold-plated wrist watch, told him that he had "been sentenced" and that Bah's hand should be amputated.[3120] The commando forced Bah onto the ground, placed a foot on his chest and his arms were stretched out and Bah's hand was amputated.

viii. Amputation of TF1-083, Pa Sorie and Musa in Samuels Area in Kissy – Kissy – Freetown and the Western Area – Crimes

3828. para. 1305: The testimony of TF 1-083, who is now deceased, in the AFRC trial was tendered into evidence pursuant to Rule 92 *quater.*[3122] He testified that on 22 January 1999 he was at Old Road at Locust in the "Samuels area" when he, five men and some women including his sister, were captured by "rebels" wearing caps that covered everything but their eyes, nose and mouth.[3123] The rebels ordered TF1-083 and the other civilians to remove their clothes, a rebel took the witness's shirt and wore it and as the witness removed his pants a rebel struck him at the waist with a knife and took the money from his pockets.[3124] The rebels then began leading them along a route stating that they said they would kill them.[3125] As they were walking TF1-083 saw corpses on the ground and the rebels said "See those ones that are lying down, they are sleeping. So you are going to sleep like this".[3126]

3829. para. 1306: When the group reached the rebels' commander, who had a fair complexion and who was wearing a round hat and combat gear, the rebels told him "these are the people we brought".[3127] The commander said "some we are coming to eat them and the others, we are going to kill them".[3128] The commander ordered the five men, including the witness, Pa Sorie, Musa, and two others to lie on their backs and said that some of them they would kill and some of them they would "send", meaning amputate their hands.[3129]

3830. para. 1307: The commanders ordered that the hands of TF 1-083, Pa Sorie, and Musa be cut off and that the victims should "go to Kabbah and ask for Kabbah to give him a hand".[3130] A

rebel stabbed TF 1-083 on his left arm near his bicep before amputating his right hand using an axe.[3131] TFI-083 was unable to see and fell into a gutter.[3132] However, he testified that he heard the rebels take Pa Sorie and cut off his hand.[3133] Pa Sorie met him later at the Connaught Hospital and told him that the rebels had cut off his hand.[3134]

3831. para. 1308: TF1-083 testified that the rebels took Musa, the last of the five civilians in the group, and they cut off four of his fingers.[3135] Musa then heard the commander say "You should not cut off Musa's fingers. You should cut off his hand, so that he can go to Kabbah and tell him to give him a new hand".[3136] Musa then begged for the rebels not to chop off his hand, they shot him and he fell down. TF1-083 testified that Musa was killed.[3137]

ix. Amputation of Mohamed Sesay's arms in Kissy – Kissy – Freetown and the Western Area – Crimes

3832. para. 1310: Mohamed Sesay testified that he saw RUF and SLA who he referred to as the People's Arm[3139] on the morning of6 January and five or six days later saw Captain Blood at a checkpoint. The witness observed the "rebels and SLAs arguing".[3140] On 19 January 1999[3141] he was in Kissy hiding in the house of Mr Abass[3142] after his home had been burnt[3143] with about 50 other civilians, including old men and women.[3144] He saw seven "rebels", including one "commando" arrive.[3145] The commando carried a pistol. one rebel carried a machete. another rebel carried an axe and four others carried guns.[3146] The commando ordered the fighters to bring the 24 young men out of the house and to the junction where they asked them to queue up in preparation for having their arms amputated on a log which had been placed in front ofthem.[3147] As already found eight men were shot and killed. and five others were killed by splitting their heads with a machete.[3148] The witness and those with him were frightened.

3833. para. 1311: Sesay was then left as the first person in the queue and one of the rebels declared that they would amputate his arm.[3149] Sesay pleaded with the Commander to kill him instead, and the other men also stood up and pleaded.[3150] The Commander blew a whistle and many "rebels" came and surrounded the captive men, forcing them to the ground. tying them up, and beating some of them.[3151] The Commando ordered the youngest of the fighters. a boy about 13 years old. to untie Sesay and amputate his arm.[3152] The fighter attempted to cut off Sesay's left arm with an axe, but when he failed the Commander came and hit Sesay's arm with an axe twice, leaving it hanging by a small lump of flesh.[3153] The fighters then put Sesay's right arm on the log and the commander hit it once, also leaving this arm to hang by the flesh.[3154]

3834. para. 1312: As the fighters were preparing to amputate the hand of another man, Rambo of the RUF[3155] arrived by vehicle with more than 40 "people" and ordered them to release the remaining people, saying he would punish the fighters for what they had done. The rebels saluted Rambo and conformed with his command.[3156] Sesay testified that Rambo then told all of them to follow him to his base, which was near the Kissy Mental Home, and before sending the witness away put 100,000 of an unidentified currency in his pocket saying that he should "endure, that was what God ordained". The witness became dizzy and fell and lay until the following morning, Friday, when he went to ECOMOG at Helena and was taken to Connaught Hospital.[3157]

3835. para. 1313: When[3158] Mohamed Sesay arrived at Connaught Hospital, he saw "so many others" who had been amputated.[3159] Some of those amputees told the witness that they had been amputated in Freetown.[3160]

x. Other Amputations in Kissy – Kissy – Freetown and the Western Area – Crimes

3836. para. 1316: The Trial Chamber has also considered the evidence of Corinne Dufka, TF1-028, and Exhibits P-142B, P-197, P-188, P-263, P-286A, P-356A-B and confidential Exhibit P-077.

3837. para. 1317: Exhibit P-263, a BBC Focus on Africa radio broadcast,[3161] described the atrocities being committed by the retreating rebel forces in Kissy who were cutting "the limbs of civilians". A Mr Bangura, who lived on Bypass Road, told reporter Lansana Fofana that he had been lined up in a queue of 15 people to be amputated by the rebels. After the first two in the queue had been amputated, the rest of them fled for their lives. Four young men whose wrists had been mutilated told Fofana that the fighter who carried out these mutilations was a Liberian fighter known as CO Cut Hand.[3162] Exhibit P-356B, another Focus on Africa programme, broadcast on 22 January 1999, included a report by Winston Ojukutu-Macaulay, who travelled with ECOMOG to Kissy. On their way back to Freetown from Kissy, they transported five civilians who were amputated.[3163]

3838. para. 1318: Confidential Exhibit P-077 reports that a five-year-old girl was thrown into a fire at Blackhall Road on 28 January 1999.[3164]

3839. para. 1319: TFI-028 lived in Karina, Bombali District when the junta attacked in 1998.[3165] The witness was taken as a member of a group that entered Freetown on 16 January.[3166] The group stopped at Ferry Junction before "RUF boys" speaking Liberian language took the witness to

Blackhall Road and then to Kissy Road. At Kissy Road, the witness saw a "big bunch" of human hands that had been amputated, tied together, and buried in the dirt.[3167] She could not count them.[3168] She testified that as she knew the Junta had entered Freetown, and she inferred that they must have been responsible for putting the hands there.[3169]

3840. para. 1320: Witness Corinne Dutlca testified that she photographed a 13-year-old girl, who was one of three girls "who were rounded up from Kissy by a group of rebels ... around the 20th to 22nd of January ... and taken up to a hill and had their hands amputated".[3170]

c. Fourah Bay – Freetown and the Western Area – Crimes

3841. para. 1326: The Trial Chamber has considered the evidence of Alpha Jalloh and TF1-150, and Exhibits P-107, P-210 and Confidential Exhibit P-077.

3842. para. 1327: Confidential Exhibit P-077 states that on 21 January 1999, three children were executed at Fourah Bay and their three sisters had limbs amputated or mutilated.[3172]

3843. para. 1328: Alpha Jalloh3173 testified that on 6 January 1999, "rebels" and soldiers [3174] first came to his area in Younge Street.[3175] On 18 January 1999 rebels, some of whom were in uniform,[3176] came to the house on Manfred Lane where he was hiding with his younger brother, cousins and other civilians and led them by gunpoint to a primary school on Fataraman Street.[3177] There the rebels put them into a queue and told them that they would send them "to Pa Kabbah for Pa Kabbah to know that they were in control".[3178] The witness, his brother and cousin sat in the line with four others, including Edward Conteh and Sheku Bah[3179] and were called one at a time. A Krio speaking rebel named Tommy from the Freetown area who wore a combat uniform, cut off all of the hands of Conteh, Bah and the witness's cousin with an axe,[3180] then he cut the witness's left hand off. The rebels told the amputees that they could go to Pa Kabbah to get more hands.[3181] Jalloh testified that he heard that his "cousin couldn't survive, so he died. Where he laid, that was the place he died".[3182]

d. Upgun – Freetown and the Western Area – Crimes

3844. para. 1332: The Trial Chamber has considered the evidence of Alimamy Bobson Sesay.

3845. para. 1333: Alimamy Bobson Sesay testified that around the third week of January 1999,3183 following the operation in Fourah Bay, he and those in his fighting force, including Gull it, Bazzy and Five-Five, withdrew to Upgun where they mounted a defensive.[3184] Once in

Upgun, Five-Five gave an instruction that they should start amputating limbs and he was "going to demonstrate it". Alimamy Bobson Sesay witnessed Five-Five capture three civilians and perfonu a demonstration by placing the captured civilians' arms on a mortar and giving one a "short sleeve" amputation, meaning an amputation at the wrist, and the other two "long sleeve" amputations, meaning an amputation above the elbow. Thereafter, according to Alimamy Bobson Sesay, Major Mines and Kabila captured and amputated an unknown number of civilians.[3185]

e. Wellington – Freetown and the Western Area – Crimes

3846. para. 1335: The Trial Chamber has considered the evidence of Sarah Koroma, TF1-026 and Akiatu Tholley.

3847. para. 1336: Sarah Koroma testified that she first saw many "rebels" in Wellington, Loko Town, on 6 January 1999.[3186] Upon seeing the rebels and hearing from other civilians that the rebels were amputating people, Koroma fled to the bush with her children and husband.[3187] The witness remained in the bush for one week until the rebels threatened to kill anyone who did not come out of the bush.[3188] The rebels then captured Koroma, her husband and other members of their group on their way back to their homes in Wellington.[3189] Koroma testified that the rebels killed her husband and another child by hacking them with machetes.[3190] The rebels ordered the remaining civilians, including the witness, to sit in a line on the ground. The rebels then used a machete to chop off her left hand, and told her that she should go tell Tejan Kabbah that the rebels said they want peace.[3191] The rebels attempted to chop her right hand. but were unsuccessful.[3192] Further, the witness testified that she did not see what happened to the other civilians in the queue with her as she was "tormented".[3193]

3848. para. 1337: Sarah Koroma testified that she left the place where she was amputated and, as she was walking near Brewery, she was beckoned by two rebels who were not in the group who amputated her hand.[3194] One of them, who carried a knife and gun[3195] told the witness that he wanted to kill her because she was Tejan Kabbah's mother, but he hurled beer bottles at her instead because he did not have bullets in his gun.[3196] The other rebel, armed with a gun,[3197] pleaded with him to leave the witness alone as she was suffering from a recent amputation.[3198] Koroma testified that the rebel who threw the beer bottles at her also kicked her into a gutter and hit her on her thigh; the beer bottles hit her and she still has scars on her feet from the bottles. [3199] On the third day after this incident, Sarah Koroma sought treatment at Connaught Hospital, where she saw many patients with amputated legs. However, the witness did not testity as to where or by whom the other patients had been amputated.[3200]

3849. para. 1338: TFI-026 testified that she was in her home in Wellington on 6 January 1999 when nine RUF rebels entered with guns. They began firing their weapons and shot her sister, killing her.[3201] The rebels who were under the command of CO Rocky[3202] then forcefully took her from her home up a mountain. On their way out of the village, the rebels burned houses and amputated people's limbs.[3203]

3850. para. 1339: Specifically, TFI-026 testified that the rebels amputated the hands of seven civilians, amputating the male civilians at the wrist and the women just above the elbow.[3204] One male civilian, wearing a white vest, died as a result of the amputation. Another male amputee was ordered to go and tell people that the rebels were coming.[3205]

3851. para. 1340: TF1-026 was with the RUF rebels during the time that they were burning houses and amputating civilians. The rebels told her she should be there to witness these acts because if she attempted to escape, they would do the same to her. [3206]

3852. para. 1341: Akiatu Tholley testified that she was on her way to the market in Wellington on 5 January 1999,[3207] when she heard that the rebels were com mg. Tholley then ran home to warn her family who locked themselves inside their house.[3208] Tholley testified that an unknown number of Krio-speaking men, wearing black t-shirts and black jeans entered the house.[3209]

3853. para. 1342: Tholley stated that when the men entered the house they amputated the first child they saw, who was about 3 or 4 years old. Tholley testified that after seeing the amputation she ran to hide in the wardrobe, where a rebel later found her and forced her outside. Once outside, the rebels began beating and kicking her and asked her to go with them.[3210] Tholley testified that upon seeing the rebels about to amputate her mother's hands, she told the rebels she would not leave with them and that they would have to amputate her too.[3211] Tholley testified that at that time, three rebels began beating her with the butt of a gun and a belt. [3212] According to Tholley, a rebel then dragged her under a mango tree, where she lay unconscious and oozing with blood until another group of rebels came by and took her along.[3213]

f. Waterloo – Freetown and the Western Area – Crimes

3854. para. 1349: The Trial Chamber has considered the evidence of Akiatu Tholley.

3855. para. 1350: Akiatu Tholley testified that after being taken from her home in Wellington, she accompanied a group of rebels to Waterloo.[3216] When she arrived at Waterloo, Tholley witnessed rebels killing men women and children, and amputating the hands of men and women.

Tholley testified that when they reached Waterloo the group was "mixed", but that she had often heard the rebels calling Five-Five's name and that he was the "overall boss" "the leader of the group".[3217]

(b) Legal Conclusions

(i) Applicable law - War crimes / Violations of Common Article 3

3856. See above: Chapter 1 – Taylor – Trial Judgment – Legal Conclusions – Applicable law – War Crimes / Violations of Common Article 3 – paras. 561 – 568 [111].

(ii) See War crimes / Violations of Common Article 3 – Findings on general requirements

3857. See above: Chapter 1 – Taylor – Trial Judgment – Legal Conclusions – Applicable Law – War Crimes / Violations of Common Article 3 – Findings on general requirements – paras. 571 – 574 [119].

(iii) Violence to Life, Health and Physical or Mental Well-Being of Persons, in particular Cruel Treatment (Article 3(a) of the Statute)– Applicable law

3858. para. 434: In addition to the chapeau requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute, the following specific elements of the offence of cruel treatment must be proved beyond reasonable doubt:

i. The act or omission of the perpetrator caused serious physical or mental suffering or injury or constituted a serious attack on human dignity;

ii. The perpetrator intended to cause serious mental or physical suffering or injury or a serious attack on human dignity or acted in the reasonable knowledge that this was likely to occur.[1047]

3859. para. 435: The Trial Chamber notes that the Prosecution has provided a definition of mutilation in its final trial brief, which adopts and slightly modifies the definition provided in the AFRC Trial Judgement.[1048] However, Count 10 of the AFRC Indictment charged "violence to life, health and physical or mental well-being of persons, in particular mutiiation",[1049] whereas Count 7 of the Indictment in this case charges only "cruel treatment". The Trial Chamber therefore finds that a specific definition of mutilation is not required, but notes that cruel treatment may encompass acts of mutilation, if such acts satisfy the requirements set out above.

(iv) Kono District– Physical Violence

a. Tombodu – Kono District – Physical Violence

3860. para. 1217: Based on Alimamy Bobson Sesay's evidence of the amputation of the arms of an unknown number of people at Yomandu Guinea Highway Superman area and Dabundeh Street, the 15 amputations in Tombodu, the amputation of the arms of Mustapha Mansaray and Ibrahim Fofana and four other people, and the attempted amputation and injury to Samuel Komb~ the Trial Chamber finds beyond reasonable doubt that in the time period of March to June 1998 the AFRC and RUF fighters caused serious physical suffering and injury to the victims. Given that the amputations were carried out by the AFRC and RUF fighters as a punishment, and that the perpetrators evinced an obvious intention to inflict suffering and injury, the Trial Chamber is satisfied that they intended the serious injury and suffering to occur. The Trial Chamber is further satisfied on the evidence that the victims were civilians and finds beyond reasonable doubt that they were not taking part in hostilities at the time of the amputations.

b. Kayima – Kono District – Physical Violence

3861. para. 1221: Based on TFI-375's evidence the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that immediately after the Fitti-Fatta Operation in mid-1998 an unknown number of people "starting at Kayima" were mutilated by the carving of RUF on their chests by RUF Commander Komba Gbundema, The Trial Chamber finds beyond reasonable doubt that Commander Gbudema caused, and intended to cause, serious physical suffering and injury to the victims.

3862. para. 1222: Based on the evidence of Sorie Kondeh, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that in May 1998 18 persons were carved with the letters "RUF" and/or "AFRC" by AFRC fighters in Kayima, and that in doing so the AFRC fighters caused, and intended to cause, serious physical suffering and injury to the victims.

3863. para. 1223: As the victims were captured civilians, the Trial Chamber is satisfied beyond reasonable doubt that the victims were not taking part in hostilities at the time of the amputations.

c. Wondedu – Kono District – Physical Violence

3864. para. 1228: The Trial Chamber is satisfied beyond reasonable doubt that, by the act of carving the letters "RUF" and "AFRC" into the bodies of an unknown number of their captive

civilians some time between April and November 1998, RUF and AFRC fighters caused, and intended to cause, serious physical injury and suffering upon their victims.

3865. para. 1229: The Trial Chamber is also satisfied beyond reasonable doubt that by knocking out teeth of Teh, a captive civilian, as punishment some time between April and November 1998. AFRC Commander Banya caused, and intended to cause, serious physical injury and suffering to Teh.

3866. para. 1230: Further, as the victims were captured civilians, the Trial Chamber is satisfied beyond reasonable doubt that the victims were not taking part in hostilities at the time of the mutilations.

d. Conclusion –Kono District - Physical Violence

3867. para. 1231: In conclusion, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between about 1 February 1998 and about 31 December 1998, in various locations in Kono District, including Tombudo, Kayima, and Wondedu, members of the AFRC and RUF committed acts of cruel treatment and other inhumane acts against an unknown number of civilians, as charged in the Indictment,[3012] and as shown in the evidence above.

3868. para. 1232: The Trial Chamber recalls that the Prosecution has established beyond reasonable doubt that at all times relevant to the Indictment, the RUF and/or AFRC forces directed a widespread or systematic attack against the civilian population of Sierra Leone[3013] The Trial Chamber is satisfied that each of the acts of physical violence proved by the Prosecution in respect of Kono District formed part of the said attack and that the perpetrators were aware of this fact. The Trial Chamber also recalls that the Prosecution has proved beyond reasonable doubt that there was an armed conflict in Sierra Leone at all times relevant to the Indictment, involving among others, members of the RUF, AFRC and CDF.[3014] The Trial Chamber is satisfied that for all of the aforementioned acts of physical violence in Kono District there was a nexus between the acts of physical violence and the armed conflict, that each of the victims was not taking an active part in the hostilities at the time of physical violence, and that the perpetrators knew this fact. Therefore, the Trial Chamber is satisfied that the aforementioned acts of physical violence in Kono District constitute other inhumane acts as a crime against humanity under Article 2 of the Statute, and cruel treatment as a war crime under Article 3 of the Statute.

(v) Kailahun District– Physical Violence

3869. para. 1263: The Trial Chamber finds the witnesses who testified to the foregoing incidents to be credible and their evidence supports proof of existence of crimes relating to physical violence on a widespread or systematic basis. The Trial Chamber will, therefore, only consider the foregoing evidence regarding Kailahun District in relation to the *chapeau* requirements.

(ii) Freetown and the Western Area– Physical Violence

a. Freetown, including the northern and eastern areas of the city – Freetown and the Western Area – Physical Violence

3870. para. 1272: TF1-358 was a medical doctor who saw the actual injuries sustained by people coming to his hospital. He produced photographs he took of these patients and their injuries. These included amputations and the patient whose eyes had to be removed. The Trial Chamber finds his account to be detailed and credible. Given that these injuries were sustained at the time rebels were in Freetown, and TF 1-358's unchallenged evidence that 90% of injuries were war related together with Exhibits P-249, P-250, and Confidential Exhibit P-232, the Trial Chamber finds that it has been proved beyond reasonable doubt that the rebels caused serious physical suffering and injury to the amputation and mutilation victims. The Trial Chamber is also satisfied beyond reasonable doubt, based on Mansaray's first-hand evidence, that by beating Abu Bakarr Mansaray, the rebels caused serious physical suffering and injury to him. Given the witness's description of the perpetrators the Trial Chamber finds that the "rebels" were members of the AFRC/RUF who were invading Freetown in January 1999.

3871. para. 1273: The Trial Chamber also finds that, given the nature of these acts and the degree of the harm suffered by the patients of TF1-358 and by Mansaray, and given that the perpetrators evinced an obvious intention to cause serious physical injury and suffering upon their victims, that the members of the AFRC/RUF intended to cause the serious physical injury and suffering. The Trial Chamber is satisfied, on TF1-385's description of the mutilated persons who he treated that the victims were civilians and, further, that Mansaray was a captured civilian and that none of these persons were taking part in hostilities at the time of the amputations, mutilations and beatings.

b. Kissy – Freetown and the Western Area – Physical Violence

i. Beating of civilians outside Good Shepard Hospital in Kissy – Kissy - Freetown and the Western Area – Physical Violence

3872. para. 1277: Although TF1-104 saw and treated the injuries of the patients brought to Good Shepherd Hospital on the morning of 6 January 1999, how the injuries were sustained emanated from the statements of the patients and is hearsay. The witness's evidence of the beating of approximately 200 people, including staff and patients not taking part in hostilities is direct evidence of beatings and the Trial Chamber finds it credible. However, as indicated previously, as the Indictment particularizes only mutilation and beating, the Trial Chamber has not considered evidence of gunshot wounds in relation to Counts 7 and 8.[3076] The Trial Chamber accepts TF 1-104's evidence that a Nigerian man named Ike had his ear amputated by the "Junta" and that Ike was a businessman. Given that Ike was brought to a hospital in Kissy, the Trial Chamber considers it can safely infer this amputation occurred in a location in Kissy and finds accordingly. The Trial Chamber finds that Ike was amputated by Junta/RUF and that this caused serious physical injury. Given that the beatings were carried out as punishment for allegedly treating ECOMOG soldiers and Kamajors at the hospital, the Trial Chamber finds that the perpetrators intended to cause the serious physical injury and suffering. Further, as the victims were injured and/or civilians at the time of the beatings, the Trial Chamber is satisfied beyond reasonable doubt that they were not taking direct part in hosti lities at the time of the attack. The witness described the group of men as a mix of "juntas" and the RUF, and in cross-examination he testified he knew some of perpetrators as RUF members and identified others by their dress. The Trial Chamber finds that it has been proved beyond reasonable doubt that the perpetrators were members of the RUF and the AFRC.

ii. Amputations of two men's hands in Kissy Market – Kissy – Freetown and the Western Area – Physical Violence

3873. para. 1279: Based on the context, the Trial Chamber is satisfied that these amputations occurred in January 1999, and, as TF1-143 and his companion were members of the RUF and the AFRC respectively, that the amputations were perpetrated by members of the RUF/AFRC. The Trial Chamber find beyond reasonable doubt that these AFRC/RUF fighters caused, and intended to cause, serious physical injury and suffering to the amputation victims. Further, as the victims were shopkeepers taking refuge in their shop, the Trial Chamber is satisfied that they were civilians who were not taking a direct part in hostilities.

iii. Amputations of James Kpumgbu and others near Kissy Mental Hospital – Kissy – Freetown and the Western Area – Physical Violence

3874. para. 1284: Based on the above evidence, the Trial Chamber is satisfied beyond reasonable doubt that James Kpumgbu's hands were mutilated and amputated by AFRC/RUF "rebels" near Kissy Mental Hospital on 6 January 1999. Kpumgbu observed Lansana and Babah's amputations and mutilations and the Trial Chamber accepts and finds that their hands were also amputated and mutilated. Given that Kpumgbu, Lansana and Babah had been captured and detained at the same time by the same rebels, the Trial Chamber accepts that these same rebels also amputated and/or mutilated Lansana and Babah. The Trial Chamber finds beyond reasonable doubt that by these acts the AFRC/RUF fighters' caused, and intended to cause, the victims serious physical injury and suffering.

3875. para. 1285: Based on the witness's description of the perpetrators the Trial Chamber is satisfied beyond reasonable doubt that they were members of the AFRC/RUF invading forces identified by the Trial Chamber at Para 202/3 unlawful killings.[3089] The Trial Chamber is further satisfied on the evidence that the victims were civilians and finds beyond reasonable doubt that they were not taking part in hostilities at the time of the amputations.

iv. Beating and amputation of Ibrahim Wai at Falcon Road in Kissy – Kissy – Freetown and the Western Area- Physical Violence

3876. para. 1289: Wai was challenged in cross-examination regarding the lashing he received, and the Trial Chamber considers that he was consistent in this throughout his evidence and in the view of the Trial Chamber he did not exaggerate or prevaricate. Therefore the Trial Chamber accepts his account of being lashed by a cable and finds beyond reasonable doubt that he was beaten by being lashed on the hand.

3877. para. 1290: Based on Wai's testimony regarding his treatment by Captain Blood in Kissy, the Trial Chamber finds that Captain Blood struck Wai with the butt of a gun, and hit him on the back with the flat side of a machete. The Trial Chamber also finds beyond reasonable doubt that Captain Blood then amputated the witness's hand and Captain Blood or persons under his command amputated both hands of his brother-in-law's brother.

3878. para. 1291: The Trial Chamber therefore finds beyond reasonable doubt that the perpetrators caused, and intended to cause, serious physical injury and suffering, to their victims.

As the witness and his relative were civilians in captivity at the time of these incidents, the Trial Chamber is satisfied that they were not taking an active part in hostilities.

3879. para. 1292: Wai observed that two men he met on his way to Brookfields Hospital had both of their hands cut off. The Trial Chamber accepts his first hand observation of these two men's amputation and that he saw "that we were many whose hands were cut off' and accordingly finds that an unknown number of persons had their hands amputated. The Trial Chamber therefore finds beyond reasonable doubt that the perpetrators caused, and intended to cause, serious physical injury and suffering to these amputation victims.

3880. para. 1293: Based on the witness's description of the perpetrators the Trial Chamber finds beyond reasonable doubt that they were members of the AFRC/RUF invading forces identified by the Trial Chamber3099

v. Amputations by Changa Bulanga in Low Cost Area and Shell Old Road Area - Kissy – Freetown and the Western Area- Physical Violence

3881. para. 1297: Based on Alimamy Bobson Sesay's eyewitness testimony that Changa Bulanga, a member of the AFRC. performed three amputations in Kissy and the amputation of an unknown number of persons in the Low Cost Area. The Trial Chamber finds beyond reasonable doubt that the perpetrators caused, and intended to cause serious injury, and suffering to their victims. The Trial Chamber further finds beyond reasonable doubt. Based on Changa Bulanga's statement that he had completed his mission which was to "amputate people...", that the victims were civilians who were not taking a direct part in hostilities at the time.

vi. Amputations of Barrie and Alusine Conteh's hands at Parsonage and Leaden Streets in Kissy- Kissy – Freetown and the Western Area – Physical Violence

3882. para. 1301: Alusine Conteh repeatedly referred to the individual dressed in civilian clothing with the four soldiers as a "civilian". However, from Conteh's detailed testimony about the actions of this individual. the Trial Chamber finds beyond reasonable doubt that the person who amputated Boi Barrie's and Conteh's hands was not a civilian but that the perpetrators were members of the AFRC/RUF invading forces identified by the Trial Chamber in the section of unlawful killings.[3117]

3883. para. 1302: Based on the above evidence, the Trial Chamber is satisfied that both of Barrie's hands were mutilated and both of Alusine Conteh's hands were amputated by members of

the AFRC/RUF invading forces in Kissy on 20 January 1999. The Trial Chamber finds beyond reasonable doubt that the perpetrators' acts caused serious physical injury and sutTering. As the perpetrators told the witness to go and tell Tejan Kabbah "no more politic" they evinced an obvious intention to cause serious suffering and injury upon their victims. As all of the victims were civilians at the time of their amputation, the Trial Chamber is satisfied beyond reasonable doubt that they were not taking an active part in hostilities.

vii. Amputations of Mohamed Sampson Bah's hand on Rowe Street in Kissy- Kissy – Freetown and the Western Area – Physical Violence

3884. para. 1304: The Trial Chamber finds beyond reasonable doubt that Commando Tafaiko a member of the AFRC/RUF invading forces identified by the Trial Chamber3121 amputated Bah's hand on Rowe Street in Kissy in January 1999. The Trial Chamber finds beyond reasonable doubt that the perpetrators caused, and intended to cause, serious physical injury and suffering. The Trial Chamber further finds beyond reasonable doubt that Bah was a civilian who was not taking part in hostilities at the time of the amputation.

viii. Amputation of TF1-083, Pa Sorie and Musa in Samuels Area in Kissy – Kissy – Freetown and the Western Area – Physical Violence

3885. para. 1309: Based on TF1-083's evidence of his amputation, the Trial Chamber finds beyond reasonable doubt that the hands of TF1-083 and Pa Sorie were amputated and the fingers of Musa were amputated before he was shot at the Samuels area of Kissy on 22 January 1999. The Trial Chamber further finds beyond reasonable doubt that the perpetrators caused serious physical injury and suffering to the victims, and as the perpetrators told the witness to go to Kabbah, that they evinced an obvious intention to cause serious physical suffering and injury upon their victims. As the victims were captured civilians and lying on their backs at the time that these amputations occurred, the Trial Chamber finds beyond reasonable doubt that they were not taking an active part in hostilities. Based on the witness's description of the perpetrators, the Trial Chamber finds beyond reasonable doubt that they were members of the AFRC/RUF invading forces identified by the Trial Chamber.[3138]

ix. Amputation of Mohamed Sesay's arms in Kissy – Kissy – Freetown and the Western Area – Physical Violence

3886. para. 1314: Based on Mohamed Sesay's account of the amputation of both of his arms in Kissy, the Trial Chamber is satisfied beyond reasonable doubt that on 19 January 1999 at Kissy members of the Peoples Army under the command of Rambo amputated the hands of Mohamed Sesay. The Trial Chamber finds beyond reasonable doubt that the perpetrators caused serious physical injury and suffering and that the perpetrators evinced an obvious intention to cause this serious physical injury and suffering upon their victim. As Sesay was a captured civilian when these amputations occurred, the Trial Chamber further finds beyond reasonable doubt that he was not taking a direct part in hostilities.

3887. para. 1315: The Trial Chamber accepts Mohamed Sesay's evidence that at Connaught Hospital he saw other people who had arms and hands amputated and that these amputations occurred in Freetown and finds beyond reasonable doubt that an unknown number of persons had their hands and/or arms amputated in January 1999 in Freetown.

x. Other Amputations in Kissy – Kissy – Freetown and the Western Area –Physical Violence

3888. para. 1321: The Trial Chamber finds that the information contained in Confidential Exhibit P-077 of physical violence committed in Kissy during the attack of Freetown is hearsay and is insufficiently precise to make a finding on the identity of the perpetrators of this crime. The Trial Chamber is unable to make a finding in relation to the crime of physical violence against civilians based solely on this evidence. However, this evidence may be used to corroborate other findings on specific incidents.

3889. para. 1322: TF 1-028's evidence that she saw a "big bunch" of human hands at Kissy Road clearly shows that amputations took place but it is insufficient in and of itself to establish the elements of Counts 7 or 8, as she did not witness the amputations, nor was she able to identify the perpetrators except by inference. However, this provides corroboration of more specific instances of amputation.

3890. para. 1323: The Trial Chamber finds that although the information contained in Exhibits P-263 and P-365A is hearsay, it is a contemporaneous account taken from the victims and eye witnesses and is credible and reliable. The report clearly shows that the victims were civilians and that the perpetrators were "rebels" or a Liberian fighter known as CO Cut Hand. It is corroborated

by other documentary evidence and the corroborative evidence of the widespread nature of these amputations. Accordingly the Trial Chamber finds that two civilian men, four young civilian men and five civilians had their limbs amputated in Kissy in late January 1999 by AFRC/RUF invading forces.

3891. para. 1324: Although Corinne Dutka's account and the evidence of the amputation is based on hearsay, the Trial Chamber finds her account to be credible, and it was corroborated by her photographic evidence of the amputated 13 year old girl and the corroborative evidence of the widespread nature of these amputations. Accordingly the Trial Chamber finds beyond reasonable doubt that a 13 year old civilian girl not taking a direct part in hostilities had her hand amputated on or about 20 to 22 January 1999 in Kissy.

3892. para. 1325: The Trial Chamber finds beyond reasonable doubt that in each of the foregoing incidents the perpetrators' acts caused, and intended to cause, serious physical injury and suffering to the victims. As the victims were civilians targeted by rebels the Trial Chamber finds beyond reasonable doubt that they were not taking a direct part in hostilities. Based on the girl's description of the perpetrators as rebels, the Trial Chamber finds that they were members of the AFRC/RUF invading forces identified by the Trial Chamber.[3171]

c. Fourah Bay – Freetown and the Western Area – Physical Violence

3893. para. 1329: Although the evidence in Confidential Exhibit P-077 is hearsay it is a contemporaneous account and the Trial Chamber accepts the credibility and reliability of the report and accordingly finds beyond reasonable doubt that on 21 January 1999 at Fourah Bay three unnamed sisters had limbs amputated or mutilated.

3894. para. 1330: Based on Jalloh's evidence, the Trial Chamber is satisfied beyond reasonable doubt that seven persons, including the witness had their hands amputated by members of the RUF/AFRC in Fourah Bay on 18 January 1999.

3895. para. 1331: The Trial Chamber therefore finds beyond reasonable doubt that the perpetrators caused, and intended to cause, serious physical injury and suffering to the victims. As the victims were captured civilians, the Trial Chamber finds beyond reasonable doubt that they were not taking direct part in hostilities at the time of the attack.

d. Upgun – Freetown and the Western Area – Physical Violence

3896. para. 1334: Based on Bobson Sesay's eyewitness evidence, the Trial Chamber is satisfied beyond reasonable doubt that Five-Five, a member of the AFRC, amputated the arms of three individuals. The Trial Chamber further finds beyond reasonable doubt that an unknown number of civilians had hands amputated by Major Mines and Kabila. The Trial Chamber therefore finds beyond reasonable doubt that the perpetrators caused serious physical injury and suffering to the victims, and that the perpetrators evinced an obvious intention to cause serious physical suffering and injury upon the victims. As the victims were captured civilians at the time of these amputations, the Trial Chamber finds beyond reasonable doubt that they were not taking a direct part in hostilities.

e. Wellington – Freetown and the Western Area – Physical Violence

3897. para. 1343: The Trial Chamber accepts Sarah Koroma's evidence and finds beyond reasonable doubt that her left hand was amputated and her right hand was mutilated by rebels in Wellington on 6 January 1999. The Trial Chamber also finds beyond reasonable doubt, based on her evidence, that on the same day a second group of two rebels beat Koroma by throwing beer bottles at her, by kicking her into a gutter and kicking her in the thigh. Trial Chamber finds that it has been proved beyond reasonable doubt that the perpetrators caused serious physical injury and suffering to Koroma and that they evinced an obvious intention to cause such serious physical injury and suffering.

3898. para. 1344: As Koroma testified only that these acts were perpetrated by "rebels", the Trial Chamber finds beyond reasonable doubt that they were members of the AFRC/RUF invading forces identified by the Trial Chamber.[3214]

3899. para. 1345: The Trial Chamber finds, however, that Koroma's evidence about other amputees she met at Connaught Hospital is insufficiently specific for it to make any findings in relation to Counts 7 and 8.

3900. para. 1346: The Trial Chamber accepts TF1-026's eyewitness evidence that rebels amputated the hands of seven people in Wellington on 6 January 1999. The Trial Chamber therefore finds beyond reasonable doubt that the perpetrators caused serious physical injury and suffering to the victims, and that the perpetrators evinced an obvious intention to cause such serious physical injury and suffering. The Trial Chamber further finds beyond reasonable doubt, based on the witness's evidence, that the amputations were perpetrated by the RUF, under the

command of CO Rocky a member of the RUF/AFRC forces which invaded Freetown on 6 January 1999.

3901. para. 1347: The Trial Chamber accepts Akiatu Tholley's evidence of witnessing the amputation of a child and finds beyond reasonable doubt that the rebels amputated the arm of a child aged three to four years in Wellington. The Trial Chamber further accepts her evidence that she was badly beaten and left under a tree in Wellington. The Trial Chamber is therefore satisfied beyond reasonable doubt that the perpetrators caused, and intended to cause, serious physical injury and suffering. As indicated in the section on Sexual Slavery, the Trial Chamber is satisfied that this incident occurred in late January 1999.[3215]

3902. para. 1348: As the victims in each of the foregoing findings were captured civilians at the time that they were beaten or amputated, the Trial Chamber finds beyond reasonable doubt that they were not taking direct part in hostilities at the time of the attacks.

f. Waterloo – Freetown and the Western Area – Physical Violence

3903. para. 1351: The Trial Chamber finds that Tholley's evidence based on her own observations to be credible and finds beyond reasonable doubt rebels amputated the hands of an unknown number of men and women in January 1999. The Trial Chamber therefore finds beyond reasonable doubt that the perpetrators caused serious physical injury and suffering to the victims, and that the perpetrators evinced an obvious intention to cause such serious physical suffering and injury upon their victims.

3904. para. 1352: As the victims were civilians at the time that they were amputated, the Trial Chamber finds beyond reasonable doubt that they were not taking direct part in hostilities at the time of the attacks.

g. Conclusion –Freetown and the Western Area – Physical Violence

3905. para. 1353: In conclusion, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between about 21 December 1998 and about 28 February 1999, in various areas of Freetown, including the northern and eastern areas of the city, the Kissy area around the State House, Fourah Bay, Upgun, and the Kissy mental hospital, and Hastings, Wellington, Turnbo, Waterloo, and Benguema in the Western Area, members of the AFRC and RUF committed acts of cruel treatment and other inhumane acts against an unknown number of civilians, as charged in the Indictment,3218 and as shown in the evidence above.

3906. para. 1354: The Trial Chamber recalls that the Prosecution has established beyond reasonable doubt that at all times relevant to the Indictment, the RUF and/or AFRC forces directed a widespread or systematic attack against the civilian population of Sierra Leone.[3219] The Trial Chamber is satisfied that each of the acts physical violence proved by the Prosecution in respect of Freetown and the Western Area formed part of the said attack and that the perpetrators were aware of this fact. The Trial Chamber also recalls that the Prosecution has proved beyond reasonable doubt that there was an armed conflict in Sierra Leone at all times relevant to the Indictment, involving among others, members of the RUF, AFRC and CDF.[3220] The Trial Chamber is satisfied that for all of the aforementioned acts of physical violence in Freetown and the Western Area there was a nexus between the acts of physical violence and the armed conflict, that each of the victims was not taking an active part in the hostilities at the time of physical violence, and that the perpetrators knew this fact. Therefore, the Trial Chamber is satisfied that the aforementioned acts of physical violence in Freetown and the Western Area constitute other inhumane acts as a crime against humanity under Article 2 of the Statute, and cruel treatment as a war crime under Article 3 of the Statute.

3907. Regarding Taylor's individual criminal responsibility (Aiding and Abetting), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Aiding and Abetting - paras. 6904-6906 [6351], 6910-6915 [6354], 6918-6924 [6360], 6927-6937 [6367], 6940-6946 [6378], 6947-6952 [6385], 6953 [6391].

3908. Regarding Taylor's individual criminal responsibility (Planning), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Planning - paras. 6957 [6392], 6958-6968 [6393], 6969-6970 [6404], 6971 [6406].

3909. Regarding Taylor's individual criminal responsibility (Instigating), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Instigating - para. 6972 [6407].

3910. Regarding Taylor's individual criminal responsibility (Ordering), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Ordering - para. 6973 [6408].

3911. Regarding Taylor's superior responsibility, see below: Chapter 13 (Article 6.3 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.3 of the Statute - Superior Responsibility - paras. 6977 - 6986 [8613].

3. Appellate Judgment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-A, Judgment, 26 September 2013

(a) Factual Findings

3912. para. 253: The Trial Chamber found that the RUF/AFRC's operational strategy was characterised by a campaign of crimes against the Sierra Leonean population, including the crimes charged in all 11 Counts of the Indictment,578 which were inextricably linked to the strategy of the military operations themselves. This strategy entailed a campaign of terror against civilians as a primary *modus operandi*, to achieve military gains at any civilian cost and political gains in order to attract the attention of the international community and improve the RUF/AFRC's negotiating stance with the Sierra Leonean government (the "Operational Strategy").[579]

3913. para. 254: In assessing Taylor's alleged criminal liability, the Trial Chamber found that Taylor, by his acts and conduct, was "critical in enabling" the RUF/AFRC's Operational Strategy, "supported, sustained and enhanced" the functioning of the RUF/AFRC and its capacity to implement its Operational Strategy, planned an attack of terror as the *modus operandi* of the attack on Freetown and had a substantial effect on the crimes committed by the RUF/AFRC.[580] It further found that Taylor knew of the RUF/AFRC's Operational Strategy, knew that his acts and conduct assisted the commission of crimes in the implementation of that Operational Strategy and knew the essential elements of the crimes in which he was participating.[581]

3914. Regarding the RUF/AFRC's Operational Strategy, see below: Chapter 12 (Article 6.1. Liability) -Taylor - Appellate Judgment - Findings and Conclusions - The RUF/AFRC's Operational Strategy - paras. 257-302 [6411].

3915. para. 303: The Appeals Chamber has reviewed the Trial Chamber's assessment of the evidence and affirmed the findings in the Judgment.[821] It has further affirmed the Trial Chamber's finding that the RUF/AFRC leadership pursued an Operational Strategy to commit the crimes charged in Counts 1-11 of the Indictment.[822]

3916. Regarding Taylor's Acts, Conduct and Mental State, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Acts, Conduct and Mental State - paras. 303 - 343 [6457].

(b) Legal Conclusions

3917. See below: Annex B encompasses the discussion of the evaluation of evidence relating to all the crimes [Annex B].

3918. Regarding Taylor's Criminal Liability, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Criminal Liability - paras. 497-595 [6630].

B. RUF

1. Indictment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-2004-15-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

3919. Paragraph 19 through 39 are incorporated by reference.[202]

3920. These attacks [para.41: 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] were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property.[203]

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

3921. Members of the AFRC/RUF subordinate to and/or acting in concert with Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, committed crimes set forth below in paragraphs 45 through 82, and charged in counts 3 through 14, as part of a campaign to terrorize the civilian

[202] RUF Indictment, para. 40.
[203] RUF Indictment, para. 42.

population. The AFRC/RUF also committed the crimes to punish the civilian population or 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.[204]

(iii) Counts 10-11: Physical Violence

3922. 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:[205]

> i. Kono District: Between about 14 February 1998 and 30 June 1998, AFRC/RUF mutilated and 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 civilians;[206]
>
> ii. Kenema District**:** Between 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;[207]
>
> iii. Koinadugu Dustrict: Between about 14 February 1998 and 30 September 1998, members of RUF/AFRC 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;[208]
>
> iv. Bombali District: Between about 1 May 1998 and 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 (or Rosors or Rossos). The mutilations included cutting off limbs;[209]
>
> v. Freetown and Western Area: 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;[210]
>
> vi. Port Loko: About the month of February 1999, the AFRC/RUF fled from Freetown to various locations in the Port Loko District. Between February 1999

[204] RUF Indictment, para. 44.
[205] RUF Indictment, para. 61.
[206] RUF Indictment, para. 62.
[207] RUF Indictment, para. 63.
[208] RUF Indictment, para. 64.
[209] RUF Indictment, para. 65.
[210] RUF Indictment, para. 66.

and April 1999 members of the AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including, cutting off limbs;[211]

3923. 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 pursuant to 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.[212]

2. Trial Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-T, Judgement, 2 March 2009

(a) Factual Findings

(i) Kono District – Crimes

a. Background to Kono District – Kono District – Crimes

3924. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Background to Kono District – paras. 1136 – 1139 [208].

b. Tombodu – Kono District – Crimes

3925. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Tombodu – Beating and Looting of civilian petty traders – paras.1161 – 1164 [233].

3926. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Tombodu – Amputations by Staff Alhaji's men – para.1172 [244].

[211] RUF Indictment, para. 67.
[212] RUF Indictment, para. 67.

3927. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Tombodu – Floggings by Staff Alhaji and his men – para. 1173 [245].

c. Wendedu – Kono District – Crimes

3928. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Wendedu - Beating of TF1-015 – para. 1777 [249].

d. Sawao – Kono District – Crimes

3929. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Sawao – Rapes, beatings and amputations – paras. 1180 – 1185 [252].

e. Yardu – Kono District – Crimes

3930. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Yardu – Killings and amputations – paras. 1186-1187 [258].

f. Kayima – Kono District – Crimes

3931. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Kayima - Carving 'AFRC/RUF' on civilians – para. 1190 [262].

g. Penduma – Kono District – Crimes

3932. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Penduma – Rapes, killings and amputations – paras. 1191 – 1192, 1197 – 1200 [263].

h. Tomandu – Kono District – Crimes

3933. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Tomandu - Carving 'RUF' on civilian men – paras. 1209, 1210 [278].

i. RUF Camps – Kono District – Crimes

3934. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Treatment of civilians in RUF Camps – para. 1226 [295].

j. Other (related to forced mining in Kono) – Kono District – Crimes

3935. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Forced mining in Kono (Dec 1998 to Jan 2000) – paras. 1248 [317], 1253 [320].

(ii) Kenema District – Crimes

a. Background to Kenema District – Kenema District – Crimes

3936. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – paras. 1042 – 1044 [335].

b. Kenema Town – Kenema District – Crimes

3937. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - para. 1045 [338].

3938. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - The "Flag Trick" and the beating of TF1-122 – paras. 1046, 1047 [339].

3939. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - TF1-129 arrested by Issa Sesay – paras. 1048 – 1053 [341].

3940. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - 'Flogging' of Police Commissioner Konneh and Chief Police Officer Issa – paras. 1054 – 1056 [347].

3941. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - Killing of Bonnie Wailer and two others – paras. 1061- 1062 [354].

3942. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town – Arrest of suspected Kamajors in Kenema Town - paras. 1066 – 1071 [359].

3943. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town – Beating and killing of B.S Massaquoi and others – paras. 1072 – 1079 [365].

c. Tongo Field – Kenema District – Crimes

3944. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Tongo Field - Killings at Cyborg Pit – paras. 1082 - 1083 [375].

3945. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Tongo Field - Forced mining at Tongo Field and Cyborg Pit – paras. 1094 - 1095 [387].

(iii) Freetown and the Western Area – Crimes

a. Background to Freetown and the Western Area - Freetown and the Western Area – Crimes

3946. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area– para. 1510 [477].

3947. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Perpetrators of the Attack on Freetown – paras. 1511 – 1515 [478].

3948. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Targeting of the civilian population in Freetown – paras. 1516 – 1520 [483], 1522 [489].

b. Upgun and Fourah Bay - Freetown and the Western Area – Crimes

3949. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Upgun and Fourah Bay – para. 1530 [497].

c. Wellington - Freetown and the Western Area – Crimes

3950. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Wellington - Killings and Amputations at Loko Town – paras. 1536 - 1537 [503].

d. Kissy - Freetown and the Western Area – Crimes

3951. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings and Beatings at a clinic – paras. 1542 – 1545 [509].

3952. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings and Amputations of TF1-101 and others - paras. 1546 – 1549 [513].

3953. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings, Amputations and Looting of TF1-022 and others – paras. 1553- 1554 [520].

3954. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Amputations and Looting of TF1-097 and others – paras. 1555 - 1556 [523].

e. Allan Town, Calaba Town and Benguema - Freetown and the Western Area – Crimes

3955. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes - Allan Town, Calaba Town and Benguema - 'Forced Marriage' of TF1-023 – paras. 1558 - 1559 [525].

(iv) Koindugu District – Crimes

3956. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 – 1505 [533].

(v) Bombali District – Crimes

3957. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 – 1509 [543].

(vi) Port Loko District – Crimes

3958. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras. 1609 – 1613 [547].

(b) Legal Conclusions

(i) Applicable law - War crimes / Violations of Common Article 3

3959. See above: Chapter 1 – RUF – Trial Judgment – Legal conclusions – Applicable law - War crimes / Violations of Common Article 3 – paras. 91 – 105 [552].

(ii) War crimes / Violations of Common Article 3 – Findings on general requirements

3960. See above: Chapter 1 – RUF – Trial Judgment – Legal conclusions – War crimes / Violations of Common Article 3 – Findings on general requirements – paras. 964 – 988 [567].

(iii) Applicable law – Violence to life, helath and physical or mental well-being of persons, in particular mutilation

3961. para. 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 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]

3962. para. 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.

3963. para. 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.

3964. para. 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 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]

3965. para. 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]

(iv) Pleading

a. Criminal acts and events - Pleading

3966. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Criminal acts and events – paras. 411-413, 415, 417 – 419 [604].

b. Locations – Pleading

3967. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Locations – paras. 420 – 422 [613].

c. Timeframes – Pleading

3968. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Timeframes – paras. 423 - 432 [616].

d. Conduct charged under Common Article 3 and Additional Protocol II – Pleading

3969. See above: Chapter 1 – RUF – Trial Judgment – Legal conclusions – Pleading - Conduct charged under Common Article 3 and Additional Protocol II – paras. 436 – 447 [626].

(v) Kono District – Physical violence

3970. See above: Chapter 2 – RUF – Trial Judgment – Legal Conclusions –Kono District – Unlawful killings - paras. 1266 - 1267 [1630].

3971. para. 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]

a. Tombodu – Kono District – Physical violence

i. Amputations – Tombodu – Kono District – Physical violence

3972. para. 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]

ii. Beating of TF1-197 near Tombodu – Tombodu – Kono District – Physical violence

3973. para. 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 this beating to constitute an act of mutilation and an other inhumane act, as charged in Counts 10 and 11.

iii. Flogging of TF1-197 – Tombodu – Kono District – Physical violence

3974. para. 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]

b. Wendedu – Kono District – Physical violence

3975. para. 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]

c. Kayima – Kono District – Physical violence

3976. para. 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]

d. Sawao – Kono District – Physical violence

i. Amputations – Sawao – Kono District – Physical violence

3977. para. 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]

ii. Beatings – Sawao – Kono District – Physical violence

3978. para. 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 actions resulted in serious injury to their bodies and to their physical health, and constitutes inhumane acts as charged in Count 11.

e. Penduma – Kono District – Physical violence

3979. para. 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]

f. Yardu – Kono District – Physical violence

3980. para. 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]

g. Tomandu – Kono District – Physical violence

3981. para. 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.

(vi) Kenema District – Physical violence

3982. para. 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

3983. para. 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.

3984. para. 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]

a. Beating of TF1-122 – Kenema District – Physical violence

3985. para. 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.

b. Initial arrest of TF1-129 – Kenema District – Physical violence

3986. para. 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.

3987. para. 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.

c. Beating of rebel named Francis – Kenema District – Physical violence

3988. para. 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.

d. Beatings of suspected collaborators: January 1998 - Kenema District – Physical violence

3989. para. 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.

e. Beatings of suspected collaborators: February 1998 - Kenema District – Physical violence

3990. para. 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.

f. "Flogging" of the Police Commissioner and CPO - Kenema District – Physical violence

3991. para. 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.

3992. para. 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.

(vii) Freetown and the Western Area – Physical violence

3993. para. 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).

3994. para. 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.

3995. para. 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 Town. The mutilation included cutting off limbs."[3025]

3996. para. 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]

3997. para. 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.

3998. para.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.

(viii) Koindugu District – Physical violence

3999. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 – 1505 [533].

(ix) Bombali District – Physical violence

4000. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 – 1509 [543].

(x) Port Loko District – Physical violence

4001. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras. 1609 – 1613 [547].

3. Appellate Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-A, Judgment, 26 October 2009

(a) Factual Findings

(i) Kono District

4002. See above: Chapter 1 – RUF – Appellate Judgment – Factual Findings – Kono District – para. 428 [712].

(b) Legal Conclusions

(i) Pleading

4003. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Pleading – para. 492 [1693].

4004. para. 898: The Trial Chamber found that Kallon incurred JCE liability under Counts 10 to 11, *inter alia*, for the physical mistreatment of TF1-122 and the infliction of physical violence on TF1-129 in Kenema Town,[2348] and the amputation of the hands of three civilians[2349] and the flogging of TF1-197 and his brother in Tombodu in Kono District.[2350]

4005. para. 899: Kallon submits that the Trial Chamber erred in law and in fact by convicting him for acts of physical violence at locations in Kono District not pleaded in the Indictment, and that this defect was not cured.[2351]

4006. para. 901: With respect to physical violence in Kono District, the Indictment particularises the charge under Counts 10 and 11 in relation to Kono District as follows:

> 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.[2356]

4007. para.902: The relevant question on appeal is whether the pleading of locations of acts of physical violence in Kono District as "in various locations in the District, including Tombodu, Kaima (or Kayima) and Wondedu" without naming Penduma and Yardu, is sufficiently specific to allow Kallon to prepare his defence for alleged JCE liability for acts of physical violence in Penduma and Yardu.

4008. para.903: The Appeals Chamber recalls that the specificity required for the pleading of locations will depend on factors including those previously listed.[2357] Kallon was convicted for acts of physical violence pursuant to his participation in the JCE. Kallon makes no submission that he directly participated in any of these crimes, and in fact he contends he did not know of them. His liability is pursuant to his participation in the JCE and it is derived from his conduct in relation to other events and crimes which were committed at locations that were named in the Indictment.[2358]

4009. para.904: In regard to his notice of the alleged criminal acts in Penduma and Yardu, the Appeals Chamber recalls that the Trial Chamber found that nonexhaustive pleading of locations may be adequate in light of the "sheer scale" of the alleged crimes.[2359] The Appeals Chamber has not found error in the Trial Chamber's general approach to applying the exception,[2360] and Kallon has not offered any argument why this exception to the requirements for pleading specificity should not apply to the acts of physical violence in Penduma and Yardu, in view of the fact that his liability is pursuant to his participation in the JCE. Accordingly, this submission is dismissed.

(ii) Pleading – Dissents

a. Justice Fisher:

4010. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Pleading-Dissents – Justice Fisher – para. 20 (p.517), para. 22 (p.518), para. 23 (p.518), para. 24 (p.518-519) [1704].

4011. para. 68 (p.530): In Ground 19, Kallon contests the pleading of Penduma and Yardu for crimes committed against four individuals for which he was convicted for mutilations under Count 10 and physical violence under Count 11. Again, the Majority considers that because Kallon's conduct that gave rise to his JCE liability for the crimes in Penduma and Yardu did not occur in those towns, he did not need the locations to be pleaded with greater specificity in order to prepare his defence.[99] For the reasons above, I disagree with the degree of reliance on the location of Kallon's culpable conduct.

4012. para. 69 (p.530-531): In addition, I dissent from the Majority's holding because I do not consider that the Appellants could have prepared their defence against the allegations of mutilations and physical violence of the four individuals in Penduma[100] and in Yardu[101] unless the names of the villages where these crimes occurred were specified. The very fact that the Appellants were charged with mutilations occurring on a widespread scale over many Districts makes it even more essential that, when the Prosecution seeks convictions for distinct acts of criminal conduct, the accused are provided sufficient information to investigate the specific crimes. Pleading an entire District as the location of particular crimes known by the Prosecutor to have occurred in a specific town or village, fails to provide the specificity as to location that is required for the preparation of the defence. Unlike crimes that are not particularly connected to a precise location because of their continuous and ambulant nature (*e.g.*, load-carrying and food-gathering as enslavement and force marriage in Kailahun District), or repetitive and pervasive character (*e.g.*, enslavement, sexual slavery and forced marriage in Kailahun District[102]), these crimes were temporally and geographically discrete events that the Prosecution established, through witness testimony, to have taken place in named locations.[103] It was, in my view, necessary to plead these locations.

4013. para. 70 (p.531): The Majority concludes, I believe wrongly, that the Trial Chamber was correct when it declined to review on appeal the adequacy of the pleading of locations and relied instead on its pre-trial decisions on the form of the Indictment. That Trial Court decision, which the Majority upholds, relied on the mode of liability and in addition the "sheer scale" exception

without inquiring further as to the necessity for, or the practicability of, alleging particular locations. It concluded that pleading entire districts or using phrases "such as" and "including but not limited to" was "acceptable if the reference is … to locations but not otherwise."[104] The Trial Chamber fails to reason this conclusion or explain why location is as a general matter less material to notice necessary to understand the charges and prepare a defence than other facts for which it did not allow such vague pleading.

4014. para. 71 (p.531-532): In my view, the Majority wrongly upholds the Trial Chamber in its application of the "sheer scale" exception to the pleading of locations because the exception does not apply when it is practicable for the Prosecution to adduce witness evidence of the material fact.[105] Contrary to the approach adopted by the Trial Chamber in its pre-trial decision on the form of the Indictment, it is not enough simply to find the cataclysmic dimensions of the alleged criminality.[106] Rather, the "sheer scale" exception is grounded in the impracticability of pleading in greater detail *as a consequence* of the scale of the alleged crimes,[107] and the Trial Chamber therefore must assess not only the general dimensions of the criminality, but, given the crimes as pleaded in the Indictment, whether the scale of the crimes charged made it "impracticable" for the Prosecution to plead locations with greater specificity.[108] As held by the ICTY and ICTR Appeals Chambers, the Prosecution is expected to know its case before proceeding to trial and may not rely on the weaknesses of its own investigation in order to mould the case against the accused in the course of the trial depending on how the evidence unfolds.[109]

4015. para. 72 (p.532): The Prosecution did know before proceeding to trial about the acts of mutilation and physical violence against the four persons in Penduma and Yardu. The Prosecution's Supplemental Pre-Trial Brief shows that it would adduce evidence of the exact crimes under Counts 10 and 11 that were found to have occurred at those villages. In relation to Penduma, the Prosecution knew it had a witness who would, and did, testify with specificity about the specific events of the crime.[110] In relation to Yardu, the Prosecution knew that the witness it would later rely upon at trial expressly named Yardu during the investigation as the location of the exact crimes which were found by the Trial Chamber.[111]

4016. para. 73 (p.532-533): Likewise, it was practicable for the Prosecution to include in the Indictment that the burnings that were charged as Acts of Terrorism and Collective Punishment in Kono occurred in Koidu Town. The Prosecution Supplemental Pre-Trial Brief shows that a witness relied upon by the Trial Chamber would give evidence in relation to Koidu Town, that the "rebels burnt the town."[112]

4017. para. 74 (p.533): This information might have been considered (with additional disclosures) to cure the defective Indictment, but, as the Appeals Chamber noted, "the Prosecution bears the burden of showing on appeal that the defect in the Indictment did not prejudice Kallon's ability to prepare his defence. The Prosecution has not offered any submissions that Kallon had notice of the charge as a result of timely, clear and consistent information detailing the factual underpinnings of the charge."[113]

4018. para. 75 (p.533): Since the Prosecution knew from the outset the evidence with which it intended to establish these discrete and site-specific crimes, the "sheer scale" exception did not apply. The Trial Chamber's application of the "sheer scale" exception to relieve the Prosecution of its duty to name these locations in the Indictment is, in my opinion, an error, resulting from the Trial Chamber's failure to first inquire as to whether it was practicable for the Prosecution to provide more details in the Indictment.

4019. para. 76 (p.533): The error is compounded by the Trial Chamber's attenuated analysis of whether the pleading of locations was defective. Rather than properly assessing the degree of specificity required for the pleading of locations, the Trial Chamber wrongly considered the Appeals Chamber to have "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."[114] Relying in part on this incorrect reading of the Appeals Chamber's holding in *Brima et al.*, the Trial Chamber failed to consider whether the Appellants lacked sufficient notice of crimes charged at locations that were not named in the Indictment.[115]

4020. para. 77 (p.533-534): Contrary to the interpretation ascribed by the Trial Chamber, the Appeals Chamber actually held that the *Brima et al.* Trial Chamber properly exercised its discretion to (i) reverse a previous decision that the pleading of locations was sufficient, (ii) hold that the pleading of locations was defective, and (iii) refuse to enter convictions for crimes at unnamed locations. The Appeals Chamber stated that it falls within the discretion of a Trial Chamber to reconsider such a decision if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice.[116] The Appeals Chamber further held that:

> [T]he Trial Chamber's limited treatment of the evidence of crimes committed in such locations was a proper exercise of its discretion in the interest of justice, taking into account that it is the Prosecution's obligation to plead clearly material facts it intends to prove, so as to afford the Appellants a fair trial.[117]

4021. para. 78 (p.534): By so holding, the Appeals Chamber agreed with the *Brima et al.* Trial Chamber that the pleading of locations non-exhaustively through the use of phrases such as "in

locations including," "in various locations in [a specified] District, including," "in several locations including" is insufficiently specific and can render an indictment defective in regard to crimes charged at unnamed locations.

4022. para. 79 (p.534): I recognise that in cases of crimes committed on a massive scale there are inherent difficulties in pleading the material facts, such as the identity of the victims, the time and place of the events, and the means by which the offence was committed. Nonetheless, since the *Brima et al.* Appeal Judgment, the Appeals Chamber has held that Trial Chambers must apply the "sheer scale" exception in a manner that safeguards the fair trial rights of the accused. To do so, I would submit, the Trial Chamber must determine the degree of specificity for pleading locations particular to the charges in the Indictment and whether it is practicable for the Prosecution to plead location with sufficient specificity to give notice of the crimes alleged. The factors provided by the Appeals Chamber, and discussed above, guide an assessment of the required degree of specificity for pleading locations. It is my view that such inquiry must focus on the relevance of location both to the accused's ability to defend against the crime itself and against his liability for the crime.

4023. para. 80 (p.534-535): As held by the ICTY and ICTR Appeals Chambers, where the Trial Chamber finds that the Prosecution was capable of pleading a material fact, but it did not, then the "sheer scale" exception does not apply.[118] If the Trial Chamber concludes that the Indictment is defective, such defects will render the trial unfair with respect to the affected charge if the Prosecution has not cured the resulting prejudice by providing timely, clear and consistent notice of the material facts of the charge.[119]

4024. para. 81 (p.535): For the reasons above, I find the locations of the crimes in Penduma and Yardu, and the burnings in Koidu Town should have been pleaded in the Indictment by reference to the village and town names. The sheer scale exception does not excuse the Prosecution's failure to plead the names of the locations when it knew from the outset the evidence with which it intended to establish that these discrete crimes occurred at specified locations. The resulting prejudice from these defects may have been cured by subsequent Prosecution disclosures, but, if so, the Prosecution made no attempt to demonstrate this.

4025. para. 82 (p.535): I therefore find the Indictment defective with respect to the pleading of Koidu Town under Counts 1, 2 and 14 and Penduma and Yardu under Counts 10 and 11. I further find that although the pleading of Penduma and Yardu under Counts 10 and 11 was only challenged on appeal by Kallon, the lack of notice with respect to these named locations affected the fair trial rights of Sesay as well since he was also convicted for these crimes.[120] I would, therefore, allow Sesay's Ground 8, in part, and Kallon's Grounds 19 and 22 and reverse the

convictions for Sesay and Kallon under Counts 1 and 2 for acts of burning in Koidu Town and Counts 10 and 11 for the crimes at Penduma and Yardu in Kono District. As I would not have found JCE liability for Gbao, I need not address his liability for crimes at these locations.

b. Justice Winter:

4026. para. 5 (p.482-483): In addition to this clarification, I also wish to express my complete agreement with the reasoning and conclusions expressed by Hon. Justice Fisher in her Partially Dissenting and Concurring Opinion insofar as it pertains to Gbao's Sub-Grounds 8(j) and 8(k), Gbao's Sub-Ground 8(i), Sesay's Grounds 33 and 46, and her opinion regarding the failure to plead locations with sufficient specificity. In particular, I join her dissent from the Majority's decision to confirm Gbao's conviction under JCE liability, given the Trial Chamber's findings that he did not share the Common Criminal Purpose with the other participants in the case before us.

(iii) Crimes charged as criminal means of furthering Common Criminal Purpose - Violence to life, health and physical or mental well-being of persons, in particular, cruel treatment

4027. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 333, -348 [751].

4028. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 377 - 378 [754].

(iv) Crimes charged and JCE *mens rea* (short review) - Violence to life, health and physical or mental well-being of persons, in particular, cruel treatment

4029. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged and JCE *mens rea* (short review) – paras. 467 - 468, 482, 492 - 493 [756] and see, also, Justice Fisher's and Justice Winter's Dissenting Opinions in that regard.

(v) Kono District - Violence to life, health and physical or mental well-being of persons, in particular, cruel treatment

4030. para. 443: Sesay and Gbao submit that the Trial Chamber provided insufficient reasoning to impute the following crimes of physical violence in Kono District to the JCE members:[1118] (i) the beating of TF1-197 on one occasion between February and March 1998 near Tombodu (including the pillaging of property from him);[1119] (ii) the act of knocking TF1-015's teeth out in the Wendedu camp;[1120] (iii) the amputation of the hands of three civilians by rebels led by Staff

Alhaji in Tombodu in April 1998;[1121] (iv) the amputations of the hands of at least three men in Penduma in April 1998;[1122] (v) the amputation of the hands of five civilian men in Sawao between February and April 1998;[1123] (vi) the flogging of TF1-197 and his brother by rebels under the command of Staff Alhaji;[1124] (vii) the beating of an unknown number of civilian men with sticks and the butts of guns in Sawao between February and April 1998;[1125] and (viii) the carving of "AFRC" and/or "RUF" on the bodies of 18 civilians in Kayima between February and April 1998.[1126] Sesay also submits that the Trial Chamber erred in fact in imputing these crimes to the JCE members. The Appeals Chamber will consider each crime incident in turn and, in so doing, address the alleged errors of fact and the alleged failure to provide a reasoned opinion together.

4031. para. 444: With regard to the beating of TF1-197 between February and March 1998, Sesay submits that TF1-197's testimony that the witness was told that the leader of the rebels who beat him and pillaged[1127] items from him, named Musa, reported to Staff Alhaji is insufficient to impute this crime to the JCE members.[1128] However, Sesay does not dispute TF1-197's testimony as such, nor does he account for the finding that Staff Alhaji was "directly subordinated" to members of the JCE.[1129] For his part, Gbao refers to the finding that "[o]ne of the rebels referred to his boss as Commando," but fails to explain how this is relevant to the evidence that the rebels' leader, whether he was called "Musa" or "Commando," reported to Staff Alhaji.[1130] In addition, the Appeals Chamber notes that beatings such as the one in question were "regularly" committed by AFRC/RUF rebels in the area between February and March 1998 as part of their looting civilian property,[1131] and that "Operation Pay Yourself," ordered by Koroma in February 1998,[1132] was endorsed by Superman who was the overall Commander for Kono District.[1133] For these reasons, Sesay's submission that the Trial Chamber erred in fact in imputing this crime, as well as his and Gbao's submissions that the Trial Chamber provided insufficient reasons for so doing, are rejected.

4032. para. 445: As regards the knocking out of TF1-015's teeth, Sesay submits that the Trial Chamber found it to be "a capricious punishment instilled on [TF1-015] by Captain Banya."[1134] However, Sesay does not account for the Trial Chamber's finding that this beating took place at the Wendedu camp, to which TF1-015 had been brought by Rocky.[1135] Wendedu camp was one of many camps "established in Kono District by the RUF" in which civilians were rounded up and forced to reside.[1136] Kallon in particular was involved in organising the Wendedu camp.[1137] Given the Trial Chamber's findings on the general coercive environment in these camps, which included beatings,[1138] the Appeals Chamber finds that it was open to a reasonable trier of fact to impute Captain Banya's mistreatment of TF1-015 to the members of the JCE. Sesay's submission

that the Trial Chamber erred in fact in imputing this crime, as well as his and Gbao's submissions that the Trial Chamber provided insufficient reasons for so doing, are dismissed.

4033. para. 446: Sesay argues that there is "no evidence" to support that the rebels, led by Staff Alhaji, who (i) amputated the hands of three civilians in Tombodu in April 1998; and (ii) flogged TF1-197 and his brother were used by members of the JCE.[1139] However, Sesay fails to demonstrate an error as he does not challenge the Trial Chamber's explicit finding that Staff Alhaji was "directly subordinated to and used by" JCE members to commit crimes in furtherance of the Common Criminal Purpose.[1140] That finding also sufficiently explains how the Trial Chamber imputed these crimes to the JCE members. Sesay's and Gbao's submissions therefore fail.

4034. para. 447: Sesay submits that there is "no evidence" that the perpetrators of the following crimes were used by members of the JCE: (i) the amputation of the hands of five civilian men in Sawao between February and April 1998; (ii) the beating of an unknown number of civilian men with sticks and the butts of guns in Sawao between February and April 1998; and (iii) the carving of "AFRC" and/or "RUF" on the bodies of 18 civilians in Kayima between February and April 1998.[1141] Sesay and Gbao also argue that the Trial Chamber gave insufficient reasons for imputing the amputations of the hands of at least three men in Penduma in April 1998 to the JCE members.

4035. para.448: However, neither Sesay nor Gbao addresses the Trial Chamber's finding, made in respect of these very crimes, that "[t]he 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."[1142] With respect to the mistreatment in Sawao, Sesay also fails to acknowledge the finding that, shortly before being amputated and beaten, the victims were brought before a rebel leader in Sawao who stated: "My instructions are if you capture [civilians], kill them and leave them there."[1143]

4036. para.449: These findings are examples of the "widespread commission" of these types of crimes, which demonstrated that the AFRC/RUF leadership contemplated the commission of crimes as a means to control the territory of Sierra Leone.[1144] Similar to the crimes of sexual violence, the Trial Chamber thus found that the JCE members availed themselves of the perpetrators to commit these crimes in furtherance of the Common Criminal Purpose. Indeed, the amputations of the three men in Penduma in April 1998 were committed by rebels led by Staff Alhaji, who was explicitly found to have been used by the JCE members in furtherance of the Common Criminal Purpose.[1145] Staff Alhaji's address to one of the victims of this incident is telling: "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."[1146] Sesay's and Gbao's submissions as to these crimes are rejected.

4037. para.450: For these reasons, the Appeals Chamber dismisses the Appellants' submissions that the Trial Chamber erred in failing to provide sufficient reasons for its conclusion that the physical violence in Kono District could be imputed to the members of the JCE. The Appeals Chamber also dismisses the Appellants' submissions that the Trial Chamber erred in fact in so concluding.

4038. Regarding Sesay's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Sesay – paras. 624, 627 – 634 [7658].

4039. Regarding Kallon's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Kallon – paras. 806, 810 – 815 [7667].

4040. See above: Chapter 7 – RUF – Appellate Judgment – Legal conclusions – Pleading – paras. 898 - 899, 901 – 904 [4004]..

4041. See above: Chapter 7 – RUF – Appellate Judgment – Legal Conclusions – Pleading-Dissents – Justice Fisher – paras. 68 (p.530), 69 (p.530-531), 70 (p.531), 71 (p.531-532), 72 (p.532), 73 (p.532-533), 74 (p.533), 75 (p.533), 76 (p.533), 77 (p.533-534), 78 (p.534), 79 (p.534), 80 (p.534-535), 81 (p.535), 82 (p.535) [4011].

4042. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Gbao – paras. 946-948, 951– 955 [7615].

4043. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

4044. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and

Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras. 4 – 28 [7454].

4045. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

(vi) Kailahun District - Violence to life, health and physical or mental well-being of persons, in particular, cruel treatment

4046. Regarding Sesay's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Sesay – para. 635 [7694].

(vii) Kenema District - Violence to life, health and physical or mental well-being of persons, in particular, cruel treatment

4047. para. 370: The Trial Chamber found that acts of unlawful killings, physical violence and enslavement were committed in Kenema District, some of which amounted to terror and collective punishment.[901] It found that these crimes fell within time period of the Junta and that the common plan and plurality of person remained the same.[902]

4048. para. 419: Both Sesay and Gbao submit that the Trial Chamber made insufficient findings on the links between the principal perpetrators of certain crimes in Kenema and the JCE members.[1038] In order to assess their submissions on the proper factual basis, it is necessary to first address another argument by Sesay relating to the Trial Chamber's crime-base findings regarding Kenema

4049. para. 420: Sesay argues that the finding in paragraph 1100 of the Trial Judgment created a presumption that the crimes in Kenema were committed for personal reasons rather than in pursuance of a common criminal purpose.[1039] The relevant part of paragraph 1100 reads:

> 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.

This finding is silent on the fighters' own reasons for committing crimes in Kenema Town. It only says that the permissive environment created by the AFRC and RUF there permitted them to do so with impunity. The presumption that Sesay reads into this finding is thus his own, and not one the Trial Chamber made. This argument fails.

4050. para. 421: The Appeals Chamber now turns to the alleged failures to make sufficient findings. Sesay and Gbao first submit that no link was shown between the JCE members and the persons who carried out the actus reus of the following crimes in Kenema Town: (i) the beating of TF1-122; (ii) the killing of Mr. Dowi; and (iii) the killing of an alleged Kamajor boss. TF1-122 was beaten by AFRC/RUF rebels at the Junta Secretariat in Kenema Town for having requested them to cease removing property from a woman.[1040] This incident was part of the so-called "flag trick:" It was common practice for those near the Junta Secretariat in Kenema Town to stand still during the raising and lowering of the Sierra Leonean flag; AFRC/RUF fighters would raise and lower the flag at irregular times and harass individuals who did not stand still and seise whatever property the latter were carrying.[1041] As to Mr. Dowi, he was killed by AFRC/RUF rebels when trying to prevent them from looting his freezer at his home in Kenema Town.[1042] Both crimes were found to have taken place in the context of the permissive environment created by the control exercised by the AFRC and RUF over Kenema Town wherein their fighters could commit crimes with impunity.[1043]

4051. para. 422: The fact, as noted, that this finding is silent on the perpetrators' own reasons for beating TF1-122 and killing Mr. Dowi is not determinative for whether the Trial Chamber found that they were used by the JCE members to commit these crimes in furtherance of the Common Criminal Purpose.Of greater relevance for that issue is the finding that the "control exercised" by the AFRC/RUF over Kenema Town "created" an environment which permitted the beating and the killing.[1045] That control, the Trial Chamber found, was exercised by the Junta: "Within one week of the coup of 25 May 1997, RUF rebels and the military Junta were in full control of [Kenema] town."[1046] Indeed, the beating of TF1-122 was found to have taken place while he was in custody at the Junta's own Secretariat building in Kenema Town.[1047] At the head of the Junta were most of the JCE members, who shared the intent to employ beatings and killings, such as those now at issue, as a means to control the territory of Sierra Leone, including Kenema Town.[1048] The Appeals Chamber is satisfied that these findings suffice to show how the perpetrators of the crimes in question were used by JCE members acting in furtherance of the Common Criminal Purpose.[1049] Sesay's and Gbao's submissions to the contrary fail.

4052. Regarding Sesay's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District – JCE – Participation in and shared intent – Sesay – paras. 617, 619 – 623 [7580].

4053. Regarding Kallon's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District – JCE – Participation in and shared intent – Kallon – paras. 798, 801 – 804, 900, 905– 907 [7598].

4054. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District – JCE – Participation in and shared intent – Gbao – paras. 946-948, 951– 955 [7615].

4055. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – paras.480 – 493 [7440].

4056. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras. 4 – 28 [7454].

4057. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

C. AFRC

1. Indictment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

4058. Paragraphs 21 through 36 are incorporated by reference.[213]

4059. 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 ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, 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. [214]

4060. These attacks were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property. [215]

4061. 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. [216]

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

4062. Members of the AFRC/RUF subordinate to and/or acting in concert with ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, committed the crimes set forth below in paragraphs 42 through 79 and charged in Counts 3 through 14, as part of a

[213] AFRC Indictment, para. 37.
[214] AFRC Indictment, para. 38.
[215] AFRC Indictment, para. 39.

campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF. [217]

(iii) Counts 10-11: Physical Violence

4063. 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: [218]

> i. Kono District: 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; [219]
>
> ii. Kenema District - 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; [220]
>
> iii. Koinadugu District - 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; [221]
>
> iv. Bombali District - 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 (or Rossos or Rosors). The mutilations included cutting off limbs; [222]
>
> v. Freetown and the Western Area - 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; [223]

[216] AFRC Indictment, para. 40.
[217] AFRC Indictment, para. 50.
[218] AFRC Indictment, para. 58.
[219] AFRC Indictment, para. 59.
[220] AFRC Indictment, para. 60.
[221] AFRC Indictment, para. 61.
[222] AFRC Indictment, para. 62.
[223] AFRC Indictment, para. 63.

vi. Port Loko: 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; [224]

4064. By their acts or omissions in relation to these events, ALEX T AMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, 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. [225]

2. Trial Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-T, Judgement, 20 June 2007

(a) Factual Findings

(i) Kenema District - Crimes

4065. para. 1192: The Indictment alleges that "[b]etween 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".[2152]

4066. para. 1193: In reaching the following findings of fact, the Trial Chamber relied on the testimony of Prosecution witness TFl-122, and exhibit P-24.

4067. para. 1194: At the time of the AFRC coup on 25 May 1997, CDF controlled Kenema District.[2153] Following the coup, AFRC/RUF troops under the command of Sam Bockarie took over control of Kenema District.[2154]

[224] AFRC Indictment, para. 64.
[225] AFRC Indictment, para. 65.

a. Kenema Town – Kenema District – Crimes

4068. para. 1195: AFRC/RUF troops were stationed in Kenema Town between May 1997 and February 1998.[2155] Witness TFl-122 testified that AFRC/RUF soldiers used to "set a trap" on civilians with the national flag. The witness explained that the flag of Sierra Leone used to be raised every morning at 6am outside the AFRC/RUF Secretariat building at 14 Hangh Road. The law stated that civilians had to stand still while the flag was being raised. However, sometimes the AFRC/RUF would raise the flag at different times of the morning. The AFRC/RUF soldiers would then arrest civilians who were unaware of the changed time and were walking in the street. They took these individuals to their Secretariat and took away any possessions that they had on them[2156] If a person resisted, she or he would be beaten and confined. The witness testified that this happened "continuously".[2157] On one such occasion the witness tried to prevent the soldiers from arresting a woman but the soldiers then began beating him with their belts.[2158]

4069. para. 1196: In early February 1998, Sam Bockarie arrested the chairman of Kenema Town Council, B.S. Massaquoi; Brima Kpaka, a prominent business man; Andrew Quee, a civil servant and about four others on the grounds that they were "Kamajor supporters"[2159] These individuals were initially detained at the AFRC Secretariat in Kenema Town.[2160] In the presence of both Sam Bockarie and the man in charge of the local AFRC Secretariat, the detainees were made to lie on the floor with tied hands to the back. They were assaulted, as a result of which B.S. Massaquoi had a swollen face, Brima Kpaka had an injury above his eye and the others had bruises.[2161] They were kept at the AFRC Secretariat building for three days.[2162] After handing them over to the police,[2163] AFRC/RUF troops rearrested them saying that they were to be taken to SOS East Brigade Headquarters.[2164] The AFRC/RUF troops beat and kicked B.S. Massaquoi.[2165] Subsequently, B.S. Massaquoi, Andrew Quee and the four other individuals were all killed.[2166]

(ii) Kono District – Crimes

4070. para. 1198: The Indictment alleges that "[b]etween 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".[2167]

4071. para. 1199: No evidence of physical violence was led in respect of Wondedu.

4072. para. 1200: In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on Prosecution Witnesses TF1-033, TF1-072, TF1-074, TF1-076, George

Johnson, TF1-198, TF1-216, TFl-272 and TF1-334, Defence Witness DAB-098 and Exhibits P-24, P-26, P-27, P-51 and P-56.

a. Tombodu – Kono District – Crimes

4073. para. 1201: Following an order of Johnny Paul Koroma in March 1998 children were abducted and trained to perform amputations on civilians in areas within the Kono District, including Tombodu.[2168] Documentary evidence corroborates the occurrence of physical violence, including mutilations, in Tombodu.[2169]

4074. para. 1202: In about March 1998, Witness TF1-on and thirteen other civilians were captured by "soldiers" and brought before their commander 'Savage' in Tombodu. 'Savage' used a cutlass to slap Witness TF1-072 on the back, accusing him of killing soldiers.[2170] He then cut the Witness severely with the cutlass on his upper right calf and on his left calf. Witness TF1-on was also stabbed by one of Savage's subordinates, 'Small Mosquito', in the left rib area following an order by 'Savage'. The Trial Chamber was able to observe the scars from these incidents.[2171]

4075. para. 1203: 'Savage' then announced that he would cut off the hands of the fourteen captives, including witness TF1-072.[2172] The men were forced to lie on ground and were tied together. 'Small Mosquito' urinated on them. He then covered them with a mattress that he set on fire with the men still lying underneath. Witness TF1-0n was burnt on his shoulder before he managed to free himself. On account of his attempted escape 'Savage' flogged the Witness on his face so severely that his vision is permanently impaired.[2173] 'Savage' then ordered the witness to place his hand on a nearby tree stump and attempted to amputate his right hand. The Witness was so terrified that he defecated. His right hand was not entirely amputated, but permanently disfigured. The Trial Chamber was able to observe that the Witness' fingers are mangled. He stated that he is unable to read or write as result of the assault.[2174] The witness was not shaken on cross-examination with regard to the identity of the commander 'Savage'.[2175]

4076. para. 1204: In about May 1998, Witness TF1-334 watched 'Savage' personally amputate the hands of about fifteen civilians. The civilians were celebrating what they believed was an ECOMOG takeover of Tombodu when in fact it was 'Savage' and his men who were wearing Nigerian ECOMOG uniforms. 'Savage' retaliated against the civilians for celebrating what they believed was his defeat.[2176] The witness testified that 'Savage' told the civilians that "they should go and tell ECOMOG that he, Savage, was in Tombodu and this was to be a warning to the other civilians".[2177]

4077. para. 1205: Witnesses TF1-033 and DAB-098 also testified that civilians were amputated by troops under the command of 'Savage' in Tombodu.[2178]

4078. para. 1206: In April 1998, witness TF1-216 was abducted and taken to Tombodu, along with a number of other civilians. At Tombodu, a commander called 'Staff Alhaji' ordered that the witness' hands and the hands of five other civilians be amputated. Following the amputation they were told to go and see President Kabbah as "he [...] got one container [of] hands for US".[2179]

b. Kaima/Kayima – Kono District – Crimes

4079. para. 1207: At an unspecified time in 1998, Witness TF1-074 was abducted by "rebels", along with eighteen other civilians, and taken to Kayima where the rebel boss Komba Gbundema was headquartered.[2180] In Kayima, AFRC/RUF soldiers carved the letters "AFRC" or "RUF" with a surgical blade on the chests of each of the civilians. Witness TF1-074 was marked by a soldier named Bangalie and was carved with both "AFRC" and "RUF" letters[2181] The witness described the people who captured him as belonging to the AFRC/RUF.[2182] As the witness testified that these events happened approximately two months after he had seen Johnny Paul Koroma passing through Kono District from Koidu Town, the Trial Chamber is able to conclude that the mutilation described took place around May 1998.[2183]

4080. para. 1208: The Brima Defence submits that the credibility of witness TF1-074 is undermined by inconsistencies between his testimony and his pre-trial statement as to whether particular individuals mentioned in his testimony were AFRC or RUF troops. The Brima Defence thus submits that RUF troops were solely responsible for the events described.[2184] While the witness may have been mistaken regarding the affiliation of particular troops, the Trial Chamber notes that witness TF1-074 testified consistently that both the AFRC and the RUF were present in Kayima. The witness testified that he was able to distinguish between the two groups since the AFRC soldiers wore combat while the RUF were armed but wearing civilian clothing[2185] The Trial Chamber also accepts the detailed and credible evidence of witness TF1-074 that it was an AFRC soldier Bangalie who was responsible for marking his body.

4081. para. 1209: In March 1998, when witness DSK-I03 arrived in Koidu Town, a number of amputees were being treated by ECOMOG. The amputees said their hands had been amputated by 'Savage's group.[2186]

4082. para. 1210: In addition, documentary evidence corroborates the evidence given by the witnesses of physical violence by members of the AFRC/RUF in Kono District, including Kayima.[2187]

4083. para. 1211: From 6 April 1998 onward, the surgical teams of MSF at Connaught Hospital in Freetown started recording an increase in the number of patients suffering from severe mutilations. Between 6 April and 4 May 1998 Connaught Hospital received 115 patients,[2188] most of whom were severely mutilated. Most of them came from Kono.[2189] Some had received some basic medical treatment from ECOMOG just outside Koidu.[2190] They were brought to the hospital in ECOMOG trucks.[2191]

4084. para. 1212: The majority of patients suffered deep lacerations, broken limbs, field amputations and amputations. A few suffered gunshot wounds and the lips, ears and fingers of some had been cut.[2192] Of the 115 patients admitted to Connaught Hospital between 6 April and 4 May 1998 four men had had both arms amputated; 14 men had had one arm amputated; five men, in addition to having their arms amputated had a part of, one or both ears cut off; 23 patients had deep lacerations on lower arms, severed tendons, broken ulna and radius, as a result of cutlass attacks; seven patients had either a complete hand or several fingers missing as a result of cutlass attacks.[2193] Between 6 April 1998 and 27 July 1998, an MSF surgical team treated almost 300 patients with amputations, severe mutilations or gunshot wounds at the hospital. The majority of the cases treated were lacerations to the head or neck or amputations of arms, hands, fingers, ears or lips. This number represented, however, only a fraction of the number of such victims, many of whom never reached medical help.[2194] According to humanitarian agencies in Freetown, only about one in four victims of mutilations by rebel forces survived their injuries.[2195]

(iii) Koinadugu District – Crimes

4085. para. 1214: The Indictment alleges that "[b]etween 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".[2196]

4086. para. 1215: No evidence of physical violence was adduced in respect of Konkoba.[2197]

4087. para. 1216: In reaching the following findings of fact, the Trial Chamber has considered the entire evidence and relies on the testimony of Prosecution witness TF1-199 and Defence witness DAB-156, as well as exhibit P-51.

a. Kabala – Koinadugu District – Crimes

4088. para. 1217: Witness TF1-199, a member of an SBU (Small Boys Unit), testified that in approximately mid-May 1998, Lieutenant-Colonel 'Savage' led an attack by AFRC/RUF forces on Kabala Town. The witness participated in the attack and he testified that after the AFRC/RUF forces had successfully captured the town, they amputated the hands of an unknown number of civilians.[2198]

(iv) Bombali District – Crimes

4089. para. 1219: The Indictment alleges that "[b]etween about 1 May 1998 and 31 [sic] November 1998, members of the AFRC/RUF mutilated an unknown number of civilians in various locations in Bombali district, including Lohondi, Malama, Mamaka, Rosos (or Rossos or Rosors). The mutilations included cutting off limbs."[2199]

4090. para. 1220: No evidence of mutilations was led in respect of Lohondi, Malama, Mamaka.[2200]

4091. para. 1221: In arriving at the following findings of fact, the Trial Chamber has considered the entirety of the evidence and relies on the testimony of Prosecution witness TF1-269.

a. Rosos – Bombali District - Crimes

4092. para. 1222: During the rainy season of 1998, in Rosos, Witness TF1-269 was attacked by three persons she referred to as 'rebels'. One of the rebels cut Witness TF1-269 in the back of her neck in an attempt to kill her.[2201] The Trial Chamber was able to observe a scar of about two inches on the neck of the Witness.[2202]

(v) Freetown and the Western Area – Crimes

4093. para. 1225: The Indictment alleges that "[b]etween 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''.[2205]

4094. para. 1226: No evidence was adduced in relation to Calaba Town.

4095. para. 1227: The Prosecution led evidence of witnesses seeing amputated people or stating that 'rebels' committed amputations in various parts of Freetown and the Western Area.[2206]

Documentary evidence confirms that in Freetown during January 1999, hundreds of civilians had their limbs amputated or were subjected to other forms of mutilation. The mutilations were usually inflicted with machetes or axes and the victims included men, women and children.[2207] While the Trial Chamber accepts this evidence as credible, given its general nature, the Trial Chamber relies on it to corroborate its findings on the more specific incidents described below.

4096. para. 1228: In arriving at the following findings of fact, the Trial Chamber has considered on the credible testimony of Prosecution witnesses TF1-083, TF1-084, TF1-085, TF1-098, TFl-153, George Johnson, TF1-184, TF1-278, and TF1-334.

a. Upgun – Freetown - Crimes

4097. para. 1229: The Trial Chamber has found that in January 1999, an attack on Fourah Bay was ordered by the Accused Brima in retaliation for the alleged killing of an AFRC soldier by civilians.[2208] Witness TFl-184 testified that prior to the troops commencing the attack, in the Kissy Old Road area, 'FiveFive' demonstrated an amputation on a civilian, explaining to them that a 'long hand' is the amputation of the hand, while a 'short hand' is the amputation of an arm around the bicep area (above the elbow and below the shoulder)[2209] Witness TF1-184 identified 'Five-Five' as the Accused Kanu.[2210]

b. Kissy Old Road – Freetown – Crimes

4098. para. 1230: Witness TF1-334 testified about a demonstration of an amputation carried out by 'FiveFive' subsequent to the attack on Fourah Bay, at Kissy Old Road. According to the witness, 'FiveFive' arrived at Upgun with Major Mines and Captain Kabila and announced that it was time for the amputations to begin. He stated that he would carry out the first amputations in order to set an example for the others. Kanu called for two civilians nearby to be brought to him and he amputated both hands of both civilians with a machete at their wrists, explaining the difference between what he referred to as 'short sleeve' and 'long sleeve' amputations. 'Five-Five' then told the civilians that since they voted for 'Pa Kabbah' they should go to him and ask him for hands. In the presence of the Accused Kanu, ten more civilians were then rounded up and Captain Kabila and Major Mines amputated them at the elbow. Major Mines told them to go to 'Pa Kabbah' or ECOMOG to complain.[2211]

c. ‘Operation Cut Hand’ at PWD – Freetown – Crimes

4099. para. 1231: Witness TF1-153 testified that while the headquarters was at PWD, a soldier came from Fourah Bay “with his head bust” reporting that the civilians there had been fighting the soldiers.[2212] The witness subsequently heard that ‘Bazzy’ had raided a WFP warehouse in the nearby area and collected a number of machetes he found there. Later that evening, the witness saw ‘Bazzy’ and overheard a conversation between him and SAJ Musa’s wife. Tina Musa asked ‘Bazzy’ why his men were holding machetes. According to the witness, ‘Bazzy’ replied “We are just [returning] from Operation Cut Hand”. The witness testified that from this conversation he understood that the machetes from the warehouse had been used to amputate people.[2213]

d. Rowe Street –Kissy – Crimes

4100. para. 1232: The Trial Chamber has relied on the evidence of witness TF1-084 of his arrest in Rowe Street, Kissy, by rebels in January 1999 in its findings on unlawful killings.[2214] In addition to the evidence recounted therein, the witness stated the rebel commander, a certain Tafaiko, ordered that witness TF1-084’s hand was to be amputated. The rebels put witness TF1-084 on the ground, stood on his chest, stretched out his arms, and intentionally chopped off his hand with an axe.[2215]

e. Fatamaran Street – Kissy – Crimes

4101. para. 1233: On approximately 18 January 1999, witness TF1-098, his brother and his cousin were forced by rebels at gunpoint to follow them to a school on Fataraman Street.[2216] The witness described the rebels as being dressed in black T-shirts, some had soldier combats and tied mufflers with the American flag.[2217] Upon arrival at the school, four other civilians captured by the rebels were joined with the witness’ group. ‘Tommy’, one of the rebels, dressed in combat, amputated the hands of the seven captured persons, including the left hand of the witness. Having done so, the rebels told them to go to ‘Pa Kabbah’ and he would give them new hands.[2218] Witness TF1-098’s cousin died as a result of the amputation.[2219]

f. Old Road (Locust and Samuels area) – Kissy – Crimes

4102. para. 1234: On 22 January 1999, on Old Road in the Locust and Samuels area, witness TF1-083 and his family were captured by a group of rebels. The rebel commander told witness TF1-083 and others to lie flat on their backs to be killed or amputated. The rebels took two people

to a comer and then returned with bloody knives. The commander ordered the rebels to cut off the hands of the remaining people. He said anyone whose hand is cut should go to Kabbah and ask him for a hand. One rebel stabbed witness TF1-083 with a knife in the left upper arm. The rebels chopped witness TF1-083's hand off with two blows of an axe.[2220] The hand of a man named Pa Sorie was also Cut.[2221] The rebels cut off the fingers oaf man named Mussa. The commander ordered the rebels to cut off the entire hand and when Mussa begged for mercy, the rebels killed him.[2222]

g. Parsonage Street – Kissy – Crimes

4103. para. 1235: On 22 January 1999, witness TF1-278 was fleeing from the rebels with his family and some of his tenants with their families when they were stopped by four persons wearing SLA uniforms and one person wearing civilian clothes near Parsonage Street in Freetown.[2223] A soldier named 'Captain Two Hand' ordered the soldiers to cut off the tenant's hands. A rebel in civilian clothes used an axe to cut off both of his hands. The soldiers told the tenant to "go and tell Tejan Kabbah this is what we have done. Go and tell no more politics, no more voting."[2224] Soldiers then amputated witness TF1-278's left hand. The witness testified that his child shouted "Hey, soldier, don't cut my father's hand, please. He is working for us."[2225] One of the soldiers ordered that the child's hand be amputated. The witness asked the soldier to amputate his right hand in exchange for sparing his child. The rebels amputated his right hand, before releasing the witness and the other civilians, telling them "You are the messenger of Tejan Kabbah. Go and tell Tejan Kabbah that we cut off your hand. Since you did not allow for peace we are saying good-bye to you."[2226]

h. Old Shell Road – Kissy - Crimes

4104. para. 1236: At Old Shell road, immediately prior to the troops' arrival at Kissy Mental Home, witness TF1-334 observed Osman Sesay a.k.a. 'Changamulanga' amputating six young civilian men at the elbow. 'Changamulanga' told the men to go to 'Pa Kabbah' and he would give them back their hands because they had voted for him. None of the three Accused were present during the amputations, but the troops subsequently moved to Kissy Mental Home to meet them.[2227]

i. Kissy Mental Home – Kissy – Crimes

4105. para. 1237: The Trial Chamber has found that the evening the troops arrived at Kissy Mental Home during the retreat from Freetown in January 1999, in the presence of the Accused Kamara and the Accused Kanu, the Accused Brima issued an order to the troops to burn houses and kill civilians in retaliation for their support of ECOMOG.[2228] In addition to ordering the witness to kill people in the PWD area, the witness overheard the Accused Brima ordering 'Changamulanga', 'Mines' and Colonel Kido to go towards the "low cost area" and amputate people.[2229] However, the witness did not testify as to whether this order to commit amputations was carried out. The Trial Chamber therefore does not make a finding of physical violence on this evidence. However, the Trial Chamber considers this evidence to generally corroborate the findings of physical violence made below in relation to Kissy Mental Home.

4106. para. 1238: Witness George Johnson testified that on the day that the troops arrived at Kissy Mental Home, the Accused Kanu ordered the soldiers, in the presence of the Accused Brima, the Accused Kamara and other commanders, to go to the eastern part of Freetown and amputate up to 200 civilians and send them to Ferry Junction. After the order was given, the witness observed fighters, including Kabila, 'Born Naked', 'Cyborg', and 'SBU Killer', moving towards the eastern part of Freetown. On their return, their machetes were covered with blood and they brought with them many amputated arms.[2230]

4107. para. 1239: Witness TF1-184 testified that while the troops were at Kissy Mental Home, AFRC soldier Kabila told 'Gullit' that "the civilians are pointing their hands at our own crowd here," implying that the civilians were divulging the troops' position to ECOMOG. In the presence of the witness, 'Gullit' said "that the hand that they are pointing at us, the fingers that are pointing at us, we shall ensure that all their hands are amputated."[2231] When asked if anything occurred as a result of the Accused Brima's words, the witness testified that about one and a half hours later, AFRC soldier 'Mines' returned to Kissy Mental Home with a bag full of hands which he showed to 'Gullit' and others, Including the witness.[2232] The Trial Chamber is satisfied beyond reasonable doubt from this testimony that 'Mines' amputated an unknown number of civilians pursuant to the order issued by the Accused Brima.

4108. para. 1240: Witness TFl-184 testified that during the period that the troops were at Kissy Mental Home, he observed 'Gullit' amputating a civilian's hand at Shell Company by Old Road.[2233]

4109. para. 1241: George Johnson testified that at Kissy Mental Home, a soldier named Kabila amputated the arms of a captured Nigerian ECOMOG soldier.[2234] The witness observed FAT Sesay writing a letter, which Kanu placed the around the ECOMOG soldier's neck. The ECOMOG soldier was sent to meet other ECOMOG soldiers at Ferry Junction.[2235] The Trial Chamber notes that this incident was not directed against the civilian population, but against a combatant. Therefore the Trial Chamber will consider this incident only in relation to Count 10.

j. Wellington –Crimes

4110. para. 1242: Witness TF1-085 testified that in January 1999, 'rebels' broke the door to her mother's house in Wellington where she was hiding along with some other civilians. The 'rebels' cut off the hand of one of the children, aged four or five years, who had been hiding in the house. The witness was then abducted by the rebels.[2236] The witness' testimony regarding subsequent events has been considered in the Trial Chamber's findings on outrages on personal dignity.[2237]

(b) Legal Conclusions

(i) Applicable law - War crimes / Violations of Common Article 3

4111. See above: Chapter 1 – AFRC – Legal Conclusions – Applicable law - War crimes / Violations of Common Article 3 - paras. 241- 242 [1023].

a. There must have been an armed conflict whether non-international or international in character at the time the offences were allegedly committed

4112. See above: Chapter 1 – AFRC – Legal Conclusions – There must have been an armed conflict whether non-international or international in character at the time the offences were allegedly committed - paras. 243 – 245 [1025].

b. There must be a nexus between the armed conflict and the alleged offence

4113. See above: Chapter 1 – AFRC – Legal Conclusions – There must be a nexus between the armed conflict and the alleged offence - paras. 246 – 247 [1028].

c. The victims were not directly taking part in the hostilities at the time of the alleged violation

4114. See above: Chapter 1 – AFRC – Legal Conclusions – The victims were not directly taking part in the hostilities at the time of the alleged violation - para. 248 [1030].

(ii) War crimes / Violations of Common Article 3 – Findings on general requirements

4115. See above: Chapter 1 – AFRC – Legal Conclusions – War crimes / Violations of Common Article 3 – Findings on general requirements - paras.249 – 254 [1031].

(iii) Applicable law – Violence to Life, Health and Physical or Mental Well-Being of Persons, in Particular Mutilation

4116. para. 724: Regarding the specific act of mutilation, III addition to the chapeau requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute, the Trial Chamber adopts the following elements of the crime of 'mutilation' :

> 1. The perpetrator intentionally subjected the victim to mutilation, in particular by permanently disfiguring the victim, or by permanently disabling or removing an organ or appendage of the victim;
>
> 2. The perpetrator's conduct was neither justified by the medical, dental or hospital treatment of the victim, nor carried out in the victim's interest.[1409]

4117. para. 725: The Trial Chamber notes that in its 'Rule 98 Decision' an additional element was given requiring that "the perpetrator's conduct caused death or seriously endangered the physical or mental health of the victim". The Prosecution submits that this additional element is superfluous and should not been retained.[1410] The Trial Chamber agrees that such a requirement is superfluous and will not retain it.

(iv) Kenema District– Physical Violence

a. Kenema Town – Physical Violence

4118. para. 1197: In light of the foregoing evidence, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied that AFRC/RUF troops carried out beatings and ill-treatment of at least seven civilians who were in their custody in Kenema Town in Kenema District. The Trial Chamber accordingly finds that the elements in relation to Counts 10 and 11 are established in respect of these incidents.

4119. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Bo, Kemena and Kailahun Districts, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bo, Kenema and Kailahun Districts - paras. 1641-1650 [7991], 1842-1847 [8001], 1982-1984 [8007], 1987-1991 [8012].

4120. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Bo, Kenema and Kailahun Districts, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bo, Kenema and Kailahun Districts - paras. 1641-1643 [8838], 1651-1664 [8839], 1842-1844 [8853], 1848-1855 [8854], 1982-1984 [8862], 1992-1996 [8863].

(v) Kono District – Physical Violence

a. Tombodu and Kaima/Kayima – Kono District - Physical Violence

4121. para. 1213: By virtue of the foregoing, and leaving aside for the present the question of the criminal responsibility of the Accused, the Trial Chamber is satisfied beyond reasonable doubt that between 14 February 1998 and 30 June 1998, troops under the command of 'Savage' intentionally mutilated at least sixteen civilians by cutting off their limbs in Tombodu in Kono District, as charged under Counts 10 and 11. The Trial Chamber further finds beyond reasonable doubt that in this same period AFRC/RUF soldiers carved the letters 'AFRC' and 'RUF' on the bodies of eighteen civilians in Kayima in Kono District, as charged under Counts 10 and 11.

4122. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Kono District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment -Findings and Conclusions - Kono District - paras. 1665-1668 [8017], 1856-1861 [8021], 1997-2000 [8027].

363. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Kono District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Kono District - paras. 1665 [8868], 1669-1673 [8869], 1856 [8874], 1862-1893 [8875], 1997 [8907], 2001-2005 [8908].

(vi) Koinadugu District – Physical Violence

a. Kabala – Koinadugu District - Physical Violence

4123. para. 1218: By virtue of the foregoing, and leaving aside for the present the question of the criminal responsibility of the Accused, the Trial Chamber is satisfied beyond reasonable doubt

that between about 14 February 1998 and 30 September 1998, members of the AFRC/RUF mutilated an unknown number of civilians by cutting off their limbs in Kabala in Koinadugu District. The Trial Chamber accordingly finds that the elements in relation to Counts 10 and 11 are established.

4124. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Koinadugu District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Koinadugu District - paras. 1686-1696 [8045], 1904-1906 [8056], 2015-2018 [8060].

4125. Regarding Brima's, Kamara's and Kanu's superior responsibility in relation to Koinadugu District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Koinadugu District - paras.1686 [8933], 1697-1699 [8934], 1904 [8937], 1907-1910 [8938], 2015 [8942], 2019-2024 [8943].

(vii) Bombali District – Physical Violence

a. Rosos – Bombali District – Physical Violence

4126. para. 1223: The Trial Chamber however makes no finding on this incident as the only act of mutilation particularised in the Indictment is "cutting off limbs".[2203]

4127. para. 1224: The Trial Chamber notes that a significant amount of evidence was led on mutilations in other locations in Bombali District, in particular in Karina.[2204] No findings have been made on this evidence as the locations were not pleaded in the Indictment.

4128. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Bombali District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bombali District - paras. 1700-1720 [8064], 1911-1920 [8085], 2025-2031 [8095].

4129. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Bombali District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Bombali District - paras. 1700 [8949], 1721-1744 [8950], 1911 [8974], 1921-1928 [8975], 2025 [8983], 2032-2044 [8984].

(viii) Freetown and Western Area – Physical Violence

4130. para. 1243: In light of the foregoing evidence, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied beyond reasonable doubt that between 6 January 1999 and 28 February 1999, members of the AFRC fighting forces mutilated at least 237 civilians and one soldier by cutting off their limbs in various areas of Freetown and in Kissy and Wellington in the Western Area. The Trial Chamber accordingly finds that the elements in relation to Count 10 (violence to life, health and physical or mental well-being of persons, in particular mutilation) and Count 11 (other inhumane acts) have been established in Freetown and the Western Area.

4131. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Freetown and Western Area, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment -Findings and Conclusions - Freetown and Western Area - paras. 1745-1786 [8102], 1929-1941 [8144], 2045-2064 [8157].

4132. Regarding Brima's, Kamara's, and Kanu's superior responsibility in relation to Freetown and Western Area, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Freetown and Western Area - paras. 1745 [8997], 1787-1810 [8998], 1929 [9022], 1942-1950 [9023], 2045 [9032], 2065-2080 [9033].

3. Appellate Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-A, Judgement, 22 February 2008

(a) Factual Finding

4133. Not applicable.

(b) Legal Conclusions

(i) Pleading

4134. para. 204: The Prosecution argues that the Trial Chamber erred in deciding not to consider mutilations under Count 11 as well as under Count 10 because considering mutilations and beatings and ill- treatment under the same Count would have resulted in a duplicitous charge.[311] The Prosecution submits that the convictions of the accused for mutilations as a war crime fail to recognise that acts of mutilation were also crimes against humanity, as they occurred as part of a

widespread or systematic attack against the civilian population.[312] The Prosecution further submits that mutilations, and acts of physical violence other than mutilation:, are not separate crimes, but are different ways of committing the war crime of violence to life, health and physical or mental wellbeing of persons, as well as the crime against humanity of "Other Inhumane Acts." Therefore, the Prosecution argues that Counts 10 and 11 were not defective If pleaded because both forms of physical violence may properly be alleged in both counts without resulting in a duplicitous charge.[313]

4135. para. 205: As discussed above, the rule against duplicity prohibits the charging of two separate offences in the same count.[314] However, the Appeals Chamber notes that Count 11 charged only the offence of "Other Inhumane Acts" as a crime against humanity, which was supported by material facts alleging mutilations as well as beatings and ill-treatment. Thus, Count l1 on its face is not duplicitous. The Appeals Chamber also notes the distinction between charging conduct and charging offences. Article 2.i is a residual category which encompasses various forms of conduct. However, it is a single offence. Therefore, the Appeals Chamber finds that alleging multiple forms of conduct in the same count was not duplicitous because Count 11 only charged one offence, namely "Other Inhumane Acts."[315] It follows that Count 11 would not have been duplicitous had the Trial Chamber considered evidence of both mutilations and beatings and ill-treatment.

4136. para. 206: However, the Appeals Chamber finds that the Trial Chamber did not err in considering mutilations only under Count 10. The Appeals Chamber notes that Count 10, which alleges "violence to life, health and physical or mental well-being of persons, in particular mutilations," is clearly supported by the paragraphs alleging mutilations, The allegations of beatings and ill-treatment could not have been used to support Count 10. The Indictment would therefore have been much clearer had the Prosecution limited the factual allegations in support of Count 10 to mutilations. Furthermore, the Prosecution's intention to rely on acts of mutilation in support of Count 11 would have been much clearer had it separated the facts supporting this Count from those supporting Count 10. Consequently, the Prosecution's combination of the material facts that support Counts 10 and 11 created a degree of ambiguity in the Indictment. In light of this ambiguity, it was within the discretion of the Trial Chamber to consider evidence of mutilations solely under Count 10. Thus, the Appeals Chamber rejects the Prosecution's submission that the Trial Chamber erred in failing to consider evidence of mutilations under Count 11 as well as under Count 10. Ground Eight of the Prosecution's Appeal is therefore dismissed.

D. CDF

1. Indictment

The Prosecutor v. Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa, SCSL-03-14-I, Indictment, 4 February 2004

(a) Particulars

(i) Charges

4137. Paragraph 4 through 21 is incorporated by reference.[226]

4138. These actions [para. 23: The CDF, largely Kamajors, engaged the combined RUF/AFRC forces in armed conflict in various parts of Sierra Leone - to include the towns of Tongo Field, Kenema, Bo, Koribondo and surrounding areas and the Districts of Moyamba and Bonthe.] by the CDF, largely Kamajors, which also included looting, destruction of private property, personal injury and the extorting of money from civilians, were intended to threaten and terrorize the civilian population. Many civilians saw these crimes committed; others returned to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property. Typical CDF actions and the resulting crimes included: [Paragraphs 24.a to 24.f incorporated by reference].[227]

(ii) Counts 6-7: Terrorizing the Civilian Population and Collective Punishments

4139. At all times relevant to this Indictment, the CDP, largely Kamajors, committed the crimes set forth in paragraphs 22 through 27 and charged in counts 1 through 5, including threats to kill, destroy and loot, as part of a campaign to terrorize the civilian populations of those areas and did terrorize those populations. The CDP, largely Kamajors, also committed the crimes to punish the civilian population for their support to, or failure to actively resist, the combined RUFf AFRC forces.[228]

(iii) Counts 3-4: Physical Violence and Mental Suffering

4140. Acts of physical violence and infliction of mental harm or suffering included the following:

[226] CDF Indictment, para. 22.
[227] CDF Indictment, para. 24.
[228] CDF Indictment, para. 28.

a. Between about 1 November 1997 and 30 April 1998, at various locations, including Tongo Field, Kenema Town, Blama, Kamboma and the surrounding areas, the CDF, largely Kamajors, intentionally inflicted serious bodily harm and serious physical suffering on an unknown number of civilians;[229]

b. Between November 1997 and December 1999, in the towns of Tongo Field, Kenema, Bo, Koribondo and surrounding areas, and the Districts of Moyamba and Bonthe, the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians by the actions of the CDF, largely Kamajors, including screening for **"Collaborators,"** unlawfully killing of suspected **"Collaborators,"** often in plain view of friends and relatives, illegal arrest and unlawful imprisonment of **"Collaborators**", the destruction of homes and other buildings, looting and threats to unlawfully kill, destroy or loot;[230]

4141. By their acts or omissions in relation to these events, SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA, 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: Inhumane Acts, a CRIME AGAINST HUMANITY, punishable under Article 2.i. of the Statute;

In addition, or in the alternative:

Count 4: **Violence to life, health and physical or mental well-being of persons, in particular cruel treatment**, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.a. of Statute.

2. Trial Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-T, Judgement, 2 August 2007

(a) Factual Findings

(i) Towns of Tongo Field– Crimes

4142. para. 388: One member of the group of civilians detained by Kamabote, TF2-035, knew a Kamajor Commander Named Baggey Waters in Panguma. BJK Sei allowed them to leave together. Sometime later, TF2-035and Baggey Waters settled together in Ngiehun. TF2-035 had been living there sometime when Kamabote arrived and discovered that he was a limba and had

[229] CDF Indictment, para. 26.
[230] CDF Indictment, para. 26(b).

been a member of the group taken from Tongo. TF2-035 had survived the killing of the Limbas in Talama by claiming to be a Madingo. Kamabote gave a single-barrel shotgun to a 12 year old boy named "Small Hunter" and ordered him to kill TF2-035. Two Kamajors intervened on TF2-035's behalf but their efforts were unsuccessful. "Small Hunter" shot TF2-035 five times, but he managed to escape into the bush. One bullet is still in his body.

4143. para. 390: There was gunfire in Tongo at the beginning of the attack and chaos created by thousands of civilians running toward the NDMC Headquarters.[685] TF2-027 saw corpses on the side of the road on the way to the headquarters. Some had visible wounds on their bodies and others did not.[686] TF2-015 was shot while running to the NDMC Headquarters, as were three women that he was running with.[687] TF2-144 saw the corpse of a man named Joskie lying on the ground; the back of his neck had been chopped at with a machete. TF2-144 also saw the corpse of an unidentified woman, but he was unable to tell whether she had wounds on her body.[688] After the attack, TF2-027 also saw Joskie Mboma's corpse on the street, as well as three other corpses. TF2-027 recognised one of the corpses as that of a Fullah boy who used to sell bread. This corpse was on its stomach and TF2-027 did not see any marks on the body.[689]

(ii) Kaliahun District – Crimes

a. Dodo Junction – Kaliahun District - Crimes

4144. para. 407: TF2-144 was among the group of people who were led by the Kamajors from NDMC Headquarters toward Dodo on 15 January 1998. In Panguma, on the way to Dodo, they were stopped by Musa Junisa's troops who checked the civilians for passes and taxes. TF2-144 witnessed the Kamajors strike a woman on the back after checking her. She was carrying a child on her back. TF2-144 does not know whether she died. The other civilians were allowed to pass but Kamajors would occasionally arrive and take civilians from the queue as they were walking to Dodo. At a checkpoint in Dodo, this same group of civilians was stopped and told to remove their passes and taxes. TF2-144 saw Kamajors hack the right hand of a man who was identified as a rebel because of the shoes he wore.

(iii) Bo District – Crimes

a. Beating of OC Bundu, OC Katta and OC Ndanema – Bo District - Crimes

4145. para. 453: On 15 February 1998, Kamajors under the leadership of Nallo, Agbamu Murray and John Ngombeh beat OC Bundu (the SSD boss) at the Bo Police Station. OC Bundu

was then forcefully taken to his house in which Kamajors searched for ammunition. The Kamajors took ammunition that they found at OC Bundu's house and returned to the police station.[883] Later on the same day, TF2-001 witnessed another group of Kamajors capture OC Bundu, OC Ndanema, and OC Katta at gunpoint and beat them. OC Katta was beaten particularly harshly and he cried.[884] TF2-001 feared for his life.[885]

b. Mutilation/Personal Injury to TF2-119 – Bo District - Crimes

4146. para. 458: TF2-119 begged for his life but the Kamajors responded that they would execute him and that they would never defy Norman's orders. One Kamajor cut the back of TF2-119's neck while another shouted, "Allahu, Akbar." TF2-119's ears were partially severed. TF2-119's face and arm were cut with a machete. The Kamajors chopped at TF2-119's back, shoulders, left arm, the back of his head, and the bone of his big toe on his right foot. The Kamajors left thinking TF2-119 was dead.[892]

c. Kllings at Bo Government Hospital by Kamajors – Bo District - Crimes

4147. para. 461: On 19 February 1998,[897] while TF2-119 was at Bo Government Hospital, a group of Kamajors came and captured an unidentified man next to TF2-119's bed. The captured man said he had been shot by the juntas when pulling out of Bo. The Kamajors carried this man away because they suspected he was a junta.[888]

d. Mutilation of TF2-006 and Wounding of Five People – Bo District - Crimes

4148. para. 472: When the Kamajors entered Bo they chased, captured and chopped at people with cutlasses. TF2-006 witnessed Kamajors attack five people with knives.[915] There was a lot of gunfire and many civilians fled crying. Some civilians were killed and others suffered amputations.[916] The Kamajors hit TF2-006 with a stick and amputated the fingers on his left hand with a cutlass.[917]

e. Killing of a Limba man by Kamajors after 15 February 1998 – Bo District – Crimes

4149. para. 473: After their occupation of Bo, the Kamajors identified one man as a junta collaborator because he was a Limba. The Kamajors sang a ritual song, "Allahu, Akbar," and hacked the man to death. After killing him, the Kamajors mutilated his body.[918]

f. Torture of TF2·198 and Killing of his Brother – Bo District - Crimes

4150. para. 477: On 16 February 1998, Kamajors searched the house of TF2-198's brother and found TF2-198 and his brother. They were thrown to the ground, beaten, and tied up by Kamajors.[926] Other people who had come to Bo from Koribondo were also beaten.[927]

g. Assault on TF2-156 and Killing of his Brothers- Bo District - Crimes

4151. para. 480: Around 22 February 1998,934 a local man named Sorie was chased by Kamajors who were armed with cutlasses, knives and guns.[935] The Kamajors captured TF2-156, his two brothers, Sorie and an unidentified man. Kamajors chopped at TF2-156 with a machete and cut his foot, stomach, chest and face.[936] TF2-156's lip was split in three places; two of his teeth were knocked out and one tooth was broken.[937]

4152. para. 481: The Kamajors chopped at TF2-156's brothers with machetes and killed them.[938] Sorie and the unidentified man were also killed.[939] The Kamajors thought TF2-156 was also dead and left him lying beside the bodies of these four people.[940]

h. Arrest of TF2-06 7 and his Father – Bo District - Crimes

4153. para. 491: TF2-067 and his father were arrested and taken to Kamajor headquarters at 88 Mahei Boima Road.[955] On the way to the headquarters, the Kamajors also arrested TF2-067's uncle. TF2- 067's uncle was held at gunpoint and the Kamajors asked him if he was a Temne. TF2-067's uncle was also brought to the Kamajor headquarters.[956]

4154. para. 492: TF2-067's father and uncle were placed with other adults while TF2-067 was placed with children his own age and younger. TF2-067's father spoke in Mende to the Kamajors. The eldest Kamajor, who was the leader of a group of small boys, ordered the release ofTF2-067's father. TF2- 067's father requested the release of TF2-067 and TF2-067's uncle. The Kamajors released TF2- 067, but refused to release TF2-067's uncle because his uncle did not speak Mende. TF2-067 has not seen his uncle since.[957]

i. Killing of a Former Soldier by Kamajors at a Checkpoint – Bo District - Crimes

4155. para. 494: At the second checkpoint, Kamajors who call themselves "Black December" stopped the group with whom TF2-067 was travelling. The Kamajors questioned the leader of the

group and then allowed them to pass. At the third checkpoint, the leader of the group was again questioned before the group was allowed to pass.[959]

j. Arrest and Beating of a Limba Man – Bo District - Crimes

4156. para. 495: A Limba man was arrested and taken to the Bo District Commander, Kosseh Hindwa, at the Kamajor headquarters located in 88 Mahei Boima Road.[960] The Limba man was beaten in front of Hindowa. He was beaten because it was suspected that his daughter was in love with a junta. TF2-056 spoke with Kosseh Hindowa and denied the Kamajor's suspicions. Hindowa requested 100,000 Leones for the release of the Limba man.[961] TF2-056 paid the money and the man was released. The Limba man had welts all over his body and was in pain; he died one month later.[962]

k. Arrest and Cruel Treatment of Two Limba Men – Bo District - Crimes

4157. para. 496: Two Limba men were arrested by Kamajors who forced the captives to remove their clothing, tied them with FM Rope. The Kamajors planned to put pepper on the prisoner's genitals. TF2-056 offered Moses Sandy, a Kamajor commander from Koribondo, 110,000 leones for the release of the two men. Moses Sandy accepted the money and demanded 15 bushels of rice. TF2-056 convinced Moses Sandy to accept 10 bushels of rice. The two limba men were held for two days and were released on the third day.[963]

l. Arrest and Cruel Treatment of a Limba Man – Bo District - Crimes

4158. para. 497: A Limba man accused of being a junta was arrested, undressed, and beaten by the Kamajors. They forced the man to roll on the ground a distance of 10 metres and then a Kamajor hit him with a gun. TF2-056 witnessed the incident, requested the assistance of ECOMOG and paid 300,000 leones to the Kamajor Abu Tawa to secure the release of the Limba man and the return of everything that had been seized by the Kamajors from the Limba Man's house. Abu Tawa had requested 400,000 leones but TF2-056 asked him to accept 300,000 leones.

m. Arrest and Beating of a Woman- Bo District - Crimes

4159. para. 498: A Mende woman who was accused of being a cook for a rebel named Mosquito was captured by a Kamajor commander named Moses Sandy.[965] She was held by ECOMOG at their headquarters and was beaten everyday. TF2-056 paid 100,000 leones to the Kamajors to

secure the woman's release. Upon determining that the woman was not a cook for the Mosquito, the ECOMOG commander released the woman to TF2-056.

n. Killing of TF2-058's Husband – Bo District – Crimes

4160. para. 500: TF2-058 left Bo for two months and returned in early July. She learned that her husband's body had been taken to Gbetema and had been eaten by Kamajors.[968]

o. Harassment of TF2-156- Bo District - Crimes

4161. para. 502: In order to go to the hospital to receive regular medical treatment, TF2-156 had to pass a checkpoint manned by Kamajors. Each time he passed through the checkpoint, the Kamajors would attack, capture, arrest or harass him. On one occasion, the Kamajors arrested him and held him captive for a short time. They called him a junta and said that the next time they captured him they would eat him.[971]

p. Mistreatment of TF2·119 at the Brigade Junction on the Bo·Freetown Road – Bo District - Crimes

4162. para. 503: On 26 March 1998, TF2-119 was discharged from Bo Government Hospital and referred to Kingtom Hospital in Freetown for further medical treatment.[972] He travelled to Freetown with his younger brother. On the way there, they were stopped by Kamajors at a checkpoint at Brigade Junction on the Bo-Freetown Road. Although TF2-119 was on crutches because of a broken leg, he was harassed by the Kamajors who demanded authentic documents to enable him to pass.[973]

4163. para. 504: Meanwhile, TF2-119's brother was taken to a booth and accused of being a collaborator. About 30 Kamajors surrounded TF2-119 and threatened to kill him. The Kamajors dragged, pulled, and shoved TF2-119. He fell to the ground, crying. TF2-119's plasters were removed. One Kamajor asked for a weapon to be brought to him and another an AK-47. TF2-119 was dragged to an open pit behind the booth in which there lay naked male bodies. One Kamajor tried to push TF2-119 into the pit but TF2-119 held onto the Kamajor trousers and shouted. TF2-119 was rescued from this ordeal by an ECOMOG soldier TF2-119 does not know if the Kamajors accepted the ECOMOG dealing with the situation but they had to accept it because by then ECOMOG were their superiors.

q. Crimes in Mongere and Gumahun Areas – Bo District – Crimes

4164. para. 515: On 29 November 1997, TF2-088 sent his son and three of his nephews to retrieve his gun so that he could give it to the Kamajors.[995] Later that day, TF2-088 saw his gun in the hands of Kamajors at the court Barri.[996] Those present included the battalion commanders Alhaji hassan Sheriff, Sundifu Samuka, and Joseph Kulagbanda. Gibril Mansaray, the Kamajor secretary, was also present. James Bundu, the Chief Kamajor, refused to return TF2-088's gun and threatened to kill all the people who had gone to collect it.[997] James Bundu said that anyone who did not join the Kamajors would be considered a rebel.[998]

r. Mistreatment of TF2-088 at the Court Barri in Gumahun – Bo District – Crimes

4165. para. 520: On the evening of 30 November 1997, at the Gumahun court barri, James Bundu asked TF2-088 whether he had called the Kamajors cannibals. When TF2-088 admitted he had done so,[1008] Joseph Kulagbanda, Sundifu Samuka and John Rainbo placed him flat on the ground. He was stripped naked while his hands were tied behind his back with FM rope brought by Gibril Mansaray. A mixture of charcoal powder with clay, ash and water brought by James Bundu was put all over TF2-088's body and his genitals were rubbed with pepper.[1009]

4166. para. 521: James Bundu stepped on TF2-088's stomach and took 41,000 leones that TF2-088 had in his shirt.[1010] James Bundu accused TF2-088 of being a thief and then each of his 13 commanders lashed TF2-088 10 times. TF2-088 was released when his wife's sister paid 5000 leones, which the Kamajors requested for his release.[1011]

s. Killing of TF2-088's Son – Bo District - Crimes

4167. para. 524: TF2-088 later learned that the ash from his son's corpse was used to perform the last initiation in Mongere Town in Norman's compound. After this initiation the Kamajors went to TF2-088's home and beat his children and several Limba people staying at his house. The Kamajors demanded food and took all TF2-088's property 250,000 leones of his money, and burnt down one of his houses.

t. Crimes Committed in Fengehun – Bo District - Crimes

4168. para. 531: During the dry season of 1998, five Kamajors arrested TF2-007 and took him to the compound where they held his father captive. TF2-007 saw his father tied with a rope

around his waist. Part of his father's right ear had been cut off. TF2-007's father was surrounded by approximately 10 Kamajors who were dancing.[1029]

(iv) Bonthe District – Crimes

a. Case of Lahai Koroma/Actions by Kondewa – Bonthe District - Crimes

4169. para. 552: On 15 February, Kamajors looked for Lahai Ndokoi Koroma, a Chiefdom Speaker, in the Catholic mission,[1073] who was accused of being a junta collaborator.[1074] They threatened to kill everyone if Lahai Ndokoi Koroma was not produced.[1075] He was captured by Kamajors, stripped naked and tied.[l076] Three delegations came from Base Zero, Talia, to investigate the matrer. The first delegation was led by Imam Fuad; the second was led by Commander Vanjawai acting under instructions of Kondewa.[1077] The first delegation told the people of Bonthe that their fate depended on Kondewa and asked to be paid 400,000 leones.[1078] Both delegations asked Father Garrick to pay for those who had a relationship with soldiers; they threatened that if he did not pay they would kill those people.[1079]

(v) Kenema District

a. Mistreatment of and Threats to Kill TF2-041; Killing of Sergeant Fosana – Kenema District – Blama - Crimes

4170. para. 577: Kamajors fired into the air as they entered police barracks in Blama. TF2-021 was frightened, so he went and hid in the bush outside town.[1139] That evening, Kamajors searched the bush and found TF2-041. They brought him to a Kamajor Co at Koribondo road who became angry and hit TF2-041 in the face with a stick, breaking one of his teeth.[1140]

4171. para. 578: Kamajors then took TF2-041 and Sergeant Fosana to Alhaji Medama, the Ground Commander in Blama.[1141] On the way there, Kamajors beat TF2-041 and told him that Norman had instructed that police should be killed.[1142]

4172. para. 580: After some time, TF2-041 woke up and returned to the bush to hide.1146 Over the course of a week, he walked 12 miles to a village with a hospital.[1147] Some Kamajors in the village threatened to kill TF2-041 but the town Chief intervened on his behalf.[1148] TF2-041 was taken to Blama for treatment, on the way there, the Kamajors escorting him again threatened to kill him but TF2-041 begged for his life and was spared.[1149]

b. Arrest and Mistreatment of TF2-151; Killing of Alleged Junta – Kenema District - Crimes

4173. para. 603: TF2-151 was taken to Mr. Fefegula's office inside the CDF Headquarters.[1216] He was stripped naked and was accused of being a junta.[1217] Though he denied the allegations the Kamajors continued to beat him.[1218] One Pa came and asked the Kamajors not to kill TF2-151; he was then released.[1219]

c. Second Arrest and Further Mistreatment of TF2-151 – Kenema District - Crimes

4174. para. 608: In December 1998, a Kamajor came into TF2-151's shop and asked him to come along with him and Mr. Fefegula. They drove to a shop where spare parts were sold. Brima Kpaka came out of the shop and accused TF2-151 of being a junta. TF2-151 was taken to the CDF office at Kaisamba Terrace. The Kamajors beat him and put him in a cell. The following day, Mr. Fefegula and Brima Kpaka questioned TF2-151 and threatened to kill him if he lied. TF2-151 was accused of being a junta. His hands were tied behind his back with FM rope and he was beaten by Kamajors. Hours later, when Mr. Fefegula instructed that he should be released, TF2-151 was in a great deal of pain. He was unable to use his hands for seven months. His wife had to clean him when he went to the toilet.

4175. para. 609: Two or three days after he was released, TF2-151 was re-arrested by KBK Magonna and was taken back to the CDF office. At the CDF office, KBK Magonna ordered that TF2-151's radio, money, jeans, and sandals be taken from him. KBK Magonna ordered some Kamajors to beat TF2-151 and told him that he would come kill him later. TF2-151 was put in a cell and remained there for some hours.

(vi) Talia/Base Zero – Crimes

a. Capture and Beating of TF2-134 by Kamajors - Talia/Base Zero

4176. para. 619: TF2-134 was captured by Kamaj rs in a village near Bonthe and forcefully brought to Talia.[1259] The Kamajors were armed with cutlasses and machetes. After two separate unsuccessful attempts to escape,[1260] she was tied with rope and beaten until she vomited blood.[1261] TF2-134 was then kept in a guardroom until sometime later in the day when a Kamajor came and ordered her to leave. [1262]

b. Capture of TF1 -109 and Looting – Talia/Base Zero

4177. para. 621: TF2-109 was captured by Kamajors along with other women and three men in her village of Mattru Jong and was taken to Talia. A Kamajor named Komoh Bonnie told TF2-109 that they were taking her to Talia to save her from the rebels. The Kamajors also took their property, including furniture, household items, and clothing.[1266] TF2-109 was held in Talia for three days. During that time she met TF2-108.[1267]

c. Treatment of Collaborators – Talia/Base Zero - Crimes

i. Detention of TF2-096's Friend by Kondewa – Talia/Base Zero - Crimes

4178. para. 631: Kondewa's bodyguards Kafi Jini, Jahman,1292 Junisa and Bokindeh came to Talia to buy cassava from TF2-096. They said that TF2-096's friend, who was also selling cassava, was a rebel.[1293] Jahman reported TF2-096's friend to Kondewa and later that day Kamajors arrested TF2-096's friend and took her to Nyandehun. She was held in a cage and was not released until 40,000 leones were paid to Kondewa.[1294]

(vii) Moyamba District - Crimes

a. Bradford – Moyamba District – Crimes

i. Third Arrival at Bradford on 23 March 1998 – Bradford – Moyamba District - Crimes

4179. para. 659: TF2-167's son Ibrahim was shot in the dead by Kamajors while he was trying to escape. TF2-167 found Ibrahim alive and although his son survived, he no longer behaves normally all the time. During this attack, Kamajors looted from TF2-167.[1403]

ii. Fourth Arrival at Bradford of the Kamajors on 25 March 1998 – Bradford – Moyamba District - Crimes

4180. para. 660: On 25 March 1998, Kamajors under the command of Obai returned to Bradford and again fired at civilians. TF2-168's wife ran into the thick bush but was caught by the Kamajors. TF2-168 saw the Kamajors approaching his wife. A Kamajor commander named

Kakpata asked TF2-168's wife to give him some money which she had wrapped around her waist. TF2-168's wife said that the money was something that she was afraid to lose and gave the Kamajors the money which was 1,600,000 leones.[1404] Afterwards Kakpata said to the other Kamajors: "Don't you want to shoot that woman?" The Kamajors shot TF2-168's wife and she fell down slowly.[1405] A six year old child was also present when TF2-168's wife was shot.[1406]

4181. para. 662: The Kamajors arrested TF2-173, his friends, and other people and held them at gunpoint.[1410] TF2-173 was lying on the ground. When he tried to raise his head he was shot in his right arm. The Kamajors had gone wild and were firing indiscriminately. Kamajors chased TF2-173 and two other people called out for him; TF2-173 and others ran and hid in the bush.[1411]

iii. Capture and Murder of One Civilian near Makabi Loko in Tune 1998 – Bradford – Moyamba District - Crimes

4182. para. 663: One day in June 1998 at about 4:00am,[1412] the Vondos[1413] came to Makabi Loko from various villages.[1414] They started firing indiscriminately in the village and TF2-170 ran away. No bullets hit him but TF2-170 fell down and was captured.[1415] A member of the CDF hit TF2-170 in the back with his gun. They took him to their Patrol Commander Kakpata.[1416] TF2-170 discovered that four of his relatives were also captives:[1417] Pa Jibo, Pa Serry Bangura, Pa Santigie Salami and Aluseini Kabbah.[1418] Kakpata said that Aluseini Kabbah had been captured for the second time and that he had failed to show the Vondos where the Gbethis were despite a promise to do so. For this reason, Kakpata stated he would kill Aluseini Kabbah and leave him there.[1419]

(b) Legal Conclusions

(i) Applicable law - War crimes / Violations of Common Article 3

4183. See above: Chapter 1 – CDF – Trial Judgment – Legal conclusions – Applicable law - War crimes / Violations of Common Article 3 – paras. 122 – 137 [1115].

(ii) War crimes / Violations of Common Article 3 - Findings on general requirements

4184. See above: Chapter 1 – RUF – Trial Judgment – Legal conclusions – War crimes / Violations of Common Article 3 – Findings on general requirements – paras. 695 – 697 [1131].

(iii) Applicable law – Violence to life, helath and physical or mental well-being of persons, in particular cruel treatment

4185. para. 154: The Indictment charges the Accused under Count 4 with cruel treatment 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. Under this Count, the Accused are charged with "violence to life, health and physical or mental well-being of persons, in particular cruel treatment". The Chamber has analysed this offence as cruel treatment, since the category of "violence to life and person" does not exist as an independent offence in customary international law.[196]

4186. para. 155: The Chamber endorses the jurisprudence of the ICTY in which cruel treatment, punishable under Article 3 of the ICTY Statute as a violation of the laws or customs of war, including violations of Common Article 3 and other inhumane acts, punishable under Article 5 of the ICTY Statute as a Crime against Humanity, were said to require proof of the same elements.[197] Thus, the Chamber concludes that elements of the offence of cruel treatment as a serious violation of Common Article 3 and Additional Protocol II are the same as of other inhumane acts as a Crime against Humanity, except that the victim of cruel treatment must be a person not taking direct part in the hostilities,[198] and the Accused must have known or had reason to know that the victim was a person not taking direct part in the hostilities.

4187. para. 156: The Chamber considers that the constitutive elements of cruel treatment are as follows:[199]

> (i) The occurrence of an act or omission;
>
> (ii) The act or omission caused serious mental or physical suffering or injury, or constituted a serious attack on human dignity, to a person not taking direct part in the hostilities; and
>
> (iii) The Accused intended to cause serious mental or physical suffering or injury or a serious attack on human dignity or acted in the reasonable knowledge that this would likely occur.[200]

(iv) Tongo Field – Physical Violence

4188. para. 756: As set out above in Factual Findings, the Chamber found that the following acts have been committed which are relevant to Count 4, Cruel Treatment:

> 1. On 14 January 1998, at the NDMC Headquarters in Tongo, a Kamajor hacked at three people with a cutlass;

2. On 15 January 1998, at a checkpoint in Dodo, Kamajors hacked the hand of a man they thought was a rebel;

3. Shortly after the third attack on Tongo, a group of 65 civilians was separated into two lines at Kamboma; One man was hacked in the neck with a machete but survived;

4. Some time after escaping a checkpoint at Panguma, Kamabote found TF2-035 in Ngiehun; On discovering that TF2-035 was a Limba, Kamabote ordered a child soldier named "Small Hunter" to kill TF2-035; Small Hunter shot TF2-035 five times; one bullet is still in his body;

4189. para. 757: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i)-(iv) and concludes that all these acts were committed by Kamajors. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all the evidence adduced, the Chamber is satisfied that each acts described in paragraph 756 was sufficiently related to the armed conflict o to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 756, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that the acts described above occurred and, furthermore, that the perpetrators knew that they were not taking an active part in hostilities.

4190. para. 758: In light of the findings set out above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of cruel treatment have been established with respect to each incident described in paragraph 756.

4191. para. 763: On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for aiding and abetting in the preparation of the crimes committed in the towns of Tongo Field as found under Counts 2, 4, and 7 above.

4192. para. 764: On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) for aiding and abetting in the preparation of the crimes committed in the towns of Tongo Field as found under Counts 2, 4, and 7 above.

(v) Koribondo – Physical Violence

4193. para. 791: As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 4, Cruel Treatment:

1. On 13 February 1998, TF2-032's nine room house in Koribondo was set on fire by Kamajors. TF2-032 testified that he is still suffering from the loss; his children are scattered, and despite his advanced age he currently sleeps in a kitchen;

2. Between 13 and 15 February 1998, after the capture of Koribondo, Kamajors went on a rampage and burned 25 houses. People felt helpless, discouraged and feared for their lives.

4194. para. 792: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i) through (ii) and concludes that all of the perpetrators were Kamajors under the effective control of Fofana. We find that individuals were intentionally killed; in the majority of cases they were specifically targeted because of the perpetrator's belief that they were collaborators or rebels. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 791 was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 791, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time they were killed and, furthermore, that the perpetrator knew that the victims were not taking an active part in the hostilities.

4195. para. 793: In light of the findings set out above, the Chamber is satisfied that both the general requirements of war crimes and the specific requirements of cruel treatment have been established with respect to the burning of TF2-032's house described in paragraph 791(i) and the burning of many houses, described in 791(ii).

4196. para. 798: On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Fofana is individually criminally responsible as a superior, pursuant to Article 6(3) for the crimes committed in Koribondo as found under Counts 2, 4, and 7 above.

4197. para. 799: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond a reasonable doubt that Kondewa is individually criminally responsible pursuant to either article 6(1) or 6(3) for any criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment.

(vi) Bo District – Physical Violence

a. Responsibility of Fofana – Bo District – Physical Violence

4198. para. 835: As set out above in Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 4, Cruel treatment:

1. On 15 February 1998 OC Bundu was detained and beaten by Kamajors under the leadership of Nallo, Agbamu Murray and John Ngombeh;

2. On 16 February 1998, in Kandeyama, TF2-001 and other police were separated from other civilians on the order of the Kamajor leaders including Agbamu Murray. The police were arrested;

4199. para. 836: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i) through (ii) and concludes that all of the perpetrators were Kamajors under the effective control of Fofana. The Chamber finds that OC Bundu and TF2-001 were targeted by the Kamajors because of their status as police officers, a group that was considered by the Kamajors to have collaborated with the juntas. Furthermore, the incidents described above occurred on the day the Kamajors entered Bo or the following day. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 835 was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 835, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time they were killed and, furthermore, that the perpetrator knew that the victims were not taking an active part in the hostilities.

4200. para. 837: In light of the findings set out above, the Chamber is satisfied that the general requirements of war crimes have been established with respect to each incident described in paragraph 835.

4201. para. 846: On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Fofana is individually criminally responsible as a superior, pursuant to Article 6(3) for the crimes committed in Bo District as found under Counts 2, 4, 5, and 7.

b. Kondewa

4202. para. 855: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Bo District during the time frame charged in the indictment.

(vii) Bonthe District – Physical Violence

a. Fofana

4203. para. 863: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Bonthe District during the time frame charged in the indictment.

b. Kondewa

4204. para. 890: As set out above in Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 4, cruel treatment:

a. On 15 February 1998, Kamajors captured Lahai Ndokoi Koroma. He was stripped naked and and tied. Three delegations came from Talia to investigate the matter;

b. On 16 February 1998, at a meeting at St. Patrick's Parish Compound in Bonthe Town, Julius Squire announced that the Kamajors were looking for three collaborators. At the same meeting, TF2-116 was singled out and his life was threatened because of alleged collaboration with the juntas;

c. At the same meeting, a boy named Bendeh Battiama was singled out and accused of being junta. He was later killed by Rambo Conteh;

d. In early March 1998, TF2-086 was detained by Kamajors including Baigeh, along the road between Sebongie and Bonthe. The Kamajors threatened her life saying, "Look how dead you are."

4205. para. 891: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i) through (ii) and concludes that all of the perpetrators were Kamajors under the effective control of Kondewa. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 889(i)-(v) was

sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 889, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time they were killed and, furthermore, that the perpetrator knew that the victims were not taking an active part in the hostilities.

4206. para. 892: The Chamber finds that in light of the circumstances under which these events occurred, it is a reasonable inference that the screening for collaboration experienced by Lahai Ndokoi Koroma, TF2-116, Bendeh Battiama, and TF2-086 caused serious mental suffering, particularly in the case of TF2-116 and TF2-086 whose lives were threatened at the same time.

4207. para. 893: The findings set out above, the Chamber is satisfied that the general requirements of war crimes have been established and the specific elements of cruel treatment have been established with respect to each incident described in paragraph 889 (ii)-(v).

4208. para. 894: By contrast, the Chamber finds that the specific elements of the crime of cruel treatment have not been established with respect to 889 (i), as it has not been proved beyond a reasonable doubt that those people whose homes were burnt endured serious mental suffering or injury.

(viii) Kenema District – Physical Violence

a. Fofana

4209. para. 911: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Kenema District during the time frame charged in the indictment.

b. Kondewa

4210. para. 918: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Kenema District during the time frame charged in the indictment.

(ix) Talia/Base Zero – Physical Violence

a. Fofana

4211. para. 929: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing, (including through Joint criminal enterprise) or otherwise aiding and abetting in the planning preparation or execution of any of the criminal acts which the Chamber found were committed in Talia/Base Zero during the time frame charged.

4212. para. 930: Likewise, the Chamber concludes that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(3) as a superior for any of the criminal acts which the Chamber found were committed in Talia/Base Zero during the time frame charged.

b. Kendowa

4213. Not applicable.

3. Appellate Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-A, Judgment, 28 May 2008

(a) Factual Findings

4214. Not applicable.

(b) Legal Conclusions

(i) Tongo Town – Physical Violence

a. Fofana

4215. para. 54: The Prosecution argues that because the *actus reus* of aiding and abetting is satisfied, the *actus reus* is also satisfied for instigating. However, the Trial Chamber found, relying on ICTY Appeals Chamber jurisprudence, that unlike the *actus reus* of instigating, the *actus reus* of aiding and abetting does not require a causal link between the act of aiding and abetting and the commission of the crime. The Appeals Chamber holds that the *actus reus* of

instigating requires a causal link which aiding and abetting does not and accordingly disagrees with the Prosecution's proposition.

4216. para. 55: Fofana's speech at the First Passing Out Parade at Base Zero was removed both temporally and geographically from the unlawful acts committed by the Kamajors in Tongo Town in January 1998. This alone would not be enough to deny a causal link between the speech and the crimes alleged. However, in this case the Appeals Chamber is of the view that there is insufficient evidence to show how Fofana's words influenced the perpetration of crimes which took place at a significantly different place and time. Fofana's speech may have substantially contributed to the military effort, but not to the crimes as such. Therefore, the Appeals Chamber is satisfied that the Trial Chamber was not in error in finding that Fofana's speech did not have a substantial effect on the perpetration of the crimes or that a causal relationship did not exist and that the *actus reus* for instigating was, consequently, not satisfied.

4217. para. 56: With regard to the *mens rea* required for "instigating," the Prosecution submits that Fofana's intent or knowledge that crimes would likely be committed may be inferred from his substantial contribution to the planning, which was done with knowledge of the crimes which Norman had ordered in the execution of the plan. Fofana's words "[n]ow you've heard the National Coordinator [. . .] any commander failing to perform accordingly and losing your own ground, just decide to kill yourself there and don't come to report to us" are ambiguous and may be interpreted not as approving Norman's unlawful orders, but rather as an appeal to each of the commanders to fight hard and not loose his ground. Further, Fofana's call "to destroy the soldiers finally from where they were [. . .] settled" was directed at the military campaign and does not include any incitement to perpetrate unlawful acts. This leads the Appeals Chamber to conclude that there were other possible interpretations of the evidence than the one suggested by the Prosecution. The Appeals Chamber, therefore, finds that a reasonable trier of fact could have found that Fofana did not have the requisite *mens rea*.

4218. para. 57: Consequently, the Appeals Chamber finds that the Trial Chamber did not err in failing to convict Fofana for instigating the commission of crimes in Tongo Town. The Prosecution's Fourth Ground of Appeal, therefore, fails in this respect.

4219. para. 61: Regarding the requisite *actus reus*, given the absence of factual findings by the Trial Chamber concerning the nature of Fofana's participation in the commanders' meetings in December 1997, the Appeals Chamber finds that it was open to a reasonable trier of fact to conclude that evidence of Fofana's presence did not by itself amount to planning. Although Fofana participated in these commanders' meetings and held a position of responsibility as

Director of War, it was open to a reasonable trier of fact to conclude that this evidence alone did not prove beyond reasonable doubt that he participated in the planning of the criminal conduct which took place in Tongo Town.

4220. para. 62: Regarding the requisite *mens rea*, the Trial Chamber found that Fofana participated in the commanders' meetings. However, the Appeals Chamber notes that the findings did not indicate that he participated at those meetings in the planning of unlawful acts rather than in the successful completion of military operations.

4221. para. 63: The Appeals Chamber therefore, concludes that the evidence did not disclose beyond reasonable doubt that Fofana possessed the requisite *mens rea* for planning violence to life, health and physical or mental well-being of persons, in particular murder, punishable under Article 3.a. of the Statute, violence to life, health and physical or mental well-being of persons, in particular cruel treatment, punishable under Article 3.a. of the Statute as well as 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.

4222. para. 64: The Appeals Chamber finds that in this respect, the Prosecution's Fourth Ground of Appeal must fail.

b. Kondewa

4223. para. 70: Kondewa submits that the Trial Chamber committed an error of law. However, he states that he agrees with the legal requirements of aiding and abetting found by the Trial Chamber. Further, he agrees that the applicable standard for *actus reus* is that of "substantial effect." His challenge is therefore not directed at the legal standard as such but rather at the Trial Chamber's application of the facts. The Appeals Chamber, therefore, is of the view that Kondewa raises an error of fact rather than law, and his arguments will be considered in this context.

4224. para. 71: Although not specifically raised in this appeal, the Appeals Chamber is of the view that it is necessary to determine whether, as a matter of law, words of encouragement and support may have a "substantial effect" even though they were spoken at a time and place that are temporally and geographically removed from the commission of the crimes. The Trial Chamber held that the *actus reus* of aiding and abetting may occur before, during, or after the perpetration of the crime and at a location geographically removed from the place where the crime is committed, if the act of the aider and abetter has a substantial effect on the perpetration of the crime. In this regard, the Trial Chamber relied on the ICTY Appeals Chamber decision in *Blaškić*

which found that the acts of aiding and abetting "may occur before, during, or after the principal crime has been perpetrated, and that the location at which the *actus reus* takes place may be removed from the location of the principal crime." Further, it is recognized in the jurisprudence of other *ad hoc* Tribunals that "encouragement" and "moral support" are two forms of conduct which may lead to criminal responsibility for aiding and abetting a crime.

4225. para. 72: The Appeals Chamber agrees that "encouragement" and "moral support" may constitute the *actus reus* and that acts of aiding and abetting can be made at a time and place removed from the actual crime.

4226. para. 73: In regard to the *actus reus* for aiding and abetting, the Trial Chamber found that Kondewa's speech at the First Passing Out Parade had a substantial effect on the perpetration of the crimes in Tongo. The Appeals Chamber recalls that the Trial Chamber found that at the First Passing Out Parade Norman instructed the Kamajors "to kill captured enemy combatants and 'collaborators' to inflict physical suffering or injury upon them and to destroy their houses" After Norman and Fofana spoke "all the fighters looked at Kondewa, admiring him as a man with mystic powers, and he made the last comment saying that the time for surrender of the rebels had long been exhausted and that they did not need any surrendered rebels." The Trial Chamber then found that in uttering these words Kondewa effectively supported Norman's instructions and encouraged the Kamajors to execute Norman's unlawful orders. The Trial Chamber also noted that no fighter would go to war without Kondewa's blessing because they believed that Kondewa transferred his mystical powers to commit such acts.

4227. para. 75: Even though the First Passing Out Parade in December 1997 was temporally and geographically removed from the second and third attacks on Tongo Town, the Appeals Chamber observes that one of the purposes of the Passing Out Parade was for Norman to give instructions to the Kamajors for the second and third attacks on Tongo Town, not just instructions concerning unlawful acts. For this reason temporal and geographic remoteness is not of significance to the question of whether Kondewa's speech substantially contributed to the perpetration of the crimes. Thus, in the light of all the circumstances of this case, a reasonable trier of fact could have concluded that the only inference available on the evidence was that through his blessings and speech at the First Passing Out Parade Kondewa substantially contributed to the perpetration of the crimes in Tongo Town.

4228. para. 76: Regarding the requisite *mens rea*, the Appeals Chamber agrees with Kondewa that the Trial Chamber erroneously relied on the fact that he had received the report to Base Zero of the Kamajors' previous crimes in Tongo. On the contrary, the Trial Chamber found that

Norman and Fofana received this report, not Kondewa. Thus, the Appeals Chamber finds that the Trial Chamber erred in fact in relying on this report.

4229. para. 78: On these findings the Appeals Chamber is satisfied that it was reasonable for the Trial Chamber to conclude that Kondewa by his words of encouragement aided and abetted the commission of criminal acts ordered by Norman in Tongo.

4230. para. 79: The Appeals Chamber therefore concludes, Justice King dissenting, that the Trial Chamber did not err in finding Kondewa responsible for aiding and abetting the commission of crimes in Tongo Town. The Appeals Chamber accordingly finds, Justice King dissenting, that Kondewa's Fourth Ground of Appeal must fail and upholds his conviction in relation to violence to life, health and physical or mental well-being of persons, in particular murder and cruel treatment punishable under Article 3.a. of the Statute (Counts 2 and 4, respectively).

4231. para. 85: In this case, in order to show a causal link between Kondewa's speech and the crimes committed in Tongo Town, the Prosecution must lead evidence to show that the Kamajors who were present at the First Passing Out Parade at which Kondewa's speech was made were the same Kamajors who subsequently committed the crimes in Tongo Town. There was no such evidence before the Trial Chamber. For this reason the Appeals Chamber finds that "instigation" for the crimes charged in Tongo Town was not proved.

4232. para. 86: Consequently, the Prosecution's Fourth Ground of Appeal fails in this respect.

(ii) Koribondo, Bo District, and Kenema District – Physical Violence

a. Fofana

4233. para. 97: Given the absence of factual findings by the Trial Chamber concerning the nature of Fofana's participation in the January 1998 commanders' meetings, the Appeals Chamber finds that it was open to a reasonable trier of fact to conclude that evidence of Fofana's presence at these meetings does not amount to planning.[231] Although Fofana attended these meetings and held a position of responsibility as Director of War, it was reasonable for the Trial Chamber to conclude that this evidence alone does not prove beyond reasonable doubt that Fofana designed the criminal conduct which took place in Koribondo, Bo District and Kenema District, or that his involvement in the planning process substantially contributed to the criminal conduct which occurred. Furthermore, despite the Trial Chamber's finding that Fofana provided commanders

with arms, ammunition and a vehicle which were used by the Kamajors during their attack on Kebi Town, the Appeals Chamber finds that it was open to the Trial Chamber to conclude that Fofana's provision of logistics for attacks in Bo District did not substantially contribute to the commission of criminal acts in Bo District.

4234. para. 98: Thus, the Appeals Chamber finds that the Trial Chamber did not err in finding Fofana not liable for planning the commission of crimes in Koribondo, Bo District and Kenema District. Therefore, the Appeals Chamber finds that in this respect, the Prosecution's Third and Fourth Grounds of Appeal must fail.

4235. para. 101: In view of the Trial Chamber's findings that Fofana's speech at the January 1998 passing out parade did not amount to urging, encouraging or prompting the Kamajors to commit criminal acts, the Appeals Chamber holds that Fofana's speech did not constitute aiding and abetting the commission of crimes in Koribondo, Bo District and Kenema District.

4236. para. 102: Furthermore, although Fofana was present at the January 1998 commanders' meeting the Trial Chamber did not make any factual findings as to the nature of Fofana's participation during these meetings. The Appeals Chamber opines that Fofana's mere presence at these meetings did not amount to aiding and abetting the criminal conduct which took place in Koribondo, Bo District and Kenema District. Furthermore, in regard to the Trial Chamber's finding that Fofana provided commanders with arms, ammunition and a vehicle prior to their attack on Kebi Town, the Appeals Chamber holds that Fofana's provision of logistics is not sufficient to establish beyond reasonable doubt that he contributed as an aider and abetter to the commission of specific criminal acts in Bo District.

4237. para. 103: Thus, The Appeals Chamber concludes that the Trial Chamber was correct in finding Fofana not liable for aiding and abetting the commission of crimes in Koribondo, Bo District and Kenema District. Consequently, the Prosecution's Third and Fourth Grounds of Appeal must fail.

b. Kondewa

4238. para. 109: The Trial Chamber found that Kondewa's speech at the Second Passing Out Parade did not amount to urging, encouraging or prompting the Kamajors to commit criminal

[231] CDF Trial Judgment, paras 765, 809, 904.

acts.[232] In addition, there was an absence of a finding by the Trial Chamber concerning the nature of Kondewa's participation in the January 1998 commanders' meetings at which Norman gave orders for the commission of unlawful acts during the "all-out offensive." The fact that Kondewa held a position of responsibility as High Priest and that he spoke at the Second Passing Out Parade and attended Commanders' meetings is not sufficient to conclude that this evidence alone does prove beyond reasonable doubt that Kondewa encouraged or supported the criminal conduct which took place in Koribondo, Bo District and Kenema District.

4239. para. 110: The Appeals Chamber agrees with the findings of the Trial Chamber that giving "words of moral support and encouragement to the Kamajor fighters who were about to conduct military operations on the junta-held territories"[233] or blessings, as well as providing medicine which the Kamajors believed would protect them against the bullets does not constitute aiding and abetting in the planning, preparation or execution of the criminal acts in Bo District.

4240. para. 111: The Appeals Chamber finds that the Trial Chamber was correct in finding Kondewa not liable for aiding and abetting the commission of crimes in Koribondo, Bo District and Kenema District. Consequently, the Prosecution's Third and Fourth Grounds of Appeal fail in this respect.

(iii) Bonthe District – Physical Violence

a. Kondewa

4241. para. 171: Kondewa alleges that the Trial Chamber erred in both law and fact in finding that he was responsible as a superior pursuant to Article 6(3) for the crimes committed in Bonthe District. It is evident, however, from the submissions that he does not challenge the Trial Chamber's articulation of the legal requirements for the establishment of superior responsibility under Article 6(3) of the Statute. Kondewa, therefore, does not allege an error of law, but is instead concerned with the way in which the Trial Chamber applied the law to the particular facts of his case. The Appeals Chamber is of the view that this submission, in essence, questions the inferences drawn from facts found by the Trial Chamber and is therefore factual in nature. Kondewa must therefore satisfy the standard of review for alleged errors of fact.

4242. para. 172: Kondewa's arguments concern the Trial Chamber's application of the effective control test in determining a superior-subordinate relationship between him and the perpetrators of

[232] CDF Trial Judgment, paras 323-324.

certain criminal acts during the attack on Bonthe. Even though Kondewa disputes the totality of the Trial Chamber's findings regarding his role as a superior, he does not proffer any argument in support of other aspects of his ground of appeal. Kondewa's arguments are specifically limited to the finding of the existence of a superior-subordinate relationship. Although Kondewa challenges the finding that he had both the legal and material ability to prevent the commission of criminal acts by his subordinate Morie Jusu Kamara and other subordinates and to punish them for those crimes, the Trial Chamber's finding that he knew or had reason to know that certain crimes were being committed or that he failed to prevent their commission or to punish the alleged perpetrators was not challenged as such.

4243. para. 173: In order for the Appeals Chamber to assess a party's arguments on appeal, the party must set out its grounds of appeal clearly, logically and exhaustively and must support allegations of error with precise references to the trial judgment or other material that supports his appeal. The Appeals Chamber will not consider submissions which are obscure, contradictory, vague or suffer from formal or other deficiencies. The Appeals Chamber will, therefore, only consider the Trial Chamber's application of the effective control test, and determine whether based on the findings of fact, a reasonable trier of fact could have concluded that a superior subordinate relationship existed between Kondewa and these Kamajors.

4244. para. 175: As has been noted, the position taken by the Prosecution is that there is no distinction between the legal standards required for proof of a superior-subordinate relationship in the case of "civilian" as opposed to "military" superior. The Appeals Chamber holds that the test for establishing the existence of a superior-subordinate relationship is effective control for both military and civilian superiors.

4245. para. 176: The Appeals Chamber will now determine whether it was reasonable for the Trial Chamber to conclude that Kondewa exercised the requisite degree of "effective control" over his alleged subordinates.

4246. para. 178: In finding that a superior-subordinate relationship existed between Kondewa and the Kamajor commanders responsible for the Bonthe attack, the Trial Chamber relied on what it describes as his *de jure* status as High Priest of Kamajors in Sierra Leone and particularly so in Bonthe District. Kondewa submits that because the Trial Chamber found elsewhere in the Judgment that the command he had over the Kamajors by virtue of his position as High Priest did not amount to a relationship of effective control, it was "unclear how the Trial Chamber

[233] *Ibid* at para. 799.

determined that [his] status as High Priest gave him any higher degree of authority in Bonthe." The Appeals Chamber notes that the Trial Chamber indeed found that Kondewa's status as High Priest did not amount to effective control over the Kamajors.

4247. para. 179: The Appeals Chamber notes, however, that the Trial Chamber did not base its findings on the existence of a superior-subordinate relationship for Bonthe District on Kondewa's *de jure* position as High Priest alone. In addition to Kondewa's *de jure* status, the Trial Chamber relied on his *de facto* status as a superior to his alleged subordinates, as disclosed by evidence of his actual exercise of effective control over Kamajors who committed crimes in Bonthe District. Although his position as High Priest was one of several factors considered by the Trial Chamber in determining the existence of a superior-subordinate relationship, the Appeals Chamber is of the view that this is not a material factor in view of the overwhelming evidence of his actual exercise of effective control. Such include evidence of the relationship with his alleged subordinates in Bonthe, including an incident occurring in August 1997, events occurring during the 15 February 1998 attack on Bonthe, and a reaction to a letter sent from the Attorney-General to Kamajors in Bonthe in March 1998.

4248. para. 181: The Appeals Chamber concurs that effective control must be established at the time of commission of the alleged crimes. The Appeals Chamber is of the view, however, that even though an accused cannot be convicted for criminal acts falling outside the period of the Indictment, evidence of matters occurring outside the timeframe of the Indictment may be taken into account where relevant and probative of the accused's responsibility as a superior. The evidence was relied upon by the Trial Chamber to establish that at a time before the commission of the crimes, Kondewa had effective control and that he had authority and power to issue oral and written directives to the Kamajors in the area. He had the power to order investigations for misconduct, and to hold court hearings and to threaten the imposition of sanctions of "a terrible death" on the Kamajors if they lied to him. The evidence also establishes Kondewa's pre-existing relationship with Squire.

4249. para. 182: Taken together with the events of February and March 1998, the evidence shows that a reasonable trier of fact could conclude that this effective control continued until at least 15 February 1998.

4250. para. 186: The Trial Chamber's findings on the existence of a superior-subordinate relationship in each location was based on the totality of the evidence in the case with regard to such location. In the case of Bonthe, Kondewa's position as High Priest, which gave him a certain status, was just one of several factors considered by the Trial Chamber. The Trial Chamber also

found that Kondewa had authority and power to issue oral and written directives; that he could order investigations for misconduct and hold court hearings; and that he had the legal and material ability to issue orders to Kamara. Furthermore, Kondewa himself acknowledged his authority and control over Bonthe by stating publicly that he refused "to give any areas under his control to a military government but to the democratically elected Government of President Ahmad Tejan Kabbah.

4251. para. 187: The Appeals Chamber finds that it was open to a reasonable trier of fact, based on all the evidence adduced, to conclude that Kondewa's *de facto* status as superior resulted in the exercise of effective control over the Kamajors who committed crimes in Bonthe. The fact that the Trial Chamber found that Kondewa did not exercise the same degree of control over Kamajors in other locations does not render the Trial Chamber's findings in relation to Bonthe inconsistent or illogical.

4252. para. 188: The Appeals Chamber therefore finds that Kondewa has failed to show that no reasonable trier of fact could have reached the conclusion that a superior-subordinate relationship existed between him and his alleged subordinates in Bonthe District.

4253. para. 189: For the foregoing reasons, the Appeals Chamber, Justice King dissenting, dismisses Kondewa's First Ground of Appeal.

(iv) Pleading

a. Liability for Collective Punishments As Cruel Treatment

i. Kondewa

4254. para. 224: The Appeals Chamber finds that the correct definition of collective punishments is:

a. 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;

b. the specific intent of the perpetrator to punish collectively.

4255. para. 225: In light of the above definition of collective punishments, it is the view of the Appeals Chamber that convictions are permissible for collective punishments, in addition to murder, cruel treatment and pillage. The crime of collective punishments requires proof of an

intention to punish collectively, which murder, pillage and cruel treatment do not. In addition, murder requires the death of the victim, which collective punishments does not and pillage requires proof of appropriation which the crime of collective punishments does not. Finally, cruel treatment requires proof of serious mental or physical suffering or injury, which collective punishments does not. Thus, because each of these crimes requires proof of materially distinct elements, cumulative convictions are permissible in this instance.

4256. para. 226: Despite our finding that the Trial Chamber did not err in determining that cumulative convictions are permissible for the crime of collective punishments in addition to murder, cruel treatment and pillage, the Appeals Chamber must, nonetheless, re-examine the Trial Chamber's factual findings on collective punishments in light of the Appeals Chamber's definition of the elements of this crime.

4257. para. 227: In relation to the commission of murder and cruel treatment in Tongo, the Trial Chamber found both Fofana and Kondewa liable pursuant to Article 6(1) for aiding and abetting in the preparation of the commission of collective punishments under Count 7. In relation to the commission of murder and cruel treatment in Koribondo, the Trial Chamber found Fofana liable as a superior, pursuant to Article 6(3), for the commission of collective punishments under Count 7. In relation to the commission of murder, cruel treatment and pillage in Bo District, the Trial Chamber found Fofana liable as a superior pursuant to Article 6(3), for the commission of collective punishments under Count 7. Finally, in relation to the commission of murder, cruel treatment and pillage in Bonthe District, the Trial Chamber found Kondewa liable as a superior pursuant to Article 6(3), for the commission of collective punishments under Count 7.

4258. para. 228: The Trial Chamber relied on numerous factual findings concerning murder, cruel treatment and pillage to support its convictions of Fofana and Kondewa for the commission of collective punishments in the various locations mentioned above. The Appeals Chamber's examination of these findings reveals that the victims of murder, cruel treatment and pillage were being targeted in these places because of their identities or their locations at the time of the Kamajors' attacks. In particular, the Kamajors targeted individuals who were identified or accused of being rebels and collaborators, or who were related to rebels. In addition, the Kamajors targeted Loko, Limba and Temne tribe members, policemen and civilians in close proximity to the National Diamond Mining Company (NDMC) Headquarters in Tongo. Finally, many other civilians appear to have been targets of murder, cruel treatment and pillage merely by chance, due to the indiscriminate nature of the attacks on these locations. Thus, the Trial Chamber's factual findings indicate that the individuals who came under attack in Tongo, Koribondo, Bo District and

Bonthe District were being targeted due to their perceived identities, their locations, or by sheer chance.

4259. para. 229: The Trial Chamber's factual findings do not, however, indicate that these individuals were objects of attack because of perceived acts or omissions for which the Kamajors sought to punish them.

4260. para. 230: The Appeals Chamber holds that Trial Chamber's factual findings do not prove beyond reasonable doubt that the perpetrators of these crimes were attacking protected persons in these areas with the intent to collectively punish them for their perceived acts or omissions. In the result, the Appeals Chamber finds that the requisite *mens rea* for collective punishments, which represents the key distinction between targeting and collectively punishing, has not been satisfied. Given that the *mens rea* requirement for collective punishments has not been met, the Appeals Chamber need not examine whether the *actus reus* has been fulfilled.

4261. para. 231: For these reasons, the Appeals Chamber, Justice Winter dissenting, reverses the Trial Chamber's verdict of Fofana and Kondewa for collective punishments under Count 7 and substitutes a conviction of not guilty.

b. Liability for Crimes Against Humanity as Cruel Treatment

4262. para. 246: The Prosecution submits that "the elements of crimes against humanity prohibit attacks against the civilian population regardless of their purpose." The Appeals Chamber notes Kondewa's contentions that while the existence of a plan or policy can be evidentially relevant in proving that an attack was directed against a civilian population – although it is not a legal element of crimes against humanity – "it should be evidentially relevant in proving that an attack was not directed against a civilian population."

4263. para. 247: In the opinion of the Appeals Chamber, it is manifestly incorrect to conclude that widespread or systematic attacks against a civilian population cannot be characterised as crimes against humanity simply because the ultimate objective of the fighting force was legitimate and/or aimed at responding to aggressors. The Appeals Chamber deems it necessary to emphasise that rules of international humanitarian law apply equally to both sides of the conflict, irrespective of who is the "aggressor," and that the absolute prohibition under international customary and conventional law on targeting civilians precludes military necessity or any other purpose as a justification. The Appeals Chamber holds that it is no justification that the perpetrators of a crime against humanity were fighting for the restoration of democracy.

4264. para. 248: The Trial Chamber's finding shall not be interpreted as legitimizing any unlawful acts committed against the civilians. The Trial Chamber's Judgment, read as a whole, makes it clear that the Trial Chamber underscored the prohibition on targeting civilians and the criminality of any acts directed against such protected persons. In its description of the applicable law on crimes against humanity, the Trial Chamber recalled that "there is an absolute prohibition against targeting civilians in customary international law."

4265. para. 249: For these reasons, the Appeals Chamber is unable to find that references by the Trial Chamber to the purpose for which the CDF was fighting was a decisive consideration in its determination of the general requirements for crimes against humanity.

4266. para. 251: The Appeals Chamber finds no ambiguity in the Trial Chamber's articulation of the applicable law. The Trial Chamber did not exclude the possibility that these attacks were directed against a civilian population merely because there was proof of military attacks targeting the opposing forces. Instead, the Trial Chamber found that, while there were attacks against the rebels or juntas, there was no evidence beyond reasonable doubt of the existence of parallel and coexisting attacks directed against the civilian population. The Trial Chamber found that a number of civilians were killed and subject to mistreatments.

4267. para. 252: The Appeals Chamber is unable to conclude that the Trial Chamber considered that, as a matter of law, a military attack cannot coexist with an attack directed against a civilian population.

4268. para. 259: Article 50 of Additional Protocol I provides:

> i. 'A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian. 2. The civilian population comprises all persons who are civilians. 3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.'
>
> ii. The Appeals Chamber considers that Article 50(1) of the Additional Protocol I is a useful tool in determining a 'civilian population.' The Appeals Chamber agrees with the view expressed in several judgments of international tribunals that 'the presence within a population of members of resistance groups, or former combatants, who have laid down their arms, does not alter its civilian characteristic' and '[t]he civilian population comprises all persons who are civilians and the presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.' In line with this principle, the Appeals Chamber takes the

view that the presence of rebels or juntas within the victims does not deprive the population of its civilian character.

4269. para. 260: The Appeals Chamber further considers that perceived "collaborators" are accorded civilian status under international law. The Appeals Chamber also notes that the Trial Judgment mentions the killings and mistreatments of a number of police officers. The Trial Chamber found that, as a general presumption and in the execution of their typical law enforcement duties, police forces are considered civilians for the purpose of international humanitarian law, unless they operate under the control of the military.

4270. para. 261: The Trial Chamber noted in this regard that the Sierra Leone Police operated under the control of a civilian authority. Nonetheless, as stated by the Trial Chamber, the status of police officers has to be determined on a case-by-case basis. In its factual findings in respect to the attack in Bo, the Trial Chamber found that, in the early stage of the conflict in Sierra Leone the police were duty bound to support the soldiers, but that they ceased to support the junta in late 1997, and that the Kamajors "turned against the police because of their 'alleged collaboration with the junta.'" The Appeals Chamber further notes, from the Trial Judgment, that "while the Kamajors were in Bo, they captured and killed police officers. [. . .] The police that had been killed did not have ammunition." The Appeals Chamber therefore, holds, that police officers who have been subject to killings and mistreatments in Bo are "civilians." In Kenema, a number of police officers were also killed when the Kamajors entered Kenema Town on 15 February 1998. The Trial Judgment shows no findings that those police officers were armed or fought against the Kamajors. The following day, upon the return of the juntas to Kenema, there were exchange of fire for several hours between the Kamajors and the rebels–among whom were police officers who were fighting. In this context, the Appeals Chamber does not consider those police officers as "civilians."

4271. para. 263: In the opinion of the Appeals Chamber the argument is misconceived and inconsistent with the well-established principle that discriminatory intent is only a requirement for the crime of persecution, and not for other crimes against humanity. Further, while several cases have held that crimes against humanity were committed as a result of attacks against civilian populations sharing a common nationality, race or ethnicity, the same has also been found in several cases where civilians were targeted based on less defined grounds. In some of these cases alleged or perceived opponents to a regime, faction or political party have been targeted. Indeed, the Trial Chamber found in the *AFRC* Trial Judgment that attacks against the civilian population were "aimed broadly at quelling opposition to the regime and punishing civilians suspected of supporting the CDF/Kamajors."

4272. para. 264: The Appeals Chamber holds that as a matter of law perceived or suspected collaborators with the rebels or juntas, as in the present case, are likewise part of a "civilian population." The Appeals Chamber will now turn to the main issue in this ground of appeal, in light of the Trial Chamber's factual findings.

4273. para. 299: The Appeals Chamber will now consider whether, based on the findings of the Trial Chamber in relation to the attacks on Tongo, Koribondo, Bo, Bonthe and Kenema, it was open to the Trial Chamber to conclude that the Prosecution failed to prove beyond reasonable doubt that the attacks were not "directed against the civilian population." The Appeals Chamber approves the opinion of the Trial Chamber that the expression "directed against" a civilian population requires that "the civilian population which is subjected to the attack must be the primary rather than an incidental target of the attack." The Appeals Chamber emphasizes that what must be primary is the civilian population as a target and not the purpose or the objective of the attack.

4274. para. 300: The Trial Chamber found that "the evidence adduced does not prove beyond reasonable doubt that the civilian population was the primary object of the attack. By contrast, there is evidence that these attacks were directed against the rebels or juntas that controlled towns, villages, and communities throughout Sierra Leone." The Appeals Chamber is of the view that the Trial Chamber appears to have misdirected itself when applying the principle it had already stated, by confusing the target of the attack with the purpose of the attack. When the target of an attack is the civilian population, the purpose of that attack is immaterial.

4275. para. 301: During the second attack on Tongo, immediately after the military operation on the rebel checkpoint, the Kamajors "took control" of the civilians and killed civilians consisting of 151 Limbas, Lokos and Temnes. Most of the crimes committed on civilians during the third attack on Tongo on 14-15 January 1998 occurred after the rebels retreated. Those crimes included a mass killing of a group of 65 civilians.

4276. para. 302: The Appeals Chamber has examined the findings in regard to each of the locations earlier mentioned. There is no doubt from those findings that the Trial Chamber was satisfied beyond reasonable doubt that civilians were attacked in various ways by the Kamajors in several of these locations. It was on these findings that the Trial Chamber found that war crimes were proved beyond reasonable doubt.

4277. para. 303: The Appeals Chamber is of the opinion that having found as earlier stated, the Trial Chamber fell into error in not testing these findings against the actual situation in the various

locations, before coming to a general conclusion that attacks directed against a civilian population had not been proved beyond reasonable doubt. Had it done so it would have found on the evidence that there were locations in which the rebels and junta had already withdrawn before the attack on the civilian population by the Kamajors occurred.

4278. para. 306: In view of the absence of military operations between the Kamajors and the rebels/soldiers at the time of the commission of most of the crimes against the civilians, the Appeals Chamber rejects Fofana's submission that those civilians were "collateral victims" of military operations, and further opines that those civilians could not reasonably be considered as mere "incidental targets" of a legitimate military attack. Rather, in the view of the Appeals Chamber, the context of the commission of the crimes, remote from military operations, supports a reasonable conclusion that the "attacks" were, in fact, specifically "directed against" a civilian population, within the meaning of Article 2 of the Statute.

4279. para. 307: In view of these findings of fact, taken as a whole, the Appeals Chamber is of the view that the criminal conduct against those civilians was neither random nor isolated acts but was rather perpetrated pursuant to a common pattern of targeting the civilian population.

4280. para. 308: In view of the foregoing, having regard to the factual findings of the Trial Chamber, the Appeals Chamber holds that the Trial Chamber erred in concluding that it had not been proved beyond reasonable doubt that the attacks were directed against a civilian population.

4281. para. 309: The Prosecution's First Ground of Appeal is granted in this respect. Under this Ground of Appeal, the Prosecution requests the Appeals Chamber to enter corresponding convictions against Fofana and Kondewa under Counts 1 and 3 in respect of all acts for which they were found by the Trial Chamber to be guilty under Counts 2 and 4. The Appeals Chamber will next consider whether the remaining legal requirements for crimes against humanity are satisfied in this case.

4282. para. 312: The Appeals Chamber agrees with the submission of the Prosecution and finds that the fourth element of crimes against humanity is proved.

4283. para. 315: However, in regard to the fifth element the Appeals Chamber is of the view that the knowledge required in order to find that crimes against humanity had been committed is that of the actual perpetrator.

4284. para. 316: For this reason, the Appeals Chamber will consider whether the actual perpetrators had such knowledge.

4285. para. 318: The above findings of the Trial Chamber demonstrate that the "all out offensive" military attacks against towns and villages occupied by the rebels and juntas encompassed also an element of targeting civilians perceived or alleged "collaborators." In the view of the Appeals Chamber, it is without a reasonable doubt that this policy was pursued by the Kamajors, through killings of definite individuals in view of any perceived or alleged relationships with the rebels, the commission of mass-killings of groups of civilians, a recurrent targeting of police officers and indiscriminate shootings at civilians, the burning of their houses or looting of their properties.

4286. para. 320: The Appeals Chamber states that the only conclusion is that the actual perpetrators had the requisite knowledge.

4287. para. 322: The Appeals Chamber, Justice King dissenting, sets aside the verdict of not guilty against Fofana and Kondewa by the Trial Chamber under Counts 1 and 3 and substitutes, therefore, a verdict of guilty on those Counts. The Appeals Chamber will consider and impose appropriate sentences in respect of those Counts as part of its Disposition of the Prosecution's Tenth Ground of Appeal.

Summary Findings

4288. para. 112: In relation to the attacks on Tongo, the Appeals Chamber, Justice King dissenting, upholds the Trial Chamber's convictions of Kondewa and Fofana, pursuant to Article 6(1), of aiding and abetting violence to life, health and physical or mental well-being of persons, in particular murder and cruel treatment punishable under Article 3.a. of the Statute (Counts 2 and 4 respectively).

4289. para. 113: In relation to the attacks on Koribondo, Bo District and Kenema District, the Appeals Chamber upholds the Trial Chamber's acquittals of Kondewa and Fofana, pursuant to Article 6(1), of violence to life, health and physical or mental well-being of persons, in particular murder and cruel treatment, punishable under Article 3.a. of the Statute (Counts 2 and 4, respectively) as well as pillage, a violation of Article 3.a. common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.f. of the Statute (Count 5).

4290. para. 114: The Appeals Chamber dismisses the Prosecution's Third and Fourth Grounds of Appeal and dismisses, Justice King dissenting, Kondewa's Fourth Ground of Appeal.

4291. para. 321: The Appeals Chamber holds that whenever the Trial Chamber has found Fofana and Kondewa individually criminally responsible for war crimes under Counts 2 and 4, it

reasonably follows that the same responsibility attaches to them for crimes against humanity in the same locations.

CHAPTER 8 – OTHER INHUMANE ACTS

A. CHARLES TAYLOR

1. Indictment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-I, Indictment, 16 March 2006

(a) Particulars

(i) Charges

4292. By his acts or omissions in relation to the below described events, the ACCUSED, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:[234]

(ii) Count 1: Terrorizing the civilian population

4293. Members of the Revolutionary United Front (RUF), Armed Forces Revolutionary Council (AFRC), AFRC/RUF Junta or alliance, and/or Liberian fighters, including members and ex-members of the NPFL (Liberian fighters), assisted or encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, burned civilian property, and committed the crimes set forth below in paragraphs 6 through 31 and charged in Counts 2 through 11, as part of a campaign to terrorize the civilian population of Sierra Leone.[235]

(iii) Counts 7 and 8: Physical Violence

> **Count 7: Violence to life, health and physical or mental well/being of persons, in particular cruel treatment**, 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 8: Other inhumane acts, a CRIME AGAINST HUMANITY, punishable under Article 2.i. of the Statute.

4294. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in

[234] Taylor Indictment, Charges, p. 2.
[235] Taylor Indictment, para. 5.

concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, committed widespread acts of physical violence against civilians, including the following:[236]

> i. Kono District: Between about 1 February 1998 and about 31 December 1998, mutilated and beat an unknown number of civilians in various locations, including Tombodu or Tumbodu, Kaima or Kayima, and Wondedu. The mutilations included cutting off limbs and other body parts and carving "AFRC" and "RUF" on the bodies of the civilians;[237]
>
> ii. Kailahun District: Between about 30 November 1996 and about 18 January 2002, beat an unknown number of civilians in locations throughout the District;[238]
>
> iii. Freetown and Western Area: Between about 21 December 1998 and about 28 February 1999, mutilated and beat an unknown number of civilians in various areas of Freetown, including the northern and eastern areas of the city, the Kissy area around the State House, Fourah Bay, Upgun and the Kissy mental hospital, and Hastings, Wellington, Tumbo, Waterloo, and Benguema in the Western Area. The mutilations included cutting off limbs.[239]

2. Trial Judgment

The Prosecutor v. *Charles Ghankay Taylor*, SCSL-03-01-T, Judgement, 18 May 2012

(a) Factual Findings

(i) Kono District– Crimes

4295. See above: Chapter 7 – Taylor- Trial Judgment- Factual Findings – Kono District – Crimes - paras. 1210 - 1211 [3758].

a. Tombodu – Kono District – Crimes

4296. See above: Chapter 7 – Taylor- Trial Judgment- Factual Findings – Kono District – Crimes - Tombodu - paras. 1212 – 1216 [3760].

[236] Taylor Indictment, para. 18.
[237] Taylor Indictment, para. 19.
[238] Taylor Indictment, para. 20.
[239] Taylor Indictment, para. 21.

b. Kayima – Kono District – Crimes

4297. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Kono District – Crimes - Kayima - paras. 1218 – 1220 [3765].

c. Wondedu – Kono District – Crimes

4298. See above: Chapter 7 – Taylor- Trial Judgment- Factual Findings – Kono District – Crimes - Wondedu - paras. 1224 – 1227 [3768].

(ii) Kailahun District (30 November 1996 to 18 January 2002) – Crimes

4299. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Kailahun District – Crimes - paras. 1233 – 1235 [3772].

a. Bunumbu– Kailahun District – Crimes

4300. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Kailahun District – Crimes - Bunumbu - paras. 1236 - 1237 [3775].

4301. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Kailahun District – Crimes - Bunumbu - Beating of Recruits at Bunumbu Training Base- paras. 1238 – 1245 [3777].

4302. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Kailahun District – Crimes - Bunumbu – Attacks against civilians in Bunumbu Surrounding Area – paras. 1246 – 1250 [3785].

4303. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Kailahun District – Crimes - Bunumbu – Marking "RUF" Letters on Recruits at Bunumbu Training Base – paras. 1251 – 1255 [3790].

b. Violence towards Civilians who Resist Crimes Committed Against Them - Kailahun District – Crimes

4304. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Kailahun District – Crimes Violence towards Civilians who Resist Crimes Committed Against Them- paras. 1256 – 1262 [3795].

(iii) Freetown and the Western Area– Crimes

4305. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Freetown and Western Area – Crimes - paras. 1264 – 1265 [3802].

a. Freetown, including the northern and eastern areas of the city – Freetown and the Western Area – Crimes

4306. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Freetown and the Western Area – Crimes - Freetown, including the northern and eastern areas of the city - paras. 1266 – 1271 [3804].

b. Kissy – Freetown and the Western Area – Crimes

4307. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Freetown and the Western Area – Crimes - Kissy - Beating of civilians outside Good Shepard Hospital in Kissy - paras. 1274 – 1276 [3810].

4308. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Freetown and the Western Area – Crimes - Kissy - Amputations of two men's hands in Kissy Market – paras. 1278 [3813].

4309. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Freetown and the Western Area – Crimes - Kissy - Amputations of James Kpumgbu and others near Kissy Mental Hospital – paras. 1280 – 1283 [3814].

4310. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Freetown and the Western Area – Crimes - Kissy - Beating and amputation of Ibrahim Wai at Falcon Road in Kissy – paras. 1286 – 1288 [3818].

4311. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Freetown and the Western Area – Crimes - Kissy - Amputations by Changa Bulanga in Low Cost Area and Shell Old Road Area – paras. 1294 – 1296 [3821].

4312. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Freetown and the Western Area – Crimes - Kissy - Amputations of Barrie and Alusine Conteh's hands at Parsonage and Leaden Streets in Kissy – paras. 1298 – 1300 [3824].

4313. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Freetown and the Western Area – Crimes - Kissy - Amputations of Mohamed Sampson Bah's hand on Rowe Street in Kissy – paras. 1303 [3827].

4314. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Freetown and the Western Area – Crimes - Kissy - Amputation of TF1-083, Pa Sorie and Musa in Samuels Area in Kissy – paras. 1305 – 1308 [3828].

4315. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Freetown and the Western Area – Crimes - Kissy - Amputation of Mohamed Sesay's arms in Kissy – paras. 1310 – 1313 [3832].

4316. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Freetown and the Western Area – Crimes - Kissy – Other Amputations in Kissy– paras. 1316 – 1320 [3836].

c. Fourah Bay – Freetown and the Western Area – Crimes

4317. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Freetown and the Western Area – Crimes - Fourah – paras. 1326 – 1328 [3841].

d. Upgun – Freetown and the Western Area – Crimes

4318. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Freetown and the Western Area – Crimes - Upgun– paras. 1332 - 1333 [3844].

e. Wellington – Freetown and the Western Area – Crimes

4319. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Freetown and the Western Area – Crimes - Wellington– paras. 1335 – 1342 [3846].

f. Waterloo – Freetown and the Western Area – Crimes

4320. See above: Chapter 7 – Taylor – Trial Judgment- Factual Findings – Freetown and the Western Area – Crimes - Waterloo– paras. 1349 - 1350 [3854].

(b) Legal Conclusions

(i) Applicable law - CAH

4321. See above: Chapter 2 – Taylor – Trial Judgment – Legal conclusions – Applicable law – CAH – paras. 504 – 515 [1383].

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(ii) CAH – Findings on general requirements

4322. See above: Chapter 2 – Taylor – Trial Judgment – Legal conclusions – CAH – Findings on general requirements - paras. 547 – 559 [1395].

(iii) Applicable law - Other inhumane acts

4323. para. 436: In addition to the *chapeau* requirements of Crimes against Humanity pursuant to Article 2 of the Statute, the following specific elements of the crime of other inhumane acts must be proved beyond reasonable doubt:

i. The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act;

ii. The act was of a gravity similar to the acts referred to in Article 2(a) to (h) of the Statute; and

iii. The perpetrator was aware of the factual circumstances that established the character of the gravity of the act.[1050]

4324. para. 437: With regard to particular acts of physical violence, the seriousness of a particular act or omission and the sufficiency of its gravity must be examined on a case-by-case basis.[1051]

(iv) Kono District– Physical Violence

a. Tombodu – Kono District – Physical Violence

4325. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Physical Violence - Tombodu paras. 1217 [3860].

b. Kayima – Kono District – Physical Violence

4326. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Physical Violence - Kayima - paras. 1221 – 1223 [3861].

c. Wondedu – Kono District – Physical Violence

4327. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Physical Violence - Wondedu - paras. 1228 - 1230 [3864].

d. Conclusion –Kono District – Physical Violence

4328. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Kono District – Physical Violence - Conclusion- Other Inhumane Acts - paras. 1231 – 1232 [3867].

(v) Kailahun District– Physical Violence

4329. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Kailahun District – Physical Violence - paras. 1263 [3869].

(iii) Freetown and the Western Area– Physcal Violence

a. Freetown, including the northern and eastern areas of the city – Freetown and the Western Area – Physical Violence

4330. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Physical Violence - Freetown, including the northern and eastern areas of the city - paras. 1272 – 1273 [3870].

b. Kissy – Freetown and the Western Area – Legal Conclusions

4331. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Physical Violence - Freetown – Beating of civilians outside Good Shepard Hospital in Kissy - paras. 1277 [3872].

4332. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Physical Violence - Freetown – Amputations of two men's hands in Kissy Market - paras. 1279 [3873].

4333. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Physical Violence - Freetown – Amputations of James Kpumgbu and others near Kissy Mental Hospital - paras. 1284 – 1285 [3874].

4334. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Physical Violence - Beating and amputation of Ibrahim Wai at Falcon Road in Kissy - paras. 1289 - 1293 [3876].

4335. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Physical Violence - Amputations by Changa Bulanga in Low Cost Area and Shell Old Road Area - paras. 1297 [3881].

4336. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Physical Violence - Amputations of Barrie and Alusine Conteh's hands at Parsonage and Leaden Streets in Kissy - paras. 1301 – 1302 [3882].

4337. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Physical Violence - Amputations of Mohamed Sampson Bah's hand on Rowe Street in Kissy - paras. 1304 [3884].

4338. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Amputation of TF1-083, Pa Sorie and Musa in Samuels Area in Kissy - paras. 1309 [3885].

4339. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Physical Violence - Amputation of Mohamed Sesay's arms in Kissy - paras. 1314 - 1315 [3886].

4340. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Other Amputations in Kissy - paras. 1321 - 1325 [3888].

4341. Fourah Bay – Freetown and the Western Area –Physical Violence See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Physical Violence - Fourah Bay - paras. 1329 - 1331 [3893].

c. Upgun – Freetown and the Western Area – Physical Violence

4342. See above: Chapter 7– Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Physical Violence - Upgun - paras. 1334 [3896].

d. Wellington – Freetown and the Western Area – Physical Violence

4343. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Physical Violence - Wellington - paras. 1343 - 1348 [3897].

e. Waterloo – Freetown and the Western Area – Physical Violence

4344. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Physical Violence - Waterloo - paras. 1351 – 1352 [3903].

f. Conclusion –Freetown and the Western Area – Physical Violence

4345. See above: Chapter 7 – Taylor – Trial Judgment – Legal Conclusions – Freetown and the Western Area – Conclusion – Physical Violence - paras. 1353 – 1354 [3905].

4346. Regarding Taylor's individual criminal responsibility (Aiding and Abetting), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Aiding and Abetting - paras. 6904-6906 [6351], 6910-6915 [6354], 6918-6924 [6360], 6927-6937 [6367], 6940-6946 [6378], 6947-6952 [6385], 6953 [6391].

4347. Regarding Taylor's individual criminal responsibility (Planning), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Planning - paras. 6957 [6392], 6958-6968 [6393], 6969-6970 [6404], 6971 [6406].

4348. Regarding Taylor's individual criminal responsibility (Instigating), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Instigating - para. 6972 [6407].

4349. Regarding Taylor's individual criminal responsibility (Ordering), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Ordering - para. 6973 [6408].

4350. Regarding Taylor's superior responsibility, see below: Chapter 13 (Article 6.3 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.3 of the Statute - Superior Responsibility - paras. 6977 - 6986 [8613].

3. Appellate Judgment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-A, Judgment, 26 September 2013

(a) Factual Findings

4351. para. 253: The Trial Chamber found that the RUF/AFRC's operational strategy was characterised by a campaign of crimes against the Sierra Leonean population, including the crimes charged in all 11 Counts of the Indictment,[578] which were inextricably linked to the strategy of the military operations themselves. This strategy entailed a campaign of terror against civilians as a primary *modus operandi*, to achieve military gains at any civilian cost and political gains in order to attract the attention of the international community and improve the RUF/AFRC's negotiating stance with the Sierra Leonean government (the "Operational Strategy").[579]

4352. para. 254: In assessing Taylor's alleged criminal liability, the Trial Chamber found that Taylor, by his acts and conduct, was "critical in enabling" the RUF/AFRC's Operational Strategy, "supported, sustained and enhanced" the functioning of the RUF/AFRC and its capacity to implement its Operational Strategy, planned an attack of terror as the *modus operandi* of the attack on Freetown and had a substantial effect on the crimes committed by the RUF/AFRC.[580] It further found that Taylor knew of the RUF/AFRC's Operational Strategy, knew that his acts and conduct assisted the commission of crimes in the implementation of that Operational Strategy and knew the essential elements of the crimes in which he was participating.[581]

4353. Regarding the RUF/AFRC's Operational Strategy, see below: Chapter 12 (Article 6.1. Liability) -Taylor - Appellate Judgment - Findings and Conclusions - The RUF/AFRC's Operational Strategy - paras. 257-302 [6411].

4354. para. 303: The Appeals Chamber has reviewed the Trial Chamber's assessment of the evidence and affirmed the findings in the Judgment.[821] It has further affirmed the Trial Chamber's finding that the RUF/AFRC leadership pursued an Operational Strategy to commit the crimes charged in Counts 1-11 of the Indictment.[822]

4355. Regarding Taylor's Acts, Conduct and Mental State, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Acts, Conduct and Mental State - paras. 303 – 343 [6457].

(b) Legal Conclusions

4356. See below: Annex B encompasses the discussion of the evaluation of evidence relating to all the crimes [Annex B].

4357. Regarding Taylor's Criminal Liability, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Criminal Liability - paras. 497-595 [6630].

B. RUF

1. Indictment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-2004-15-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

4358. Paragraph 19 through 39 are incorporated by reference.[240]

4359. These attacks [para.41: 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] were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property.[241]

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

4360. Members of the AFRC/RUF subordinate to and/or acting in concert with Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, committed crimes set forth below in paragraphs 45

[240] RUF Indictment, para. 40.

through 82, and charged in counts 3 through 14, as part of a campaign to terrorize the civilian population. The AFRC/RUF also committed the crimes to punish the civilian population or 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.[242]

(iii) Counts 10-11: Physical Violence

4361. 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:[243]

> i. Kono District: Between about 14 February 1998 and 30 June 1998, AFRC/RUF mutilated and 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 civilians;[244]
>
> ii. Kenema District**:** Between 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;[245]
>
> iii. Koinadugu District: Between about 14 February 1998 and 30 September 1998, members of RUF/AFRC 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;[246]
>
> iv. Bombali District: Between about 1 May 1998 and 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 (or Rosors or Rossos). The mutilations included cutting off limbs;[247]
>
> v. Freetown and Western Area: 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;[248]

[241] RUF Indictment, para. 42.
[242] RUF Indictment, para. 44.
[243] RUF Indictment, para. 61.
[244] RUF Indictment, para. 62.
[245] RUF Indictment, para. 63.
[246] RUF Indictment, para. 64.
[247] RUF Indictment, para. 65.
[248] RUF Indictment, para. 66.

vi. Port Loko: 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;[249]

4362. 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:

Chapter 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 pursuant to 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.[250]

2. Trial Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-T, Judgement, 2 March 2009

(a) Factual Findings

(i) Kono District – Crimes

a. Background to Kono District – Kono District – Crimes

4363. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Background to Kono District – paras. 1136 – 1139 [208].

b. Tombodu – Kono District – Crimes

4364. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Tombodu – Beating and Looting of civilian petty traders – paras. 1161 – 1164 [233].

4365. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Tombodu – Amputations by Staff Alhaji's men – para. 1172 [244].

[249] RUF Indictment, para. 67.

4366. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Tombodu – Floggings by Staff Alhaji and his men – para. 1173 [245].

c. Wendedu – Kono District – Crimes

4367. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Wendedu - Beating of TF1-015 – para. 1777 [249].

d. Sawao – Kono District – Crimes

4368. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Sawao – Rapes, beatings and amputations – paras. 1180 – 1185 [252].

e. Yardu – Kono District – Crimes

4369. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Yardu – Killings and amputations – paras. 1186 - 1187 [258].

f. Kayima – Kono District – Crimes

4370. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Kayima - Carving 'AFRC/RUF' on civilians – para. 1190 [262].

g. Penduma – Kono District – Crimes

4371. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Penduma – Rapes, killings and amputations – paras. 1191,1192, 1197 – 1200 [263].

h. Tomandu – Kono District – Crimes

4372. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Tomandu - Carving 'RUF' on civilian men – paras.1209 – 1210 [278].

[250] RUF Indictment, para. 67.

i. RUF Camps – Kono District – Crimes

4373. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Treatment of civilians in RUF Camps – para. 1226 [295].

j. Other (related to forced mining in Kono) – Kono District – Crimes

4374. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Forced mining in Kono (Dec 1998 to Jan 2000) – paras. 1248, 1251 – 1253 [317].

(ii) Kenema District – Crimes

a. Background to Kenema District – Kenema District – Crimes

4375. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – paras. 1042 – 1044 [335].

b. Kenema Town – Kenema District – Crimes

4376. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - para. 1045 [338].

4377. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - The "Flag Trick" and the beating of TF1-122 – paras. 1046 – 1047 [339].

4378. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - TF1-129 arrested by Issa Sesay – paras. 1048 – 1053 [341]

4379. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - 'Flogging' of Police Commissioner Konneh and Chief Police Officer Issa – paras. 1054 – 1056 [347].

4380. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town - Killing of Bonnie Wailer and two others – paras. 1061- 1062 [354].

4381. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town – Arrest of suspected Kamajors in Kenema Town - paras. 1066 – 1071 [359].

4382. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Kenema Town – Beating and killing of B.S Massaquoi and others – paras. 1072 – 1079 [365].

c. Tongo Field – Kenema District – Crimes

4383. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Tongo Field - Killings at Cyborg Pit – paras. 1082 -1083 [375].

4384. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Tongo Field - Forced mining at Tongo Field and Cyborg Pit – paras. 1094 – 1095 [387].

(iii) Freetown and the Western Area – Crimes

a. Background to Freetown and the Western Area - Freetown and the Western Area – Crimes

4385. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area– para. 1510 [477].

4386. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Perpetrators of the Attack on Freetown – paras. 1511 – 1515 [478].

4387. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Targeting of the civilian population in Freetown – paras. 1516 – 1519 [483], 1521, 1522 [489].

b. Upgun and Fourah Bay - Freetown and the Western Area – Crimes

4388. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Upgun and Fourah Bay – para. 1530 [497].

c. Wellington - Freetown and the Western Area – Crimes

4389. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Wellington - Killings and Amputations at Loko Town – paras. 1536 - 1537 [503].

d. Kissy - Freetown and the Western Area – Crimes

4390. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings and Beatings at a clinic – paras. 1542 – 1545 [509].

4391. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings and Amputations of TF1-101 and others - paras. 1546 – 1549 [513].

4392. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings, Amputations and Looting of TF1-022 and others – paras. 1553- 1554 [520].

4393. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Amputations and Looting of TF1-097 and others – paras. 1555 - 1556 [523].

e. Allan Town, Calaba Town and Benguema - Freetown and the Western Area – Crimes

4394. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes - Allan Town, Calaba Town and Benguema - 'Forced Marriage' of TF1-023 – paras. 1558 - 1559 [525].

(iv) Koindugu District – Crimes

4395. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 – 1505 [533].

(v) Bombali District – Crimes

4396. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 – 1509 [543].

(vi) Port Loko District – Crimes

4397. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras. 1609 – 1613 [547].

(b) Legal Conclusions

(i) Applicable law - CAH

4398. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Applicable law - CAH – paras. 75-90 [1582].

(ii) CAH – Findings on general requirements

4399. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – CAH – Findings on general requirements – paras. 942 – 963 [1598].

(iii) Applicable law – Other inhumane acts

4400. para. 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 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]

4401. para. 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]

4402. para. 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]

4403. para. 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.

4404. para. 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]

4405. para. 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]

4406. para.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]

4407. para. 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 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]

4408. para. 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.

(iv) Pleading

a. Criminal acts and events - Pleading

4409. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Criminal acts and events – paras. 411-413, 415, 418– 419 [604].

b. Locations – Pleading

4410. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Locations – paras.420 – 422 [613].

c. Timeframes – Pleading

4411. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Timeframes – paras. 423 – 432 [616].

d. CAH – Pleading

4412. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Pleading – CAH – paras.448 - 449 [1628].

(v) Kono District – Physical violence

4413. See above: Chapter 2 – RUF – Trial Judgment – Legal Conclusions – Kono District – Unlawful killings - paras. 1266 – 1267 [1630].

4414. See above: Chapter 7 – RUF – Trial Judgment – Legal Conclusions – Kono District – Physical violence - para. 1310 [3971].

a. Tombodu – Kono District – Physical violence

4415. See above: Chapter 7 – RUF – Trial Judgment – Legal Conclusions – Kono District – Physical violence – Tombodu - Amputations – para. 1311 [3972].

4416. See above: Chapter 7 – RUF – Trial Judgment – Legal Conclusions – Kono District – Physical violence – Tombodu - Beating of TF1-197 near Tombodu – para. 1312 [3973].

4417. See above: Chapter 7 – RUF – Trial Judgment – Legal Conclusions – Kono District – Physical violence – Tombodu - Flogging of TF1-197 – para. 1313 [3974].

b. Wendedu – Kono District – Physical violence

4418. See above: Chapter 7 – RUF – Trial Judgment – Legal Conclusions – Kono District – Physical violence – Wendedu - para. 1314 [3975].

c. Kayima – Kono District – Physical violence

4419. See above: Chapter 7 – RUF – Trial Judgment – Legal Conclusions – Kono District – Physical violence – Kayima - para. 1315 [3976].

d. Sawao – Kono District – Physical violence

4420. See above: Chapter 7 – RUF – Trial Judgment – Legal Conclusions – Kono District – Physical violence – Sawao - Amputations – para. 1316 [3977].

4421. See above: Chapter 7 – RUF – Trial Judgment – Legal Conclusions – Kono District – Physical violence – Sawao - Beatings - para. 1317 [3978].

e. Penduma – Kono District – Physical violence

4422. See above: Chapter 7 – RUF – Trial Judgment – Legal Conclusions – Kono District – Physical violence – Penduma - para. 1318 [3979].

f. Yardu – Kono District – Physical violence

4423. See above: Chapter 7 – RUF – Trial Judgment – Legal Conclusions – Kono District – Physical violence – Yardu - para. 1319 [3980].

g. Tomandu – Kono District – Physical violence

4424. See above: Chapter 7 – RUF – Trial Judgment – Legal Conclusions – Kono District – Physical violence – Tomandu - para.1320 [3981].

(vi) Kenema District – Physical violence

4425. See above: Chapter 7 – RUF – Trial Judgment – Legal conclusions – Kenema District – Physical violence – paras. 1096 - 1097, 1109 [3982].

4426. See above: Chapter 7 – RUF – Trial Judgment – Legal conclusions – Kenema District – Physical violence – Beating of TF1-122 – para. 1110 [3985].

4427. See above: Chapter 7 – RUF – Trial Judgment – Legal conclusions – Kenema District – Physical violence – Initial arrest of TF1-129 – paras. 1111 -1112 [3986].

4428. See above: Chapter 7 – RUF – Trial Judgment – Legal conclusions – Kenema District – Physical violence – Beating of rebel named Francis – para. 1113 [3988].

4429. See above: Chapter 7 – RUF – Trial Judgment – Legal conclusions – Kenema District – Physical violence – Beatings of suspected collaborators: January 1998 – para. 1114 [3989].

4430. See above: Chapter 7 – RUF – Trial Judgment – Legal conclusions – Kenema District – Physical violence – Beatings of suspected collaborators: February 1998 – para. 1115 [3990].

4431. See above: Chapter 7 – RUF – Trial Judgment – Legal conclusions – Kenema District – Physical violence – "Flogging" of the Police Commissioner and CPO – paras. 1116 - 1117 [3991].

(vii) Freetown and the Western Area – Physical violence

4432. See above: Chapter 7 – RUF – Trial Judgment – Legal conclusions – Freetown and the Western Area – Physical violence - para. 1566 - 1567, 1584 - 1585 – 1587 [3993].

(viii) Koindugu District – Physical violence

4433. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 – 1505 [533].

(ix) Bombali District – Physical violence

4434. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras.1506 – 1509 [543].

(x) Port Loko District – Physical violence

4435. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras.1609 – 1613 [547].

3. Appellate Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-A, Judgment, 26 October 2009

(a) Factual Findings

(i) Kono District

4436. See above: Chapter 1 – RUF – Appellate Judgment – Factual Findings – Kono District – para.428 [712].

(b) Legal Conclusions

(i) Pleading

4437. See above: Chapter 5 – RUF – Appellate Judgment – Legal Conclusions – Pleading – para. 492 [3293].

4438. See above: Chapter 7 – RUF – Appellate Judgment – Legal conclusions – Pleading – paras. 898 - 899, 901 – 904 [4004].

(ii) Pleading – Dissents

a. Justice Fisher:

4439. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Pleading-Dissents – Justice Fisher – para.20 (p.517), para.22 (p.518), para.23 (p.518), para.24 (p.518-519) [1704].

4440. See above: Chapter 7 – RUF – Appellate Judgment – Legal Conclusions – Pleading-Dissents – Justice Fisher – paras.68 (p.530), 69 (p.530-531), 70 (p.531), 71 (p.531-532), 72 (p.532), 73 (p.532-533), 74 (p.533), 75 (p.533), 76 (p.533), 77 (p.533-534), 78 (p.534), 79 (p.534), 80 (p.534-535), 81 (p.535), 82 (p.535) [4011].

b. Justice Winter:

4441. See above: Chapter 7 – RUF – Appellate Judgment – Legal Conclusions – Pleading-Dissents – Justice Winter - para. 5 (p.482-483) [4026].

(iii) Crimes charged as criminal means of furthering Common Criminal Purpose – Other inhuman acts (Physical violence)

4442. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 333, 348 [751].

4443. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras.377 - 378 [754].

(iv) Crimes charged and JCE *mens rea* (short review) – Other inhuman acts (Physical violence)

4444. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged and JCE *mens rea* (short review) – paras. 467, 468, 482, 492, 493 [756] and see, also, Justice Fisher's and Justice Winter's Dissenting Opinions in that regard.

(v) CAH - Existence of a widespread and systematic attack

a. Kenema District – CAH – Widespread and systematic attack

4445. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Existence of a widespread and systematic attack – Kenema District – paras. 637, 642 – 644 [1711].

(vi) CAH – Attack against civilian population

a. Kailahun District – CAH – Attack against civilian population

4446. See above – Chapter 2 – RUF – Appellate judgment – Legal conclusions – CAH – Attack against civilian population – Kailahun District – paras.714, 719 – 724 [1715].

(vii) Kono District – Other inhuman acts (Physical violence)

4447. See above: Chapter 7 – RUF – Appellate Judgment – Legal Conclusions – Kono District – paras. 443-450[4030].

4448. Regarding Sesay's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Sesay – paras. 624, 627 – 634 [7658].

4449. Regarding Kallon's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Kallon – paras. 806, 810 – 815 [7667].

4450. See above: Chapter 7 – RUF – Appellate Judgment – Legal conclusions – Pleading – paras. 898, 899, 901 – 904 [4004].

4451. See above: Chapter 7 – RUF – Appellate Judgment – Legal Conclusions – Pleading-Dissents – Justice Fisher – paras. 68 (p.530), 69 (p.530-531), 70 (p.531), 71 (p.531-532), 72 (p.532), 73 (p.532-533), 74 (p.533), 75 (p.533), 76 (p.533), 77 (p.533-534), 78 (p.534), 79 (p.534), 80 (p.534-535), 81 (p.535), 82 (p.535) [4011].

4452. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and

Conclusions – Kono District – JCE – Participation in and shared intent – Gbao – paras. 946-948, 951– 955 [7615].

4453. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

4454. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras. 4 – 28 [7454].

4455. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

(viii) Kailahun District – Other inhuman acts (Physical violence)

4456. Regarding Sesay's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Sesay – para. 635 [7694].

(ix) Kenema District – Other inhuman acts (Physical violence)

4457. See above: Chapter 7 – RUF – Appellate Judgment – Legal Conclusions – Kenema District – paras. 370, 419 – 422 [4047]

4458. Regarding Sesay's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District – JCE – Participation in and shared intent – Sesay – paras. 617, 619 – 623 [7580].

4459. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Existence of a widespread and systematic attack – Kenema District – paras. 637, 642 – 644 [1711].

4460. Regarding Kallon's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings

and Conclusions – Kenema District – JCE – Participation in and shared intent – Kallon – paras. 798, 801 – 804 [7598].

4461. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District – JCE – Participation in and shared intent – Gbao – paras. 946-948, 951– 955 [7615].

4462. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

4463. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras. 4 – 28 [7454].

4464. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

C. AFRC

1. Indictment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

4465. Paragraphs 21 through 36 are incorporated by reference.[251]

4466. 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 ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, 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.[252]

4467. These attacks were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property. [253]

4468. 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. [254]

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

4469. Members of the AFRC/RUF subordinate to and/or acting in concert with ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, committed the crimes set forth below in paragraphs 42 through 79 and charged in Counts 3 through 14, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF. [255]

[251] AFRC Indictment, para. 37.
[252] AFRC Indictment, para. 38.
[253] AFRC Indictment, para. 39.
[254] AFRC Indictment, para. 40.
[255] AFRC Indictment, para. 50.

(iii) Counts 10-11: Physical Violence

4470. 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: [256]

> i. Kono District: 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; [257]
>
> ii. Kenema District - 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; [258]
>
> iii. Koinadugu District - 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; [259]
>
> iv. Bombali District - 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 (or Rossos or Rosors). The mutilations included cutting off limbs; [260]
>
> v. Freetown and the Western Area - 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; [261]
>
> vii. Port Loko: 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; [262]

4471. By their acts or omissions in relation to these events, ALEX T AMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, pursuant to Article 6.1. and, or

[256] AFRC Indictment, para. 58.
[257] AFRC Indictment, para. 59.
[258] AFRC Indictment, para. 60.
[259] AFRC Indictment, para. 61.
[260] AFRC Indictment, para. 62.
[261] AFRC Indictment, para. 63.
[262] AFRC Indictment, para. 64.

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.[263]

2. Trial Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-T, Judgement, 20 June 2007

(a) Factual Findings

(i) Kenema District – Crimes See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Kenema District – Crimes - paras. 1192 – 1194 [4065].

a. Kenema Town – Crimes

4472. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Kenema District - Crimes - – Kenema Town - paras. 1195 - 1196 [4068].

(ii) Kono District – Crimes

4473. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Kono District – Crimes - - paras. 1198 – 1200 [4070].

a. Tombodu – Kono District – Crimes

4474. See above: Chapter 7– AFRC – Trial Judgment – Factual Findings - Kono District – Crimes - - Tombodu - paras. 1201- 1206 [4073].

[263] AFRC Indictment, para. 65.

b. Kaima/Kayima – Kono District – Crimes

4475. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Kono District– Crimes - – Kaima/Kayima - paras. 1207 - 1212 [4079].

(iii) Koinadugu District – Crimes

4476. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Koinadugu District – Crimes - paras. 1214 - 1216 [4085].

a. Kabala – Koinadugu District – Crimes

4477. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Koinadugu District– Crimes- – Kabala - para. 1217 [4088].

(iv) Bombali District – Crimes

4478. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Bombali District (1 May 1998 - 30 November 1998) - paras. 1219 - 1221 [4089].

a. Rosos – Bombali District - Crimes

4479. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Bombali District Crimes - – Rosos - para. 1222 [4092].

(v) Freetown and the Western Area – Crimes

4480. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Freetown and the Western Area – Crimes - paras. 1225 – 1228 [4093].

a. Upgun – Freetown – Crimes

4481. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Freetown and the Western Area– Freetown – Upgun - para. 1229 [4097].

b. Kissy Old Road – Freetown – Crimes

4482. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Freetown and the Western Area – Crimes - Freetown - Kissy Old Road – para. 1230 [4098].

c. ‘Operation Cut Hand’ at PWD –Freetown – Crimes

4483. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Freetown and the Western Area – Crimes - Freetown - Kissy ‘Operation Cut Hand’ at PWD – para. 1231 [4099].

d. Rowe Street – Kissy – Crimes

4484. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Freetown and the Western Area – Crimes - Kissy – Rowe Street – para. 1232 [4100].

e. Fatamaran Street – Kissy – Crimes

4485. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Freetown and the Western Area (6 January 1999 - 28 February 1999) - Kissy – Fatamaran Street – para. 1233 [4101].

f. Old Road (Locust and Samuels area) – Kissy – Crimes

4486. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Freetown and the Western Area (6 January 1999 - 28 February 1999) - Kissy – Old Road (Locust and Samuels area) – para. 1234 [4102].

g. Parsonage Street – Kissy – Crimes

4487. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Freetown and the Western Area – Crimes - - Kissy – Parsonage Street – para. 1235 [4103].

h. Old Shell Road – Kissy – Crimes

4488. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Freetown and the Western Area – Crimes - Kissy – Old Shell Road – para. 1236 [4104].

i. Kissy Mental Home – Kissy – Crimes

4489. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Freetown and the Western Area (6 January 1999 - 28 February 1999) - Kissy – Kissy Mental Home – paras. 1237 [4105].

j. Wellington – Crimes

4490. See above: Chapter 7 – AFRC – Trial Judgment – Factual Findings - Freetown and the Western Area - Crimes - – Wellington – para. 1242 [4110].

(b) Legal Conclusions

(i) Applicable law – Crimes against humanity ("CAH")

4491. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Applicable law – Crimes against humanity – The Law - paras. 211 – 213 [1941].

a. Attack – Applicable law – CAH

4492. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Applicable law – Crimes against humanity – Attack - para. 214 [1944].

b. Widespread or systematic – Applicable law – CAH

4493. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Crimes against humanity – Widespread or systematic – Applicable law - para. 215 [1945].

c. Directed against any civilian population – Applicable law - CAH

4494. See above: Chapter 2 – AFRC — Trial Judgment – Legal Conclusions – Directed against any civilian population – Applicable law – CAH - para. 216 – 219 [1946].

d. The acts of the perpetrator must be part of the attack – Applicable law - CAH

4495. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – The acts of the perpetrator must form part of the attack – Applicable law – CAH - para. 220 [1950].

e. *Mens rea* – Applicable law - CAH

4496. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – *Mens rea* – Applicable law – CAH - paras. 221 - 222 [1951].

(ii) CAH – Findings on general requirements

4497. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Applicable law – Crimes against humanity – CAH – Findings on general requirements - paras. 224 – 226 [1954].

a. AFRC/RUF Government Period

4498. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Applicable law – Crimes against humanity – CAH – Findings on general requirements - AFRC/RUF Government period - paras. 227 – 232 [1957].

b. Post AFRC/RUF Government Period (February 1998 January 2000

4499. See above: Chapter 2 – AFRC – Trial Judgment - Legal Conclusions – Applicable law – CAH – Findings on general requirements - Post AFRC/RUF Government Period (February 1998 January 2000) - paras. 233 – 239 [1963].

(iii) Applicable law – Other Inhumane Acts

4500. para. 726: The elements of Chapter 11, a crime against humanity as "other inhumane acts", have been discussed earlier.[1411] With regard to particular acts of physical violence, the seriousness of the act or omission and its degree of gravity must be examined on a case-by-case basis. The Trial Chamber notes that the particulars mentioned in paragraphs 58 through 64 mainly identify acts of mutilations which are covered by Chapter 10. Paragraph 60 of the Indictment particularises beatings and ill-treatment. The Trial Chamber will consider these acts solely under Chapter 11, as considering mutilations and ill-treatment under the same Chapter would result in a duplicitous charge. Therefore, with regard to acts of violence other than 'mutilation', such as beatings and ill-treatment,[1412] the Trial Chamber will assess the seriousness of a particular conduct and its sufficient gravity on a case-by-case basis. In that regard consideration must be given to all the factual circumstances, including the nature of the act or omission which forms the factual basis of the charges, the context in which it occurred, including the personal circumstances and the effects on the victim.[1413]

(iv) Pleading – Dissent

4501. See above: Chapter 5 – AFRC – Trial Judgment – Legal Conclusions - Separate Concurring Opinion of Justice Sebutinde – paras. 1 (p. 574)[3390] – 18 (p.580-581) [3394].

4502. See above: Chapter 5 - AFRC – Trial Judgment – Legal Conclusions – Separate Partly Dissenting Opinion (Forced Marriage) of Justice Doherty – paras. 14 (p.584) [3395]– 71 (p.595) [3410].

(v) Kenema District – Physical Violence

a. Kenema Town – Physical Violence

4503. See above: Chapter 7 – AFRC – Trial Judgment – Legal Conclusions - Kenema District – Physical Violence - Kenema Town - para. 1197 [4118].

(vi) Kono District – Physical Violence

a. Tombodu and Kaima/Kayima – Kono District – Physical Violence

4504. See above: Chapter 7 – AFRC – Trial Judgment – Legal Conclusions - Kono District – Physical Violence - Tombodu and Kaima/Kayima - para. 1213 [4121].

(vii) Koinadugu District – Physical Violence

a. Kabala – Koinadugu District - Physical Violence

4505. See above: Chapter 7 – AFRC – Trial Judgment – Legal Conclusions - Koinadugu District – Physical Violence - Kabala - para. 1218 [4123].

(viii) Bombali District – Physical Violence

a. Rosos – Bombali District - Physical Violence

4506. See above: Chapter 7 – AFRC – Trial Judgment – Legal Conclusions - Bombali District – Rosos - paras. 1223 - 1224 [4126].

(ix) Freetown and Western Area – Physical Violence

4507. See above: Chapter 7 – AFRC – Trial Judgment – Legal Conclusions - Freetown and Western Area - Upgun, Kissy Old Road, 'Operation Cut Hand', Rowe Street, Fatamaran Street, Old Road (Locust and Samuels area), Parsonage Street, Old Shell Road, Kissy Mental Home and Wellington - para. 1243 [4130].

3. Appellate Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-A, Judgement, 22 February 2008

(a) Factual Findings

4508. Not applicable.

(b) Legal Conclusions

(i) Pleading – Forced Marriage

4509. para. 181: A preliminary point worthy of note is that the Prosecution may have misled the Trial Chamber by the manner in which forced marriage appeared to have been classified in the Indictment. The Indictment classifies Count 8 "Other Inhumane Acts" along with Counts 6, 7 and 9 under the heading "Sexual Violence." Under this heading in paragraphs 52 to 57, the Indictment alleges acts of forced marriages. This categorisation of forced marriages explain, but does not justify, the classification by the Trial Chamber of forced marriage as "sexual violence." Notwithstanding the manner in which the Prosecution had classified "Forced Marriage" in the Indictment and the submissions made by the Prosecution in this appeal which is inconsistent with such classification, the Appeals Chamber will consider the submissions made as an issue of general importance that may enrich the jurisprudence of international criminal law.

4510. para. 182: The first issue for the Appeals Chamber's deterr1inatic n relates to the scope of "Other Inhumane Acts" under Article 2.i of the Statute. The Tria Chamber concluded that in light of the exhaustive categorisation of sexual crimes under Article 2.g, the offence of "Other Inhumane Acts" must be restrictively interpreted so as to exclude offences of a sexual nature.[272] The Appeals Chamber considers that it is implicit in the Trial Chamber's finding that it considered forced marriage as a sexual crime.

4511. para. 183: In order to assess the correctness of the Trial Chamber's finding, regard must be given to the objective of the prohibition of "Other Inhumane Acts" in international criminal law. First introduced under Article 6.c of the Nuremberg Charter, the crime of "Other Inhumane Acts" is intended to be a residual provision so as to punish criminal acts not specifically recognised as crimes against humanity, but which, in context, are of comparable gravity to the listed crimes against humanity.[273] It is therefore inclusive in nature, intended to avoid unduly restricting the Statute's application to crimes against humanity.[274] The pro 1ibition against "Other

Inhumane Acts" is now included in a large number of international legal instruments and forms part of customary international law.[275]

4512. para. 184: The jurisprudence of the international tribunals shows that a wide range of criminal acts, including sexual crimes, have been recognised as "Other Inhumane Acts." These include forcible transfer,[276] sexual and physical violence perpetrated upon dead human bodies,[277] other serious physical and mental injury, forced undressing of women and marching them in public,[279] forcing women to perform exercises naked,[280] and forced disappearance, beatings, torture, sexual violence, humiliation, harassment, psychological abuse, and confinement in inhumane conditions.[281] Case law at these tribunals further demonstrates that this category has been used to punish a series of violent acts that may vary depending upon the context.[282] In effect, the determination of whether an alleged act qualifies as an "Other Inhumane Act" must be made on a case-by-case basis taking into account the nature of the alleged act or omission, the context in which it took place, the personal circumstances of the victims including age, sex, health, and the physical, mental and moral effects of the perpetrator's conduct upon the victims.[283]

4513. para. 185: The Trial Chamber therefore erred in law by finding that "Other Inhumane Acts" under Article 2.i must be restrictively interpreted. A tribunal must take care not to adopt too restrictive an interpretation of the prohibition against "Other Inhumane Acts" which, as stated above, was intended to be a residual provision. At the same time, (are must be taken not to make it too embracing as to make a surplusage of what has been expressly provided for, or to render the crime nebulous and incapable of concrete ascertainment. An over-broad interpretation will certainly infringe the rule requiring specificity of criminal prohibitions.

4514. para. 186: Furthermore, the Appeals Chamber sees no reason why the so-called "exhaustive" listing of sexual crimes under Article 2..g of the Statute should foreclose the possibility of charging as "Other Inhumane Acts" crimes which may among others have a sexual or gender component.[284] As an ICTY Trial Chamber has recognised, "[h]owever much care [was] taken in establishing a list of all the various forms of infliction, one would never be able to catch up with the imagination of future torturers who wish to satisfy their bestial instincts; and the more specific and complete a list tries to be, the more restrictive it becomes."[285] The Trial Chamber therefore erred in finding that Article 2.i of the Statute excludes sexual crimes.

a. The Nature of "Forced Marriage" in the Sierra Leone Conflict and its Distinction from Sexual Slavery – Pleading – Forced Marriage

4515. para. 187: The Appeals Chamber recalls the Trial Chamber's finding that the evidence adduced by the Prosecution did not establish the elements of a non-sexual offence of forced marriage independent of the crime of sexual slavery under Article 2.g of the Statute;[286] and that the evidence is completely of the crime of sexual slavery, leaving no lacuna in the lav. that would necessitate a separate crime of forced marriage as an "Other Inhumane Act."[287]

4516. para. 188: The Trial Chamber defined sexual slavery as the perpetrator's exercising any or all of the powers attaching to the right of ownership over one or more persons by imposing on them a deprivation of liberty, and causing them to engage in one or more acts of a sexual nature.[288] In finding that the evidence of forced marriage was completely of the crime of sexual slavery, the Trial Chamber found that the relationship of the perpetrators to their "wives" was one of ownership, and that the use of the term "wife" was indicative of the perpetrator's intent to exercise ownership rights over the victim.[289] Implicitly, the Trial Chamber found that evidence of forced marriage was predominantly sexual in nature.

4517. para. 189: According to the Prosecution, the element that distinguishes forced marriage from other forms of sexual crimes is a "forced conjugal association by the perpetrator over the victim. It represents forcing a person into the appearance, the veneer of a conduct (i.e. marriage), by threat, physical assault or other coercion."[290] The Prosecution adds that while acts of forced marriage may in certain circumstances amount to sexual slavery, in practice they do not always involve the victim being subjected to non-consensual sex or even forced domestic labour.[291] Therefore, the Prosecution contends that forced marriage is not a sexual crime.

4518. para. 190: The trial record contains ample evidence that the perpetrators of forced marriages intended to impose a forced conjugal association upon the victims in their ban exercise an ownership interest and that forced marriage is not predominantly a sexual crime. There is substantial evidence in the Trial Judgment to establish that throughout the conflict in Sierra Leone, women and girls were systematically abducted from their homes and communities by troops belonging to the AFRC and compelled to serve as conjugal partners to AFRC soldiers.[292] They were often abducted in circumstances of extreme violence,[293] compelled to move a long with the fighting forces from place to place,[294] and coerced to perform a variety of conjugal duties including regular sexual intercourse, forced domestic labour such as cleaning and cooking for the "husband," endure forced pregnancy, and to care for and bring up children of the "marriage."[295] In return, the rebel "husband" was expected to provide food, clothing and protection to his "wife,"

including protection from rape by other men, acts he did not perform when he used a female for sexual purposes only.[296] As the Trial Chamber found, the relative benefits that victims of forced marriage received from the perpetrators neither signifies consent to the forced conjugal association, nor does it vitiate the criminal nature of the perpetrator's conduct given the environment of violence and coercion in which these events took place.[297]

4519. para. 191: The Trial Chamber findings also demonstrate that these forced conjugal associations were often organised and supervised by members of the AFRC or civilians assigned by them to such tasks.[298] A "wife" was exclusive to a rebel "husband," and my transgression of this exclusivity such as unfaithfulness, was severely punished.[299] A "wife" who did not perform the conjugal duties demanded of her was deemed disloyal and could face serious punishment under the AFRC disciplinary system, including beating and possibly death.[300]

4520. para. 192: In addition to the Trial Chamber's findings, other evidence in the trial record shows that the perpetrators intended to impose a forced conjugal association rather than exercise mere ownership over civilian women and girls. In particular, the Appeals Chamber notes the evidence and report of the Prosecution expert Mrs. Zainab Bangura which demonstrates the physical and psychological suffering to which victims of forced marriage were subjected during the civil war in Sierra Leone. According to the Prosecution expert:

> "the most devastating effect on women of the war was the phenomenon called 'bush wife', rebel wife or jungle wife. This was a phenomenon adopted by rebels whereby young girls or women were captured or abducted and forcibly taken as wives ... The use of the term 'wife' by the perpetrator was deliberate and strategic. The word 'wife' demonstrated a rebel's control over a woman. His psychological manipulations of her feelings rendered her unable to deny him his wishes .. By calling a woman 'wife', the man or 'husband' openly staked his claim and she was not allowed to have sex with any other person. If she did, she would be deemed unfaithful and the penalty was severe beating or death.
>
> 'Bush wives' were expected to carry out all the functions of a wife and more ... [S]he was expected to show undying loyalty to her husband for his protection and reward him with 'love and affection ... 'Bush wives' were constantly sexually abused, physically battered during and after pregnancies, and psychologically terrorised by their husbands, who thereby demonstrated their control over their wives. Physically, most of these girls experienced miscarriages, and received no medical attention at the time ... Some now experience diverse medical problems such as severe stomach pains ... some have had their utems removed; menstrual cycles are irregular; some were infected with sexually transmitted diseases and others tested HIV positive."[301]

4521. para. 193: In light of all the evidence at trial, Judge Doherty, m her Partly Dissenting Opinion, expressed the view that forced marriage involves "the imposition, by threat or physical

force arising from the perpetrator's words or other conduct, of a forced conjugal association by the perpetrator over the victim."[302] She further considered that this crime satisfied the elements of "Other Inhumane Acts" because victims were subjected to mental trauma by being labelled as rebel "wives"; further, they were stigmatised and found it difficult to reintegrate into their communities. According to Judge Doherty, forced marriage qualifies as an "Other Inhumane Acts" causing mental and moral suffering, which in the context of the Sierra Leone conflict, is of comparable seriousness to the other crimes against humanity listed in tile Statute.[303]

4522. para. 194: Furthermore, the Appeals Chamber also notes that in their respective Concurring and Partly Dissenting Opinions, both Justice Sebutinde and Justice Doherty make a clear and convincing distinction between forced marriages in a war context end the peacetime practice of "arranged marriages" among certain traditional communities, noting that arranged mamages are not to be equated to or confused with forced marriage during armed conflict.[304] Justice Sebutinde goes further to add, correctly in our view, that while traditionally arranged marriages involving minors violate certain international human rights norms such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), forced marriages which involve the abduction and detention of women and girls and their use for sexual and other purposes is clearly criminal in nature.[305]

4523. para. 195: Based on the evidence on record, the Appeals Chamber finds that no tribunal could reasonably have found that forced marriage was subsumed in the crime against humanity of sexual slavery. While forced marriage shares certain elements with sexual slavery such as non-consensual sex and deprivation of liberty, there are also distinguishing factors. First, forced marriage involves a perpetrator compelling a person by force or threat of force, through the words or conduct of the perpetrator or those associated with him, into a forced conjugal association with a another person resulting in great suffering, or serious physical or mental injury on the part of the victim. Second, unlike sexual slavery, forced marriage implies a relationship of exclusivity between the "husband" and "wife," which could lead to disciplinary consequences for breach of this exclusive arrangement. These distinctions imply that forced marriage is not predominantly a sexual crime. The Trial Chamber, therefore, erred in holding that the evidence of forced marriage is subsumed in the elements of sexual slavery.

4524. para. 196: In light of the distinctions between forced marriage and sexual slavery, the Appeals Chamber finds that in the context of the Sierra Leone conflict, forced marriage describes a situation in which the perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force or coercion to serve as a

conjugal partner resulting in severe suffering, or physical, mental or psychological injury to the victim.

b. Does Forced Marriage Satisfy the Elements of "Other Inhumane Acts"? – Pleading – Forced Marriage

4525. para. 197: The Prosecution submits that the crime charged under Count 8 is "Other Inhumane Acts," which forms part of customary international law, and therefore, does not violate the principle of *nullum crimen sine lege*. Therefore, the Prosecution submits that the only question on appeal is whether forced marriage satisfies the elements of "Other Inhumane Acts." The Prosecution argues that forced marriage amounts to an "Other Inhumane Acts" and that the imposition of a forced conjugal association is as grave as the other crimes against humanity such as imprisonment, causing great suffering to its victims.[307] In particular, the Prosecution argues that the mere fact of forcibly requiring a member of the civilian population to remain in conjugal association with one of the participants of a widespread or systematic attack directed against the civilian population is at least, of sufficient gravity to make this conduct an "Other Inhumane Acts."[308]

4526. para. 198: The Appeals Chamber agrees with the Prosecution flat the notion of "Other Inhumane Acts" contained in Article 2.i of the Statute forms part of customary intemational law.[309] As noted above, it serves as a residual category designed to punish acts or omissions is not specifically listed as crimes against humanity provided these acts or omissions meet the following requirements:

> (i) inflict great suffering, or serious injury to body or to mental or physical health;
>
> (ii) are sufficiently similar in gravity to the acts referred to in Article 2.a to Article 2.h of the Statute; and
>
> (iii) the perpetrator was aware of the factual circumstances that established the character of the gravity of the act.[310]

The acts must also satisfy the general chapeau requirements of crimes against humanity.

4527. para. 199: The Appeals Chamber finds that the evidence before 1he Trial Chamber established that victims of forced marriage endured physical injury by being subjected to repeated acts of rape and sexual violence, forced labour, corporal punishment, and depravation of liberty. Many were psychologically traumatised by being forced to watch the killing or mutilation of close family members, before becoming "wives" to those who committed these atrocities and from

being labelled rebel "wives" which resulted in them being ostracised from their communities. In cases where they became pregnant from the forced marriage, both they and their children suffered long term social stigmatisation.

4528. para. 200: In assessing the gravity of forced marriage in the Sierra Leone conflict, the Appeals Chamber has taken into account the nature of the perpetrator's conduct especially the atmosphere of violence in which victims were abducted and the vulnerability of the women and girls especially those of a very young age. Many of the victims of forced marriage were children themselves. Similarly, the Appeals Chamber has considered the effects of the perpetrators' conduct on the physical, moral, and psychological health of the victims. The Appeals Chamber is firmly of the view that acts of forced marriage were of similar gravity to several enumerated crimes against humanity including enslavement, imprisonment, torture, rape, sexual slavery and sexual violence.

4529. para. 201: The Appeals Chamber is also satisfied that in each case, the perpetrators intended to force a conjugal partnership upon the victims, and were aware that their conduct would cause serious suffering or physical, mental or psychological injury to the victims. Considering the systematic and forcible abduction of the victims of forced marriage, and the prevailing environment of coercion and intimidation, the Appeals Chamber finds that the perpetrators of these acts could not have been under any illusion that their conduct was not criminal. This conclusion is fortified by the fact that the acts described as forced marriage may have involved the commission of one or more international crimes such as enslavement, imprisonment, rape, sexual slavery, abduction among others.

4530. para. 202: The Appeals Chamber has carefully given consideration to whether or not it would enter fresh convictions for "Other Inhumane Acts" (forced marriage). The Appeals Chamber is fully aware of the Prosecution's submission that entering such convictions would reflect the full culpability of the Appellant. The Appeals Chamber is also aware that the Trial Chamber relied upon the evidence led in support of sexual slavery and forced marriage to enter convictions against the Appellants for "Outrages upon Personal Dignity" under Count 9 of the Indictment. Since "Outrages upon Personal Dignity" and "Other Inhumane Acts" have materially distinct elements (in the least, the former is a war crime, and the latter a crime against humanity) there is no bar to entering cumulative convictions for both offences on the basis of the same facts. However, in this case the Appeals Chamber is inclined against entering such cumulative convictions. The Appeals Chamber is convinced that society's disapproval of the forceful abduction and use of women and girls as forced conjugal partners as part of a widespread or

systematic attack against the civilian population, is adequately reflected by recognising that such conduct is criminal and that it constitutes an "Other Inhumane Act" capable of including individual criminal responsibility in international law.

4531. para. 203: The Appeals Chamber therefore grants Ground Seven of the Prosecution's Appeal.

(ii) Pleading – Mutilations

4532. para. 204: The Prosecution argues that the Trial Chamber erred in deciding not to consider mutilations under Count 11 as well as under Count 10 because considering mutilations and beatings and ill-treatment under the same Count would have resulted in a duplicitous charge.[311] The Prosecution submits that the convictions of the accused for mutilations as a war crime fail to recognise that acts of mutilation were also crimes against humanity, as they occurred as part of a widespread or systematic attack against the civilian population.[312] The Prosecution further submits that mutilations, and acts of physical violence other than mutilation:, are not separate crimes, but are different ways of committing the war crime of violence to life, health and physical or mental wellbeing of persons, as well as the crime against humanity of "Other Inhumane Acts." Therefore, the Prosecution argues that Counts 10 and 11 were not defective If pleaded because both forms of physical violence may properly be alleged in both counts without resulting in a duplicitous charge.[313]

4533. para. 205: As discussed above, the rule against duplicity prohibits the charging of two separate offences in the same count.[314] However, the Appeals Chamber notes that Count 11 charged only the offence of "Other Inhumane Acts" as a crime against humanity, which was supported by material facts alleging mutilations as well as beatings and ill-treatment. Thus, Count l1 on its face is not duplicitous. The Appeals Chamber also notes the distinction between charging conduct and charging offences. Article 2.i is a residual category which encompasses various forms of conduct. However, it is a single offence. Therefore, the Appeals Chamber finds that alleging multiple forms of conduct in the same count was not duplicitous because Count 11 only charged one offence, namely "Other Inhumane Acts."[315] It follows that Count 11 would not have been duplicitous had the Trial Chamber considered evidence of both mutilations and beatings and ill-treatment.

4534. para. 206: However, the Appeals Chamber finds that the Trial Chamber did not err in considering mutilations only under Count 10. The Appeals Chamber notes that Count 10, which alleges "violence to life, health and physical or mental well-being of persons, in particular

mutilations," is clearly supported by the paragraphs alleging mutilations, The allegations of beatings and ill-treatment could not have been used to support Count 10. The Indictment would therefore have been much clearer had the Prosecution limited the factual allegations in support of Count10 to mutilations. Furthermore, the Prosecution's intention to rely on acts of mutilation in support of Count11 would have been much clearer had it separated the facts supporting this Count from those supporting Count 10. Consequently, the Prosecution's combination of the material facts that support Counts 10 and 11 created a degree of ambiguity in the Indictment. In light of this ambiguity, it was within the discretion of the Trial Chamber to consider evidence of mutilations solely under Count 10. Thus, the Appeals Chamber rejects the Prosecution's submission that the Trial Chamber erred in failing to consider evidence of mutilations under Count 11 as well as under Count 10. Ground Eight of the Prosecution's Appeal is therefore dismissed.

D. CDF

1. Indictment

The Prosecutor v. Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa, SCSL-03-14-I, Indictment, 4 February 2004

(a) Particulars

(i) Charges

4535. Paragraph 4 through 21 is incorporated by reference.[264]

4536. These actions [para. 23: The CDF, largely Kamajors, engaged the combined RUF/AFRC forces in armed conflict in various parts of Sierra Leone - to include the towns of Tongo Field, Kenema, Bo, Koribondo and surrounding areas and the Districts of Moyamba and Bonthe.] by the CDF, largely Kamajors, which also included looting, destruction of private property, personal injury and the extorting of money from civilians, were intended to threaten and terrorize the civilian population. Many civilians saw these crimes committed; others returned to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property. Typical CDF actions and the resulting crimes included: [Paragraphs 24.a to 24.f incorporated by reference].[265]

[264] CDF Indictment, para. 22.
[265] CDF Indictment, para. 24.

(ii) Counts 6-7: Terrorizing the Civilian Population and Collective Punishments

4537. At all times relevant to this Indictment, the CDP, largely Kamajors, committed the crimes set forth in paragraphs 22 through 27 and charged in counts 1 through 5, including threats to kill, destroy and loot, as part of a campaign to terrorize the civilian populations of those areas and did terrorize those populations. The CDP, largely Kamajors, also committed the crimes to punish the civilian population for their support to, or failure to actively resist, the combined RUFf AFRC forces.[266]

(iii) Counts 3-4: Physical Violence and Mental Suffering

4538. Acts of physical violence and infliction of mental harm or suffering included the following:

a. Between about 1 November 1997 and 30 April 1998, at various locations, including Tongo Field, Kenema Town, Blama, Kamboma and the surrounding areas, the CDF, largely Kamajors, intentionally inflicted serious bodily harm and serious physical suffering on an unknown number of civilians;[267]

b. Between November 1997 and December 1999, in the towns of Tongo Field, Kenema, Bo, Koribondo and surrounding areas, and the Districts of Moyamba and Bonthe, the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians by the actions of the CDF, largely Kamajors, including screening for **"Collaborators,"** unlawfully killing of suspected **"Collaborators,"** often in plain view of friends and relatives, illegal arrest and unlawful imprisonment of **"Collaborators**", the destruction of homes and other buildings, looting and threats to unlawfully kill, destroy or loot;[268]

4539. By their acts or omissions in relation to these events, SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA, 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: Inhumane Acts, a CRIME AGAINST HUMANITY, punishable under Article 2.i. of the Statute;

In addition, or in the alternative:

Count 4: Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a VIOLATION OF ARTICLE 3 COMMON TO THE

[266] CDF Indictment, para. 28.
[267] CDF Indictment, para. 26.
[268] CDF Indictment, para. 26(b).

GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.a. of Statute.

2. Trial Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-T, Judgement, 2 August 2007

(a) Factual Findings

(i) Kenema District – Crimes

a. Tongo Fields – Kenema District – Crimes

4540. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings - Kenema District - Crimes – Tongo Fields - paras. 388, 390 [4142].

(ii) Kaliahun District – Crimes

a. Dodo Junction – Kaliahun District – Crimes

4541. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings – Kaliahun District - Crimes – Dodo Junction - para. 407 [4144].

(iii) Bo District – Crimes

4542. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Beating of OC Bundu, OC Katta and OC Ndanema - para. 453 [4145].

4543. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Mutilation/Personal Injury to TF2-119 - para. 458 [4146].

4544. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Killings at Bo Government Hospital by Kamajors - para. 461 [4147].

4545. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Mutilation of TF2-006 and Wounding of Five People - para. 472 [4148].

4546. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Killing of a Limba man by Kamajors after 15 February 1998 - para. 473 [4149].

4547. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Torture of TF2-198 and Killing of his Brother - para. 477 [4150].

4548. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Assault on TF2-156 and Killing of his Brothers - paras. 480 - 481 [4151].

4549. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Arrest on TF2-067 and his Father - paras. 491 - 492 [4153].

4550. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Killing of a Former Soldier by Kamajors at a Checkpoint – para. 494 [4155].

4551. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Arrest and Beating of a Limba Man - para. 495 [4156].

4552. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Arrest and Cruel Treatment of Two Limba Men - para. 496 [4157].

4553. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Arrest and Cruel Treatment of a Limba Man - para. 497 [4158].

4554. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Arrest and Beating of a Woman - para. 498 [4159].

4555. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Killing of TF2- 058's Husband - para. 500 [4160].

4556. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Harassment of TF2-156 - paras. 502 [4161].

4557. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Mistreatment of TF2-119 at the Brigade Junction on the Bo-Freetown Road - paras. 503 - 504 [4162].

4558. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Crimes in Mongere and Gumahum - para. 515 [4164].

4559. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Mistreatment of TF2-088 at the Court Barri in Gumahun - paras. 520 - 521 [4165].

4560. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Killing of TF2-088's Son - para. 524 [4167].

4561. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bo District - Crimes – Crimes committed in Fengehun - para. 531 [4168].

(iv) Bonthe District – Crimes

4562. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Bonthe District - Crimes – Case of Lahai Koroma/Actions by Kondewa - para. 552 [4169]

(v) Kenema District – Crimes

4563. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Kenema District - Crimes – Mistreatment of and Threats to Kill TF2-041; Killing of Sergeant Fosana - paras. 577 - 578, 580 [4170].

4564. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Kenema District - Crimes – Arrest and Mistreatment of TF2-151; Killing of Alleged Junta – para. 603 [4173].

4565. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings –Kenema District - Crimes – Second Arrest and Further Mistreatment of TF2-151 – paras. 608, 609 [4174].

(vi) Talia/Base Zero – Crimes

4566. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings – Talia/Base Zero - Crimes – Capture and Beating of TF2-134 by Kamajors – para. 619 [4176].

4567. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings – Talia/Base Zero - Crimes – Capture of TF1-109 and Looting – para. 621 [4177].

4568. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings – Talia/Base Zero - Crimes – Treatment of Collaborators – Detention of TF2-096's Friend of Kondewa – para. 631 [4178].

(vii) Moyamba District – Crimes

4569. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings – Moyamba District - Crimes – Bradford – Third Arrival at Bradford on 23 March 1998 – para. 659 [4179].

4570. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings – Moyamba District - Crimes – Bradford – Fourth Arrival at Bradford of the Kamajors on 25 March 1998 – paras. 660, 662 [4180].

4571. See above: Chapter 7 – CDF – Trial Judgment – Factual Findings – Moyamba District - Crimes – Bradford – Capture and Murder of One Civilian near Makabi Loko in Tune 1998, para. 663 [4182].

(b) Legal Conclusions

(i) Applicable law - CAH

4572. See above: Chapter 2 – CDF – Trial Judgment – Legal conclusions – Applicable law – CAH – paras. 110 - 121 [2096].

(ii) CAH – Findings on general requirements

4573. See above: Chapter 2 – CDF – Trial Judgment – Legal conclusions – CAH – Findings on general requirements - paras. 691 – 693 [2108].

4574. para. 694: Having thus found that the essential requirement of an attack against the civilian population has not been satisfied beyond reasonable doubt, the Chamber finds that the Fofana and the Kondewa are not guilty of Crimes against Humanity as charged in Count 1 (Murder as a Crime against Humanity) and Count 3 (Other Inhumane Acts as a Crime against Humanity).

(iii) Applicable law - Other inhumane acts

4575. para. 149: 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.[191]

4576. para. 150: In the Chamber's view, the constitutive elements of the crime of other inhumane acts are:

> (i) The occurrence of an act or omission of similar seriousness to the other acts enumerated in Article 2 of the Statute;
>
> (ii) The act or omission caused serious mental or physical suffering or injury or constituted a serious attack on human dignity;

(iii) The Accused, at the time of the act or omission, had the intention to commit the inhumane act or acted in the reasonable knowledge that this would likely occur.[192]

4577. para. 151: 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.[193]

4578. para. 152: The Chamber takes the view that the intention to inflict other inhumane acts is satisfied where the Accused, at the time of the act or omission, had the intention to inflict serious mental or physical suffering or injury or to commit a serious attack on the human dignity of the victim, or where he or she had reasonable knowledge that the act or omission would likely cause serious physical or mental suffering or injury or a serious attack on human dignity.[194]

4579. para. 153: The Chamber recognises that a third party could suffer serious mental harm 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 mental harm 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 mental suffering on the third party, or where the Accused had reasonable knowledge that his act would likely cause serious mental suffering 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."[195]

(iv) Tongo Field – Physical Violence

4580. See above: Chapter 7 – CDF – Trial Judgment – Legal Conclusions - Tongo Fields – Physical Violence - paras. 756 - 758, 763 – 764 [4188].

(v) Koribondo – Physical Violence

4581. See above: Chapter 7 – CDF – Trial Judgment – Legal Conclusions – Koribondo – Physical Violence – paras. 791 - 793, 798 – 799 [4193].

(vi) Bo District – Physical Violence

4582. See above: Chapter 7 – CDF – Trial Judgment – Legal Conclusions – Bo District – Physical Violence – Fofana – paras. 835 - 837, 846 [4198].

4583. See above: Chapter 7 – CDF – Trial Judgment – Legal Conclusions – Bo District – Physical Violence – Kondewa – paras. 855 [4202].

(vii) Bonthe District – Physical Violence

4584. See above: Chapter 7 – CDF – Trial Judgment – Legal Conclusions – Bonthe District – Physical Violence – Fofana – para. 863 [4203].

4585. See above: Chapter 7 – CDF – Trial Judgment – Legal Conclusions – Bo District – Physical Violence – Kondewa – paras. 890 – 894 [4204].

(viii) Kenema District – Physical Violence

4586. See above: Chapter 7 – CDF – Trial Judgment – Legal Conclusions – Kenema District – Physical Violence – Fofana – para. 911 [4209].

4587. See above: Chapter 7 – CDF – Trial Judgment – Legal Conclusions – Kenema District – Physical Violence – Fofana – para. 918 [4210].

(ix) Talia/Base Zero – Physical Violence

4588. See above: Chapter 7 – CDF – Trial Judgment – Legal Conclusions – Talia/Base Zero – Physical Violence – Fofana – paras. 929 - 930 [4211].

3. Appellate Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-A, Judgment, 28 May 2008

(a) Factual Findings

4589. Not applicable.

(b) Legal Conclusions

(i) CAH – Findings - Attack directed against civilian population

4590. See above: Chapter 2 – CDF – Appeal Judgment – Legal Conclusions –CAH – Findings on general requirements – paras. 232 - 234, 244 - 252 [2136].

(ii) Attack directed against civilian population – CAH – Findings on general requirements

4591. See above: Chapter 2 – CDF – Appeal Judgment – Legal Conclusions –CAH – Findings on general requirements - Attack directed against civilian population – paras. 257 – 265 [2148].

(iii) CAH – Findings on general requirements

4592. See above: Chapter 2 – CDF – Appeal Judgment – Legal Conclusions –CAH – Findings on general requirements – paras. 297 – 321 [2157].

a. Disposition - CAH

4593. para. 322: The Appeals Chamber, Justice King dissenting, sets aside the verdict of not guilty against Fofana and Kondewa by the Trial Chamber under Counts 1 and 3 and substitutes, therefore, a verdict of guilty on those Counts. The Appeals Chamber will consider and impose appropriate sentences in respect of those Counts as part of its Disposition of the Prosecution's Tenth Ground of Appeal.

(iv) Dissent

a. Justice King

4594. See above: Chapter 2 – CDF – Appeal Judgment – Legal Conclusions –CAH – Findings on general requirements – para.58 [2188] (p.19).

CHAPTER 9 – CONSCRIPTING OR ENLISTING CHILDREN UNDER THE AGE OF 15 YEARS INTO ARMED FORCES OR GROUPS, OR USING THEM TO PARTICIPATE IN HOSTILITIES

A. CHARLES TAYLOR

1. Indictment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-I, Indictment, 16 March 2006

(a) Particulars

(i) Charges

4595. By his acts or omissions in relation to the below described events, the ACCUSED, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:[269]

(ii) Count 1: Terrorizing the civilian population

4596. Members of the Revolutionary United Front (RUF), Armed Forces Revolutionary Council (AFRC), AFRC/RUF Junta or alliance, and/or Liberian fighters, including members and ex-members of the NPFL (Liberian fighters), assisted or encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, burned civilian property, and committed the crimes set forth below in paragraphs 6 through 31 and charged in Counts 2 through 11, as part of a campaign to terrorize the civilian population of Sierra Leone.[270]

(iii) Count 9: Child Soldiers

> **Count 9: 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

4597. Between about 30 November 1996 and about 18 January 2002, throughout the Republic of Sierra Leone, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities. Many of these children were first abducted, then

[269] Taylor Indictment, Charges, p. 2.

trained in AFRC and/or RUF camps in various locations throughout the country, and thereafter used as fighters.[271]

2. Trial Judgement

The Prosecutor v. *Charles Ghankay Taylor*, SCSL-03-01-T, Judgement, 18 May 2012

(a) Factual findings

(i) General – Factual Findings

4598. para. 1357: The Prosecution has not pleaded specific locations with regard to conscripting, enlisting and/or use of boys and girls under the age of 15 to participate in armed hostilities. In accordance with established jurisprudence, the Trial Chamber has found that due to the continuous nature of the crime of conscripting, enlisting and/or use of boys and girls under the age of 15, the pleading of particular locations is impracticable.[3229] Therefore, the Trial Chamber has considered evidence of conscripting, enlisting and/or use of boys and girls under the age of 15, in all locations in Sierra Leone.

4599. para. 1361: The Trial Chamber heard evidence from many witnesses who observed children who appeared to be under the age of 15 at training bases, or engaged in various war-related activities. The Trial Chamber is aware that an official document if authenticated or uncontested is more reliable evidence of age than a witness's perception but also acknowledges that such documentary evidence is not available in many parts of Sierra Leone. The Trial Chamber is also cognisant that these witnesses made estimations of age on the basis of the child's appearance, height or physical development and/or the witness's personal experiences, rather than on objective proof of age.[3234] Given the inherent uncertainties in such estimations, the Trial Chamber has exercised caution in determining the ages of children associated with the rebel factions in its findings and has excluded all evidence related to child soldiers where it is not satisfied that such evidence referred to persons under age of 15 years.[3235]

4600. para. 1362: The Trial Chamber has found that the AFRC, RUF, the AFRC/RUF or junta forces were armed groups.[3236]

[270] Taylor Indictment, para. 5.
[271] Taylor Indictment, para. 22.

(ii) Conscription and Enlistment of Child Soldiers

a. General - Conscription and Enlistment of Child Soldiers

4601. para. 1363: The Prosecution evidence relates, almost entirely, to forcible conscription of children under the age of 15 into an armed force or group in circumstances of coercion. The evidence shows that in the majority of cases children were abducted and then trained.[3237]

4602. para. 1364: Children were trained in Masingbi Road,[3238] Superman Ground[3239] and Yengema in Kono District,[3240] Rosos in Bombali District, 3241 Port Loko,[3242] and Bunumbu in Kailahun District.[3243] Although evidence was adduced on two locations called "Bunumbu", in the west and in the east of Kailahun,[3244] the Trial Chamber is satisfied, based on evidence on its proximity to Buedu,[3245] that the Bunumbu training base was located in the east of Kailahun District.

4603. para. 1365: At the end of the training, children were given personal weapons[3246] and assigned to frontline commanders.[3247]

b. Tonkolili District – Conscription and Enlistment of Child Solders –Child Soldiers

4604. para. 1366: Perry Kamara testified that he was a radio operator for the RUF,[3248] and was stationed in Kangari Hills under the command of Isaac Mongor from early 1996 to May 1997.[3249] At the time the RUF in Kangari Hills abducted many civilians, some of whom were aged 12, 15 and 16.[3250] Some boys were sent to the training base which had between 500 and 1000 abducted trainees. They were forcibly marked "RUF" on the forehead or back to prevent escape. Other abductees were forced to marry, or used for hard labour.[3251]

c. Kailahun District – Conscription and Enlistment of Child Solders – Child Soldiers

i. Children abducted and trained by the RUF and AFRC at Bunumbu after ECOMOG Intervention - Kailahun District – Child Soldiers

4605. para. 1368: TF1-362 testified that the Bunumbu training base, also called "Camp Lion", was established after the ECOMOG Intervention,[3252] and operated until the end of 1998/1999.[3253]

4606. para. 1369: The witness testified that the procedure at Bunumbu was the same as it had been at Matru Jong,[3254] which was a training base used by the RUF prior to 30 November 1996. Children were first screened based on age and health, and then assigned to SBUs and SGUs. SBUs were as young as seven. SGUs were nine to 15 years of age.[3255] The training lasted from two weeks to six months.[3256] "Recruits" who tried to escape were either killed or branded on their faces or chests with the letters "RUF".[3257]

4607. para. 1370: The military training at Bunumbu including preparing ambushes,[3258] dodging bullets (Halaka training) and dismantling weapons.[3259] Some civilian "recruits" died during military training exercises and the High Command was informed.[3260] After the training, SBUs were sent to the front lines to fight or were assigned as bodyguards.[3261]

4608. para. 1371: During the training, SBUs were forced to participate in food-finding by the AFRC and RUF missions.[3262]

4609. para. 1372: Dennis Koker testified that approximately one month after the AFRC and RUF were driven out of Freetown,[3263] they arrived in Buedu along with civilians they had captured on the way from Kono, Quiva Road junction, Masiaka, Makeni and Koidu. The stronger ones were taken for military training at Bunumbu, and after the training they were sent as reinforcements to fight in the war. Some of those sent for training told Koker they were aged 12 or 14 and he saw that they were "very small" and "not fit for military work".[3264] During the 21 months Koker spent in Buedu up to 500 children were recruited as SBUs and given guns. They did domestic chores and fought at the war front.[3265] Koker testified that SBUs were small children aged 7 to 14.[3266]

4610. para. 1373: Albert Saidu heard that Monica Pearson was a training commander at Bunumbu Camp Lion training base from 1998 to 1999.[3267] He agreed with a previous statement given to the Prosecution that after the ECOMOG Intervention, boys were abducted during the retreat from Freetown and the strongest ones were sent to Bunumbu for training. He testified that some of the children were as young as 8 years old.[3268]

4611. para. 1374: TF1-189 testified that after she heard about the attack on Freetown on 6 January 1999, the rebels sent 20 captives, aged 12 to 18, both male and female, away from Mamboma village in Kailahun. TF1-189 learned that the rebels took them to "the training base" at which C.O. Monica was the commander, where they were taught how to use guns. After the training, the trainees were taken to the front lines.[3269] The witness was informed about this recruitment from her cousin, who was one of those trained, and who was 16 at the time of her

abduction. Her cousin also said that she was given a gun and was assigned to guard a commander.[3270]

4612. para. 1375: Aruna Gbonda testified that from 1996 to 2000, some of the RUF rebels in Kailahun were "little children" aged 8 to 10 years old who were abducted and then trained. Some carried guns.[3271]

4613. para 1376: Exhibit D-013, a report by a Training Commander at Camp Lion, Bunumbu from 21 May 1998, records the presence of 53 SBUs at the base, but does not specify their age.[3272]

ii. Abduction and training of Komba Sumana in approximately July/August 1998 – Kailahun District – Conscription and Enlistment of Child Solders – Child soldiers

4614. para. 1379: Komba Sumana testified that he lived in Tankoro village near Koidu Town at the time when the "soldiers have overthrown".[3273] On cross-examination, Sumana confirmed a prior statement in which he said he was in Koidu when he heard that ECOMOG had dislodged the AFRC from Freetown, in approximately February 1998.[3274] The Trial Chamber is satisfied from this description that the event referred to by Sumana is the ECOMOG Intervention of 14 February 1998.[3275]

4615. para. 1380: Approximately two months later, after the rainy season had begun, his parents and siblings were captured by "rebels" outside of Pakidu village and taken in the direction of Koidu Town.[3276] Sumana then came under the care of an aunt. They travelled together to Koidu Town, having heard that ECOWAS was there. On the way, they were attacked by "rebels" and became separated.[3277] Approximately a week later, still during the rainy season, three "rebels" attacked Sumana and another civilian in the bush outside Koidu Town and captured them. The rebels were male "youths" wearing military uniform trousers with a black and green combat pattern and civilian clothes and were carrying guns. They spoke Liberian English.[3278]

4616. para. 1381: On cross-examination, Sumana testified that he could not recall the month or the year in which he was abducted, but that it was during the "mango season" and "at the time we were finally driven out of Koidu Town",[3279] some months after ECOMOG drove the rebels out of Freetown.[3280] Sumana also denied having told the Prosecution that he was abducted in approximately February 1998, as was recorded by an investigator in a prior statement.[3281]

4617. para. 1382: The Trial Chamber recalls the evidence presented before it that the "mango season" generally begins in April or May.[3282] The Trial Chamber also recalls its finding that Koidu Town was captured by junta forces in late February/early March 1998 and that they were forced by ECOMOG to retreat in early April.[3283] The Trial Chamber finds Sumana's evidence consistent with evidence of these known events and concludes that he was captured in around April 1998.

4618. para. 1383: Sumana testified that he was "very small" and did not yet have any facial hair at the time of his capture.[3284] He stated that before they were driven out of Koidu Town, his father "used to tell" him that he was 14 years old.[3285]

4619. para. 1384: Sumana also testified that he was born in 1984 but he was unable to say in which month.[3286] He presented the court with a birth certificate which he testified was obtained by his father at the end of the war. This certificate, issued on 22 June 2003, shows from hospital records that he was born on 10 August 1984.[3287] The Trial Chamber notes that Sumana stopped his education in Class 4 and cannot read.[3288]

4620. para. 1385: Sumana also presented the Court with a voter identification card which he testified he obtained in Freetown in 2002, during the elections.[3289] This card shows that he was "age 18"[3290] and the date of the elections as 14 May 2002.

4621. para. 1386: Sumana testified that after he was captured, the "rebels" brought him to their base in Kissi Town. There, Sumana saw many other captured civilians and "rebels". Their "boss" was "Major Wallace", a former Liberian ULIMO fighter who joined the STF and spoke Krio, Liberian English and a Liberian tribal language Sumana did not recognise. Major Wallace's "boss" in Kissi Town was "Superman". When they were in Liberia, Major Wallace was under Colonel Alhaji Kromah.[3291] Sumana learned his captors were named Wuya, Opong and Alie.[3292] On cross-examination, Sumana confirmed that all three were former ULIMO fighters who had joined the STF.[3293] The Trial Chamber is satisfied from Sumana's description of his abductors and their associates that he was abducted by members of the STF.

4622. para. 1387: Sumana testified that he became a member of the "SBU" and performed domestic chores; he was not able to explain what SBU stands for.[3294] Approximately three weeks after Sumana was brought to Kissi Town, Issa Sesay assembled the captured civilians at PC Ground and stated that Mosquito had requested that the civilians be sent to Kailahun for training. Morris Kallon selected more than 200 men, women and children, including Sumana, to participate in this training. At the time of selection, the civilians were held at gunpoint and

Sumana testified that "[t]hey said if anybody refused to go they would kill him".[3295] On cross-examination, Sumana testified that this happened at the time the mangos were ripening which may have been April.[3296]

4623. para. 1388: Sumana testified that the training took place during the rainy season in the bush outside of Buedu. The trainees undertook two months of training under an instructor named "Monica" who spoke Liberian English. Sumana was taught to crawl on the ground during an ambush, how to shoot, dismantle, clean and reassemble an AK-47 gun, how to attack a town and how to burn houses. The civilians were sometimes beaten and given little food. One man fell ill and died. Sumana showed the Court scars on his right knee and ankle and on his left shin which he testified were the result of crawling on the ground during the training.[3297] On the basis of his evidence, and on Sumana's testimony of later events set out below, the Trial Chamber is satisfied that Sumana's military training ended in approximately July or August 1998.

4624. para. 1389: On cross-examination, Sumana agreed that the "Monica" who conducted the training was also known as "Colonel Monica" and that the training camp was located "in Buedu". The Defence referred the witness to other evidence suggesting that Colonel Monica Pearson, a known RUF trainer, was not in Buedu in 1998, but rather in Camp Lion in Bunumbu, some 14 miles away. Sumana explained that "they" used to say that she was in Buedu, but that "we" were in the bush and did not go to Buedu. He then reiterated that he was at a camp "in Buedu" where he was trained by a female Liberian named Monica.[3298] The Trial Chamber notes that according to Exhibit P-276, a map of Kailahun District marked by TF1-168, Bunumbu is approximately 15 kilometres outside of Buedu.[3299] The Trial Chamber notes that, in his own description of the location, the witness seemed to refer interchangeably to "in Buedu" and the bush outside of Buedu. The Trial Chamber relies on his repeated spontaneous descriptions of a location "outside of Buedu" and "in the bush" and is satisfied that this is not inconsistent with the location of the training camp at Bunumbu.

iii. Abduction and training of Edna Bangura – Kailahun District – Conscription and Enlistment of Child Solders – Child Soldiers

4625. para. 1394: The evidence of witness Edna Bangura of her capture in Masingbi, Tonkolili District in 1994 and subsequent detention in Buedu has been recited in the section dealing with Count 4 (rape).[3301]

4626. para. 1395: In Buedu, Bangura was assigned to CO Scorpion. The day after she arrived, CO Issa ordered that she and other captured civilians be sent for training. Bangura testified that

she was not yet 11 when she was sent for training and estimated that the other people sent for training were between 10 to 25 years old.[3302] She was subsequently assigned to a Small Girls Unit "for small girls between the age brackets of 8, 11, 12, 13". She saw small boys of similar ages who were formed into Small Boys Units and who acted as securities.[3303] She was sent with others in groups of up to 20, some but not all of whom, were armed to villages where they took "whatever we were able to see" and where they captured civilians, men, women and children and forced them to carry the looted goods.[3304]

4627. para. 1396: Bangura testified that she was trained "in Buedu" for two weeks by Monica Pearson whom she believed was Liberian.[3305] At the training, they were taught how to set an ambush, how to retreat and how to use a gun. Bangura was trained with a two pistol grip gun. She testified that she was very small and that she had to place the gun somewhere higher than herself so that she could duck under the strap. Other people were trained with G3s and LARs; Bangura was unable to explain what an LAR is. She estimated that there were 50 or more people trained with her.[3306]

4628. para. 1397: On cross-examination, Bangura explained that the training camp was not in fact in Buedu Town but rather in a place that she estimated was about one or two hours walk away.[3307] Defence counsel suggested to her that Monica Pearson worked in a camp which was 14 miles away in Bunumbu and doubted that it was possible to walk this far in an hour or two. Bangura suggested that they used to run. The Trial Chamber has noted that according to Exhibit P-276, a map of Kailahun District marked by TF1-168, Bunumbu is approximately 15 kilometres outside of Buedu.[3308] Bangura went on to testify on cross-examination that she knows of a place called Bunumbu but she does not know how far it is from Buedu nor does she know if there was an RUF training camp located there. However, inconsistently, Bangura also stated that she had been to Bunumbu, then stated that she did not know it was Bunumbu or the names of other villages but was emphatic that she "was trained somewhere around Buedu".[3309]

iv. Abduction and training of TF1-026 from January to November/December 1999 - Kailahun District – Conscription and Enlistment of Child Solders – Child soldiers

4629. para. 1403: TF1-026, born on 9 November 1984,[3316] was 14 years old on 6 January 1999 when nine RUF rebels, under the command of CO Rocky, came to her house in Wellington, Freetown, where she lived with her family.[3317] The rebels abducted the witness, who went with them unwillingly.[3318]

4630. para. 1404: After her abduction, the witness was taken by the RUF rebels, commanded by CO Rocky, to Calaba Town,[3319] and two days later to Waterloo where they met CO Rambo, an RUF commander.[3320] From there they moved to Makeni, where they met "Brigadier Issa", the "big man in Makeni", and Superman, another "big man" of the RUF. During her three week stay in Makeni, she did house chores in CO Issa's house.[3321]

4631. para. 1405: After this three weeks period in Makeni, Brigadier Issa ordered CO Rocky to take the women to be trained in Kailahun. The witness and 19 other girls and women were taken by a vehicle to Kono, and from Kono they walked to Buedu, Kailahun District. In Buedu they were handed over to Mosquito, "the big man of all of them", who told CO Rocky to take them to "Buedu field" to be trained.[3322]

4632. para. 1406: At the training field, CO Rocky handed over the girls and women to an RUF woman Vanguard named Krio Mammy for training. Mosquito arrived at the field, said "they" should start training them, and informed the girls and women that anyone caught trying to escape would be killed. The trainees were then provided military training for six months. All the trainees received a gun during the training and were trained how to use it, how to crawl while using arms, and how to shoot a gun, an "AK". They also had a G3. They were told the training was needed in the RUF, and if the ECOMOG attacked they would need to know how to shoot, crawl, roll and escape. The witness was 14 years old during her training, while the others ranged in age from 18 to 26.[3323]

4633. para. 1407: During the training the witness tried to escape with three other female trainees. They were told a boat would come and take them to Liberia. After finding out that Mosquito had heard of their attempt, the witness and her friend returned to the training camp, while the two other females were captured by Mosquito. Mosquito then shot and killed the two recaptured girls in front of the other trainees, telling them that this was an example of what would happen to them if they tried to escape. Another female trainee had already died because the training made her ill. After the execution of the two trainees, all the remaining 17 trainees had the letters "RUF" carved onto their chests with a knife, so that if they "ran away wherever (they) went if caught (they) would be killed".[3324]

4634. para. 1408: After the six months of training, Mosquito ordered that the women be brought back to Makeni, Bombali District, and handed over to Brigadier Issa. The witness spent two months in Makeni, during which she did domestic chores for Brigadier Issa and his wife.[3325] She was forcibly married to a "RUF boy".[3326] The witness escaped to her home village after she became pregnant. She spent a total of nine months in rebel captivity.[3327]

d. Kono District - Conscription and Enlistment of Child Solders – Child soldiers

i. Children abducted and trained by the AFRC and RUF between March and December 1998 - Kono District - Conscription and Enlistment of Child Solders –Child Soldiers

4635. para. 1412: Dennis Koker testified that approximately a week after the AFRC was expelled from Freetown,3329 they captured many children aged 12 or 14 years from Koidu Town and the surrounding area in Kono and forcefully used these children as reinforcements to fight for them. The children had guns and fought for the RUF.[3330]

4636. para. 1413: Alice Pyne testified that in March 1998, while she was at PC Ground, the RUF captured children from villages near PC Ground and took them to the training base at Superman Ground.[3331] The captured children who were sent for training at Superman Ground were aged 8-13. After they "graduated" they would be distributed to commanders. The training at Superman Ground was the same type of training the witness underwent at Dia.[3332] At Dia, the training included how to attack, how to mount an ambush, how to crawl and manoeuvre.[3333]

4637. para. 1414: Alimamy Bobson Sesay testified that SBUs, some aged 8 to 12, were given basic weapon training at Masingbi Road from mid-March to April 1998, and was himself involved in providing such training.[3334] The witness also saw SBUs given basic training in Kono by Junior Sherrif, Savage, Tito in Yengema, Amara Kallay, Komba Gbundema, Emmanuel Williams aka Rocky and Colonel Isaac Mongor.[3335]

4638. para. 1415: Emmanuel Bull testified that after April 1998, while he was with the RUF/AFRC between Woama and Baima,[3336] he heard that Bai Bureh had ordered the RUF/AFRC to train young men. The witness and others were then trained for two weeks by Kallay Amara, Anthony and Jah Spirit on how to use weapons. Some of the trainees were Small Boys Units, aged 13 and upwards. Usually at mid-day the trainees were sent on food finding missions, accompanied by gunmen.[3337]

ii. Children trained by the AFRC and RUF after December 1998 in Yengema – Kono District - Conscription and Enlistment of Child Solders – Child soldiers

4639. para. 1423: TF1-362 testified that at the end of 1998, when Kono was "cleared",[3341] Yengema training base was established.[3342] The same procedures that had been used at Bunumbu training base were employed at Yengema viz. dividing the recruits into five platoons, including an SBU platoon.[3343] The recruits were trained with live ammunition and were sent on food

finding missions. The youngest and oldest "recruits" died most often.[3344] After the training, the "recruits" were assigned to the frontline commanders including Morris Kallon, Denis Mingo and Rambo.[3345] SBUs were also assigned to commanders as bodyguards.[3346]

iii. Abduction, training and use of TF1-143 in September 1998 – Kono District - Conscription and Enlistment of Child Solders – Child soldiers

4640. para. 1425: TF1-143 stated that he was born on 1 March 1986,[3348] and testified that he was 12 years old in September 1998.[3349] At this time, the witness was living in Kabala Town, Koinadugu District,[3350] when he heard heavy shooting.[3351] His family ran away to his mother's village, Konkoba, located 12 miles from Kabala Town.[3352] Two nights later, TF1-143's family was captured at gunpoint and locked in a house with 150 civilians.[3353] TF1-143 testified that there were over 200 rebels in the town.[3354] Some rebels were wearing combat trousers, black shirts and red bandanas on their heads. Most of them had heavy weapons.[3355]

4641. para. 1426: The next morning, four armed rebels came to the house.[3356] Two rebels, named Kabila and Mohamed, marked all 50 children with "AFRC" and/or "RUF". Kabila marked "RUF" on TF1-143's chest with a razor blade.[3357] TF1-143 testified that after being marked, he and the other children were taken out of Konkoba village and assigned to commanders, including Five-Five, O-Five, Komba and others.[3358] TF1-143 and another boy named "Short Pepper" were assigned to Kabila.[3359]

4642. para. 1427: After being assigned to Kabila and taken away from Konkoba the group went food finding and then stopped at a village, the name of which TF1-143 did not know, to rest. At this village TF1-143 underwent a "forced" training – his first.[3360] Kabila forced TF1-143 to learn how to dismantle a weapon, clean it and put it back together. The weapon was a large gun with a round box and large chains.[3361]

4643. Para. 1428: TF1-143 testified that the group from Konkoba eventually made its way to Koinadugu Town, where TF1-143 and the other captured children were introduced to SAJ Musa by their commanders. The commanders gave SAJ Musa two boys whom they had reserved for him.[3362] TF1-143 testified that the rebels who had captured him were under SAJ Musa's group, which was a mix of AFRC and RUF fighters.[3363]

4644. para. 1429: After meeting with SAJ Musa in Koinadugu Town, Kabila told TF1-143 that their group was to be in the advance team to Freetown. Kabila, TF1-143, the other boy and Kabila's "wife", a young woman he had captured, went to the forest, or "jorbush". In the jorbush

TF1-143 and the other boy underwent a second training. They learned how to dismantle a weapon, clean it, couple it up, cock it, put it on safety, how to manoeuvre and how to crawl.[3364] In the evening, they returned to Koinadugu Town from the jorbush.[3365]

e. Bombali District – Conscription and Enlistment of Child Solders – Child soldiers

i. Children trained at Camp Rosos and used by the AFRC in July 1998 - Bombali District – Conscription and Enlistment of Child Solders – Child soldiers

4645. para. 1433: Alimamy Bobson Sesay testified that small boys were captured during the "SLA" attack on Karina in July 1998 and were assigned to the wives of SLA and RUF commanders to do "small works". Later on, the small boys were given "personal training" as SBUs in Camp Rosos on weapons and guard duties.[3367] At Camp Rosos, 77 people were trained, the majority of whom were SBUs aged 8 to 12. They were trained for three weeks by Junior Sherrif, Major Eddie, Five-Five and the witness himself. In order to prepare them for the attack on Freetown, SBUs were trained how to use weaponry, lay ambushes, and were given drills in Fighting In a Built Up Area (FIBUA).[3368]

ii. Children taken from care centre in Makeni in May 2000 and continued recruitment until 2001 - Bombali District –Conscription and Enlistment of Child Solders – Child soldiers

4646. para.1435: TF1-174 testified that in mid-April 2000, he met with a British "MILOB member", Colonel Joe, the "CO" of KENBATT-5, Augustine Gbao and Morris Kallon to decide whether the care centre for children in Makeni should continue to function. Gbao and Kallon said that they must hear from Issa Sesay and Foday Sankoh before making a decision. When the witness visited Gbao at Teko Barracks, "we" heard "them" talking in a room used to communicate with Issa Sesay or Foday Sankoh. Eventually, the witness was told he could move the children, but that he must give the RUF a list of the names.[3369] However, RUF personnel demanded the return of children who "were good fighters".[3370] Between 1 and 5 May 2000 he saw RUF members taking more than 100 children from the centre.[3371] By 14 or 15 May 2000 another 100 children were gone from the centre. One of the remaining children told the witness that 45 children had been taken to fight in Lunsar but that they were killed in an accident on the way.[3372]

4647. para. 1436: TF1-174's account is corroborated by Exhibit P-334, an Amnesty International Report, which reports that it is believed that 30 boys aged 14 to 17 were threatened and intimidated to join the RUF in May 2000 at Makeni care centre.[3373]

4648. para. 1437: The Coalition to Stop the Use of Child Soldiers reports that a group of 72 former child combatants at Makeni rehabilitation centre were forced to re-join the RUF in 2001.[3374]

iii. Abduction and training of TF1-158 in 1998 – Bombali District – Conscription and Enlistment of Child Solders – Child soldiers

4649. para. 1440: TF1-158 testified that he was 10 years old when rebels attacked his town, Bonoya,[3375] Bombali District a few months before the AFRC attack on Freetown on 6 January 1999. After the attack on the village the rebels forced the witness to join them by holding him at gun point. He testified that "if anybody refused to go that person would be killed".[3376] The rebels took him to Rosos and forced him to carry items looted from civilians en route.

4650. para. 1441: On cross-examination, TF1-158 testified that Gullit, Five-Five, O-Five, Staff Alhaji and Adama Cut Hand were in the group that captured him,[3377] while the group's leader was SAJ Musa.[3378] The Trial Chamber is satisfied from his description of his abductors and their associates that he was abducted by members of the AFRC.

4651. para. 1442: The Trial Chamber notes that TF1-158 stated that some of the attackers of Bonoya spoke a Liberian language. However, the witness's explanation of how he knew it was a Liberian language[3379] is inconsistent with his prior statements and is implausible. The Trial Chamber will thus disregard it in its evaluation of the evidence.

4652. para. 1443: On cross-examination TF1-158 testified he was first captured when Kabbah was President,3380 but later confirmed a prior statement in which he stated that the attack on Bonoya occurred after the overthrow of President Tejan Kabbah.[3381] He also agreed with Defence Counsel that he did not give the OTP a date for the events,[3382] and that the date "May 1998" referred to in his prior testimony in the AFRC trial was provided by Counsel.[3383]

4653. para. 1444: The witness was in Rosos for five days before he escaped leaving his gun.[3384]

iv. Abduction and Training of TF1-158 in approximately July 1999 – Bombali District – Conscription and Enlistment of Child Solders – Child soldiers

4654. para. 1447: After escaping from Rosos, the witness was captured again in Kamayusufu, Bombali District,[3386] shortly after he heard about the Lomé Peace Accord on the radio.[3387] The Trial Chamber is satisfied from the context that this event occurred in approximately July 1999. Some of the rebels who captured the witness wore full military uniform, and others wore red headbands, military uniform shorts or sleeveless shirts. Officer Demo, who was an SLA soldier with Savage's group told him they would take him back as they had done before, after which the rebels took him to Kamabai.[3388] The Trial Chamber is satisfied from the witness's description of his abductors and their associates that he was abducted by members of the AFRC.

4655. para. 1448: In Kamabai, the witness was trained "how to go and attack Kabala" and how to dismantle, clean and couple a gun. He testified that "[w]e were [aged] ten", and that other trainees were aged 15.[3389] On cross-examination the witness denied his testimony in the AFRC trial where he approved a former statement to the OTP indicating that they had spent 5 days in Kabala during which the witness was taught "weapon handling" by Savage.[3390]

f. Port Loko District - Conscription and Enlistment of Child Solders – Child soldiers

i. Abduction of Akiatu Tholley from January to April 1999 – Port Loko District - Conscription and Enlistment of Child Solders – Child soldiers

4656. para. 1451: Akiatu Tholley gave evidence of conscription of children into the armed factions and their use in hostilities including evidence that she was trained militarily in Port Loko District. The Trial Chamber has made findings in relation to aspects of Tholley's evidence under Count 6, Sexual Slavery. The Trial Chamber has found, *inter alia*, that Tholley was abducted from Wellington, Western Area during the retreat from Freetown in late January, 1999 by a member of the AFRC named "James" who was under the command of Santigie Borbor Kanu; that James repeatedly raped Tholley; that she was given weapons to carry to Allen Town; that she was detained by James in Masiaka from approximately April through May, 1999; that James taught her to use an AK-47 and a pistol; and that during this time she was given military training in Port Loko District, that she unsuccessfully tried to flee after which James gave her drugs which caused her to have "a change of mind" and was held in captivity by James in Allen

Town and Waterloo, Western Area until approximately April 1999 and thereafter in Masiaka, Bombali District for approximately two months.[3392]

4657. para. 1452: Tholley testified that she could not recall when she was born.[3393] On cross-examination she also testified that she did not recall her prior testimony given in April 2005 in the AFRC trial, in which she stated that she was born in February and knew from having seen her birth certificate that she was 19 years old at the time she gave that evidence.[3394] Defence Counsel put to Tholley a statement given during an interview with the Prosecution in February/March 2005 in which it was recorded that she was born on 28 February, was 19 years of age and that her birth certificate had been eaten by rats. Tholley confirmed this and repeated that she does not know when she was born.[3395] On re-examination, Tholley confirmed that in the same interview she had also stated, "I can't remember the year. I know I am aged 19 now. I thought I was older but found my birth certificate after my first interview with the OTP. I no longer have it as it was eaten by rats".[3396] The Trial Chamber also notes that Tholley testified that she had not yet begun her menses at the time she was raped by James in Allen Town,[3397] an event the Trial Chamber has found occurred in late January, 1999.

(iii) Using Children to Actively Participate in Hostilities – Child Soldiers

4658. para. 1457: Evidence was adduced that RUF and AFRC used children to fight on the front lines, to carry arms and to work to support their hostilities.[3402]

4659. para. 1458: Children aged 10-14 years guarded civilians who were forced to mine[3403] for diamonds by the RUF, and carried weapons[3404] to ensure that these civilians did not escape.[3405] Several witnesses testified that if civilians tried to take diamonds from the mining area, children were ordered to kill them.[3406] The Prosecution alleges the diamonds mined were used to purchase materiel used in hostilities.[3407]

4660. para. 1460: Evidence was adduced on the use of children as bodyguards to military commanders.[3411] Children were given arms to guard the commanders' physical safety, homes, property and women.[3412]

4661. para. 1461: Several witnesses also testified regarding the participation of children in food finding missions.[3413] These missions occurred throughout the conflict where food was scarce, and children sent on these missions were sometimes armed[3414] or accompanied by gunmen.[3415]

4662. para. 1462: Evidence was adduced that children committed crimes including amputations,[3416] decapitation,[3417] rape,[3418] looting,[3419] burning structures,[3420] and capturing,[3421]

threatening, beating,[3422] and killing civilians.[3423] Children were given weapons, sent on patrols, took part in ambushes, or used as spies to check whether enemy forces were in the surrounding villages.[3424]

4663. para. 1463: Children were forced to carry ammunition during the movement of the armed groups[3425] and children who were captured during an attack on their village or town were often forced to carry looted goods, often on their heads.[3426]

4664. para. 1464: The Trial Chamber has also heard evidence from various witnesses about the use of children, both boys and girls, for domestic chores, such as laundering, cooking and cleaning in the households of members of the armed groups[3427] and children being forced to move with these households from location to location.

a. Kenema District - Using Children to Actively Participate in Hostilities – Child Soldiers

i. Children used at Tongo Fields by the AFRC and RUF - Kenema District - Using Children to Actively Participate in Hostilities – Child Soldiers

4665. para. 1465: TF1-567 testified that during the Junta period the RUF and AFRC abducted civilians, who were forced to work in the mines in Tongo Fields, and were guarded by armed soldiers, some of them as young as 14 years old.[3428] Similarly, TF1-371 testified that some of the armed guards at Tongo Fields during the Junta period were SBUs aged 13, who carried AK-47s.[3429] Augustine Mallah testified that he saw armed children, aged 10 and above, guarding civilians who were mining at Tongo Fields at that time[3430] to ensure that they worked hard and did not escape.[3431] Abdul Otonjo Conteh testified that armed RUF combatants, including both adult and child combatants aged 12 to 15, guarded the mining[3432] at Cyborg in Tongo Fields.[3433] TF1-375 testified that he was told by "Boise" after the 1997 coup that SBUs were guarding mining sites, and that Sam Bockarie ordered SBUs to shoot and kill people who tried to take "gravel" from that area without permission.[3434]

4666. para. 1466: Abdul Otonjo Conteh testified that Sam Bockarie came to Tongo Fields every day during the junta period, accompanied by a convoy of adult and child combatants, aged 12 to 14, to collect diamonds.[3435] Conteh also testified that Sam Bockarie sent child combatants to attack civilians who were mining in the fields and he reported this in his capacity as a local committee member.[3436] Three people were killed and many injured after child combatants opened

fire on civilians in Tongo Fields. Two civilians were killed and many others were injured by child combatants in Sandeyeima.[3437] The witness observed the two dead bodies.[3438]

ii. Children committing crimes during the junta period - Kenema District - Using Children to Actively Participate in Hostilities – Child Soldiers

4667. para. 1469: Alex Bao's testimony in the AFRC and RUF trials was tendered by consent[3441] and he was cross examined in this trial.[3442] He testified that from 25 May 1997 to February 1998[3443] Issa Sesay had his "fighters", "boys" including small boys aged 12, 15 to 18 with the AFRC and RUF rebel forces at the Hangh Road Secretariat, Kenema and where he lived on Hangh Road, Kenema. These "boys" used to extort money from civilians.[3444] In this trial, Bao reaffirmed his prior statement that Sesay's "boys" were armed and very dangerous and would attack civilians and rob them.[3445] The witness testified in the RUF trial that time they assaulted a woman and took her money. When Bao tried to assist her he was beaten and locked up for two hours.[3446]

b. Kailahun District - Using Children to Actively Participate in Hostilities – Child soldiers

i. General - Kailahun District - Using Children to Actively Participate in Hostilities – Child soldiers

4668. para. 1473: TF1-362 and TF1-189 testified that children who were trained at Bunumbu were sent or taken to the frontlines. TF1-362 testified that during the training, SBUs were forced to participate in food-finding by the AFRC and RUF missions.[3450] They were accompanied by "securities" who carried arms, the SBUs carried knives and sticks, and that they would beat, or even kill civilians who put up any resistance.[3451] On cross-examination, the witness confirmed a previous statement in which she indicated that she sent her own SBU, aged about 10, on food finding missions and gave him her own gun.[3452]

4669. para. 1474: Dennis Koker testified that the stronger civilians captured during the retreat from Freetown,[3453] were taken for military training at Bunumbu, and after the training they were sent as reinforcements to fight in the war. Some of those sent for training told Koker they were aged 12 or 14 and he saw that they were "very small" and "not fit for military work".[3454] During the 21 months Koker spent in Buedu up to 500 children were recruited as SBUs and given guns.

They did domestic chores and fought at the war front.[3455] Koker testified that SBUs were small children aged 7 to 14.[3456]

4670. para. 1475: Albert Saidu heard that many of the abducted children trained by Monica Pearson were then sent to fight after their training. He testified that some of the children were as young as 8 years old.[3457]

ii. Use as bodyguards - Kailahun District - Using Children to Actively Participate in Hostilities – Child soldiers

4671. para. 1483: Samuel Kargbo testified that he was beaten in March 1998 in Buedu by Mike Lamin's and Issa Sesay's securities, who included both men and small boys called SBUs.[3460]

4672. para. 1484: Aruna Gbonda testified that from 1996 to 2000, some of the RUF rebels in Kailahun were children aged 8 to 10 years old who were abducted and then trained. They carried guns and followed commanders such as Issa Sesay, Mosquito and Augustine Gbao.[3461]

iii. Edna Bangura - Kailahun District - Using Children to Actively Participate in Hostilities – Child soldiers

4673. para. 1487: The Trial Chamber has found that Bangura's testimony relating to the date of her conscription into the RUF was inconsistent. Bangura gave further evidence relevant to the use of child soldiers in Buedu but given the lack of precision of Bangura's evidence about the timing of events, the Trial Chamber is unable to determine beyond reasonable doubt that these events fall within the temporal jurisdiction of the court

c. Kono District - Using Children to Actively Participate in Hostilities – Child soldiers

i. Children committing crimes in Kono in February/March 1998 - Kono District - Using Children to Actively Participate in Hostilities – Child soldiers

4674. para. 1488: Sia Kamara's testimony in the RUF trial was tendered by consent[3463] and she was cross examined in this trial.[3464] She testified in the RUF trial that she was captured in Yegbema near Kainako and Gandorhun,[3465] and then taken to Sawoa, Kono District.[3466] She was captured shortly after the RUF and AFRC were driven out of Freetown. During the retreat she saw Johnny Paul Koroma's convoy pass through Tongo Fields, where she was living prior to her

capture.[3467] At Sawoa, Kamara witnessed "a little boy" "not up to 14" use a cutlass to amputate the right hands of five men, including her brother. The women were forced to clap and laugh while this was occurring.[3468] The small boy then chopped Kamara's upper right arm.[3469]

ii. Children used for food-finding missions at Superman Ground in July 1998 - Kono District - Using Children to Actively Participate in Hostilities – Child soldiers

4675. para. 1491: Perry Kamara testified that Exhibit P-051[3473] was the RUF nominal roll record for Superman Ground, Kono District.[3474] Kamara explained that the page titled "list of manpower to go for food" dated 13 July 1998[3475] lists the people who "will take over security for them to go and guard the people who went for the food".[3476] The page included three names with "SBU" written next to them. Kamara testified that the "SBU" notation indicated that they were boys aged 12 to 15.[3477] Kamara confirmed that the date written on the page coincided with his time at Superman Ground.[3478]

iii. Children used to guard mining in Tombodu in December 1999 - Kono District - Using Children to Actively Participate in Hostilities – Child soldiers

4676. para. 1494: The evidence of Tamba Yomba Ngekia in the RUF trial was tendered by consent in this trial.[3479] He testified that he was captured on 16 December 1999[3480] by the RUF in Koidu, Kono District.[3481] He and 50 captured civilians were taken to Tombodu, where Officer Med, Colonel Jibo and Tactical brought mining equipment and informed them that "Issa sent us to you, you the civilians".[3482] Ngekia and other captured civilians went down to the bridge in Tombodu and started mining, surrounded by boys aged 6 to 11 with guns.[3483] Ngekia testified that he was forced to mine for six months during the dry season.[3484]

iv. Children used in Koidu in 2001 - Kono District - Using Children to Actively Participate in Hostilities – Child soldiers

4677. para. 1496: TF1-174 testified that he assembled 150 children, aged 11 to 16, who had been with the RUF in March 2001 on the way to Koidu. These children were then brought to the Caritas interim care centre in Makeni. Some children who were assembled told the witness that they had been digging for their adult commanders, others that they did domestic chores, and some stated they manned pits while carrying guns.[3487] Some children told the witness they received new guns after trips to Liberia while accompanying their commanders.[3488]

v. Children used in Kono in March/April 1998 - Kono District - Using Children to Actively Participate in Hostilities – Child soldiers

4678. para. 1498: Alimamy Bobson Sesay testified that he and Commander Bomb Blast used SBUs in approximately March/April 1998 to amputate the limbs of civilians in Yomandu. Mohamed Savage also used SBUs to help with amputations during this time period.[3489] Between March/April and May/June 1998,[3490] Savage, Guitar Boy and some SBUs amputated the hands of approximately 15 civilians at Tombodu.[3491] Sesay testified that around the same time, "our" SBUs captured girls aged 8 to 10 years old at Masingbi Road and they lived with these girls and had sex with them.[3492]

4679. para. 1499: Alex Tamba Teh testified that after he heard that ECOMOG had taken over Kono, Rocky aka Emmanuel Williams shot and killed all the adult male captives at Igbaleh/Kamachende close to Koidu. Upon Rocky's order, SBUs decapitated the men he had just killed.[3493] At Igbaleh, he saw SBUs amputating a small boy's hands and feet before throwing him into a toilet pit.[3494] At Wondedu, SBUs set five houses on fire after Captain Banya instructed them to "go and light candles".[3495]

4680. para. 1500: Samuel Bull testified that after his capture in Tongbodu in mid-April 1998,[3496] Issa, the commander, ordered a 14 year-old boy to take off his shirt and kill him. The boy took the shirt off and told Bull to lie on the ground, but Issa then decided he should not be killed.[3497]

4681. para. 1501: In the AFRC trial, Alhaji Tejan Cole testified that on 12 April 1998, at Bombafoidu, 200 rebels, among them 6 small boys who carried guns, attacked the town.[3498] Cole was asked to undress by a small boy, aged about 12 to 14, who had a gun.[3499]

d. Port Loko District - Using Children to Actively Participate in Hostilities – Child soldiers

i. Use of Akiatu Tholley to participate in hostilities in April/May 1999 - Port Loko District - Using Children to Actively Participate in Hostilities – Child soldiers

4682. para. 1506: The Trial Chamber has recounted the evidence that Tholley was brought to Masiaka in approximately April 1999 and remained there for approximately two months.[3504] Tholley testified that when she arrived in Masiaka, Issa Sesay said it was "his town".[3505] On

cross-examination Tholley stated she heard Issa Sesay receiving orders from Foday Sankoh via radio while Sankoh was incarcerated.

4683. para. 1507: Tholley testified that after James brought her to Masiaka, she tried to escape but was caught by a "rebel boy"[3506] who returned her to James. James beat her and gave her drugs which made her "brave enough to do wicked things and did not cry and did not have feelings of wanting to go home".[3507] James taught her how to use an AK-47 and a pistol. On cross-examination Tholley agreed that this was not "actual training".[3508] Two days later, she was sent by James, together with "his boys" on a food-finding mission.[3509] In a village near Masiaka, they met a woman and her adult daughters in a house and looted everything that they had. One of the boys told Tholley to kill the woman since she refused to join them. Initially, Tholley refused; however, he gave her marijuana to smoke and afterwards Tholley shot the woman in the back and killed her.[3510] They then gave the woman's children loads to carry and went back to Masiaka.[3511]

4684. para. 1508: Tholley testified that during the time she was in Masiaka, she was taken to Port Loko by "some rebels" to be trained "how to fight". Tholley did not specify the names or factions of the rebels that took her to Port Loko. She stated that she was taught how to load bullets, how to shoot a gun and how to hide. Other people, both male and female, children and adults, were being trained; however, Tholley was unable to estimate how many. Tholley testified that the boys being trained were about 8 years old and older. There was a woman in charge of the training, but Tholley did not know her name.[3512]

e. Koinadugu District - Using Children to Actively Participate in Hostilities – Child soldiers

i. Use of child soldiers in Koinadugu District - Koinadugu District - Using Children to Actively Participate in Hostilities – Child soldiers

4685. para. 1510: Sieh Mansaray testified that from February to mid-March 1998,[3514] "the People's Army" came through Kondembaia, Koinadugu District en route to Kono, and set up a checkpoint at his house as part of "Operation Pay Yourself".[3515] Mansaray witnessed children aged 10, 12 and 15 with weapons as part of the People's Army.[3516]

4686. para. 1511: Mansaray testified that on or about 20 or 21 May 1998,[3517] he was captured by the "Foday Sankoh rebels" in Kondembaia,[3518] and was present when "the boss" ordered the

rebels to burn down the houses in the village.[3519] Mansaray saw boys aged 10, 13, 15 and older with guns who were following the boss's command to burn down the houses in the village. Mansaray was not certain if the boys were captured or relatives of the rebels.[3520]

ii. Findings on victim witness in Koinadugu District - Using Children to Actively Participate in Hostilities – Child soldiers

iii. Akiatu Tholley used to participate actively in hostilities after April or May 1999 - Findings on victim witness in Koinadugu District - Using Children to Actively Participate in Hostilities – Child soldiers

4687. para. 1513: The Trial Chamber has found that Akiatu Tholley was conscripted into the AFRC/RUF in January through April or May 1999. Tholley testified that after this, "they" took her to Kurubonla, Koinadugu District to fight, although she was unable to recall when this was.[3522] On re-examination Tholley clarified that the woman who trained them was the one who sent them to fight in Kurubonla.[3523] There, Tholley fought with the rebels against Kamajors and civilians while carrying a gun. Tholley stated that the rebels she was with, "our colleagues", killed civilians and that is why "we too killed them"[3524], which, taken together with Tholley's further evidence, the Trial Chamber understands to mean that Tholley herself participated in the killing of civilians. On cross-examination, Tholley denied telling the Prosecution that she was sent to Kono to fight as recorded in a previous statement and maintained that she fought in Kurubonla.[3525] She testified that she was sent to fight, to kill civilians and loot property and agreed that he only fought in Kurubonla as a trained soldier during the war.[3526]

4688. para. 1514: After she had killed civilians during the fighting in Kurubonla, Tholley dropped the gun and ran away. She surrendered to ECOMOG at Lunsar. They thought she was a spy, beat her and took her to the police station. The police men also beat her. Tholley gave the police her address in Freetown and they contacted her family who came and collected her from the Kissy Police Station.[3527]

4689. para. 1515: On cross-examination, Tholley denied a prior statement to the Prosecution in which it was recorded that she said she was taken from Masiaka to Lunsar and that she stayed there for over a month then moved to Makeni. Tholley denied ever going to Makeni and clarified that she only went to Lunsar after she escaped from Port Loko on her way to Freetown.[3528]

iv. Use of TF1-143 to participate in hostilities in September 1998 - Findings on victim witness in Koinadugu District - Using Children to Actively Participate in Hostilities – Child soldiers

4690. para. 1517: After being assigned to Kabila outside Konkoba village, TF1-143 accompanied Kabila, other fighters and their "boys" on a food-finding mission. They arrived at a farmhouse and Kabila ordered TF1-143 to rape the old woman they found there. TF1-143 cried and refused to rape the woman, so Kabila made him lie in the sun with his eyes open the entire day as punishment.[3529]

4691. para. 1518: After his training in maintaining a weapon TF1-143 was forced to do push-ups for five hours in a house in the village. Kabila would lift TF1-143 and hit him against the wall as punishment for disobeying his orders, starting from TF1-143's refusal to rape the old woman in the farmhouse.[3530] In the evening, Kabila took TF1-143 into the bush and defecated. He ordered TF1-143 to eat the faeces, or he would kill him and tell the others that TF1-143 ran away. Again, this was punishment for TF1-143 disobeying Kabila's orders. TF1-143 complied and ate the faeces.[3531]

f. Bombali District - Using Children to Actively Participate in Hostilities – Child soldiers

i. Children trained at Camp Rosos and used by the AFRC in July 1998 - Bombali District - Using Children to Actively Participate in Hostilities – Child soldliers

4692. para. 1520: Alimamy Bobson Sesay testified that small boys who were captured during the SLA attack on Karina in July 1998 were assigned to the wives of SLA and RUF commanders to do "small works" before being trained. After the training SBUs were sent on food finding missions, used for ambushes and patrols, and engaged in attacks on armed forces.[3533]

4693. para. 1521: After the troops left Rosos in September/October 1998, Bobson Sesay testified that SAJ Musa sent men, led by Major O-Five, as reinforcements for the Freetown attack.[3534] O-Five's group of fighters was comprised of SBUs, aged about 8 to 10. Some carried weapons and some carried loads. According to O-Five, most of the SBUs had been captured in Koinadugu and later trained.[3535]

ii. Children committing crimes after ECOMOG Intervention 1998 / Children as bodyguards to commanders and committing crimes during Operation Pay Yourself (February 1998) - Bombali District - Using Children to Actively Participate in Hostilities –Child soldiers

4694. para. 1525: TF1-174 testified that on 17 February 1998, the start of Operation Pay Yourself, 3540 the children at Teko Barracks in Makeni with whom the witness worked began carrying guns and being with their "big ground commanders" again. They were involved in looting and made the witness and others afraid of them.[3541] The majority of the children at Teko Barracks were under the age of 14/15.[3542]

iii. Children committing crimes after ECOMOG Intervention 1998 / Children participating in burnings and amputations in Rosos between July and October 1998 - Bombali District - Using Children to Actively Participate in Hostilities – Child soldiers

4695. para. 1527: Alimamy Bobson Sesay testified that during his stay in Rosos, between July and October 1998, SBUs participated in burnings and amputations. During food finding patrols in Rokulan and Royanka in Bombali, SBUs did the amputations as they were "the ones who had machetes".[3544]

iv. Findings on victim witness in Bombali District / Use of Komba Sumana to participate actively in hostilities from approximately August to December 1998 - Using Children to Actively Participate in Hostilities – Child soldiers

4696. para. 1530: Komba Sumana testified that after his military training was complete, Mosquito assembled the civilians into separate lines of adults and children. Sumana did not know the ages of his "colleagues", but some were the same height as him and some were taller. "Soldiers" coming from the direction of Buedu brought weapons which were distributed to the adult civilians and then to the children. Sumana received an "AK".[3546]

4697. para. 1531: On cross-examination, Sumana testified that Monica personally gave him an AK-47 and denied a prior statement given to a Prosecution investigator that he did not receive a weapon because he could not shoot, explaining that he had in fact stated he was not given a gun that was large. In the same statement, Sumana described the weapons distributed as "new" whereas in a later statement it was recorded that he stated some were new and some old. Sumana explained that there were both new and old guns.[3547]

4698. para. 1532: Mosquito sent the trainees to "clear" Kono. They were joined by a number of "rebels" he had not met before and who were under the command of a man named "Blood". They marched for three weeks back to PC Ground where they met "Issa". The trainees were told that this was Operation No Living Thing and "Issa" said they would be sent to attack Koidu Town. Sumana was scared and did not participate in this attack.[3548] Instead, he gave his gun to a rebel named "Wallace" and hid in his house in Kissi Town. From the house, Sumana observed "Issa", Morris Kallon, Augustine Gbao and Superman pass by in a vehicle and the others pass by on foot. Sumana learned from Wallace that the attack was not successful.[3549] The Trial Chamber recalls its finding that an unsuccessful attack on Koidu Town known as the Fitti-Fatta mission was launched by Superman in approximately mid-June 1998.[3550]

4699. para. 1533: Sumana remained in Kissi Town for about a week during which time Wallace returned Sumana's gun to him. Towards the end of the rainy season, Superman clashed with Mosquito and left with all of the rebels in Kissi Town for Tombodu where they met an "SLA" named "Savage". Together with Savage and his soldiers they continued on to Kurubonla, Koinadugu District.[3551]

4700. para. 1534: Sumana testified that the commanders in Kurubonla were SAJ Musa, General Bropleh, and Five-Five. Shortly after his arrival in Kurubonla, a convoy of STF, RUF and AFRC attacked the Guinean barracks at Mongor Bendugu. Sumana "fought" together with Wallace and the other fighters. Other commanders present during the attack were Superman, SAJ Musa, Savage and Komba Gbundema. Sumana testified that they successfully dislodged the Guineans and captured some large weapons including a 40 barrel and a tank which they were not able to carry away and which they burnt. They also captured a large amount of bullets including "AAs", "mortars" and "AKs" as well as AA guns which they took with them.[3552]

4701. para. 1535: Approximately a week after the attack on Mongor Bendugu, after the rainy season had ended, a group of soldiers and rebels commanded by Five-Five left Kurubonla for Freetown. Sumana and others remained in Kurubonla for approximately a month and then moved to Koinadugu Town. There SAJ Musa was the commander and was deputised by Superman.[3553] Following a meeting organised by SAJ Musa, they attacked ECOMOG and the Kamajors at Kabala. Sumana testified that he took part in this attack. Sumana testified that during this attack, some civilians were captured, including adults and some who were the same height as Sumana but whose ages he did not know. The captured people were given military training at the barracks.[3554]

4702. para. 1536: A week after the first attack, the "rebels", the "SLAs" and the STF attacked Kabala again. Sumana testified that he went on this attack with Wallace, under the command of Superman. SAJ Musa also commanded a group during this attack. Guns, bullets and civilians were captured and brought to Koinadugu where the captured civilians were trained.[3555]

4703. para. 1537: Sumana testified that after a conflict with Superman, SAJ Musa left Koinadugu Town. The Trial Chamber notes that SAJ Musa split with Superman in October 1998.[3556] Superman remained the commander and General Bropleh the deputy. Later, Superman's group joined SAJ Musa and Five-Five in Makeni, Bombali District.[3557] On the way to Makeni, they attacked Binkolo and set houses on fire. Sumana testified that "there was a house that they said we should burn down" and that Komba Gbundema "passed that order". Sumana was with an RUF rebel from Superman's group named Blood and "together with that man… we burnt it down".[3558] Sumana testified that he travelled with Blood as his bodyguard. Blood carried a communication set and was therefore unable to carry a gun.[3559] The Trial Chamber notes that on cross-examination, Sumana agreed with Defence counsel that he fought as an RUF rebel but stated that he never killed or amputated anyone, never burned a house, never looted and never raped.[3560]

4704. para. 1538: At Makeni, Sumana's group attacked ECOMOG together with SAJ Musa's group. They captured Makeni after two days. After it was captured, the RUF stayed in Teko Barracks, the STF were at Waterworks and the SLAs were in the centre of Makeni Town.[3561] Sumana testified that he subsequently overheard a communication between Five-Five and Superman at Superman's house in which Five-Five reported that SAJ Musa had been shot in Freetown.[3562] The Trial Chamber recalls that SAJ Musa was killed on 23 December 1998.[3563]

4705. para. 1539: Sumana's group was then taken to "Issa's" house and then to Lunsar where they remained for a month under the command of Superman. Sumana testified that during that time they dislodged ECOMOG from Gberi Junction together with Rambo's group which had come from Makeni[3564] but he did not specify whether he personally joined this attack. Sumana testified that he then returned to Makeni where he remained for a year, and ultimately disarmed in Port Loko.[3565]

v. Findings on victim witness in Bombali District / Training and Use of TF1-158 to participate actively in hostilities from approximately in 1998 - Using Children to Actively Participate in Hostilities – Child soldiers

4706. para. 1542: After TF1-158 was abducted from Bonoya, he was forced to carry rice and groundnut that the rebels had taken from civilians. They went to Ndaria village, Mamboma, Karina, Mateboi and then to Rosos. They travelled as a mixed group of RUF and AFRC, the majority were AFRC.[3568] On cross-examination, the witness denied telling the Prosecution that he was taken to Karina, Kurubonla, Serkoya, Rosos and then Lunsar stating that only after his second abduction, did he arrive at Lunsar.[3569]

4707. para. 1543: TF1-158 and his group spent three days in Rosos, during which the witness was trained to fight under the direction of Staff Alhaji. He was trained to dismantle, clean, couple, cock, 3570 fire and load a gun as well as how to fix a magazine on the gun and to crawl.[3571] The witness was given a "two pistol grip" gun. Approximately 300 other people who were also trained, some 8 to 11 years old and some adults. After training, the rebels gave the trainees drugs to make them bold and brave so they would not fear anything. The rebels pierced the skin below the witness's eye and applied cocaine, called "brown brown", on it, making the witness feel "like a mad person".[3572] On cross-examination the witness stated that while he was in Rosos he heard people talking about an attack on Freetown. After his release he learned the attack took place on 6 January.[3573]

4708. para. 1544: While in Rosos, the rebels took the witness and others on a food-finding mission in a village nearby. Staff Alhaji assembled those who were to go in the morning and everyone, including the witness, was given a gun. They took food items and livestock from civilians and came back to Rosos. In Rosos, Staff Alhaji reported to Five-Five and O-Five but mainly to Gullit.[3574] The witness also testified that when he was in Rosos, he observed child combatants being "marked" with "RUF" on their shoulders or marked on their faces in order to make them brave.[3575]

4709. para. 1545: Defence Counsel cross-examined TF1-158 at length on his prior statements to OTP and on the evidence he adduced during the AFRC trial. Neither the interview records nor the transcript were tendered into evidence and the Trial Chamber is unable to consider them in total. TF1-158 stated Counsel was "confusing me with questions"[3576] and denied or gave explanations for inconsistencies put to him. In particular he stated that some RUF, including Kill Man No Blood and Allusein were part of their group who came to Rosos.[3577]

vi. Findings on victim witness in Bombali District / Use TF1-158 to participate actively in hostilities in approximately July 1999 - Using Children to Actively Participate in Hostilities – Child soldiers

4710. para. 1548: TF1-158 testified that after he was trained, some RUF and AFRC (referred to as SLAs[3579]) came from Makeni. He knew some were RUF since some of them had "RUF" tattoos on their shoulders. On cross-examination the witness stated that an order to attack Kabala came from Makeni, clarifying a prior statement in which he said Brigadier Issa was the one who ordered the mixed group to attack Kabala.[3580] The joint group went together to attack Kabala but were ambushed by Kabbah's soldiers, and shooting "all over" ensued. Since they "were not actually allowed to attack the town", the witness went into a shop and took a bicycle so he could return to Kamabai. While climbing on a hill he dodged fire, crawled into a gutter, took out his gun and put it down until he saw Savage who told him they were to go back.[3581]

4711. para. 1549: After the attack, the witness returned with Savage to Kamabai, where they rested and were further trained. During the training, the witness heard of a grudge between the RUF and the AFRC in Makeni. At this time, the witness saw Superman and General Issa, of the RUF, fighting against the AFRC. Superman and "General Issa" were in an AA van with a two-barrel gun mounted on it. "They were shooting seriously and Savage too was returning fire". Savage and the witness then went to Kabala. On the way to Kabala, Savage killed men in Fadugu.[3582] It was put to the witness that he did not mention this incident in his testimony in the AFRC Trial and the witness explained that he forgot.[3583]

4712. para. 1550: On cross-examination, the witness testified this was the first time he saw "General Issa", Issa Sesay[3584] and stated that a record of interview in 2005 when he referred to "Brigadier Issa" and that he saw Brigadier Issa once, in a vehicle, "during the time the disarmament has taken place. He used to go to Karina" was incorrectly recorded.[3585]

4713. para. 1551: The witness, Officer Demo, Savage and the others in their group arrived at the Makakura Checkpoint in Kabala where they surrendered to Pa Kabbah's soldiers who disarmed them, including taking the witness's gun. In order to enter Kabala, Kabbah's soldiers gave the fighters either an "ex-combatant" wristband to adults or "ex-child combatant" wristband to those who were small boys. The witness was given a "child combatant" wristband.[3586]

4714. para. 1552: On cross-examination, the witness estimated that he was 11 years old at the time he disarmed and had been with the rebels for about 10 months, inclusive of the time he escaped.[3587] After a few weeks in Kabala, UN trucks came and took child combatants to a care

centre in Lunsar "under Caritas"[3588]. Then the RUF, which had not yet disarmed, came to Lunsar. Some of the "child combatants", aged 10 to 15 and above, decided to join the RUF and left with them.[3589] On cross-examination it was put to the witness that he had not previously testified to this evidence. He stated that he had given this information to the OTP just prior to his testimony and denied being prompted. He stated that he thought he should "say it".[3590]

vii. Findings on victim witness in Bombali District / TF1-143 used to participate actively in hostilities from approximately September to December 1998 - Using Children to Actively Participate in Hostilities – Child soldiers

4715. para. 1554: The Trial Chamber has already found that TF1-143 was abducted in Koinadugu in September 1998.[3592] He testified that they left Koinadugu with the rest of the advance team consisting of more than 200 people. Kabila informed TF1-143 that the advance team was mostly "AFRC dominant but was mixed",[3593] and included some RUF.[3594] After leaving Koinadugu Town, the team was informed that Nigerian soldiers were stationed in Karina.[3595] TF1-143 testified that Kabila told him to stay in the bush and lie down. TF1-143 heard gunfire and after the shooting had stopped, the group went through Karina.[3596]

4716. para. 1555: In the second village after Karina,[3597] O-Five ordered that boys who had been captured and marked should be trained.[3598] Kabila and Mohamed trained the boys for two hours on how to parade with a weapon, how to escape and how to crawl. After this training Kabila gave TF1-143 two blue tablets. TF1-143 testified that after he took the tablets he "started feeling a way that [he] was not feeling before. [He] started being bold; [his] eyes going red at the time".[3599]

4717. para. 1556: TF1-143 testified that in the next village, Five-Five ordered that they should loot, kill and burn down the town.[3600] At a house in the village Kabila and TF1-143 found five people – two men, a woman, her child and another child.[3601] Kabila killed one man as a demonstration, and TF1-143 then killed the other four using a machete.[3602] TF1-143 testified that Kabila had threatened to kill him if he did not kill the four people, and that he felt bold enough to commit these acts because of the blue tablets he had ingested.[3603]

4718. para. 1557: The group reached a village called Kamalo and took boats to cross a river to Kakuna, where there were Nigerian soldiers. TF1-143 was told to stay in the forest outside Kakuna Town, where he heard heavy firing.[3604] He testified that he was carrying some of Kabila's ammunition and the machete he had used to hack the four people to death.[3605] He testified that previously Kabila had made him carry his GMG gun which was large with a round

box, used large bullets and the ammunition was worn around the neck. However, the gun was too large and heavy for TF1-143, so Kabila stopped giving it to him.[3606]

4719. para. 1558: On cross-examination, TF1-143 could not explain why there was nothing in the previous statements to the Prosecution about Kabila's heavy gun stating that he remembered telling the Prosecution about the gun in his 2007 interview.[3607]

4720. para. 1559: Three villages before Colonel Eddie Town,[3608] Kabila trained TF1-143 on how to shoot a weapon. The gun had two handles and could be held "at the back and in front". They went to the riverside and TF1-143 was instructed to shoot the gun and aim into the river. He shot it once and they returned to town.[3609]

4721. para. 1560: Kabila then brought out some marijuana and told TF1-143 that he should start smoking. Kabila continued to wrap marijuana for him and he would smoke it wherever they went.[3610]

4722. para. 1561: TF1-143 testified that in the next village, Komba ordered "his boys" to capture a girl. The boys captured her at gunpoint, stripped her naked and left her in a house for Komba. TF1-143 was standing guard at the door of the house with John, one of Komba's boys, while Komba "used her" that is he raped her.[3611]

4723. para. 1562: During the march from Colonel Eddie Town to Freetown, the group stayed in the forest during the day and walked at night.[3612] TF1-143 testified that at a deserted village along the way, SAJ Musa ordered the town to be burned. Kabila sprinkled petrol around a house, and TF1-143 then struck a match and set the house on fire.[3613]

4724. para. 1563: TF1-143 testified that the group travelling from Colonel Eddie Town was comprised of SAJ Musa's group and the Red Lion group. SAJ Musa's group was AFRC mixed with RUF.[3614] The Red Lion group included Junior Lion, Gullit and Foday Pump Lock. On cross-examination, TF1-143 agreed that he had never specifically referred to the Red Lion group by name to the Prosecution in any of his five previous interviews, the latest coming three weeks before his examination-in-chief.[3615] TF1-143 explained that the Prosecution had not asked him about the two groups travelling from Colonel Eddie Town. He only told them about the commanders who were present and SAJ Musa's group since that was the group he was part of and knew.[3616] Additionally, TF1-143 explained that he had forgotten many things that happened to him in the past, but as the interviews progressed he began to recall most of the things he experienced.[3617] TF1-143 denied being asked to name the Red Lion group during his testimony,[3618] or learning of any evidence that had been given earlier in the case.[3619]

g. Freetown and the Western Area - Using Children to Actively Participate in Hostilities – Child soldiers

i. Children committing crimes in Freetown and the Western Area during and after January 1999 - Using Children to Actively Participate in Hostilities – Freetown and the Western Area – Child soldiers

4725. para. 1566: In Exhibit P-335, the Coalition to Stop the Use of Child Soldiers reports that 10% of the armed forces which attacked Freetown in January 1999 were children.[3621]

4726. para. 1567: Confidential Exhibit P-077 reports that during the rebels' attack on Freetown, 8 to 11 year old boys raped, killed and amputated the hands of civilians.[3622]

4727. para. 1568: In Exhibit P-310, the UN Secretary-General reports that a significant number of rebel fighters in the Freetown attack in January 1999 were children and that boys as young as 8 to 11 were killing and inflicting injuries.[3623] In Exhibit P-328, Human Rights Watch reports that RUF child combatants, armed with pistols, rifles and machetes, were seen actively participating in killings and amputations during the Freetown attack.[3624]

4728. para. 1569: TF1-174 testified that during the course of his work with children, some told him they fought in Freetown in January 1999. The witness named four of these children in a confidential exhibit.[3625]

4729. para. 1570: Mohamed Sesay testified that about a week and a half after the Freetown attack, he was taken to a junction where a 13 year old boy was ordered to amputate his arm. The boy hit Sesay's left arm with a machete. His arm was not amputated completely and the 'commando' took the axe from the boy and amputated both of Sesay's hands.[3626]

4730. para. 1571: Alimamy Bobson Sesay testified that during the Freetown attack, SBUs captured young girls, about 8 years old, and brought them to the State House and "used them for sexual purposes".[3627] From February to March 1999, at Benguema, SBUs captured young girls aged 8 and had sexual intercourse with them.[3628]

4731. para. 1572: TF1-023 testified in the AFRC trial that she was captured at Consider Lane in Calaba Town on 22 January 1999 by a young rebel boy with a gun.[3629] Later that day, TF1-023 was taken to Allen Town along with other captives.[3630] At Allen Town, the captured civilians were guarded by armed SBUs aged 13 to 15.[3631]

ii. Children used by the AFRC and RUF after 6 January 1999 - Using Children to Actively Participate in Hostilities – Freetown and the Western Area – Child soldiers

4732. para. 1576: Osman Jalloh testified that in January 1999,[3636] he saw children who appeared to be 8 to 10 years old, who were carrying guns, and packing stones on the highway to block ECOMOG at Sanyinoh Junction, between Wellington and Calaba Town.[3637]

4733. para. 1577: Paul Nabieu Conteh testified that he saw about 25 children aged 10 to 14 wearing military uniforms at Benguema after 19 January 1999, some carrying guns. The children were attached to commanders such as Gunboot, Tina Musa and Brigadier Five-Five who had 5 to 10 children. The children were sent to flog civilians who committed crimes.[3638]

4734. para. 1578: Alimamy Bobson Sesay testified that from February to March 1999, Benguema was a military training centre. Every commander had a small boy, aged 8 to 12, and they were ordered to train them to help repel enemy attacks. The small boys were trained individually by the commanders on weaponry, and taken on patrols.[3639]

4735. para. 1579: Bobson Sesay also testified that around March/April 1999, the troops at Newton were joined by RUF and "SLA" under the command of KBC who came with 8 fighters, including 2 SBUs around 10 years old, from Liberia, who had "AKs". KBC said that his group was put together and sent by Charles Taylor.[3640] At Newton, children participated in ambushes and patrols until the troops left in April-May 1999.[3641]

4736. para. 1580: Exhibit P-310 reports that between 6 January and mid-February 1999 approximately 2000 children went missing in the aftermath of the Freetown attack. Escapees reported that abducted boys were either selected for training as fighters, or used as porters.[3642] Exhibit P-077 records that there were 1,192 reports of children missing between January 6 and February 4, 1999. Escapees reported that young boy abductees tended to be used as porters or were selected for training as fighters.[3643]

iii. Findings on victim witness in Freetown and the Western Area / TF1-143 used to actively participate in hostilities in January 1999 - Findings on victim witness in Freetown and the Western Area - Using Children to Actively Participate in Hostilities – Child soldiers

4737. para. 1583: As the group of fighters, including TF1-143, who had left Colonel Eddie Town approached Freetown, an advance team comprised of commanders and fighters was able to take

over the barracks in Benguema, where the Sierra Leone soldiers were being trained.[3645] The advance team looted ammunition, and Kabila had TF1-143 and his "other boy" carry some looted ammunition.[3646]

4738. para. 1584: When they entered Freetown, the group went to Allen Town, where TF1-143 stayed behind because his feet had become swollen.[3647] TF1-143 joined Adama Cut Hand's team in Allen Town. TF1-143 testified that although he had not heard the name Adama Cut Hand[3648] nor met her before, he knew some of "her boys".

4739. para. 1585: On cross-examination, TF1-143 was questioned about prior statements he had given to the Prosecution regarding Adama Cut Hand.[3649] In his testimony, the witness denied seeing Adama at Koinadugu, Benguema or Waterloo.[3650] Yet in his first interview with the Prosecution on 7 April 2003, TF1-143 stated that Adama Cut Hand was in Koinadugu, he was part of her Cut Hand Group and Adama was his immediate boss.[3651] TF1-143 insisted that he had made corrections to these previous statements and that Kabila was his boss from the time he was captured up to Freetown.[3652] In that same interview, TF1-143 stated that a group from Makeni joined his group at Benguema, and that he saw most of the commanders together at that time, including Adama Cut Hand.[3653] TF1-143 explained that he was just listing the names of commanders he knew, but also agreed with Defence Counsel that he was listing the names of people who he had claimed to remember being at Koinadugu and Waterloo.

4740. para. 1586: On re-examination, TF1-143 confirmed that during his interview on 16-18 April 2008, he had made corrections to his previous statements to the Prosecution regarding Adama Cut Hand. TF1-143 stated that he "only met and worked with Adama Cut Hand when the group entered Freetown. Before that time he had only heard her name".[3654] The Trial Chamber notes that this correction is still inconsistent with TF1-143's examination-in-chief, in which he claimed that he had not even heard Adama Cut Hand's name before he met her in Allen Town.

4741. para. 1587: Adama Cut Hand's base was in Foamex. She informed TF1-143 that he would be part of the patrol. One of her girls, Mariama, was injured, so TF1-143 took the girl's AK-47.[3655] TF1-143 testified that at the base he saw two men being brought by Adama Cut Hand's boys. She ordered the boys to hold the men's arms, and amputated one man's arm at the wrist and the other's at the elbow.[3656]

4742. para. 1588: Adama Cut Hand ordered TF1-143 and "her boys" to loot and to bring her any person who "refused or made comments against them". The witness went with a group of eight boys to Kissy.[3657] They looted a store where two men objected to the boys' behaviour. The

boys took the two men to Adama Cut Hand, and she amputated their arms.[3658] During the amputations, TF1-143 pointed his weapon at the men.[3659]

4743. para. 1589: TF1-143 and "one of Adama's boys" then went on patrol to Kissy market.[3660] They knocked on the door of a shop but no one answered. After forcing the door open, TF1-143 found two men inside.[3661] Since the men had refused to open the door, TF1-143 and the other boy agreed to amputate the men's hands. TF1-143 used a machete to amputate one man at the wrist and the other at the elbow. Afterwards the boys took what they wanted from the store and left.[3662]

4744. para. 1590: They returned to Foamex, where they heard heavy shooting, and so withdrew to Allen Town, where TF1-143 hid in a mosque.[3663] After three days in hiding, TF1-143 was arrested by Nigerian soldiers and questioned by the SSD, the Sierra Leone police. They were able to locate TF1-143's brother, who retrieved him from the police.[3664]

h. Findings in Relation to Other Districts in Sierre Leone - Using Children to Actively Participate in Hostilities – Factual Findings

4745. para. 1595: The Trial Chamber finds that the Prosecution has not adduced evidence of conscription or use of child soldiers in Bonthe, Moyamba, Pujehun, Bo and Kambia Districts.

(b) Legal Conclusions

(i) Applicable Law – Other Serious Violations of International Humanitarian Law

4746. para. 575: The Accused is charged with one count of other serious violations of international humanitarian law pursuant to Article 4(c) of the Statute: conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities (Count 9).

4747. para. 576: Article 4(c) of the Statute provides:

> The Special Court shall have the power to prosecute persons who committed the following serious violations of international humanitarian law:
>
> […]
>
> c. Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.

4748. para. 577: The crimes listed in Article 4 of the Statute possess the same *chapeau* requirements as those in Article 3 of the Statute.

4749. para. 579: The questions of whether (i) nexus existed between the alleged violation and the armed conflict, (ii) that the victim was not directly taking part in the hostilities at the time of the alleged violation and (iii) that the perpetrator knew or had reason to know that the victim was not taking a direct part in the hostilities at the time of the alleged act or omission are considered on a case by case basis in the findings on the crimes section.[1328]

(ii) Other Serious Violations of International Humanitarian Law – Findings on general requirements

4750. para. 578: The Trial Chamber finds that the Prosecution proved beyond reasonable doubts that there was an armed conflict in Sierra Leone at all times relevant to the Indictment, involving among others members of the RUF, AFRC and CDF.

4751. para. 1606: The Trial Chamber recalls that the Prosecution has proved beyond reasonable doubt that there was an armed conflict in Sierra Leone at all times relevant to the Indictment, involving among others, members of the RUF, AFRC and CDF.[3692] The Trial Chamber is satisfied that for all of the aforementioned acts of conscription and/or enlistment into an armed force or group and/or use for active participation in hostilities of persons under the age of 15 years in the aforementioned areas of Sierra Leone there was a nexus between the conscription, enlistment and/or use and the armed conflict, that each of the victims was not taking an active part in the hostilities at the time of conscription, enlistment and/or use and that the perpetrators knew this fact. Therefore, the Trial Chamber is satisfied that the aforementioned acts of conscription and/or enlistment into an armed force or group and/or use for active participation in hostilities of persons under the age of 15 constitute other serious violations of international humanitarian law under Article 4 of the Statute.

(iii) Applicable Law – Conscripting, Enlisting or using Child Soldiers to participate in active hostilities

4752. para. 438: In Count 9, the Indictment charges that "[b]etween about 30 November 1996 and about 18 January 2002, throughout the Republic of Sierra Leone, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the Accused, routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities". The Accused is thus charged with conscripting or enlisting children under the age of

15 years into armed forces or groups, or using them to participate actively in hostilities ("conscripting, enlisting or using child soldiers"), an 'other serious violation of international humanitarian law', punishable under Article 4(c) of the Statute.[1052]

4753. para. 439: In addition to the *chapeau* requirements of other serious violations of international humanitarian law pursuant to Article 4 of the Statute, the following elements of the crime of conscripting or enlisting children under the age of 15 years into armed forces or groups, or using children under the age of 15 years to actively participate in hostilities must be proved beyond reasonable doubt:

i. The perpetrator conscripted or enlisted one or more persons into an armed force or group or used one or more persons to actively participate in hostilities;[1053]

ii. Such person or persons were under the age of 15 years;[1054]

iii. The perpetrator knew or should have known that such person or persons were under the age of 15 years.[1055]

4754. para. 440: The *actus reus* of the crime can be satisfied by 'conscripting' or 'enlisting' children under the age of 15, or by 'using' them to participate actively in the hostilities.

4755. para. 441: 'Conscription' encompasses any acts of coercion, such as abductions[1056] and forced recruitment of children by an armed group with the purpose of using them to participate actively in hostilities.[1057]

4756. para. 442: 'Enlistment' entails accepting and enrolling individuals when they volunteer to join an armed force or group.[1058] Enlistment need not be a formal process, and may include "any conduct accepting the child as part of the [armed group]. Such conduct would include making him participate in combat operations".[1059] Conscription and enlistment are both types of recruitment,[1060] and while conscription involves an element of express compulsion[1061] or coercion, this element is absent in enlistment.[1062]

4757. para. 443: The crime of enlisting or conscripting "is an offence of a continuing character – referred to by some courts as a continuous crime and by others as a permanent crime".[1063] The crime of conscripting or enlisting children under the age of 15 continues to be committed as long as a child remains in the armed force or group and consequently ceases to be committed when the child leaves the armed group or reaches the age of 15 years.[1064]

4758. para. 444: 'Using' children to participate actively in the hostilities encompasses putting their lives directly at risk in combat,[1065] but may also include participation in activities linked to combat such carrying loads for the fighting faction, finding and/or acquiring food, ammunition or equipment, acting as decoys, carrying messages, making trails or finding routes, manning checkpoints or acting as human shields.[1066] Whether a child is actively participating in hostilities in such situations will be assessed on a case-by-case basis.

(iv) Conscription and Enlistment of Child Solders – Legal Findings

a. Tonkolili District - Conscription and Enlistment of Child Solders –Child soldiers

4759. para. 1367: The time period referred to Kamara, i.e. from early 1996 to May 1997, partly falls outside the jurisdiction of the Court. However it is clear from his evidence that the abductions and training occurred continuously throughout the period. The Trial Chamber therefore finds that it has been proved beyond reasonable doubt that an unknown number of children aged below 15 years were abducted and conscripted, i.e. forcedly recruited with the purpose of using them actively in hostilities, into an armed group, the AFRC/RUF at Kangari Hills within the Indictment period. Given the prevalence of children in the RUF the Trial Chamber is satisfied that the perpetrators, including Kamara knew or should have known that these children were under the age of 15 years. The Trial Chamber is accordingly satisfied that the elements of the crime of the conscription of children into an armed force have been proved beyond reasonable doubt in relation to an unknown number of children who were abducted and trained at Kangari Hills.

b. Kailahun District – Conscription and Enlistment of Child Solders – Child soldiers

i. Children abducted and trained by the RUF and AFRC at Bunumbu after ECOMOG Intervention – Kailahun District – Conscription and Enlistment of Child Solders – Child soldiers

4760. para. 1377: The Trial Chamber accepts the testimony of witnesses Koker, Gbonda, Saidu, TF1-189's and TF1-362's first-hand evidence about the training of children at Bunumbu from approximately February 1998 until the end of 1998. TF1-362's evidence was unequivocal and was corroborated by Exhibit D-013. The Trial Chamber notes that TF1-189 testified that the training occurred in January 1999, while TF1-362 testified that the training at Bunumbu ended in

December 1998 when the RUF was flushed out of the area, and that she then went to Yengema. Given the detailed first-hand testimony of TF1-362, the Trial Chamber finds that TF1-189 must have been mistaken about timing of these events but accepts her evidence that these abductions and trainings occurred.

4761. para. 1378: The Trial Chamber is therefore satisfied that an unknown number of children were conscripted, i.e. abducted and forcedly recruited with the purpose of using them actively in hostilities, into an armed group, the AFRC/RUF. Moreover, based on TF1-362's evidence that the children were screened into groups of SBUs and SGUs based on their age, the Trial Chamber finds that it has been proved beyond reasonable doubt that some of these children were under the age of 15 years. Further, based on evidence of this screening process, the Trial Chamber is satisfied that the perpetrators, including TF1-362, knew or should have known that these children were under the age of 15 years. The Trial Chamber is accordingly satisfied that the elements of the crime of the conscription of children into an armed force have been proved beyond reasonable doubt in relation to an unknown number of children who were trained at Bunumbu.

ii. Abduction and training of Komba Sumana in approximately July/August 1998 – Kailahun District – Conscription and Enlistment of Child Solders – Child soldiers

4762. para. 1390: On the basis of evidence given by Sumana that he was forcibly abducted from outside of Koidu Town in approximately April or May 1998 by members of the STF under the command of Superman, that he became an SBU, that he was held by the RUF for three weeks in Kissi Town, and that he was subsequently forced to participate in two months of military training at Bunumbu, Kailahun District by members of the RUF under the command of Issa Sesay and Sam Bockarie ending in approximately July or August 1998, the Trial Chamber finds that Sumana was conscripted, i.e. abducted and forcedly recruited with the purpose of using him actively in hostilities, into an armed group, the RUF.

4763. para. 1391: Sumana presented the Court with two official documents which appear to incompatible with each other with regard to his exact age. The voter ID card does not state his date of birth nor indicates the time and place it was issued, nor does it show the information used to support its issue, whereas Sumana's birth certificate, which he received after his voter ID card was issued, is based on actual hospital records.

4764. para. 1392: The Trial Chamber accepts that Sumana may not himself have known his exact age at the time of his abduction, he was "very small" at the time and did not yet have facial

hair. His father "used to tell him" that he was 14, whereas according to his recently acquired birth certificate he was actually only 13.

4765. para. 1393: Notwithstanding the apparent inconsistency between these two official documents both show that Sumana was 13 at the time of his abduction, the Trial Chamber is accordingly satisfied that he was about 13 at the time of his abduction in April/May 1998. The Trial Chamber therefore finds that it has been proved beyond reasonable doubt that Sumana was under the age of 15 at the time of his capture. Given the prevalence of children under the age of 15 in the RUF,[3300] the Trial Chamber is satisfied that the members of the RUF knew or should have known that Sumamna was under the age of 15 years. The Trial Chamber is accordingly satisfied that the elements of the crime of conscription of a child under 15 years into an armed force, the RUF/AFRC under the command of Sam Bockarie, have been proved beyond reasonable doubt in relation to Komba Sumana.

iii. Abduction and training of Edna Bangura - Kailahun District – Conscription and Enlistment of Child Solders – Child soldiers

4766. para. 1398: The Trial Chamber takes into consideration Bangura's young age at the time of the events and the fact that she stopped her education in Form 5.[3310] Bangura appeared nervous and shy during her testimony. The Trial Chamber is satisfied that her description of a training base outside of Buedu where Monica Pearson was the training commander is not inconsistent with the location of the training base at Bunumbu.

4767. para. 1399: However, other reliable evidence shows that Sam Bockarie sent Monica Pearson to establish a training camp at Bunumbu only after the ECOMOG Intervention in February, 1998[3311] and that there is no evidence to suggest that Monica Pearson was at Bunumbu prior to this time. Indeed, the evidence suggests that Pearson was in Pujehun,[3312] Bonthe (Matru Jong),[3313] and Kenema Districts (Camp Lion in Zogoda) prior to leaving Sierra Leone for Liberia in 1996[3314] and did not return to Sierra Leone until just prior to the ECOMOG Intervention.[3315]

4768. para. 1400: The Trial Chamber finds this is inconsistent with Bangura's evidence that she was trained by Pearson outside of Buedu within weeks of being captured in 1994 when she was still 10 years old. Further, if Bangura is believed about the year of her capture, her alleged conscription occurred before the indictment period.

4769. para. 1401: The Trial Chamber has considered that Bangura's detailed description of her training at Bunumbu under Monica Pearson may be more reliable than her assertion of the year

in which she was captured as she is a child witness with little education recalling events which occurred more than a decade ago. She is more likely to reliably recall events rather than numeric representations of time. Trial Chamber concludes that Bangura was in fact trained after February, 1998 and not in 1994 as she stated. The Trial Chamber finds this would be inconsistent with Bangura's testimony that she was born in 1984 and was not yet 11 when she was trained.

4770. para. 1402: Based on the inconsistencies in Bangura's testimony relating to the date and age at which she was abducted, the Trial Chamber cannot be satisfied beyond a reasonable doubt that the events described by the witness occurred within the Indictment period.

iv. Abduction and training of TF1-026 from January to November/December 1999 - Kailahun District – Conscription and Enlistment of Child Solders – Child soldiers

4771. para. 1409: On the basis of TF1-026's unchallenged testimony that she was forcibly abducted from her home in Wellington and removed from her family, that she was detained by Brigadier Issa in Makeni for three weeks while doing domestic chores, that she was taken to Buedu field in Kailahun District and was militarily trained with a gun for six months; that she tried to escape and was threatened with execution, that the letters "RUF" were carved on her chest with a knife, that she was sent back to Makeni to do house chores for Brigadier Issa and his wife, the Trial Chamber finds that TF1-026 was conscripted, i.e. abducted and forcedly recruited with the purpose of using her actively in hostilities, into an armed group, the RUF/AFRC. The Trial Chamber finds this conscription was perpetrated by members of the RUF under the command of Sam Bockarie and occurred in Kailahun District from approximately February or March 1999 through approximately November or December 1999.

4772. para. 1410: On the basis of the witness's testimony that she was born in 1984, the Trial Chamber is satisfied that she was 14, and thus under the age of 15 years, during her conscription and training in 1999. Given the prevalence of children under the age of 15 in the RUF, 3328 the Trial Chamber is satisfied that the members of the RUF knew or should have known that TF1-026 was under the age of 15 years. Accordingly the Trial Chamber finds that the elements of the crime of the conscription of a child under the age of 15 years into an armed force have been proved beyond reasonable doubt in relation to TF1-026 and that the perpetrators knew or should have known that children under the age of 15 were conscripted into the armed force.

4773. para. 1411: The Trial Chamber, however, is not satisfied that the performance of domestic chores constitutes active participation in hostilities, as these activities are not related to the

hostilities and do not directly support the military operations of the armed groups, and therefore does not made a finding that the domestic chores she performed at Issa Sesay's house in Makeni shortly after her capture in 1999 constitute use of a child to participate actively in hostilities.

c. Kono District - Conscription and Enlistment of Child Solders– Child soldiers

i. Children abducted and trained by the AFRC and RUF between March and December 1998 - Kono District - Conscription and Enlistment of Child Solders–Child soldiers

4774. para. 1416: The Trial Chamber notes that Koker did not provide any basis for his estimate that the children who were captured in Koidu and who fought for the RUF were between 12 and 14 years old but that this aspect of his evidence was not challenged and that he had experience of working with children in the RUF, and therefore accepts that these children were under the age of 15. Given the prevalence of children in the RUF/AFRC, the Trial Chamber is satisfied that the perpetrators, including Koker knew or should have known that these children were under the age of 15 years. The Trial Chamber therefore finds that an unknown number of children were conscripted into the RUF/AFRC in Koidu Town and the surrounding area after 14 February 1998 and that the Prosecution have proved beyond reasonable doubt the crime of the conscription of children under the age of 15 into the RUF in Koidu Town and the surrounding area after 14 February 1998

4775. para. 1417: The Trial Chamber notes that Alice Pyne's evidence of the age of the abducted children was not challenged and that she had children herself at that time. On the basis of this evidence, the Trial Chamber is therefore satisfied beyond reasonable doubt that the abducted children by members of the RUF/AFRC from villages near PC Ground were under the age of 15 years. The Trial Chamber is further satisfied that the children were trained at Superman Ground and subsequently distributed to commanders.

4776. para. 1418: Based on the prevalence of children under the age of 15 conscripted by the RUF 3338 the Trial Chamber is satisfied that the members of the RUF knew or should have known that these children was under the age of 15 years. The Trial Chamber therefore finds that an unknown number of children were conscripted, i.e. forcedly recruited with the purpose of using them actively in hostilities, into the RUF/AFRC from villages near PC Ground in March 1998 and in Koidu Town and surrounding area after 14 February 1998 and that the Prosecution has proved beyond reasonable doubt the crime of the conscription of an unknown number of

children under the age of 15 into the RUF at PC Ground and the surrounding area in March 1998 and in Koidu Town and surrounding area after 14 February 1998.

4777. para. 1419: Alimamy Bobson Sesay testified about the training of children at Masingbi Road. Given his detailed account, and his lack of any motivation to lie in relation to this evidence, the Trial Chamber considers his testimony to be reliable in relation to this incident. Bobson Sesay testified that he knew the children trained at Masingbi Road were between 8 and 12 because the children were "mustered" and information about each recruit, including their names and ages, was recorded by one of the training commanders. The Trial Chamber is therefore satisfied beyond reasonable doubt that these children were under the age of 15 years. On the basis of Bobson Sesay's evidence the Trial Chamber finds that an unknown number of children under the age of 15 were conscripted, i.e. forcedly recruited with the purpose of using them actively in hostilities, into an armed group, the RUF/AFRC between mid-March and April 1998 at Masingbi Road. The Trial Chamber is further satisfied that, given this registration process, the members of the AFRC who were involved in training the children, including Bobson Sesay, knew or should have known that these children were under the age of 15 years. The Trial Chamber accordingly finds that the elements of the crime of conscription of persons under the age of 15 years into an armed force have been proved beyond reasonable doubt in relation to an unknown number of children who were conscripted into the RUF/AFRC at Masingbi Road from mid-March to April 1998.

4778. para. 1420: However, the Trial Chamber finds that Bobson Sesay's evidence regarding the training given by other SLA and RUF commanders in parts of Kono other than Masingbi Road is insufficiently specific as to the dates of the training and the ages of the "SBUs" that were trained.

4779. para. 1421: The Trial Chamber notes that Emmanuel Bull was 17 years of age at the time of his capture and enforced training. His siblings were aged 16, and 11 or 12, his brother, Titus, being the youngest of those captured.[3339] His testimony that the children were "[s]mall boys in the age of 13. You know, 13, 15" was not challenged. On the basis of this evidence, the Trial Chamber is therefore satisfied beyond reasonable doubt that these children were under the age of 15 years.

4780. para. 1422: Based on his evidence that these children were trained on how to use weapons, the Trial Chamber finds beyond reasonable doubt that members of the RUF/AFRC conscripted, i.e. abducted and forcedly recruited with the purpose of using them actively in hostilities, these children into their armed force. Moreover, based on the prevalence of children under the age of 15

conscripted by the AFRC/RUF,[3340] the Trial Chamber is satisfied that the members of the AFRC and RUF knew or should have known that these children was under the age of 15 years. The Trial Chamber therefore finds that an unknown number of children were conscripted into the RUF in or about April 1998 in Kono District and that the elements of the crime of the conscription of children under the age of 15 into the AFRC and RUF have been proved beyond reasonable doubt.

ii. Children trained by the AFRC and RUF after December 1998 in Yengema – Kono District - Conscription and Enlistment of Child Solders– Child soldiers

4781. para. 1424: The Trial Chamber has previously found that TF1-362's detailed account of the training of children at various bases in Sierra Leone is credible.[3347] In this instance, the Trial Chamber finds that, based on TF1-362's direct evidence of the training of children at Yengema from approximately December 1998, that children were conscripted, i.e. forcedly recruited with the purpose of using them actively in hostilities, into an armed group, the RUF/AFRC. Moreover, based on TF1-362's evidence that the children were screened into groups of SBUs and SGUs based on their age, the Trial Chamber finds that it has been proved beyond reasonable doubt that some of these children were under the age of 15 years, and that the perpetrators, including TF1-362, knew or should have known that these children were under the age of 15 years. The Trial Chamber is accordingly satisfied that the Prosecution has proved beyond a reasonable doubt that an unknown number of children under 15 years were conscripted into the RUF/AFRC, an armed force in December 1998 at Yengema.

iii. Abduction, training and use of TF1-143 in September 1998 – Kono District - Conscription and Enlistment of Child Solders– Child soldiers

4782. para. 1430: On the basis of TF1-143's testimony that he was forcibly abducted from a house in Konkoba in Koinadugu District; that he was marked on the chest with the letters "RUF" by a rebel commander named Kabila, that he was assigned to Kabila and taken to Koinadugu, that he was trained by Kabila to dismantle and put together a weapon; that he later underwent a second training in the jorbush near Koinadugu in which he learned how to operate a weapon, the Trial Chamber finds that TF1-143 was conscripted, i.e. abducted and forcedly recruited with the purpose of using him actively in hostilities, into an armed group the AFRC/RUF. The Trial Chamber is satisfied from TF1-143's description that this occurred in approximately September 1998.

4783. para. 1431: Other than TF1-143 writing down his date of birth, no official document was introduced to corroborate this date. However, the witness was confident about his age, and about the fact that he was in Form Four at the time of his abduction, and was not challenged regarding his age during cross-examination. Moreover, he looked young at the time he gave evidence in 2008 ten years after the incidents he testified about. The Trial Chamber is therefore satisfied that it has been proved beyond reasonable doubt that the witness was 12 years old at the time of his abduction, and thus under the age of 15 years during his abduction and training. Finally, on the basis of the prevalence of the military training of children under the age of 15 years by the AFRC/RUF, the Trial Chamber is satisfied that the members of the AFRC/RUF knew or should have known that the witness was under the age of 15 years. The Trial Chamber is accordingly satisfied that the Prosecution have proved beyond a reasonable doubt that TF1-143, a child under 15 years was conscripted into the RUF/AFRC, an armed force in September 1998 at Konkoba

4784. para. 1432: The crime of conscription continues as long as the child remains within the armed forces or reaches the age of 15 years.[3366] TF1-143 testified that he remained with the AFRC/RUF until he was arrested by Nigerian armed forces after the Freetown attack in January 1999. The Trial Chamber finds, therefore, that TF1-143's conscription in the AFRC/RUF continued until January 1999.

d. Bombali District – Conscription and Enlistment of Child Solders – Child soldiers

i. Children trained at Camp Rosos and used by the AFRC in July 1998 – Bombali District – Conscription and Enlistment of Child Solders – Child soldiers

4785. para. 1434: On the basis that children were abducted by SLAs during an attack on Karina in July 1998 and that they were trained militarily for three weeks at Camp Rosos by AFRC/RUF members, including the witness, the Trial Chamber finds that an unknown number of children were conscripted, i.e. abducted and forcedly recruited with the purpose of using them actively in hostilities, into an armed group, the AFRC/RUF under the command of SAJ Musa in Karina in July 1998. While Bobson Sesay provided no basis for his estimation that the SBUs who were trained at Rosos were between 8 and 12 years old. However the Trial Chamber notes that he was not challenged on this evidence and that he was involved in the training of children of similar ages recorded at Masingbi Road, and was therefore familiar with the physical appearance of children in this age range. Moreover, given that Bobson Sesay testified that the children were aged between 8 and 12, it is reasonable to infer that the children must have been very young. The Trial Chamber is

therefore satisfied that the Prosecution has proved beyond reasonable doubt that these children were under the age of 15 years, and that the perpetrators, including the witness, knew or should have known that these children were under the age of 15 years and, accordingly, have proved beyond reasonable doubt that an unknown number of children under the age of 15 years were abducted and conscripted into the AFRC/RUF in July 1998 at Camp Ross, Bombali District.

ii. Children taken from care centre in Makeni in May 2000 and continued recruitment until 2001 - Bombali District – Conscription and Enlistment of Child Solders – Child soldiers

4786. para. 1438: On the basis of the witness's evidence that he witnessed the RUF fighters taking more than 100 children from the centre, which is corroborated in part by Exhibit P-334, the Trial Chamber is satisfied beyond a reasonable doubt that the RUF abducted these children. Given the RUF commanders had previously demanded that their child "fighters" be returned the Trial Chamber is satisfied that the RUF intended to use these children in combat. The Trial Chamber cannot determine, on the basis of this evidence, whether the group of over 100 children were forcibly taken or whether they rejoined the RUF voluntarily. However as it is a crime under Article 4(c) to conscript or enlist children under the age of 15 years into an armed force it is irrelevant whether the children left voluntarily or under duress. While TF1-174 did not testify about the age of the specific children who were abducted, the Trial Chamber is satisfied, based on TF1-174's testimony that 60-70% of the majority of the children at the interim care centre were below the age of 14 years, and on the basis that the centre kept records documenting the ages of these children, that some of these children were under the age of 15 years. Further, based on the prevalence of children under the age 15 who fought with the RUF, and the familiarity of the RUF commanders with these particular children, the Trial Chamber is satisfied that the RUF fighters knew or should have known that these children were under the age of 15 years. The Trial Chamber is accordingly satisfied that the Prosecution has proved beyond a reasonable doubt that an unknown number of children under 15 years were conscripted into the RUF, an armed force in May 2000 at Makeni.

4787. para. 1439: The witness did not personally observe the next 100 children being taken by RUF fighters, as he was in Freetown at the time, he only noted that there were approximately 100 fewer children at the centre upon his return. He was also told that 45 had been taken to fight in Lunsar. This evidence is hearsay but it is corroborated by TF1-174's observation that children were missing and the evidence of the RUF requiring the return of child fighters from the Centre. As it is crime under Article 4(c) to conscript or enlist children under the age of 15 years into an

armed force it is irrelevant whether the 45 children were taken voluntarily or under duress. The Trial Chamber is accordingly satisfied that the Prosecution have proved beyond a reasonable doubt that a further unknown number of children under 15 years were conscripted into the RUF, an armed force in May 2000 at Makeni.

iii. Abduction and training of TF1-158 in 1998 - Bombali District – Conscription and Enlistment of Child Solders – Child soldiers

4788. para. 1445: On the basis of TF1-158's testimony that he was forcibly abducted from Bonoya, Bombali District a few months before the attack on Freetown on 6 January 1999, that he was taken to Rosos while being forced to carry items looted from civilians; the Trial Chamber finds that TF1-158 was conscripted, i.e. abducted and forcedly recruited with the purpose of using him actively in hostilities, into an armed group, the AFRC/RUF under the command of SAJ Musa. The Trial Chamber finds this conscription occurred in the Bombali District for an unspecified number of months before December 1998.

4789. para. 1446: Based on the witness's testimony that he was ten years old at the time of his capture, the Trial Chamber finds that he was under the age of 15 years. Based on the prevalence of children under the age 15 who were militarily trained by members of the AFRC/RUF at Camp Rosos, 3385 the Trial Chamber is satisfied that the members of the AFRC/RUF knew or should have known that TF1-158 was under the age of 15 years. The Trial Chamber is accordingly satisfied that the Prosecution have proved beyond a reasonable doubt that TF1-158 a child under 15 years was conscripted into the AFRC/RUF, an armed force in Bonoya in late 1998.

iv. Abduction and Training of TF1-158 in approximately July 1999 – Bombali District – Conscription and Enlistment of Child Solders – Child soldiers

4790. para. 1449: On the basis of the testimony provided by TF1-158, that he was forcibly abducted from Kamayusufu, Bombali District after the Lomé Peace Accord and that he was militarily trained in Kamabai, Bombali District by members of the AFRC, the Trial Chamber finds that TF1-158 was conscripted, i.e. abducted and forcedly recruited with the purpose of using him actively in hostilities into an armed group, the AFRC/RUF. The Trial Chamber finds this conscription was perpetrated by members of the AFRC/RUF under the command of Savage and occurred in Bombali District from approximately July, 1999 through August, 1999.

4791. para. 1450: Based on the witness's testimony that he was 10 years old when he was captured in approximately September 1998 and that he was 10 years old during his training, the Trial Chamber is satisfied that he was under the age of 15 years during his second abduction and training in July-August 1999. On the basis of the prevalence of children under the age of 15 given military training by the AFRC,[3391] the Trial Chamber is satisfied that the members of the AFRC knew or should have known that TF1-158 was under the age of 15 years. The Trial Chamber is accordingly satisfied that Prosecution has proved beyond a reasonable doubt that TF1-158 a child under the age of 15 years was conscripted into an armed force.

e. Port Loko District - Conscription and Enlistment of Child Solders – Child soldiers

i. Abduction of Akiatu Tholley from January to April 1999 – Port Loko District - Conscription and Enlistment of Child Solders – Child soldiers

4792. para. 1453: On the basis of the evidence given by Tholley that she was forcibly abducted from her home in Wellington in late January, 1999; given weapons to carry to Allen Town; detained by James in Masiaka from approximately April through May, 1999; that she unsuccessfully tried to flee and was given narcotics by James and that James taught her to use an AK-47 and a pistol; and that during this time she was given military training in Port Loko District, the Trial Chamber finds that Tholley was conscripted, i.e. abducted and forcedly recruited with the purpose of using him actively in hostilities, into an armed group. The Trial Chamber finds this conscription was perpetrated by members of the AFRC under the command of Santigie Borbor Kanu.

4793. para. 1454: Although Tholley testified that she does not know her date of birth, the Trial Chamber is satisfied from her confirmation on re-examination that she was 19 years old at the time of the interview in February/March 2005 (making her not older than 13 in February/March 1999, shortly after her abduction) and from her own description that she had not yet had her menses when she was raped, that it has been proved beyond reasonable doubt that Tholley was less than 14 years old at the time of her conscription in January 1999.

4794. para. 1455: Based on the prevalence of children under the age of 15 conscripted by the AFRC/RUF, 3398 the Trial Chamber is satisfied that the members of the AFRC knew or should have known that Tholley was under the age of 15 years. The Trial Chamber is accordingly

satisfied that the elements of the crime of conscription of children under 15 have been proved beyond a reasonable doubt.

4795. para. 1456: The crime of conscription under Art 4(c) continues as long as the child remains within the armed forces or reaches the age of 15 years.[3399] Tholley testified that she was later taken to Kurubonla in Koinadugu District to fight, although she was unable to recall when this was,[3400] and that she surrendered to ECOMOG at Lunsar shortly thereafter.[3401] The Trial Chamber is unable to determine with precision when this occurred. It accordingly finds that Tholley's conscription occurred from the time of her abduction in January, 1999 until at least April/May 1999.

(v) Using Children to Actively Participate in Hostilities – Child soldiers

4796. para. 1459: The guarding of military objectives amounts to active participation in hostilities. 3408 This Trial Chamber has previously held that in the conflict in Sierra Leone, where diamonds were mined and sold to raise revenue to finance war efforts, the use of a child to guard a diamond mine put the child at sufficient risk to constitute illegal use of the child pursuant to Article 4(c) of the Statute.[3409] Control over the diamond mines in Kono and Kenema Districts was crucial for the war effort of all armed groups in the conflict. As the diamond mines were in highly contested and strategic locations, the Trial Chamber finds that they were potential military targets for the warring factions. The Trial Chamber finds that due to the high risk of enemy attacks, those children who were used to guard the mines were in direct danger of being caught in hostilities. The Trial Chamber therefore finds that those children who were used to guard the mines were being used to actively participate in hostilities.[3410] Based on the evidence, and on the context in which this mining occurred, the Trial Chamber is satisfied that these children were used by members of the RUF and AFRC who knew or should have known that these children were under the age of 15 years.

a. Kenema District - Using Children to Actively Participate in Hostilities – Child soldiers

i. Children used at Tongo Fields by the AFRC and RUF - Kenema District - Using Children to Actively Participate in Hostilities – Child soldiers

4797. para. 1467: TF1-567 estimated that the children who he saw guarding the mines were aged from "14 upwards", Mallah estimated the children "[t]hey were about ten years, 12 years,

15 years, you know". Witnesses TF1-567, TF1-371 and Mallah were members of the RUF, knew of the abduction of children and were aware of the ages of those targeted. Conteh indicated that the children were "12 to 15" years of age. The Trial Chamber accepts his estimate as he was the father of three children and had been a secondary school teacher for several years prior to his capture.[3439] The evidence of TF1-375 corroborates the foregoing testimony that children were used in guarding mining. Each of these witnesses gave credible evidence of the ages of the children they saw and this evidence was not challenged in cross-examination. The Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that children under the age of 15 years were used by the AFRC and RUF during the Junta period to guard mining sites in Tongo Fields and that the members of the AFRC and RUF knew or should have known that these children were under the age of 15 years. Accordingly, the Trial Chamber finds that the elements of the crime of using persons under the age of 15 years to participate actively in hostilities have been proved beyond reasonable doubt in relation to an unknown number of children in Tongo Fields between May 1997 and February 1998.

4798. para. 1468: The Trial Chamber notes that Conteh did not give any evidence regarding the age of the specific child combatants who killed civilians in Tongo Fields and therefore finds that it has not been proved beyond reasonable doubt that these killings were committed by children under the age of 15 years. However the Trial Chamber accepts his evidence that the children who accompanied Sam Bockarie were between 12 and 14 and therefore finds that it has been proved beyond reasonable doubt that the children who accompanied Sam Bockarie to collect diamonds, were under the age of 15 years. Based on the prevalence of children under the age of 15 used by the AFRC/RUF as bodyguards, the Trial Chamber is also satisfied that the members of the AFRC/RUF knew or should have known that these children were under the age of 15 years. The Trial Chamber finds that safeguarding the physical safety of military commanders, in particular where children are used as bodyguards, constitutes using children to participate actively in hostilities.[3440] The Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that children under the age of 15 years were used by the AFRC and RUF during the Junta period to guard mining sites in Tongo Fields and to collect diamonds produced by civilians working in those mining sites. Based on the prevalence of children being conscripted and used by the RUF and AFRC the Trial Chamber further finds that the members of the AFRC and RUF knew or should have known that these children were under the age of 15 years. The Trial Chamber is therefore satisfied that the elements of the crime of using children to participate actively in hostilities have been proved beyond reasonable doubt in relation to this evidence.

ii. Children committing crimes during the junta period - Kenema District - Using Children to Actively Participate in Hostilities – Child soldiers

4799. para. 1470: The Trial Chamber notes that Bao gave evidence that the boys at Hangh Road were aged 12 to 18. When asked how he knew the ages of the children, Bao responded, "I am a father of so many children, so I know who is 12, who is 15, who is 18".[3447] Bao testified similarly in the RUF trial, stating, "I am the father of many children, so I know when a child is 12 and above; I know".[3448] Bao was not challenged on his estimates of the children's ages in cross-examination in either trial.

4800. para. 1471: However, Bao did not give any evidence about the ages of the particular children who were involved in extorting money, nor did he give other specific examples of such incidents. With respect to the incident involving the attack of the woman, the witness did not identify the age of the assailants, nor whether it was the "small boys" with Issa Sesay who had attacked her.[3449]

4801. para. 1472: The Trial Chamber therefore finds that it has not been proved beyond reasonable doubt that the children involved in extorting money in Hangh Road or who attacked the woman were under the age of 15 years.

b. Kailahun District - Using Children to Actively Participate in Hostilities – Child soldiers

4802. para. 1476: Although TF1-362 and TF1-189 did not specify the ages of the children who were sent to the frontlines the Trial Chamber is satisfied that this evidence relates to those children who were trained and some of whom were under the age of 15. Koker also testified that SBUs were sent to the war front, and later clarified that SBUs could be defined as a unit of small boys aged 7 to 14. Koker ascertained the ages of children who were trained at Bunumbu by asking them their ages. Further, based on the prevalence of children under the age 15 who fought with the RUF, the Trial Chamber is satisfied that the members of the RUF knew or should have known that these children were under the age of 15 years. None of the witnesses specified the role that the children played at the front line, nor the duties they undertook while they were there, nor did they state if these children were armed. However the Trial Chamber notes that the evidence that children were sent and/or taken to the frontlines was not challenged and that "frontlines" was used in evidence to refer to the fighting area. The Trial Chamber therefore finds that the lives of these children were put at risk by sending them to the fighting areas, and

becoming a military target. Accordingly, the Trial Chamber finds that children under the age of 15 years were used to actively participate in hostilities.

4803. para. 1477: Koker also testified that children trained at Bunumbu were used to do domestic chores. The Trial Chamber is not satisfied that the performance of domestic chores constitutes active participation in hostilities, as these activities are not related to the hostilities and do not directly support the military operations of the armed groups

4804. para. 1478: In the RUF case, Trial Chamber I held, in the context of food-missions in which the children who participated were unarmed, that "although this activity supports the armed group in a general sense, in our view it does not establish that the children openly carried arms while on such missions"[3458] and consequently found that such food-finding missions did not amount to active participation in hostilities.[3459]

4805. para. 1479: The Trial Chamber concurs that not every instance in which a child participated in a food-finding mission constitutes active participation in hostilities. However, to the extent that a food-finding mission may be considered "activities linked to combat", that is, where there is a clear link between the mission and the hostilities, the child's active participation in such a mission may constitute "use". In the context of food-finding missions in which children carried arms and committed crimes against civilians, the Trial Chamber finds that such activities constitute active participation in hostilities.

4806. para. 1480: TF1-362 testified that children were sent on food-finding missions with other recruits armed with knives and sticks, and that they beat and killed civilians if they met with resistance. She also sent her own 10 year old SBU, armed with a gun on one such mission.

4807. para. 1481: TF1-362 did not testify as to the exact ages of those people who were sent on such missions. The Trial Chamber has accepted her evidence that the SBUs trained at Bunumbu were as young as 7. Given her testimony that SBUs including her own 10 years old armed SBU, were sent on food finding missions the Trial Chamber finds beyond reasonable doubt that some of the children were under the age of 15 years. As those who were sent on such missions had already been screened by age the Trial Chamber finds beyond reasonable doubt that the perpetrators, including TF1-362, knew or should have known that children under the age of 15 years were sent on these food-finding missions and that they armed with knives and sticks.

4808. para. 1482: The Trial Chamber is accordingly satisfied that the Prosecution has proved beyond reasonable doubt that an unknown number of children who were sent on food-finding

missions from Bunumbu between February to December 1998 were used to participate actively in hostilities.

i. Use as bodyguards - Kailahun District - Using Children to Actively Participate in Hostilities – Child soldiers

4809. para. 1485: The Trial Chamber notes that Kargbo did not give any evidence about the age of the children who were involved in his flogging, indicating solely that they were "SBUs". Moreover, the witness did not mention that the flogging had been perpetrated by SBUs in any previous statements, and the Trial Chamber finds that his explanation that the Prosecution forgot to record this, is unconvincing. Therefore, the Trial Chamber finds that it has not been established beyond reasonable doubt that the children involved in this incident were under the age of 15 years.

4810. para. 1486: Gbonda stated in his evidence that whilst he was Deputy Chiefdom commander from 1996 – 2000 he saw children, some aged eight, nine and ten, following commanders and carrying guns. Gbonda's evidence of the age of the children was not challenged and he is the father of several children, five of whom died during the time of the hostilities.[3462] The Trial Chamber accepts his evidence and finds that the children he saw were aged less than 15 years. The Trial Chamber finds that as these children were armed with guns they were taking part in armed hostilities. Based on the prevalence of children being conscripted and used by the RUF and AFRC the Trial Chamber further finds that the members of the AFRC and RUF knew or should have known that these children were under the age of 15 Years. The Trial Chamber is therefore finds that it has been proved beyond reasonable doubt that these children were used to participate actively in hostilities between 1996 to 2000 in Kailahun.

ii. Edna Bangura - Kailahun District - Using Children to Actively Participate in Hostilities – Child soldiers

4811. See above: Chapter 9 – Taylor – Trial Judgement – Factual Findings - Using Children to Actively Participate in Hostilities – Kailahun District - Edna Bangura – para. 1487[4673].

c. Kono District - Using Children to Actively Participate in Hostilities – Child soldiers

i. Children committing crimes in Kono in February/March 1998 - Kono District - Using Children to Actively Participate in Hostilities – Child soldiers

4812. para. 1489: Although the witness was not precise as to the age of the boy and could not tell whether or not he had an Adam's apple[3470] her evidence as to his size and estimated age was not challenged. The Trial Chamber considers that, as a mother of four children,[3471] her estimation is based on experience of young children. The Trial Chamber therefore finds that it has been proved beyond a reasonable doubt that the child who committed these crimes was under the age of 15 years. Based on the prevalence of children under the age of 15 used by the AFRC/RUF to commit crimes,[3472] the Trial Chamber is satisfied that the members of the AFRC/RUF knew or should have known that the boy was under the age of 15 years.

4813. para. 1490: The Trial Chamber finds that the use of this child to amputate the hands of five men and chop Kamara's arm constitutes active participation in hostilities and that the elements of the crime of the use of children under the age of 15 to participate actively in hostilities by the AFRC/RUF have been proved beyond reasonable doubt. The Trial Chamber is satisfied from the context that this event occurred in Sawoa, Kono Province in February/March 1998 after the AFRC/RUF retreat from Freetown.

ii. Children used for food-finding missions at Superman Ground in July 1998 - Kono District - Using Children to Actively Participate in Hostilities – Child soldiers

4814. para. 1492: While Exhibit P-051 lists the names of three individuals who are designated as "SBUs" who were sent to get food, it does not indicate their age. While Kamara testified that SBUs were between 12 and 15 years old, he did not provide any evidence about the age of these particular SBUs. Moreover, although Kamara was at Superman Ground at the time at which this roll record was written, he does not testify that he personally witnessed these food-finding missions.

4815. para. 1493: In addition, the exhibit does not indicate whether the SBUs who went on these missions were armed. Although Kamara testifies that the list indicates those who would provide security and those who had weapons (i.e. AK-47), the names of the SBUs do not specify that they were allocated weapons. Accordingly, the Trial Chamber finds that it has not been proved beyond

a reasonable doubt that the children sent on these missions were under the age of 15 years, nor that these food-finding missions constitute active participation in hostilities.

iii. Children used to guard mining in Tombodu in December 1999 - Kono District - Using Children to Actively Participate in Hostilities – Child soldiers

4816. para. 1495: Exhibit P-196 shows that Ngekia was challenged on his evidence of the ages of the children who were guarding the mining at Tombodu in December 1999. He stated "when you look at them in the face you will know that they were children" and "[i]t's easy to recognise a child. All of them were 10 years, 11 years – all of them were under 15".[3486] He also stated that he was the father of six children.[3487] Given his clear observations and his experience as the father of children the Trial Chamber accepts his evidence as to the age of the children at the mine and therefore finds that it has been proved beyond reasonable doubt that these children were under the age of 15 years. Based on the prevalence of children under the age of 15 being conscripted and used by the RUF the Trial Chamber is satisfied that the members of the RUF knew or should have known that these children was under the age of 15 years. The Trial Chamber has previously held that, in these circumstances, children who were used to guard the mines were being used to participate actively in hostilities. The Trial Chamber is accordingly satisfied that the Prosecution has proved beyond reasonable doubt that an unknown number of children who were used to guard mining in Tombudu in December 1999 were used to participate actively in hostilities.

iv. Children used in Koidu in 2001 - Kono District - Using Children to Actively Participate in Hostilities – Child soldiers

4817. para. 1497: TF1-174's evidence is hearsay, which is uncorroborated. Moreover, the evidence is inconclusive whether the specific duties were performed by children whose ages were below 15 years. The Trial Chamber is therefore, not satisfied that the elements of the crime of the use of children to actively participate in hostilities have been proved beyond reasonable doubt in relation to this evidence.

v. Children used in Kono in March/April 1998 - Kono District - Using Children to Actively Participate in Hostilities – Child soldiers

4818. para. 1502: Alimamy Bobson Sesay provided evidence which the Trial Chamber has already accepted that the SBUs who were trained were between 8 to 12 years. Therefore, based on his knowledge and experience of the age of SBUs, the Trial Chamber finds that it has been

proved beyond a reasonable doubt that the children who amputated the limbs of civilians in Tombodu and Yomandu and captured girls aged 8 to 10 years of age at Masingbi Road and detained them for sexual purposes were under the age of 15 years and that they were used to participate actively in hostilities. Based on the prevalence of children under the age of 15 being used by the RUF/AFRC to commit crimes the Trial Chamber is satisfied that the members of the RUF/AFRC knew or should have known that these children was under the age of 15 years. The Trial Chamber accordingly finds that the elements of the crime of using persons under the age of 15 to participate actively in hostilities by the AFRC/RUF have been proved beyond reasonable doubt in relation to an unknown number of children from early to mid-1998 in Yomandu, Tombodu and Masingbi Road.

4819. para. 1503: Tamba Teh testified that the SBUs were "small boys below the ages of 16, 15, right down". He described some of the boys who Rocky ordered to decapitate civilians as so small that they "could not even lift their guns up except that they drag the guns on the ground".[3500] When asked about the age of the boy whose hands and feet were amputated, the witness responded, "[w]ell, I can't say I know exactly, but I am also a father and I know what age a child is[…]"[3501] In cross-examination, Tamba Teh was not questioned about the ages of the SBUs. The Trial Chamber accepts the witness's observation on the size and age of the children who perpetrated the crimes and his personal experience as a father in assessing a child's age and finds beyond a reasonable doubt that the children who decapitated those people killed by Rocky and the children who amputated a young boy were under the age of 15. Based on the prevalence of children under the age of 15 used by the RUF/AFRC to commit crimes, the Trial Chamber is satisfied that the members of the RUF/AFRC knew or should have known that these children were under the age of 15 years. The Trial Chamber is accordingly satisfied that the Prosecution has proved beyond reasonable doubt that children under 15 years were used to participate actively in hostilities by members of the RUF/AFRC in relation to each of these incidents. As Tamba Teh testified that these incidents occurred after ECOMOG had driven the RUF/AFRC from Kono District, the Trial Chamber is satisfied that it occurred in around April 1998.[3502]

4820. para. 1504: Samuel Bull was not challenged on his evidence that the boy who was ordered to kill him was 14. The Trial Chamber also notes that he is the father of five children,[3503] some of whom were in their teens at the time of this incident. The Trial Chamber therefore accepts his evidence and finds that it has been proved beyond reasonable doubt that the child was under the age of 15. Based on the prevalence of children under the age of 15 used by the RUF to commit crimes, the Trial Chamber is satisfied that the members of the RUF knew or should have known that this child was under the age of 15 years. The Trial Chamber is satisfied that the child

who was ordered to kill Bull by Issa Sesay was used to participate actively in hostilities. The Trial Chamber accordingly finds that the elements of the crime of using persons under the age of 15 to participate actively in hostilities by the AFRC/RUF have been proved beyond reasonable doubt in relation to this incident in mid-April 1998 at Tongbodu.

4821. para. 1505: Cole did not give any evidence about the ages of the boys who participated in the attack on Bombafoidu beyond saying that they were small and did not give any reason for his belief that the boy who asked him to undress was between 12 and 14 years old but he was not challenged on this evidence. The Trial Chamber accepts his evidence and therefore finds that it has been proved beyond a reasonable doubt that this child was under the age of 15 years. Based on the prevalence of children under the age of 15 being used by the AFRC/RUF the Trial Chamber is satisfied that the members of the AFRC/RUF knew or should have known that these children were under the age of 15 years. The Trial Chamber is accordingly satisfied that the Prosecution has proved beyond reasonable doubt that children who ordered to Cole to undress were used to participate actively in hostilities.

d. Port Loko District - Using Children to Actively Participate in Hostilities – Child soldiers

i. Use of Akiatu Tholley to participate in hostilities in April/May 1999 - Port Loko District - Using Children to Actively Participate in Hostilities – Child soldiers

4822. para. 1509: The Trial Chamber recalls that it has found that in the context of food-finding missions in which children carried arms and/or committed crimes against civilians, that such activities constitute active participation in hostilities.[3513] The Trial Chamber is therefore satisfied that when Tholley was sent on a food-finding mission during which she looted civilian property, used a weapon and killed a civilian woman in April or May 1999, she was actively participating in hostilities. Based on the prevalence of children being conscripted and used by the RUF/AFRC the Trial Chamber further finds that the members of the AFRC/RUF knew or should have known that these children were under the age of 15 years. The Trial Chamber is therefore satisfied that the elements of the crime of using children to participate actively in hostilities have been proved beyond reasonable doubt in relation to this evidence.

e. Koinadugu District - Using Children to Actively Participate in Hostilities – Child soldiers

i. Use of child soldiers in Koinadugu District - Koinadugu District - Using Children to Actively Participate in Hostilities – Child soldiers

4823. para. 1512: Mansaray was not challenged on his estimation of the ages of the armed children that he saw with the People's Army in February to mid-March 1998. The Trial Chamber notes that the witness was the father of eight children including a child who was 12 or 13 years at the time of the incidents.[3521] The Trial Chamber accepts his evidence and therefore finds that it has been proved beyond a reasonable doubt that some of the armed children seen by Mansaray and those children burning houses were under the age of 15 years. As these children were travelling with the Peoples Army and were armed, the Trial Chamber is satisfied that they were taking an active part in hostilities. Further, based on the prevalence of children under the age 15 who fought with the AFRC/RUF forces, also referred to as the People's Army, the Trial Chamber is satisfied that the members of the AFRC/RUF knew or should have known that these children were under the age of 15 years. The Trial Chamber is accordingly satisfied that the Prosecution has proved beyond reasonable doubt that an unknown number of children under the age of 15 years was used to participate actively in hostilities in Koinadugu District between March and May 1998.

ii. Findings on victim witness in Koinadugu District - Using Children to Actively Participate in Hostilities – Child soldiers

iii. Akiatu Tholley used to participate actively in hostilities after April or May 1999 - Findings on victim witness in Koinadugu District - Using Children to Actively Participate in Hostilities – Child soldiers

4824. para. 1516: On the basis of Tholley's evidence that she fought with "the rebels" against Kamajors and civilians, that she personally killed civilians and looted property while carrying a gun, the Trial Chamber is satisfied that Tholley actively participated in hostilities and was used as a child soldier by members of the AFRC/RUF. The Trial Chamber has previously found that Tholley was under the age of 15 during this time and that the perpetrators knew or should have known that she was under the age of 15 years. The Trial Chamber is accordingly satisfied that the Prosecution has proved beyond reasonable doubt that Akiatu Tholley, a child under the age

of 15 years, was used to participate actively in hostilities in Koinadugu District after April or May 1999.

iv. Use of TF1-143 to participate in hostilities in September 1998

Findings on victim witness in Koinadugu District - Using Children to Actively Participate in Hostilities – Child soldiers

4825. para. 1519: The Trial Chamber recalls that it has found that in the context of food-finding missions in which children carried arms and/or committed crimes against civilians, that such activities constitute active participation in hostilities.[3532] The Trial Chamber is therefore satisfied that when TF1-143 went on a food-finding mission shortly after he was captured with Kabila and other fighters, during which he was ordered to rape a women, constitutes active participation in hostilities. The Trial Chamber has previously found that TF1-143 was under the age of 15 and that members of the AFRC/RUF knew or should have known that he was under the age of 15. Trial Chamber accordingly is satisfied that the Prosecution has proved beyond reasonable doubt that TF1-143, child under the age of 15 years was used to participate actively in hostilities in Koinadugu District in or about September 1998.

f. Bombali District - Using Children to Actively Participate in Hostilities – Child soldiers

i. Children trained at Camp Rosos and used by the AFRC in July 1998 - Bombali District - Using Children to Actively Participate in Hostilities – Child soldiers

4826. para. 1522: The Trial Chamber has already found that the children abducted and trained in Karina and Camp Rosos in July 1998 were under the age of 15 years.[3536] The Trial Chamber is not satisfied that the performance of domestic chores 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. The Trial Chamber therefore finds that the use of the children to perform "small works" for the commanders' wives does not constitute active participation in hostilities.

4827. para. 1523: However, the Trial Chamber finds that given the military purpose and the presence of adult fighters, children who took part in patrols, including food-finding missions, and ambushes with the SLAs were actively participating in hostilities.[3537] Therefore, on the basis of the evidence that the SBUs trained at Camp Rosos were used to participate in ambushes,

patrols, and food-finding missions, and participated in attacks on armed forces, the Trial Chamber finds beyond reasonable doubt that these children were used to participate actively in hostilities. The Trial Chamber is satisfied that AFRC/RUF members who had trained and lived with the SBUs at Camp Rosos and who took children on these missions knew or should have that the children were under the age of 15 years. The Trial Chamber accordingly is satisfied that the Prosecution has proved beyond reasonable doubt that an unknown number of children under the age of 15 years, were used to participate actively in hostilities in Bombali District in or about July 1998.

4828. para. 1524: Further, the Trial Chamber finds that carrying arms and ammunition constitutes active participation in hostilities, as this activity is related to the hostilities and directly supports the military operations of the armed group.[3538] The Trial Chamber is therefore satisfied that the children who Bobson Sesay saw with O-Five in September to October 1998, who were carrying ammunition for the rebels, were actively participating in hostilities. While Bobson Sesay provided no basis for his estimation that the SBUs who were trained at Rosos were between 8 and 10 years old, the Trial Chamber notes that he was not challenged on this evidence and that he was involved in the training of children of similar ages at Masingbi Road, and was therefore familiar with the physical appearance of children in this age range. The Trial Chamber has found that these events occurred in August/September 1998.[3539] The Trial Chamber is accordingly satisfied that the Prosecution has proved beyond reasonable doubt that an unknown number of children under the age of 15 years, were used to participate actively in hostilities in Bombali District on or about August/September 1998.

ii. Children committing crimes after ECOMOG Intervention 1998 / Children as bodyguards to commanders and committing crimes during Operation Pay Yourself (February 1998) - Bombali District - Using Children to Actively Participate in Hostilities – Child soldiers

4829. para. 1526: The Trial Chamber finds that whilst TF1-174 did not testify about the age of the specific children who carried arms, acted as bodyguards to commanders, and who were involved in looting, the Trial Chamber is satisfied, based on TF1-174's testimony that the majority of the children at Teko Barracks were under the age of 14/15, that most of these children were under the age of 15 years. The Trial Chamber has found that in the context of the conflict in Sierra Leone, that the use of children to commit crimes against civilians and/or safeguard the physical safety of military commanders, both constitute active participation in hostilities.[3543] Accordingly, the Trial Chamber is satisfied that those children from Teko Barracks who acted as bodyguards to

commanders and engaged in looting were used by the RUF and AFRC to participate actively in hostilities. Based on the prevalence of children being conscripted and used by the RUF/AFRC the Trial Chamber finds that the members of the AFRC/RUF knew or should have known that these children were under the age of 15 years. The Trial Chamber accordingly is satisfied that the Prosecution has proved beyond reasonable doubt that an unknown number of children under the age of 15 years, were used to participate actively in hostilities at Teko Barracks in February 1998. The Trial Chamber is therefore satisfied that the elements of the crime of using children to participate actively in hostilities have been proved beyond reasonable doubt in relation to this evidence.

iii. Children committing crimes after ECOMOG Intervention 1998 / Children participating in burnings and amputations in Rosos between July and October 1998 - Bombali District - Using Children to Actively Participate in Hostilities – Child soldiers

4830. para. 1528: The Trial Chamber has found that in the context of the conflict in Sierra Leone, that the use of children to commit crimes against civilians constitutes active participation in hostilities.[3545] The Trial Chamber is therefore satisfied that those children from Camp Rosos who participated in burnings and amputations were used by the AFRC/RUF to actively participate in hostilities. The Trial Chamber has already found that it has been proved beyond reasonable doubt that children who were trained at Camp Rosos were under the age of 15 years, and that AFRC/RUF members who used them to participate in food-finding missions, and to commit crimes against civilians knew or should have known that these children were under the age of 15 years. The Trial Chamber is accordingly satisfied that the Prosecution has proved beyond reasonable doubt that an unknown number of children under the age of 15 years, were used to participate actively in hostilities at Rosos between July and October 1998.

4831. para. 1529: The Trial Chamber is accordingly satisfied that the elements of the crime of the use of children under the age of 15 years to participate actively in hostilities have been proved beyond a reasonable doubt at Camp Rosos in July-October 1998.

iv. Findings on victim witness in Bombali District / Use of Komba Sumana to participate actively in hostilities from approximately August to December 1998 - Using Children to Actively Participate in Hostilities – Child soldiers

4832. para. 1540: Although Sumana did not testify to the exact nature of his participation in the hostilities described, the Trial Chamber is satisfied on the basis of his testimony that he was an

"SBU", that he carried a gun, that he marched together with the troops from Kailahun to Kono District; that he was present and fought during attacks carried out by RUF/AFRC rebels under the command of Superman against enemy forces at Mongo Bendugu; Kabala in Koinadugu District and at Binkolo and Makeni in Bombali District during the period of approximately August through December 1998, and that he acted as a bodyguard to a rebel named "Blood" that Sumana was used to participate actively in hostilities.

4833. para. 1541: The Trial Chamber has previously found that it was satisfied that Sumana's date of birth was 10 August 1984. It is therefore satisfied that during the period from August to December 1998, the witness was 14 years old and thus under the age of 15 years. Based on the prevalence of the use of children under the age of 15 for active participation in hostilities by the RUF/AFRC,[3567] the Trial Chamber is satisfied that the members of the RUF/AFRC knew or should have known that Sumana was under the age of 15 years. The Trial Chamber is accordingly satisfied that the elements of the crime of the use of a child under the age of 15 years to participate actively in hostilities have been proved beyond a reasonable doubt.

v. Findings on victim witness in Bombali District / Training and Use of TF1-158 to participate actively in hostilities from approximately in 1998 - Using Children to Actively Participate in Hostilities – Child soldiers

4834. para. 1546: The Trial Chamber considers that the removal and carrying away of looted goods is a foreseeable and integral part of the appropriation of the private property of a civilian. The taking and resultant carrying away of the property has a direct nexus with the conflict and the use of children to carry loads constitutes active participation in hostilities, as these activities were related to the hostilities. The Trial Chamber has found that in the context of food-finding missions in which children carried arms constitutes active participation in hostilities.[3578] The Trial Chamber therefore finds that the use of the witness to go on an armed food-finding mission to loot food from civilians, in Rosos after September 1998 constituted active participation in hostilities. Based on the prevalence of children being conscripted and used by the RUF/AFRC the Trial Chamber further finds that the members of the AFRC/RUF who used the witness knew or should have known that these children were under the age of 15 years.

4835. para. 1547: The Trial Chamber therefore finds that the elements of the crime of the use of TF1-158, a child under the age of 15 years, to participate actively in hostilities have been proved beyond reasonable doubt.

vi. Findings on victim witness in Bombali District / Use TF1-158 to participate actively in hostilities in approximately July 1999 - Findings on victim witness in Bombali District - Using Children to Actively Participate in Hostilities – Child soldiers

4836. para. 1553: The Trial Chamber accepts TF1-158's evidence that he went with a group to attack Kabala while he was carrying a gun; that hostilities erupted between the two sides; that he was in the line of fire and therefore had to hide in a gutter and hide his gun. Accordingly the Trial Chamber finds that TF1-158 actively participated in hostilities and was used as a child soldier by members of the AFRC/RUF under the command of Issa Sesay and Denis Mingo in the Bombali District after 7 July 1999. On the basis of the witness's unchallenged testimony that he was 10 years old when he was captured in approximately September 1998, and during his training in July-August 1999, and based on his testimony that he was 11 years old when he disarmed in 1999 and was acknowledged as a "child combatant" on his surrender at Kabala, the Trial Chamber is satisfied that he was under the age of 15 years at the time of this attack. Based on the prevalence of children under the age of 15 used by the AFRC/RUF in hostilities,[3591] the Trial Chamber is satisfied that the members of the AFRC/RUF knew or should have known that TF1-158 was under the age of 15 years. The Trial Chamber is accordingly satisfied that the elements of the crime of the use of TF1-158 a child under the age of 15 years to participate actively in hostilities in Bombali District at an unknown date after 7 July 1999 have been proved beyond a reasonable doubt.

vii. Findings on victim witness in Bombali District / TF1-143 used to participate actively in hostilities from approximately September to December 1998 - Using Children to Actively Participate in Hostilities – Child soldiers

4837. para. 1564: The Trial Chamber notes that the witness omitted to mention both Kabila's heavy gun, and the Red Lion group in previous statements to the Prosecution. However, it notes that the witness was very young at the time that he gave his statements and had experienced traumatic events while given narcotics, and therefore finds that his explanation that he began to recollect more about the events that occurred as the interviews progressed to be convincing. The Trial Chamber has therefore accepted TF1-143's testimony.

4838. para. 1565: The Trial Chamber has found that in the context of the conflict in Sierra Leone, the use of children to commit crimes against civilians and carrying arms and ammunition constitutes active participation in hostilities, as this is related to the hostilities and directly supports the military operations of the armed group.[3620] The Trial Chamber finds TF1-143's

evidence that he killed four civilians at a village near Karina on Kabila's orders; that he partook in the capture of a girl who was then raped by Komba at a village near Colonel Eddie Town, that he set fire to a deserted house in a village near Colonel Eddie Town; and that he carried some of Kabila's ammunition and his gun during the journey from Koinadugu to Colonel Eddie Town to be credible. Based on the prevalence of children being conscripted and used by the RUF/AFRC the Trial Chamber further finds that the members of the AFRC/RUF knew or should have known that these children were under the age of 15 years. Accordingly, the Trial Chamber is satisfied that it has been proved beyond reasonable doubt that TF1-143, a child under the age of 15 years was used to participate actively in hostilities by members of the AFRC/RUF.

g. Freetown and the Western Area - Using Children to Actively Participate in Hostilities – Child soldiers

i. Children committing crimes in Freetown and the Western Area during and after January 1999 - Freetown and the Western Area - Using Children to Actively Participate in Hostilities – Child soldiers

4839. para. 1573: The Trial Chamber finds that the information contained in Exhibits P-077, P-335, P-310 and P-328 on the prevalence of children used by the rebels forces during the attack on Freetown, is based on hearsay and does not give sufficient information of the locations, times and perpetrators to return a finding in relation to the crime of the use of children under the age of 15 years to participate actively in hostilities. However, this evidence may corroborate other findings on specific incidents. Alimamy Bobson Sesay's evidence did not provide the age range of the children used to capture young girls but the Trial Chamber notes its findings above that Alimamy Bobson Sesay trained SBUs and that these units were made up of children aged 5-17. The Trial Chamber finds that TF1-174's account, which is based on hearsay and is uncorroborated, is insufficient to make findings on any specific incident of the use of child soldiers, particularly as TF1-174 provides no information about the ages of the children to whom he spoke.

4840. para. 1574: TF1-023 did not provide any evidence about the age of the "rebel boy" with the gun who captured her in Calaba on 22 January 1999. The Trial Chamber therefore finds that it has not been established that this boy was under the age of 15 years. While she indicates that the children who guarded her and the other captives in Allen Town were aged 13 to 15 years old, in cross-examination in the AFRC trial, TF1-023 was questioned about the ages of the small boys and testified, "I could not tell their actual age because I didn't ask them for their ages. So I

only guessed".[3632] The Trial Chamber therefore finds that it has not been proven beyond a reasonable doubt that these children were under the age of 15.

4841. para. 1575: The Trial Chamber notes that Mohamed Sesay's evidence was not challenged and that he testified that he is the father of four children.[3633] The Trial Chamber is therefore satisfied that the "boy" who assaulted Sesay was under the age of 15 years at the time of this attack and, based on the prevalence of children under the age of 15 used by the AFRC/RUF in hostilities,[3634] the Trial Chamber is satisfied that the members of the AFRC/RUF knew or should have known that the boy who assaulted Mohamed Sesay was under the age of 15 years. The Trial Chamber recalls that it has found that in the context of the conflict in Sierra Leone, the use of children to commit crimes against civilians constitutes active participation in hostilities.[3635] Accordingly the Trial Chamber is satisfied that it has been proved beyond reasonable doubt that a child under the age of 15 years was used to participate actively in hostilities by members of the AFRC/RUF by assaulting and amputating the hands of Mohamed Sesay in January 1999 in Freetown.

ii. Children used by the AFRC and RUF after 6 January 1999 - Freetown and the Western Area - Using Children to Actively Participate in Hostilities –Child soldiers

4842. para. 1581: The Trial Chamber finds that the information contained in Exhibits P-310 and P-077 is based on hearsay and is inconclusive whether the missing children were abducted by any of the warring factions. Bobson Sesay and Conteh's accounts corroborate each other that, in the period after the Freetown attack children were present at Benguema, carried guns, and accompanied commanders. As Conteh testifies that these children were wearing military uniforms, and were sent to flog civilians, and as Bobson Sesay testifies that they were sent on patrol, the Trial Chamber is satisfied that these children were used to actively participate in hostilities. Conteh testified that the children were between 10 and 14, and Bobson Sesay testified that they were between 8 and 12, placing them in approximately the same age range. Accordingly, the Trial Chamber is satisfied that some of the children who were trained at Benguema and who accompanied commanders during this time were under the age of 15 years. On the basis of the prevalence of the military training of children under the age of 15 by the AFRC and RUF,[3644] the Trial Chamber is satisfied that the members of the AFRC and RUF knew or should have known that these children were under the age of 15 years. Further, based on Bobson Sesay's evidence that these children were trained militarily by their commanders, the Trial Chamber is satisfied that these children were conscripted into an armed group, the AFRC/RUF.

4843. para. 1582: The Trial Chamber is therefore satisfied that an unknown number of children were used to participate actively in hostilities by the RUF/AFRC forces in Benguema from the end of January until March 1999. The Trial Chamber is accordingly satisfied that the elements of the crime of conscripting of children under the age of 15 years into armed forces and of the crime of the use of children under the age of 15 years to participate actively in hostilities have been proved beyond reasonable doubt.

h. Findings on victim witness in Freetown and the Western Area / TF1-143 used to actively participate in hostilities in January 1999 - Findings on victim witness in Freetown and the Western Area - Using Children to Actively Participate in Hostilities – Child soldiers

4844. para. 1591: The Trial Chamber notes that the witness gave prior statements to the Prosecution which are inconsistent on the material issue of whether he had met Adama Cut Hand in Koinadugu, or whether he had met her for the first time in Freetown in 1999. The witness was very young at the time that he gave his statements, and had endured traumatic events. Moreover, the Trial Chamber notes that the witness corrected the record of when he first met Adama Cut Hand in a subsequent interview to the Prosecution, stating that he had first met her in Freetown. The Trial Chamber is therefore satisfied, that despite these inconsistencies, the witness is credible, and that his detailed account of his participation in atrocities during the Freetown attack in January 1999 can be relied upon. Accordingly the Trial Chamber finds that TF1-143, a child under the age of 15 years, carried looted ammunition, looted a store, held a gun to facilitate Adama Cut Hand amputating the arms of two civilian men, with another child amputated the arms of two civilian men and looted their store.

4845. para. 1592: The Trial Chamber recalls that it has found that in the context of the conflict in Sierra Leone, the use of children to commit crimes against civilians, and to carry arms and ammunition constitutes active participation in hostilities.[3665] Given that the Trial Chambers has found that TF1-143 has committed crimes and carried ammunition the Trial Chamber finds that it has been proved beyond reasonable doubt that TF1-143 was used to participate actively in hostilities in Freetown in January 1999.

4846. para. 1593: The Trial Chamber has previously found that it has been proved beyond reasonable doubt that TF1-143 was under the age of 15 at the time at which these events occurred, and that the perpetrators knew or should have known that he was under the age of 15 years.

4847. para. 1594: The Trial Chamber therefore finds that the elements of the crime of the use of a child under the age of 15 years to participate actively in hostilities has been proved beyond reasonable doubt in relation to this evidence.

i. Findings in Relation to Other Districts in Sierre Leone - Using Children to Actively Participate in Hostilities – Legal Conclusions

4848. See above: Chapter 9 – Taylor – Trial Judgement – Factual Findings - Using Children to Actively Participate in Hostilities - Findings in Relation to Other Districts in Sierre Leone - paras. 1595 [4745].

j. Summary of Legal Findings - Using Children to Actively Participate in Hostilities – Legal Conclusions

4849. para. 1596: Based on the foregoing, the Trial Chamber finds that the requirements of Count 9 have been established with respect to the following:

i. An unknown number of children under the age of 15 years were conscripted into the RUF in Kangari Hills between 30 November 1996 and May 1997;

ii. Komba Sumana, a child under the age of 15 years, was conscripted into the RUF/AFRC under the command of Superman from April/May 1998 to 10 August 1999 when he was abducted in Koidu, Kono District and trained in Kailahun District;

iii. TF1-026, a child under the age of 15 years, was conscripted into the RUF/AFRC from February/March 1999 to November/December 1999 when she was abducted in Freetown and trained in Kailahun District;

iv. An unknown number of children under the age of 15 years were conscripted into the RUF/AFRC between February 1998 and December 1998 when they were abducted and trained at Bunumbu, Kailahun District;

v. An unknown number of children under the age of 15 years were conscripted into the RUF/AFRC from December 1998 onwards in Yengema, Kono District;

vi. An unknown number of children under the age of 15 years were conscripted into the RUF/AFRC in March 1998 and trained at Superman Ground, Kono District;

vii. An unknown number of children under the age of 15 years were conscripted into the RUF/AFRC in February 1998 in Koidu Town;

viii. An unknown number of children under the age of 15 years were conscripted into the AFRC/RUF after April 1998 between Woama and Baima, Kono District;

ix. An unknown number of children under the age of 15 years were conscripted into the AFRC/RUF from mid-March 1998 to April 1998 and trained at Masingbi Road, Kono District;

x. TF1-143, a child under the age of 15 years, was conscripted into the RUF/AFRC in approximately September 1998 in Koinadugu District;

xi. An unknown number of children under the age of 15 years were abducted at Karina and conscripted into the AFRC/RUF in July 1998 at Camp Rosos, Bombali District;

xii. Approximately 100 children were enlisted or conscripted into the RUF after being abducted from a care centre in Makeni, Bombali District in May 2000;

xiii. Approximately 45 children were enlisted or conscripted into the RUF after being abducted from a care centre in Makeni, Bombali District in May 2000;

xiv. TF1-158, a child under the age of 15 years, was conscripted into the AFRC/RUF from September to late 1998 in Bombali District;

xv. TF1-158, a child under the age of 15 years, was again conscripted into the RUF/AFRC in Bombali District from July to August 1999;

xvi. Akiatu Tholley, a child under the age of 15 years, was conscripted into the AFRC/RUF from January 1999 until April/May 1999 in Port Loko District;

xvii. An unknown number of children were used by the RUF/AFRC Junta to participate actively in hostilities from May 1997 until February 1998 by guarding mines in Tongo Fields, Kenema District;

xviii. An unknown number of children were used by Sam Bockarie to participate actively in hostilities from May 1997 until February 1998 by attacking civilians and by acting as bodyguards at Tongo Fields, Kenema District;

xix. An unknown number of children under the age of 15 years were used by the RUF/AFRC to participate actively in hostilities by their presence at the frontlines between February 1998 and December 1998 from Bunumbu, Kailahun District;

xx. An unknown number of children under the age of 15 years were used by the RUF/AFRC to participate actively in hostilities by participating in armed food-finding missions between February 1998 and December 1998 from Bunumbu, Kailahun District;

xxi. An unknown number of children were used by the RUF and RUF/AFRC to participate actively in hostilities by their armed presence with commanders between 1996 and 2000 in Kailahun District;

xxii. An unknown number of children under the age of 15 years were used by the AFRC/RUF to actively participate in hostilities by committing crimes against civilians from mid-March 1998 to April 1998 at Masingbi Road, Kono District;

xxiii. A child was used by fighters to participate actively in hostilities at sometime after February 1998 in Sawoa, Kono District by committing an amputation;

xxiv. An unknown number of children were used by the RUF/AFRC to participate actively in hostilities in December 1999 by guarding mines in Tombodu, Kono District;

xxv. An unknown number of children were used by the RUF/AFRC to actively participate in hostilities between March and June 1998 in Yomandu and Tombodu, Kono District by committing crimes;

xxvi. An unknown number of children were used by the RUF/AFRC to participate actively in hostilities in March/April 1998 in Igbaleh and Wondedu, Kono District by committing crimes;

xxvii. A child under the age of 15 years was used by the RUF/AFRC to participate actively in hostilities in mid-April 1998 in Tongbodu, Kono District;

xxviii. An unknown number of children under the age of 15 years were used by RUF/AFRC members to participate actively in hostilities on April 12, 1998 in Bombafoidu, Kono District;

xxix. Akiatu Tholley, a child under the age of 15 years, was used by the AFRC/RUF to participate actively in hostilities in approximately April or May 1999 in Port Loko District;

xxx. Akiatu Tholley, a child under the age of 15 years, was used by the AFRC/RUF to participate actively in hostilities in Koinadugu District in late 1999;

xxxi. An unknown number of children under the age of 15 years were used by the AFRC/RUF to participate actively in hostilities in Kondembaia, Koinadugu District in February to mid-March 1998;

xxxii. An unknown number of children under the age of 15 years were used by the RUF to participate actively in hostilities in Kondembaia, Koinadugu District in February to mid-March 1998 by committing crimes;

xxxiii. An unknown number of children were used by the RUF/AFRC to participate actively in hostilities by carrying arms and ammunition in approximately September to October 1998 in Koinadugu District;

xxxiv. An unknown number of children under the age of 15 years were used by the AFRC/RUF to participate actively in hostilities in July to August 1998 in Camp Rosos, Bombali District;

xxxv. An unknown number of children under the age of 15 years were used to participate actively in hostilities by looting and acting as bodyguards to commanders in Makeni, Bombali District in February 1998;

xxxvi. Komba Sumana, a child under the age of 15 years, was used by the RUF/AFRC under the command of Superman to participate actively in hostilities from August to December 1998 in Koinadugu and Bombali Districts;

xxxvii. TF1-158, a child under the age of 15 years, was used by the AFRC/RUF to participate actively in hostilities by carrying looted items and participating in food-finding missions from September to November 1998 in Bombali District;

xxxviii. TF1-158, a child under the age of 15 years, was used by the RUF/AFRC to participate actively in hostilities when he took part in an attack on Kabala, Bombali District, at an unknown date after 7 July 1999;

xxxix. TF1-143, a child under the age of 15 years, was used by the RUF/AFRC to participate actively in hostilities from September to December 1998 in Bombali District;

xl. TF1-143, a child under the age of 15 years, was used by the RUF/AFRC to participate actively in hostilities in September 1998 near Konkoba Village, Koinadugu District;

xli. An unknown number of children were conscripted into the RUF/AFRC in Benguema, Western Area, from January to March 1999;

xlii. An unknown number of children were used by the RUF/AFRC to participate actively in hostilities in Benguema, Western Area, from January to March 1999.

xliii. A child under the age of 15 years, was used by the AFRC/RUF to actively participate in hostilities in approximately the third week of January in Freetown, Western Area, by attempting to amputate a civilian's hands;

xliv. TF1-143, a child under the age of 15 years, was used by the RUF/AFRC to actively participate in hostilities during the Freetown attack in January 1999.

4850. para. 1597: Based on the foregoing substantial evidence relating to the prevalence of children associated with armed groups fighting in Sierra Leone.[3666] The Trial Chamber finds that there was a consistent pattern of conduct among these armed groups, including the RUF and the AFRC, of abducting children and forcing them into Small Boys Units (SBU) and Small Girls

Units (SGU).[3667] These units were made of up children generally in the range of 5 to 17 years.[3668]

4851. para. 1598: Throughout the armed conflict in Sierra Leone the RUF and AFRC forcibly abducted children of various ages from their homes or forced traditional rulers to provide recruits.[3669] Following their abduction, many children were forced to undergo military training[3670] in order for them to fight with the armed groups,[3671] or defend themselves in case of an attack.[3672]

4852. para. 1599: The training was generally comprised of instructions on the use of weaponry,[3673] at times practiced with live ammunition;[3674] how to attack a town, fight and kill,[3675] how to guard,[3676] how to set an ambush,[3677] and how to burn houses.[3678] Children sometimes died during the course of military training.[3679]

4853. para. 1600: The Trial Chamber also notes the RUF and AFRC's practice of giving children narcotics. Cocaine was sometimes administered by opening a cut on a children's body, putting cocaine on it and then covering it up with a plaster.[3680] The Trial Chamber finds that this practice exemplifies a method of coercion used to make the children fearless and carry out orders without hesitation,[3681] and shows that children would likely commit violent acts while under the influence of such substances.

4854. para. 1601: The use of narcotics caused some children to develop drug addictions.[3682]

4855. para. 1602: The foregoing evidence shows that children were of importance to the AFRC and the RUF as they carried out orders "quickly" and "they followed their bosses' way".[3683]

4856. para. 1603: The Trial Chamber finds that the existence of specific combat units, namely the SBU and SGU, designated for children, demonstrates the institutionalized nature of conscription and use of children by the AFRC and the RUF. Based on evidence that the leadership of the forces was engaged in the abduction,[3684] military training,[3685] and use of children,[3686] and that they acknowledged[3687] or must have observed that such persons were children the Trial Chamber finds that the perpetrators knew or should have known that children under the age of 15 were conscripted or used by the armed forces.

4857. para. 1604: 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. The Trial Chamber finds that the acts of children who participated in such acts of violence were directly linked to hostilities. Further, such crimes typically occurred while the children were

armed and in the company of adult fighters and commanders. In these circumstances, and given the prevailing context of guerrilla warfare, these children would constitute legitimate military targets as they would be perceived as actively participating in hostilities.[3688] Moreover, the purpose of these crimes was ultimately to damage or harm the adversary by eradicating support for opposing forces, or destroying territory.3689 The Trial Chamber therefore finds that in the context of the conflict in Sierra Leone, the use of children to commit crimes against civilians constitutes active participation in hostilities.[3690]

4858. para. 1605: In conclusion, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that between 30 November 1996 and until 2000, in Tonkolili, Kailahun, Kono, Bombali and Port Loko Districts, as well as in Freetown and the Western Area, members of the RUF/AFRC, an armed force or group, conscripted, enlisted and/or used for active participation in hostilities an unknown number of persons under the age of 15 and that the perpetrators knew or should have known that such persons were under the age of 15, as charged in the Indictment,[3691] and as shown in the evidence above.

4859. para. 1607: Accordingly, the Trial Chamber finds that the elements of the crimes of conscription, enlistment and use of children to actively participate in armed conflict pursuant to Count 9 of the Indictment have been proved beyond reasonable doubt in the instances listed above.

4860. Regarding Taylor's individual criminal responsibility (Aiding and Abetting), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Aiding and Abetting - paras. 6904-6906 [6351], 6910-6915 [6354], 6918-6924 [6360], 6927-6937 [6367], 6940-6946 [6378], 6947-6952 [6385], 6953 [6391].

4861. Regarding Taylor's individual criminal responsibility (Planning), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Planning - paras. 6957 [6392], 6958-6968 [6393], 6969-6970 [6404], 6971 [6406].

4862. Regarding Taylor's individual criminal responsibility (Instigating), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Instigating - para. 6972 [6407].

4863. Regarding Taylor's individual criminal responsibility (Ordering), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Ordering - para. 6973 [6408].

4864. Regarding Taylor's superior responsibility, see below: Chapter 13 (Article 6.3 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.3 of the Statute - Superior Responsibility - paras. 6977 - 6986 [8613].

3. Appeallate Judgment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-A, Judgment, 26 September 2013

(a) Factual Findings

4865. para. 253: The Trial Chamber found that the RUF/AFRC's operational strategy was characterised by a campaign of crimes against the Sierra Leonean population, including the crimes charged in all 11 Counts of the Indictment,[578] which were inextricably linked to the strategy of the military operations themselves. This strategy entailed a campaign of terror against civilians as a primary modus operandi, to achieve military gains at any civilian cost and political gains in order to attract the attention of the international community and improve the RUF/AFRC's negotiating stance with the Sierra Leonean government (the "Operational Strategy").[579]

4866. para. 254: In assessing Taylor's alleged criminal liability, the Trial Chamber found that Taylor, by his acts and conduct, was "critical in enabling" the RUF/AFRC's Operational Strategy, "supported, sustained and enhanced" the functioning of the RUF/AFRC and its capacity to implement its Operational Strategy, planned an attack of terror as the modus operandi of the attack on Freetown and had a substantial effect on the crimes committed by the RUF/AFRC.[580] It further found that Taylor knew of the RUF/AFRC's Operational Strategy, knew that his acts and conduct assisted the commission of crimes in the implementation of that Operational Strategy and knew the essential elements of the crimes in which he was participating.[581]

4867. Regarding the RUF/AFRC's Operational Strategy, see below: Chapter 12 (Article 6.1. Liability) -Taylor - Appellate Judgment - Findings and Conclusions - The RUF/AFRC's Operational Strategy - paras. 257-302 [6411].

4868. para. 303: The Appeals Chamber has reviewed the Trial Chamber's assessment of the evidence and affirmed the findings in the Judgment.[821] It has further affirmed the Trial Chamber's finding that the RUF/AFRC leadership pursued an Operational Strategy to commit the crimes charged in Counts 1-11 of the Indictment.[822]

4869. Regarding Taylor's Acts, Conduct and Mental State, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Acts, Conduct and Mental State - paras. 303 - 343 [6457].

(b) Legal Conclusions

4870. See below: Annex B encompasses the discussion of the evaluation of evidence relating to all the crimes [Annex B].

4871. Regarding Taylor's Criminal Liability, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Criminal Liability - paras. 497-595 [6630].

B. RUF

1. Indictment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-2004-15-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

4872. Paragraphs 19 through 39 are incorporated by reference.[272]

4873. These attacks [para.41: 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] were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property.[273]

[272] RUF Indictment, para. 40.
[273] RUF Indictment, para. 42.

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

4874. Members of the AFRC/RUF subordinate to and/or acting in concert with Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, committed crimes set forth below in paragraphs 45 through 82, and charged in counts 3 through 14, as part of a campaign to terrorize the civilian population. The AFRC/RUF also committed the crimes to punish the civilian population or 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.[274]

(iii) Count 12: Use of child soldiers

4875. At all times relevant to this Indictment, throughout the Republic of Sierra Leone, AFRC/RUF routinely conscripted, enlisted, and/or used boys and girls under the age of 15 to participate in hostile activities. Many of these children were first abducted, then trained in AFRC/RUF camps in various locations throughout the country, and thereafter used as fighters.[275]

4876. 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.[276]

2. Trial Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-T, Judgement, 2 March 2009

(a) Factual Findings

(i) Overview on children within the RUF and AFRC forces – Child soldiers

4877. para. 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.

[274] RUF Indictment, para. 44.
[275] RUF Indictment, para. 68.
[276] RUF Indictment, para. 68.

We 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.

a. Importance of child fighters within the RUF - Overview on children within the RUF and AFRC forces – Child soldiers

4878. para. 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.

4879. para. 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]

b. Pattern of Abductions, Training and Use - Overview on children within the RUF and AFRC forces – Child soldiers

4880. para. 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 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]

4881. para. 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]

4882. para. 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]

4883. para. 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 cook, undertake laundry duties, fetch water and carry goods including looted property and food for the forces.[3101]

4884. para. 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.

4885. para. 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]

4886. para. 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 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]

4887. para. 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]

c. Typical ages of child fighters - Overview on children within the RUF and AFRC forces – Child soldiers

4888. para. 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 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]

4889. para. 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]

4890. para. 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.

4891. para. 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]

(ii) Abductions of Children by the AFRC/RUF forces – Child soldiers

4892. para. 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 the time of the abduction Wallace was subordinate to Superman. Subsequently, Wallace became the bodyguard to the STF Commander General Bropleh.[3130]

4893. para. 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]

4894. para. 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]

4895. para. 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 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]

(iii) Military Training of Children by the RUF – Child soldiers

a. Bayama Training Base - Military Training of Children by the RUF – Child soldiers

4896. para. 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]

b. Bunumbu Training Base ("Camp Lion") - Military Training of Children by the RUF – Child soldiers

4897. para. 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]

4898. para. 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]

4899. para. 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]

4900. para. 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]

4901. para. 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]

4902. para. 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 was either hand-delivered or communicated via radio to Sesay, and delivery confirmations were communicated back to the base.[3162]

4903. para. 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]

4904. para. 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]

4905. para. 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]

4906. para. 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 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]

4907. para. 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]

4908. para. 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]

c. Yengema Training Base - Military Training of Children by the RUF – Child soldiers

4909. para. 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 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]

4910. para. 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]

4911. para. 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]

(iv) Use of children by the RUF and AFRC forces – Child soldiers

a. The RUF in Kailahun District (November 1996 to 1998) - Use of children by the RUF and AFRC forces – Child soldiers

i. Children in combat - The RUF in Kailahun District (November 1996 to 1998) - Use of children by the RUF and AFRC forces – Child soldiers

4912. para. 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 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]

4913. para. 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]

4914. para. 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]

4915. para. 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 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]

4916. para.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]

ii. Children as bodyguards for Commanders - The RUF in Kailahun District (November 1996 to 1998) - Use of children by the RUF and AFRC forces – Child soldiers

4917. para. 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]

4918. para. 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 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]

4919. para. 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]

4920. para. 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]

4921. para. 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]

4922. para. 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]

iii. Children sent on food-finding missions - The RUF in Kailahun District (November 1996 to 1998) - Use of children by the RUF and AFRC forces – Child soldiers

4923. para. 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]

b. The AFRC/RUF forces in Kenema and Kono Districts - Use of children by the RUF and AFRC forces – Child soldiers

4924. para. 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]

4925. para. 1662: Kallon was seen with SBUs between the ages of 13 and 17 in Freetown in 1997.[3228]

i. Kenema District (May 1997 to February 1998) - The AFRC/RUF forces in Kenema and Kono Districts - Use of children by the RUF and AFRC forces – Child soldiers

4926. para.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]

ii. Children guarding mines in Tongo Fields - Kenema District (May 1997 to February 1998) - The AFRC/RUF forces in Kenema and Kono Districts - Use of children by the RUF and AFRC forces – Child soldiers

4927. para. 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 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]

4928. para. 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]

4929. para. 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]

iii. Children engaged in domestic chores in Tongo Field - Kenema District (May 1997 to February 1998) - The AFRC/RUF forces in Kenema and Kono Districts - Use of children by the RUF and AFRC forces – Child soldiers

4930. para. 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 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]

iv. Kono District (February to April 1998) - The AFRC/RUF forces in Kenema and Kono Districts - Use of children by the RUF and AFRC forces – Child soldiers

4931. para. 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]

v. Children as bodyguards - Kono District (February to April 1998) - The AFRC/RUF forces in Kenema and Kono Districts - Use of children by the RUF and AFRC forces – Child soldiers

4932. para. 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]

4933. para. 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]

4934. para. 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]

vi. Crimes committed by children - Kono District (February to April 1998) - The AFRC/RUF forces in Kenema and Kono Districts - Use of children by the RUF and AFRC forces – Child soldiers

4935. para. 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]

4936. para. 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]

4937. para. 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* 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]

vii. Children sent on food-finding missions - Kono District (February to April 1998) - The AFRC/RUF forces in Kenema and Kono Districts - Use of children by the RUF and AFRC forces – Child soldiers

4938. para. 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]

c. The AFRC Attack on Freetown (January 1999) - Use of children by the RUF and AFRC forces – Child soldiers

4939. para. 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]

4940. para. 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]

4941. para. 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]

4942. para. 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 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]

4943. para. 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]

4944. para. 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]

4945. para. 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]

4946. para. 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]

d. The RUF in Makeni and Magburaka (1999 to 2000) - Use of children by the RUF and AFRC forces – Child soldiers

4947. para. 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]

4948. para. 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]

4949. para. 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.

4950. para. 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]

4951. para. 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 Sefadu in Kono District. Some of these children visited Mendy each morning and informed him that they were "going to the mining area."[3298]

4952. para. 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]

4953. para. 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]

(v) Koinadugu District – Crimes

4954. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 – 1505 [533].

(vi) Bombali District – Crimes

4955. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 – 1509 [543].

(vii) Port Loko District – Crimes

4956. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras. 1609 – 1613 [547].

(b) Legal Conclusions

(i) Applicable law - Other serious violations of IHL

4957. para. 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.

4958. para. 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]

4959. para. 108: These two elements have already been discussed in detail above in relation to the general requirements under Article 3 of the Statute.

4960. para. 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.

(ii) Other serious violations of IHL – Findings on general requirements

4961. para. 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.

4962. para. 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.

(iii) Applicable law - Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities

4963. para. 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]

4964. para. 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]

4965. para. 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 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]

4966. para. 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]

4967. para. 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]

4968. para. 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 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]

4969. para. 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]

4970. para. 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.

4971. para. 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]

4972. para. 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]

4973. para. 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]

4974. para. 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.

(iv) Pleading

a. Criminal acts and events - Pleading

4975. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Criminal acts and events – paras.412 [605], 418 - 419 [611].

b. Locations – Pleading

4976. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Locations – paras.420 – 422 [613].

c. Timeframes – Pleading

4977. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Timeframes – paras. 423 – 432 [616].

d. Issue of duplicity – Pleading

4978. Separate Concurring Opinion – Justice B.Thompson – para. 29 (p.705): 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.

4979. Separate Concurring Opinion – Justice B.Thompson – para. 30 (p.705): 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.

4980. Separate Concurring Opinion – Justice B.Thompson – para. 31 (p.705-706): 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:

> 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]

4981. Separate Concurring Opinion – Justice B.Thompson – para. 32 (p.706): 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. (Note: fn9 = 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.)

(v) Child soldiers – Legal findings

4982. para. 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]

4983. para. 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]

4984. para. 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.

a. Conscription of Child soldiers – Child soldiers – Legal findings

4985. para. 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.

i. Conscription into an Armed Group - Conscription of Child soldiers – Child soldiers – Legal findings

4986. para. 1695: We observe that either the abduction of persons for specific use within an organization 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.

4987. para. 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 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.

4988. para. 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.

4989. para. 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.

4990. para. 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.

4991. para.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.

4992. para.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.

ii. Actual or Imputed Knowledge - Conscription of Child soldiers – Child soldiers – Legal findings

iii. Knowledge that the children were under the age of 15 - Actual or Imputed Knowledge - Conscription of Child soldiers – Child soldiers – Legal findings

4993. para. 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.

4994. para. 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 spared so that they could be utilised by the fighting forces.[3314] We conclude that RUF and AFRC fighters knew of this practice.

4995. para. 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.

4996. para. 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.

iv. Knowledge that the children may be trained in combat - Actual or Imputed Knowledge - Conscription of Child soldiers – Child soldiers – Legal findings

4997. para. 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.

4998. para. 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.

v. Findings on the Conscription of Child Soldiers - Conscription of Child soldiers – Child soldiers – Legal findings

4999. para. 1708: On the basis of the foregoing, the Chamber finds that it is established beyond reasonable doubt that:

(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.

5000. para. 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.

b. Use of Child Soldiers in Hostilities - Child soldiers – Legal findings

i. Active Participation in Hostilities - Use of Child Soldiers in Hostilities - Child soldiers – Legal findings

ii. Children in combat operations - Active Participation in Hostilities - Use of Child Soldiers in Hostilities - Child soldiers – Legal findings

5001. para. 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]

5002. para. 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.

5003. para. 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.

5004. para. 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.

5005. para. 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.

5006. para. 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.

5007. para. 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.

iii. Children on armed patrols - Active Participation in Hostilities - Use of Child Soldiers in Hostilities - Child soldiers – Legal findings

5008. para. 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 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.

5009. para. 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.

iv. Children perpetrating crimes against civilians - Active Participation in Hostilities - Use of Child Soldiers in Hostilities - Child soldiers – Legal findings

5010. para. 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.

5011. para. 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.

5012. para. 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.

5013. para. 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.

5014. para. 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 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.

5015. para. 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.

v. Children guarding military objectives - Active Participation in Hostilities - Use of Child Soldiers in Hostilities - Child soldiers – Legal findings

5016. para. 1725: The Chamber finds that the guarding of military objectives amounts to active participation in hostilities.[3324]

5017. para. 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.

5018. para. 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 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]

5019. para. 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.

vi. Children as spies - Active Participation in Hostilities - Use of Child Soldiers in Hostilities - Child soldiers – Legal findings

5020. para. 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.

vii. Children as domestic labour - Active Participation in Hostilities - Use of Child Soldiers in Hostilities - Child soldiers – Legal findings

5021. para.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.

viii. Children as bodyguards to Commanders - Active Participation in Hostilities - Use of Child Soldiers in Hostilities - Child soldiers – Legal findings

5022. para. 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

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.

5023. para. 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 particularized 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.

5024. para. 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]

5025. para. 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.

5026. para.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.

5027. para.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.

5028. para.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.

5029. para. 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.

5030. para. 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.

5031. para. 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 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.

5032. para. 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.

5033. para. 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.

ix. Children used for food finding missions - Active Participation in Hostilities - Use of Child Soldiers in Hostilities - Child soldiers – Legal findings

5034. para. 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 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.

x. Actual or Imputed Knowledge that the children were under the age of 15 - Use of Child Soldiers in Hostilities - Child soldiers – Legal findings

5035. para. 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.

5036. para. 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.

5037. para. 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.

xi. Findings on the Use of Child Soldiers - Use of Child Soldiers in Hostilities - Child soldiers – Legal findings

5038. para. 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.

5039. para. 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.

(vi) Koindugu District – Child soldiers

5040. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras.1496 – 1505 [533].

(vii) Bombali District – Child soldiers

5041. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras.1506 – 1509 [543].

(viii) Port Loko District – Child soldiers

5042. See above: Chapter 1– RUF – Trial Judgment – Factual findings – Port Loko District - paras.1609 – 1613 [547].

3. Appellate Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-A, Judgment, 26 October 2009

(a) Factual Findings

5043. Not applicable.

(b) Legal Conclusions

(i) Pleading

5044. para. 136: Kallon argues that in light of the conduct for which he was convicted for planning the conscription and use of child soldiers within the RUF, the pleading requirements should have been consistent with those required for allegations of personal commission.[267] He argues that the Trial Chamber held that the pleading of personal commission of Count 12 was defective, but that it nonetheless erroneously found him guilty under Count 12 for planning crimes that "he [was] alleged to have personally committed."[268] Kallon submits that "[t]he Indictment provides no specific details regarding [his] role," and that this ambiguity is compounded by the expansive timeframe for the crime.[269] According to Kallon, this defect prejudiced his defence against charges under Count 12. Kallon contrasts the approach of the Trial Chamber with the ICTR Appeals Chamber's approach in *Prosecutor v. Niyitegeka* where it held that an indictment "must delve into particulars where possible" and required greater specificity about the time and place of alleged attacks in which the accused in that case personally participated.[270]

5045. para. 137: Kallon further argues that the defects in the Indictment in relation to Count 12 could not have been cured through the "mere service of witness statements."[271] Kallon submits that the Trial Chamber erroneously relied on the testimony of Prosecution Witnesses TF1-263, TF1-141, Dennis Koker, TF1-366, TF1-371, TF1-045, TF1-060 and Edwin Kasoma, who adduced evidence regarding incidents not pleaded in the Indictment.[272]

5046. para. 139: When alleging forms of liability pursuant to Article 6(1) other than personal commission, international criminal tribunals have required the Prosecution "to identify the 'particular acts' or 'the particular course of conduct' on the part of the accused which forms the basis for the charges in question."[274] Where possible, the Prosecution should specify "the *form* of participation, such as 'planning' *or* 'instigating' *or* 'ordering' etc."[275] Thus, it is required that the Indictment expressly alleges that Kallon incur liability for "planning" the crime under Count 12, and that the Indictment specify the material facts of his conduct relied upon to establish that liability.

5047. para. 140: Paragraph 38 of the Indictment states that "Morris Kallon ..., by [his] acts or omissions, [is] 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 [he] *planned*." By operation of paragraph 40 of the Indictment, this allegation is incorporated into each of the Counts, including Count 12. The Indictment, therefore, expressly alleges that Kallon planned the crime under Count 12.

5048. para. 141: Kallon objects that the Indictment nonetheless provides no specific details regarding his role.[276] The Trial Chamber relied upon the following particular acts to find that Kallon planned the offence under Count 12:

(i) 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;

(ii) he was the senior RUF Commander on 3 May 2000 at Moria near Makeni where child soldiers were used in the ambush of UNAMSIL forces;

(iii) he brought a group of children to Bunumbu for training in 1998; and[277]

(iv) he issued orders that "young boys" should be trained to become soldiers and handle weapons at Bunumbu on or about 9 June 1998.[278]

5049. para. 142: The Appeals Chamber must determine whether the Prosecution provided adequate notice of the "particular acts" or "the particular course of conduct" which formed the basis for Kallon's liability for planning the offence under Count 12 in relation to events in Kenema, Kailahun, Kono and Bombali Districts. The Indictment provides notice that Kallon incurred liability pursuant to each mode of liability, in part, as a result of his acts as a "senior officer and commander in the RUF, Junta and AFRC/RUF forces,"[279] his role "[b]etween about May 1996 and about April 1998, [as] a Deputy Area Commander,"[280] and that as a function of these positions "Kallon ... exercised authority, command and control over all subordinate members

of the RUF, Junta and AFRC/RUF forces."[281] Kallon's conduct in these positions entailed the acts described in (i) and (ii) above, and thus the Indictment provided sufficient notice in respect of those acts.

5050. para. 143: In respect of (iii) and (iv) above, the Appeals Chamber recalls that a distinction is drawn between the material facts upon which the Prosecution relies and the evidence by which those material facts will be proved. Only the former must be pleaded.[282] In this case, Kallon, while acting in his capacity as a commander personally brought children to a training camp, and issued orders that children should be trained as combatants. In the view of the Appeals Chamber, these two facts constituted evidence of Kallon's conduct as an RUF Commander and his involvement in the execution of the plan to recruit and use child soldiers. The Trial Chamber did not find that this conduct amounted to planning itself, but it inferred Kallon's role in planning from this evidence. As such, these facts were evidence of his role in planning and they need not have been pleaded in the Indictment.

5051. para. 144: Kallon's submission that the Trial Chamber found that the defective pleading of Count 12 was cured through the mere service of witness statements is misconceived. Kallon was convicted of planning the use of children under the age of 15 years to participate actively in hostilities. The Trial Chamber did not find that the pleading of planning liability was defective; it needed no cure.

5052. para. 492: The Appeals Chamber holds that so long as Gbao agreed to the Common Criminal Purpose and was, therefore, a member of the JCE as the Trial Chamber found,[1256] he is responsible for all crimes that he either intended, or were naturally foreseeable would be committed by members of the JCE or persons under their control. This is consistent with the pleading of the crimes in the Indictment (which must be read in its entirety) and which pleaded each of the crimes in Count 1 to 14 as either within the JCE or as a reasonably foreseeable consequence of the JCE.[1257]

(ii) Pleading – Dissents

a. Justice Fisher:

5053. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Pleading-Dissents – Justice Fisher – para.20 (p.517), para.22 (p.518), para.23 (p.518), para.24 (p.518-519) [1704].

(iii) Crimes charged as criminal means of furthering Common Criminal Purpose – Child soldiers

5054. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 333, 348 [751].

5055. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 377 - 378 [754].

(iv) Crimes charged and JCE *mens rea* (short review) – Child soldiers

5056. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged and JCE *mens rea* (short review) – paras.467 - 468, 482, 492 - 493 [756] and see, also, Justice Fisher's and Justice Winter's Dissenting Opinions in that regard.

(v) Kailahun District – Child soldiers

5057. See above: Chapter 5 – RUF – Appellate Judgment – Legal Conclusions – Kailahun District – paras. 386 – 391 [3315].

5058. Regarding Sesay's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Sesay – para. 635 [7694].

5059. para. 749: The Trial Chamber 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, Bombali and Kenema Districts.[1948] The Trial Chamber held 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.[1949]

5060. para. 750: The Trial Chamber also found that Sesay, as one of the most senior RUF Commanders, made a substantial contribution to the planning of this system of conscription.[1950] It, therefore, convicted him under Article 6(1) for planning the "use of persons under the age of 15 to participate actively in hostilities in Kailahun, Kenema, Kono and Bombali Districts between 1997 and September 2000, as charged in Count 12."[1951]

5061. para. 755: The Trial Chamber found that Sesay contributed to the planning of the offence under Count 12 by issuing orders that "young boys" should be trained at *Bunumbu*.[1971] Sesay

contends that the Trial Chamber found that these "young boys" were in fact 15 years of age and above.[1972] However, Sesay misinterprets the Trial Chamber's findings which referred to "young boys" to include persons of at least 15 years of age as well as SBUs comprising children as young as 9 to 11 years of age.[1973]

5062. para. 756: Sesay further submits that "in any event, the Trial Chamber cites only one piece of valid evidence for this finding: the evidence of Witness TF1-366," and that the testimonies of Witnesses TF1-199 and TF1-371, also cited by the Trial Chamber in further support, do not in fact support the finding.[1974] The Trial Chamber provided no citations for its finding that Sesay issued the orders in June 1998, however, it cited the testimony of TF1-366, TF1-199 and TF1-371 for its findings that SBUs were children tasked with carrying weapons for the RUF. Witness TF1-366's testimony most closely supports both findings of the Trial Chamber, including that Sesay issued orders. He testified directly that Kallon and Superman issued orders and Sesay "sent messages" that young boys should be brought to be trained at Bunumbu.[1975] He stated that some of the "young boys" were 15 years of age, but that many were SBUs comprising children ages 9 to 11 years and smaller boys.[1976] Witness TF1-199 testified that SBUs were "really small boys" and because he was a small boy of 12 years of age, he was called an SBU.[1977] However, he did not mention Sesay in his testimony or testify to anyone giving orders. Witness TF1-371 testified that children between the ages of 12 and 18 years were classified as SBUs, and that Sesay had SBUs, one of whom was around 15 years and the other around the age of 16.[1978] Importantly, of the testimony cited by the Trial Chamber, only TF1-366 supports the finding that Sesay issued orders for "young boys" to be trained at Bunumbu in June 1998.

5063. para. 757: This testimony is consistent with the testimony of TF1-362, relied on by the Trial Chamber to find that civilians captured on the highway to Freetown from 1997 onward, as well as people from Daru and the SLA, were brought to Bunumbu training base at the command of Issa Sesay.[1979] Importantly, although Sesay challenges the Trial Chamber's reliance on TF1-362 in other contexts, he does not impugn these findings.[1980]

5064. para. 758: Trial Chambers enjoy broad discretion in their assessment of evidence and determination of the weight to accord testimony. In general, a Trial Chamber may in the exercise of its discretion rely on a single witness for support of its factual findings. With respect to TF1-366, the Trial Chamber stated that it "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."[1981]

5065. para. 759: The Appeals Chamber considers that the testimony of TF1-366 was corroborated "in some material aspect" by the testimony of TF1-199 and TF1-362, whose evidence was found credible by the Trial Chamber.[1982] The Trial Chamber's failure to explicitly cite TF1-362's testimony for the impugned finding is unfortunate, but in the circumstances caused no error.

5066. para. 760: Sesay contends that the Trial Chamber erred in finding, on the basis of testimony of TF1-362, that he personally communicated reports to *Bunumbu* and ordered that the training camp be moved from Bunumbu to Yengema.[1983] Sesay, however, fails to demonstrate that the Trial Chamber could not reasonably rely on TF1-362 for these findings. As Sesay does not show an error in the Trial Chamber's exercise of its discretion to assess the witness's credibility or determine the weight it attached to his testimony, this part of Sesay's argument fails.

5067. para. 761: Sesay further submits that the Trial Chamber unreasonably relied upon Witnesses TF1-114 and TF1-108[1984] to support its finding that children were forcibly trained,[1985] but disregarded their testimony that, Sesay contends, "contradicted TF1-362's account of Sesay's involvement in the training base." However, Sesay fails to demonstrate how the testimony of TF1-114 and TF1-108 contradicts the testimony relied upon by the Trial Chamber, and the Appeals Chamber is unable to infer his argument. The Appeals Chamber recalls that "[w]hile 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."[1986] Sesay fails to show error in the Trial Chamber's finding.

5068. para. 762: The Trial Chamber found that Sesay, as one of the most senior RUF commanders, made a substantial contribution to the planning of the RUF system of child use by, *inter alia*, receiving reports on training at Bunumbu and subsequently at Yengema.[1987] Specifically, the Trial Chamber found that the adjutant at the base drew up a list of recruits including their names, ages and other personal data.[1988] Sesay submits that the Trial Chamber erred in finding that receipt of reports substantially contributed to the crime of child conscription or use.[1989] He posits that the alleged planning must be found to have actually led to the commission of specific crimes.[1990]

5069. para. 763: 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 the reports to an advisor.[1991] Next, the reports were either delivered by hand or communicated via radio to Sesay and finally to Bockarie;[1992] and Sesay would confirm delivery of the report back to the base.[1993] The Trial Chamber found that "[e]very such report was either hand-delivered or communicated

via radio to Sesay."[1994] The Trial Chamber also found that the training commander at Yengema reported directly through Sesay to Bockarie, until Bockarie left the RUF in December 1999, after which she reported to Sesay only.[1995] According to the Trial Chamber, records were kept of the ages of SBUs and SGUs trained at Bunumbu and Yengema, from which it could be inferred that the fighters who conducted the training knew or had reason to know that certain trainees were under the age of 15.[1996]

5070. para. 764: The Appeals Chamber considers that Sesay's receipt of reports is relevant circumstantial evidence supporting the findings that "the execution of this system of conscription [of child soldiers] required a substantial degree of planning"[1997] and that "this planning was conducted at the highest levels of the RUF organization,"[1998] including Sesay.[1999] That reports on the training of child soldiers were transmitted to RUF headquarters signifies that the conscription of child soldiers was highly organised, and that the RUF leadership was responsible for that organisation. Moreover, the creation and transmission of training reports represents a mechanism through which the RUF headquarters could monitor the implementation of the planned conscription of child soldiers. Sesay's receipt of such reports was indicative that he had participated in that planning process. Accordingly, contrary to Sesay's contention, the Trial Chamber did not consider that he substantially contributed to the planning by merely receiving reports, but that his receipt of such reports was part of the evidence taken into consideration in coming to the conclusion that he had participated in the planning at both the preparatory and execution phases.

5071. para. 765: Sesay contends that the Trial Chamber's reliance on TF1-141 to find that he participated in the training bases by giving speeches at Bunumbu training camp, passing and receiving messages and threatening to execute those child soldiers who attempted to leave[2000] is "wholly unreasonable given [the witness's] frailties" and the numerous and significant contradictions in the witness's testimony.[2001]

5072. para. 766: The Trial Chamber acknowledged the "concerns" raised by the Defence,[2002] and indicated that it was "uneasy with portions of TF1-141's testimony that appear[ed] to be fanciful and thus implausible."[2003] The Trial Chamber noted that the witness was captured by the RUF in 1998 and remained with the group until 2000, when he was demobilised.[2004] The Trial Chamber considered that although the witness was diagnosed with Post-Traumatic Stress Disorder as a result of his experience as a child soldier with the RUF, he was nonetheless able to give truthful testimony.[2005] The Trial Chamber concluded that, after seeing the witness in court, hearing his testimony and observing him under cross-examination, he "came across as a candid witness." The

Trial Chamber, therefore, "generally accepted his testimony, especially as it relates to his own experiences as a child combatant."[2006]

5073. para. 767: Sesay contends the witness was "constantly contradicting himself," and that the Trial Chamber disregarded a "significant contradiction" in the witness's testimony, but he only points to one purported contradiction, which, even if a contradiction, was not material to the findings Sesay contests here.[2007] Sesay further fails to show what portions of the witness's testimony contain discrepancies that made the Trial Chamber's assessment of the witness's credibility unreasonable. Seasy thus fails to establish that the Trial Chamber erred in accepting parts of the witness's evidence.

5074. para. 768: Taking into account the foregoing discussion, the Appeals Chamber will now consider Sesay's broader claim that the Trial Chamber erred in finding him liable for planning the use of child soldiers.

5075. Regarding Sesay's responsibility for planning the use of child soldiers, see below: Chapter 12 (Article 6.1 liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema Distrtict (also Kono / Kailahun / Bombali Districts) – paras.769 – 775 [7640].

5076. Regarding Kallon's responsibility for planning the use of child soldiers, see below: Chapter 12 (Article 6.1 liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema Distrtict (also Kono / Kailahun / Bombali Districts) – paras.909, 917 – 926 [7647].

(vi) Kenema District – Child soldiers

5077. See above: Chapter 9 – RUF – Appellate Judgment – Legal conclusions – Kailahun District – paras. 749[5059], 750[5060], 755-768[5061].

5078. Regarding Sesay's responsibility for planning the use of child soldiers, see below: Chapter 12 (Article 6.1 liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema Distrtict (also Kono / Kailahun / Bombali Districts) – paras. 769 - 775 [7640].

5079. Regarding Kallon's responsibility for planning the use of child soldiers, see below: Chapter 12 (Article 6.1 liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema Distrtict (also Kono / Kailahun / Bombali Districts) – paras. 909, 917 - 926 [7647].

(vii) Kono District – Child soldiers

5080. See above: Chapter 9 – RUF – Appellate Judgment – Legal conclusions – Kailahun District – paras.749[5059], 750[5060], 755-768 [5061].

5081. Regarding Sesay's responsibility for planning the use of child soldiers, see below: Chapter 12 (Article 6.1 liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema Distrtict (also Kono / Kailahun / Bombali Districts) – paras. 769 - 775 [7640].

5082. Regarding Kallon's responsibility for planning the use of child soldiers, see below: Chapter 12 (Article 6.1 liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema Distrtict (also Kono / Kailahun / Bombali Districts) – paras. 909, 917 – 926 [7647].

(viii) Bombali District – Child soldiers

5083. See above: Chapter 9 – RUF – Appellate Judgment – Legal conclusions – Kailahun District – paras. 749 - 750, 755 – 768 [5059].

5084. Regarding Sesay's responsibility for planning the use of child soldiers, see below: Chapter 12 (Article 6.1 liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema Distrtict (also Kono / Kailahun / Bombali Districts) – paras. 769 – 775 [7640].

5085. Regarding Kallon's responsibility for planning the use of child soldiers, see below: Chapter 12 (Article 6.1 liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema Distrtict (also Kono / Kailahun / Bombali Districts) – paras. 909, 917 - 926 [7647].

C. AFRC

1. Indictment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

5086. Paragraphs 21 through 36 are incorporated by reference.[277]

5087. 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 ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, 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. [278]

5088. These attacks were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property. [279]

5089. 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. [280]

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

5090. Members of the AFRC/RUF subordinate to and/or acting in concert with ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, committed the crimes set forth below in paragraphs 42 through 79 and charged in Counts 3 through 14, as part of a

[277] AFRC Indictment, para. 37.
[278] AFRC Indictment, para. 38.
[279] AFRC Indictment, para. 39.

campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF. [281]

(iii) Count 12: Use of Child Soldiers

5091. At all times relevant to this Indictment, throughout the Republic of Sierra Leone, AFRC/RUF routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities. Many of these children were first abducted, then trained in AFRC/RUF camps in various locations throughout the country, and thereafter used as fighters. [282]

5092. By their acts or omissions in relation to these events, ALEX T AMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, 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. [283]

2. Trial Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-T, Judgement, 20 June 2007

(a) Factual Findings

(i) The Expert Witnesses

5093. para. 1248: Both the Prosecution and the Defence introduced expert witness reports on Child Soldiers,[2242] and the Prosecution expert testified at tria1.[2243] The Prosecution expert report provides an overview on the widespread use of children under the age of 15 as combatants by the parties to the conflict in Sierra Leone during the period covered by the Special Court Statute.[2244] The Trial Chamber cannot confirm the Prosecution Expert's figures regarding the number of child soldiers because some of her sources referred to child soldiers as individuals under the age of 18,

[280] AFRC Indictment, para. 40.
[281] AFRC Indictment, para. 50.
[282] AFRC Indictment, para. 65.

rather than 15, and there is no other corroborating evidence on the issue.[2245] Nevertheless, the Prosecution expert report emphasizes that the illegal recruitment and/or use of children as combatants was not an isolated, localised, or accidental phenomenon.[2246] While "widespread or systematic use" of children is not a chapeau element for a finding of liability under Article 4 (C) of the Statute, that Trial Chamber finds that the information may be useful in assessing whether a perpetrator "knew or should have known" that persons recruited were under the age of 15.

5094. para. 1249: With regards to the forces alleged to have been associated with the Accused in this case, the Prosecution Expert Report refers to the illegal conscription and use of children by AFRC Government forces during the AFRC government period,[2247] and by armed forces during the January 1999 invasion and retreat from Freetown.[2248] She also notes that the overthrow of the AFRC government brought negotiations for the release of child combatants between child protection organisations and the rebel government to a halt. While the expert does not specifically refer to the further illegal recruitment or use of children during 1998, she does say that during that year ECOMOG turned over child Prisoners of War (POWs) to UNICEF,[2249] suggesting that these children had been associated with forces fighting the Kabbah government during this period.

5095. para. 1250: The Defence Expert Witness report affirms the widespread recruitment and use of children as combatants by all the forces involved in the conflict, including by renegade soldiers.[2250] He attributes the problem to several phenomena: that in a "traditional African setting the concept of childhood is related to the ability to perform tasks not to age[2251]; that the phenomenon was due, in part, to the partial disintegration of the state prior to the conflict[2252]; that the use of children as combatants was a practice established in Sierra Leone in the decades preceding the conflict of the latter half of the 1990s[2253]; that the Kabbah government's encouragement of child soldier recruitment into the military influenced the practice of rebel groups[2254]; and that all fighting factions resorted to the use of child soldiers.[2255] Finally, the Defence Expert report states that many of the children that followed AFRC members after they were ousted from power in February 1998 did so voluntarily, and that they joined family members or other close associates out of fear of reprisals.[2256] However, the Expert provided no research or evidence to substantiate this claim.

5096. para. 1251: The Trial Chamber stresses that both experts agree that persons under the age of 15 were used for military purposes by all factions, including the AFRC, during the conflict including the period 25 May 1997-mid 1999. As discussed in the Applicable law, the Trial

[283] AFRC Indictment, para. 65.

Chamber rejects any defence based on cultural distinctions regarding the definition of "childhood."[2257] The Trial Chamber infers from the Defence Expert's argument that all factions to the conflict recruited and used child soldiers that he is suggesting a *Tu Quoque* Defence. The Trial Chamber rejects such a defence and recalls that it has addressed the related Mistake of Law issue in the Applicable Law section of the Judgement. The Trial Chamber will not review evidence regarding the conditions of the Sierra Leonean State and army prior to 1997 as the issue has no bearing on the perpetration of international crimes by individuals within the state. Finally, it is not impossible that some persons under the age of 15 associated with the troops were family members and were present voluntarily. The Trial Chamber will address this particular defence claim in more detail below.

(ii) The Evidence of Former Child Soldiers

5097. para. 1252: The Trial Chamber finds the testimonies of both witnesses TF1-157 and TF1-158 regarding their experiences as former child soldiers to be reliable and credible.

5098. para. 1253: TF1-157 was 20 years old when he testified before the SCSL in 2005. As will be discussed in more detail below, the Trial Chamber is able to infer beyond a reasonable doubt that he was abducted between May and August of 1998, meaning that he was approximately thirteen years old at the time of the events he described.2258 The witness testified that rebels and soldiers attacked Bonoya/Bornoya village in Bombali District, his home village, on the Islamic New year, although he did not know the year.[2259] He clarified that among the attackers were former soldiers who had "turned into rebels."[2260] Among the attackers were individuals wearing combat fatigues, and others wearing civilian clothing.[2261] During the attack, the witness watched the assailants commit a number of atrocities against his family members.[2262] Among the assailants was a man named 'Mohamed', who abducted the witness.[2263] The attackers abducted at least five other people from Bonoya/Bomoya the same day, at least three of whom were younger than the witness at the time.[2264] The witness described having gone together with his captors through the villages of Kamagbo, Daraya, Mayogbo, Karina, Mabaka, Mandaha, Mateboi, Gbomsamba, Robat Mess (Camp Rosos).[2265] While the Trial Chamber is unable to find some of these locations on the maps at its disposal, it notes that these locations are discussed by other prosecution witnesses.

5099. para. 1254: Given the precision with which the witness described his journey from Bonoya/Bomoya to Robat Mess/Camp Rosos, events at Robat Mess/Camp Rosos[2266], the journey towards Freetown, including the death of Saj Musa in Benguema,[2267] and the fact that the troops arrived in Freetown on "January 6",2268 the Trial Chamber is able to infer beyond a reasonable doubt that the witness was abducted between May and August of 1998.[2269] Along the route the

child witnessed the commission of numerous crimes by his abductors,[2270] and was systematically exploited and abused. 'Mohamed' forced him to carry rice and luggage along the route from Bonoya to Camp Rosos,[2271] while other captors also used him to fetch water, and pound rice, in addition to carrying goods for the troops.[2272] Upon arrival at Camp Rosos, the witness' abductors forced the witness to undergo military training.[2273] During that training, the witness was repeatedly flogged by his captors because he "was Mandingo and belonged to Tejan Kabbah's people."[2274] As part of the military instruction the witness was given injections and tablets of drugs which he believed to be cocaine.[2275] The daily doses of narcotics were so strong that the witness did not know what he was doing, and could not tell the court whether he had killed anyone while under the influence.[2276] At one point 'Adama Cuthand', a known fighter associated with the renegade soldiers, threatened to amputate one of his limbs-- although it is not clear why-- and he only narrowly escaped that fate.[2277] The witness testified that he learned at Camp Rosos that the commanders in charge of the "rebels" who had captured him were 'Gullit', 'Five-Five' and 'Adama Cut Hand'.[2278]

5100. para. 1255: On 6 January, 1999 the witness entered Freetown with the SLA rebels.[2279] He was forced by his commander Abdul to accompany him wherever he went in Freetown. The witness gives as an example an occasion on which he was forced to accompany Abdul to Calaba Town to burn vehicles and houses and kill people.[2280] On two occasions Abdul also took the witness to fight at Eastern Police.[2281] It emerged in cross-examination that witness TF1-157 did not fight on these occasions, but that his role was to carry equipment for Abdu1.[2282] Following the retreat from Freetown, the witness managed to escape from the rebels and found his way to the protection of UNICEF.[2283] The Trial Chamber notes that the witness was not shaken on cross-examination, and therefore in spite of his youth at the time of events finds that the witness was credible and reliable with regards to the details of captivity and his treatment in captivity. However, the Trial Chamber will consider the youth of the witness at the time of events when evaluating the weight to be accorded his testimony regarding the command structure of the troops he was forced to accompany.

5101. para. 1256: Witness TF1-158, who is the younger brother of Witness TF1-157,[2284] was 18 years old when he testified before the Court. He too did not recall the precise year but remembered that he was 10 years old when armed soldiers and men wearing mixed combat and civilian witness attacked the Mosque in Bonoya/Bornoya where the witness was attending a service.[2285] The attackers wore mixed combat and civilian clothing.[2286] The witness later learned that the leaders of the group that attacked Bonoya/Bornoya were "Saj Musa. Gullit, Five-Five and O-Five."[2287] He also referred to his abductors as "SAJ Musa's group."[2288] The witness watched 'Adama' hack his

father to death on the day he was abducted,[2289] was compelled by his captors to carry food for the troops,[2290] and witnessed the commission of numerous crimes by the troops who had abducted him.[2291] The witness testified that he spent a week at Rosos,[2292] where like witness TF1-157, he was forced by his captors to participate in military training. Some of those trained with him were as young as seven or eight years o1d.[2293] Soon after the military training the witness managed to escape to the village of Kamasufu, where he was arrested a second time by a different faction of renegade soldiers associated with the fighters named "Savage' and "Staff Alhaji. When asked at which time he was abducted the second time the witness answered that "it was when they said there was a ceasefire.[2294] The Trial Chamber therefore infers that the second abduction took place in 1999. The witness was again forced to carry loads for his captors,[2295] and forced to undergo further military training[2296] before being sent to participate in an attack on Kabala.[2297] The attack failed and the troops were forced to retreat to Kamabai. Five days later the witness was told there was infighting between the RUF and AFRC at Makeni. Savage then ordered that the troops disarm and the witness was turned over to the United Nations.[2298]

5102. para. 1257: The Trial Chamber concludes that Witness TF1-158 was abducted and exploited the first time by a group associated with the Accused during a period covered by the Indictment. However, the witness was abducted the second time in Bombali District in 1999. The Trial Chamber recalls that it is the Prosecution's case that during this time the Accused were in the Western Area or Port Loko Districts. Although this point in itself is not dispositive, the Prosecution has failed to make a case linking the Accused with crimes committed in Bombali district in late 1998 or early 1999. Accordingly, while the Trial Chamber finds that Witness TFl-158 was again abducted and used to participate in hostilities, the Trial Chamber will disregard the evidence on this second abduction.

5103. para. 1258: The Brima Defence points out that the witness described the Accused Brima as having a stammer when he speaks.[2299] The Accused testified before the Chamber for 21 days and displayed no sign of a stammer in his speech. The Trial Chamber also observes that the witness repeatedly stated that the commanders of the first group that abducted him were "Saj Musa, Gullit, 55 and 05."[2300] However, other evidence before this Chamber indicates that SAJ Musa and 'O-Five' were not together with the Accused Brima and Kanu in Bombali District during this period. The witness also testified that 'Staff Alhaji' trained child soldiers both at Camp Rosos in Bombali District,[2301] during the witness' first abduction, and at Kamabai in Koinadugu District, during his second abduction, which the Trial Chamber believes is improbable.[2302] On cross-examination, however, the Witness was not shaken with regards to the description of his treatment in captivity. The Trial Chamber further notes that the events as described by TF1-158 are notably distinct from

those related by witness TF1-157. Therefore the Trial Chamber finds that in spite of his youth, the witness was credible and reliable with regards to the details of captivity and his treatment in captivity. However, it will not rely on his testimony with regards to the command structure.

5104. para. 1259: Three other former child soldiers testified before the Chamber, TF1-199, TF1-180, TF1-085 but the Trial Chamber concludes that their testimonies were problematic. TF1-180 testified that he was abducted in Bombali District. He was then shuttled back and forth between Bombali District and Port Loko District and was eventually sent to fight ECOMOG in Koinadugu District. The only indication that the witness provides regarding the time frame is that the Commanders in charge of his captivity were "General Issa, Brigadier Five-Five and General Gullit" suggesting that his captivity took place after the retreat from Freetown to Port Loko or Bombali District in 1999.[2303] The Indictment refers to no other crimes taking place in Port Loko after April 1999, and to no crimes at all in Koinadugu and Bombali Districts during this period.

5105. para. 1260: TF1-085 testified she was abducted in Freetown in January 1999. She was then forced into a "marriage" with her captor. She spent "months" in Port Loko District where she endured a series of sexual crimes. After an attempt to escape, this witness too was shuttled back and forth between Port Loko and Makeni Districts where she was forced to undergo military training. Following a long, but imprecise, period of sexual enslavement, she was sent to participate in an attack on Kono. The Trial Chamber has no other information regarding any attacks on Kono after the spring of 1998.[2304] Thus, the Trial Chamber is unable to link the military element of the witness' experiences, directly or indirectly, to the Accused

5106. para. 1261: TF1-199 testified that he was abducted in Bombali district during the Christmas holidays of 1998. 'Lieutenant Marah' and his superior 'Savage' were the commanders of the faction that abducted the witness.[2305] The Brima Defence argues that these two men were part of Brigadier Mani's group, and that the Prosecution has not linked Brigadier Mani to the Accused during this period.[2306] The Trial Chamber recalls that it is the Prosecution's case that during this period, the Accused were in the Western Area preparing the attack on Freetown. Although this point in itself is not dispositive, the Prosecution has failed to make a case linking the accused with crimes committed in Bombali district in late 1998 or early 1999.

(iii) The Evidence of Other Witnesses

5107. para. 1262: In addition to the testimony provided by former child soldiers, the Trial Chamber heard the evidence of witnesses who said that crimes against them were committed by child soldiers, and the evidence of other witnesses who described the abduction and use of child

soldiers by SLA soldiers. Witnesses TF1-023, who was 16 years old at the time of events, testified that she was captured by a "young boy" holding a gun on 22 January 1999.[2307] She was then taken to Allen Town with other abducted civilians. Once there, she and other civilians were guarded by boys her abductors referred to as 'SBUs' which she said stood for 'Small Boy Units.' The witness believed these boys to have been between 13 and 15 years o1d.[2308] TF1-024 testified that he was abducted by three "rebel boys" on 8 January 1999.[2309] However, as he did not provide an approximate age for these "boys", the Trial Chamber will not consider his testimony on this particular subject.

5108. para. 1263: On the 25th of January 1999, Witness TF1-227 was abducted by AFRC troops led by a 'Corporal Bastard' at Kola Tree in the Western Area and taken to Benguema in the Western Area.[2310] At Benguema, he saw approximately 25 combatants between the ages of 10 and 14 years o1d.[2311] They were dressed in military uniforms, carried guns and "acted like they were trained soldiers".[2312] He said that "Brigadier Five-Five" personally had five to ten child combatants with him.[2313] He described Five-Five as a "mature gentleman" wearing civilian clothes.[2314] The Witness explained that child soldiers were responsible for flogging civilians who disobeyed disciplinary rules.[2315] As the Witness' identification of 'Brigadier Five-Five' is vague, the Trial Chamber will not rely on it in making its findings on the liability of the Accused Kanu for this crime.

5109. para. 1264: Witness TFl-206 testified that he was abducted by rebels wearing combat clothing in Bombafoidu, Kono during the night of 12-13 April 1998.[2316] Once captured by these men, the witness and other abducted civilians were forced to undress by an armed boy between the ages of 12 and 14 wearing combat clothing.[2317]

5110. para. 1265: Witnesses TFl-122 and TF1-062 described the use of children in Kenema District. The former testified that during the Junta period he saw child soldiers, some no older than 12 years old, at the AFRC Secretariat in Kenema,[2318] while the latter said he saw armed children as young as 12 guarding Cyborg Pit, a diamond mining area in Kenema, during the same period.[2319]

5111. para. 1266: Referring to the Applicable Law above, it is the Trial Chamber's view that the use of children to participate actively in hostilities is not limited to participation in combat. An armed force requires logistical support to maintain its operations. Any labour or support that gives effect to, or helps maintain, operations in a conflict constitutes active participation.

5112. para. 1267: Thus, with regards to the specific question of using a child to guard a diamond mine, the Trial Chamber observes that in the instant conflict, diamonds were mined and sold to raise revenue to finance war efforts. Therefore, use of a child to guard a diamond mine in this context put the child at sufficient risk to constitute illegal use of the child pursuant to Article 4 (C) of the Statute. Therefore, the Trial Chamber will consider the evidence of Witness TF1-062. TF1-122 testified that he saw child soldiers at the AFRC Secretariat in Kenema. He also testified that crimes were committed in that Secretariat.[2320] Thus the Trial Chamber further finds that regardless of the specific duties of the children at the Secretariat, the presence of children in locations where crimes were widely committed was illegal.

5113. para. 1268: Witness TFl-133 testified that 'Pa Mani' used children as bodyguards at his home in Kurunbola, Koinadugu in 1998.[2321] The Trial Chamber is satisfied that 'Pa Mani' is Brigadier Mani, the Director of Defence in the AFRC government. However, the Prosecution has adduced no evidence linking the crimes of Brigadier Mani with the Accused.

5114. para. 1269: In addition to the prosecution witnesses, Defence witnesses DAB-081 and DBK-037 also indicated that the use of child soldiers was prevalent during the Indictment period. DBK-081 testified that in July 1998 rebels associated with SAJ Musa and 'Superman' attacked the witness' village in Koinadugu District.[2322] While the factions occupied the town, they "recruited" young boys and girls and used them to "safeguard the village from enemy attack". The abductees ranged in age from 14 to 18 years old.[2323] DBK-037, testified that numerous children were abducted during the retreat from Freetown, and that commanders on the "West Side" in Port Loko District had approximately 300 child combatants in their charge. However, the witness did not specify the time period.[2324] The Trial Chamber, however, finds no evidence linking the Accused to these children.

5115. para. 1270: The testimony of other witnesses has enabled the Trial Chamber to put the evidence provided by former child soldiers and their victims into a broader context. TF1-334 testified that following Johnny Paul Koroma's declaration of Koidu (Kono District) as a "no-go area" area for civilians in late February 1998, rebel soldiers began capturing civilians for a variety of uses, including children between the ages of 8 and 12. Young boys were assigned to Small Boy Units (SBUs) which were used in Tombodu to amputate the limbs of civilians.[2325]

5116. para. 1271: George Johnson testified that hundreds of civilians were abducted by AFRC troops during the trek from Mansofinia to Camp Rosos, including men, women and children.[2326] Among those who received military training at Rosos were small boys between the ages of ten and fifteen who were called "Small Boy Units". Following the training these boys were then divided

into battalions. The witness himself had approximately 15 SBUs under his command.[2327] TF1-334 corroborated this evidence saying small children as young as ten years old were abducted at Karina and distributed among the military commanders,[2328] and that at Camp Rosos he personally provided military training to children abducted between Mansofinia and Rosos.[2329] Witness TF1-153 testified that he had seen many child soldiers at the base established by the AFRC soldiers at 'Colonel Eddie Town.'[2330]

5117. para. 1272: Witness TF1-334 further stated that during the 1999 invasion of Freetown, 'Gullit' ordered the capture of civilians saying that it would attract the attention of the international community.[2331] Approximately 300 abducted civilians were taken by the fighters from Freetown to Benguema.[2332] Among those captured were "many" small boys, including some as young as nine or ten years old. They were later trained as SBUs, and the witness himself had two SBUS.[2333] He added that once the retreating troops arrived at Newton in the Western Area, 'Gullit' ordered that everyone who had a young boy between the ages of ten and twelve should provide the child with basic military training.[2334]

5118. para. 1273: Witness TF1-334 further testified that while he, 'Gullit', 'Bazzy', 'Five-Five' and 'Commander A', a close associate of the accused, were at Newton following the 1999 retreat from Freetown, they met with officials from UNAMSIL and Archbishop Ganda who asked the fighters to release children in order to help secure a ceasefire. 'Gullit' responded that he would consider the proposal but no children were released.[2335] With regards to this particular evidence, however, the Trial Chamber notes that the Witness did not say that the children had been abducted nor did he explain what they were being used for.

5119. para. 1274: Finally, a UN Report released in the wake of the January 1999 invasion of Freetown stated that "a significant number of rebel combatants were children. Reports were received of death and injuries being inflicted by boys as young as eight to 11 years old."[2336]

5120. para. 1275: The Trial Chamber therefore finds that the AFRC fighting forces conscripted children under the age of 15 years old and/or used them to participate actively in hostilities during the period covered by the Indictment. The Trial Chamber is of the view that the AFRC fighting faction used children as combatants because they were easy to manipulate and program, and resilient in battle.[2337] In the instant case, the evidence is conclusive that most, if not all, of the children in question were forcibly abducted from their families or legal guardians.[2338] In addition to having been kidnapped, child soldiers described having been forced into hard labour[2339] and military training, and sent into battle, often on the frontlines.[2340] They were also beaten;[2341] forced to watch the commission of crimes against family members;[2342] injected with narcotics to make

them feadess;[2343] compelled to commit crimes including rape, murder, amputation and abduction;[2344] used as human shields;[2345] and threatened with death if they tried to escape or refused to obey orders.[2346]

(b) Legal Conclusions

(i) Applicable law – Other Serious Violations of International Humanitarian Law

5121. para 256: Article 4 of the Statute is entitled 'Other Serious Violations of International Humanitarian Law' and provides as follows:

> The Special Court shall have the power to prosecute persons who committed the following serious violations of international humanitarian law:
>
> a. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
>
> b. Intentionally directing attacks against personnel, installations, materials, 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 the protection of given to civilians or civilian objects under the international law of armed conflict;
>
> c. Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.

5122. para. 257: The crimes listed in Article 4 of the Statute possess the same chapeau requirements as those in Article 3 of the Statute.[493]

(ii) Other Serious Violations of IHL – Findings on general requirements

5123. para. 258: As stated above, the Trial Chamber finds that at all times relevant to the Indictment, there was an armed conflict in Sierra Leone and that the crimes were closely related to this conflict.[494] Unless indicated otherwise in its Factual Findings, the Trial Chamber is also satisfied that all victims were not directly taking part in the hostilities at the time the crimes occurred.

(iii) Applicable law – Conscripting, enlisting or using child soldiers

5124. para. 727: In Count 12, the Indictment alleges that the AFRC/RUF "at all times relevant to this Indictment, throughout the Republic of Sierra Leone routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities." The Accused are thus charged with conscripting or enlisting children under the age of 15 years into armed forces or

groups, or using them to participate actively in hostilities ("conscripting, enlisting or using child soldiers"), an 'other serious violation of international humanitarian law', punishable under Article 4(c) of the Statute.[1414]

5125. para. 728: The question of whether this crime is recognised as a crime entailing individual criminal responsibility under customary international was examined by the Appeals Chamber,[1415] which found that, prior to November 1996, the crime had crystallised as customary law, regardless of whether committed in internal or international armed conflict,[1416] and held that

> [C]hild recruitment was criminalised before it was explicitly set out as a criminal prohibition in treaty law and certainly by November 1996, the starting point of the time frame relevant to the indictments. As set out above, the principle of legality and the principle of specificity are both upheld.[1417]

a. Elements of the Crime

5126. para. 729: Guided once more by the Rome Statute, the Trial Chamber adopts the following elements of the crime of conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities:

1. The perpetrator conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities;

2. Such person or persons were under the age of 15 years;

3. The perpetrator knew or should have known that such person or persons were under the age of 15 years;

4. The conduct took place in the context of and was associated with an armed conflict;

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.[1418]

b. Pleadings

5127. para. 730: The Kanu Defence submits that the age of 15 years is 'arbitrary' as "the ending of childhood [in the traditional African setting] has little to do with achieving a particular age and more to do with physical capacity to perform acts reserved for adults."[1419] Moreover, the Kanu Defence claims that the age for recruitment into the military in Sierra Leone is flexible, and that there has been a practice by various governments in Sierra Leone of recruiting persons under the age of 15 into the military prior to the Indictment period.[1420] According to the Kanu Defence, this

practice impacts on the Accused Kanu's awareness as to the unlawfulness of conscripting, enlisting or using child soldiers below the age of 15. As such conduct was not, it is submitted, on its face manifestly illegal, no conviction should be entered on Count 12 on the grounds of mistake of law.[1421]

(iv) Use of Child Soldiers - Findings on general requirements

5128. para. 731: The Trial Chamber recalls that the Appeals Chamber has found that the crime charged in Count 12 of the Indictment has attained the status of customary international law. The Appeals Chamber also confirmed the customary status of the requirement that the victim must be below the age of 15.[1422] Moreover, the Trial Chamber notes that the domestic law of Sierra Leone defines a 'child' as a person under 16 years of age.[1423] Therefore, the Trial Chamber dismisses what appears to be an argument by the Kanu Defence to construe the age requirement flexibly.

5129. para. 732: Furthermore, the Trial Chamber is not persuaded that the defence of mistake of law can be invoked here. The rules of customary international law are not contingent on domestic practice in one given country.[1424] Hence, it cannot be argued that a national practice creating an appearance of lawfulness can be raised as a defence of conduct violating international norms. The submission by the Kanu Defence is therefore dismissed.

5130. para. 733: The *actus reus* of the crime can be satisfied by 'conscripting' or 'enlisting' children under the age of 15, or by 'using' them to participate actively in the hostilities.

5131. para. 734: 'Conscription' implies compulsion, in some instances through the force of law.[1425] While the traditional meaning of the term refers to government policies requiring citizens to serve in their armed forces,[1426] the Trial Chamber observes that Article 4(c) allows for the possibility that children be conscripted into "[armed] groups". While previously wars were primarily between well established States, contemporaneous armed conflicts typically involve armed factions which may not be associated with, or acting on behalf, a State. To give the protection against crimes relating to child soldiers its intended effect, it is justified not to restrict 'conscription' to the prerogative of States and their legitimate Governments, as international humanitarian law is not grounded on formalistic postulations.[1427] Rather, the Trial Chamber adopts an interpretation of 'conscription' which encompasses acts of coercion, such as abductions[1428] and forced recruitment[1429], by an armed group against children, committed for the purpose of using them to participate actively in hostilities.

5132. para. 735: 'Enlistment' entails accepting and enrolling individuals when they volunteer to join an armed force or group.[1430] Enlistment is a voluntary act, and the child's consent is therefore not a valid defence.[1431]

5133. para. 736: 'Using' children to "participate actively in the hostilities" encompasses putting their lives directly at risk in combat.[1432] As a footnote attached to the Preparatory Conference on the establishment of the International Criminal Court states The words "using" and "participate" have been adopted in order to cover both participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and use of children as decoys, couriers or at military checkpoints."[1433]

5134. para. 737: It is the Trial Chamber's view that the use of children to participate actively in hostilities is not limited to participation in combat. An armed force requires logistical support to maintain its operations. Any labour or support that gives effect to, or helps maintain, operations in a conflict constitutes active participation. Hence carrying loads for the fighting faction, finding and/or acquiring food, ammunition or equipment, acting as decoys, carrying messages, making trails or finding routes, manning checkpoints or acting as human shields are some examples of active participation as much as actual fighting and combat.

5135. para. 738: The elements of 'armed forces or groups' entail that the armed forces or groups must be under responsible command, which entails a degree of organization which should be such as to enable the armed groups to plan and carry out concerted military operations and to impose discipline within the armed group.

(v) Findings – Child soldiers

5136. para. 1276: The Trial Chamber is therefore satisfied that children were routinely recruited and used for military purposes by the AFRC fighting forces. The only method of recruitment described in the evidence is abduction, a particularly egregious form of 'conscription.'

5137. para. 1277: The Trial Chamber is further satisfied that AFRC and RUF forces abducted children for military purposes in Kenema District[2347] during the AFRC government period, and that the AFRC fighting forces abducted children for military purposes in Kono[2348], Koinadugu and Bombali[2349] Districts in 1998, and in Freetown and the Western area in 1999.[2350] It finds the evidence insufficient to make a finding with regards to the conscription and/or use of Child Soldiers in Port Loko District between February and April 1999.

5138. para. 1278: Although the Trial Chamber has found that the recruitment of these children for military purposes suffices for a finding of liability under Count 12, the Trial Chamber is further satisfied that children under the age of 15 were used for military purposes in Kenema District in 1997- 1998,[2351] Kono District in 1998,[2352] and Freetown and the Western Area in 1999.[2353] The Trial Chamber finds that forcing children to undergo military training in a hostile environment constitutes illegal use of children pursuant to Article 4 (C), and therefore also finds that AFRC forces illegally used children in Bombali District in 1998.[2354] The Trial Chamber is further satisfied that incidents of conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities were linked to the Accused in this case in the districts of Bombali and Freetown and the Western Area.

(vi) Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers

5139. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment -Findings and Conclusions - Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers - paras. 1820-1837 [8191], 1970-1972 [8208], 2089-2098 [8211].

5140. Regarding Brima's, Kamara's, and Kanu's superior responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers - paras. 1820-1834 [9075], 1838 [9076], 1973-1975 [9078], 1977 [9081].

3. Appellate Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-A, Judgement, 22 February 2008

(a) Factual Findings

5141. Not applicable.

(b) Legal Conclusions

(i) *Mens rea* for Crimes Related to Child Soldiers

5142. para. 293: In his Seventh Ground of Appeal, Kanu alleges the t the Trial Chamber erred in law in dismissing his argument that "the absence of criminal knowledge on his part vitiated the requisite *mens rea* to the crimes relating to child soldiers.*"*[450] He argues that the *mens rea* element required for the crime was in this instance negated by a mistake of law on his part. Due to various factors, detailed in his Appeal Brief, Kanu submits that "he believed that his conduct [of conscripting or enlisting children under the age of 15 years] was legitimate."[451] He contends that at all material times, he lacked the requisite criminal intent required for the crime of "conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities" punishable under Article 4.c of the Statute of the Special Court.

5143. para . 294: In the alternative, Kanu argues that conscripting or enlisting children under the age of 15 was not a war crime at the time alleged in the Indictment.

5144. para. 295: The Prosecution observes that the Appeals Chamber has already ruled that conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities was a crime entailing individual criminal responsibility at the time of the acts alleged in the Indictment. The Appeals Chamber refers to it dictum that:

> "The rejection of the use of child soldiers by the international community was widespread by 1994 ... Citizens of Sierra Leone, and even less, persons in leadership roles, cannot possibly argue that they did not know that recruiting children was a criminal act in violation of international humanitarian law. Child recruitment was criminalized before it was explicitly set out as a criminal prohibition in treat:' law and certainly by November 1996, the starting point of the time frame relevant to the indictments. As set out above, the principle of legality and the principle of specificity a-e both upheld."[452]

5145. para. 296: Kanu's submission that conscripting or enlisting children under the age of 15 was not a war crime at the time alleged in the Indictment is without merit. Furthermore it is frivolous and vexatious for Kanu to contend that the absence of criminal knowledge on his part vitiated the requisite *mens rea* in respect of the crimes relating to child soldiers.

5146. para. 297: Kanu's Seventh Ground of Appeal therefore fails.

D. CDF

1. Indictment

The Prosecutor v. Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa, SCSL-03-14-I, Indictment, 4 February 2004

(a) Particulars

(i) Charges

5147. Paragraph 4 through 21 is incorporated by reference.[284]

(ii) Count 8: Use of Child Soldiers

5148. At all times relevant to this Indictment, the Civil Defence Forces did, throughout the Republic of Sierra Leone, initiate or enlist children under the age of 15 years into armed forces or groups, and in addition, or in the alternative, use them to participate actively in hostilities.[285]

5149. By their acts or omissions in relation to these events, SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crime alleged below:

> **Count 8: 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 INTERNATIONA.L HUMANITARIAN LAW, punishable under Article 4.c. of the Statute.[286]

2. Trial Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-T, Judgement, 2 August 2007

(a) Factual Findings

(i) Testimony of Child Soldiers

5150. para. 667: TF2-140 was born on 19 January 1983.[1431] He was abducted by the RUF in 1996. At that time, TF2-140 was 13 years old. He was forced to fight with the RUF until he was captured by the CDF in Koidu in 1997.[1432] The Kamajors held TF2-140 and five others in a cage

[284] CDF Indictment, para. 22.
[285] CDF Indictment, para. 29.
[286] CDF Indictment, para. 29.

made of palm fronds.[1433] Eventually a Kamajor named Sandi promised to free TF2-140 if agreed to help the Kamajors.[1434] TF2-140 feared for his life and felt that he had no option but to comply. He led the Kamajors to various hidden stores of ammunition and helped them to capture certain strategic points.[1435] TF2-140 spent a month assisting Kamajors in this way.[1436] At this time, TF2-140 was 14 years old.[1437]

5151. para. 668: In August or September 1997, TF2-140 was taken to Pujehun District and initiated into Kamajor society.[1438] Some of those initiated with him were adults and others were children of 10 or 11 years.[1439] Initiation fees were paid to the district initiator, Mualemu Sherrif, who sent fees to Kondewa, the Kamajor High Priest.[1440]

5152. para. 669: From Pujehun, TF2-140 travelled with Sandi to Mano Junction. On the way they encountered fighting at Kenema, TF2-140 was armed and he participated in the fighting.[1441]

5153. para. 670: After reaching Mano Junction, TF2-140 was re-initiated along with 28 other boys.[1142] By this time, TF2-140 was 15 years of age.[1443] Some of the boys who took part in this initiation were the same age as TF2-140 and others were as young as 10 or 11 years old.[1444] It was widely believed that were more effectively immunized because they had not had any time with women.[1445]

5154. para. 671: In February 1998, TF2-140 passed through Blama and Koribondo.[1446] An attack took place in Koribondo shortly before TF2-140 arrived there.[1447] As TF2-140 passed through the town he saw Joe Tamidey, a Kamajor commander, who was being guarded by four small boys. TF2-140 estimated that these boys were younger than he was.[1448]

5155. para. 672: From Koribondo, TF2-140 made his way to Pujehun and then Bo.[1449] In Bo, TF2-140 stayed in a compound adjacent to Fofana's Mohei Boima Road Residence.[1450] TF2-140 gradually became involved with the Kamajors in Fofana's compound and acted as part of the security team for the houses and its occupants. While there, he met Fofana and Norman.[1451]

5156. para. 673: Sometime after Christmas 1998, TF2-140 went with Norman to Freetown.[1452] TF2-140 began to visit the Kamajor base at Brookfields Hotel regularly.[1453] At Brookfields, there were boys younger than TF2-140.[1454] Throughout 1999, child soldiers continued to gather at Brookfields.[1455] TF2-140 along with other small boys, was involved in various attacks that were planned from Brookfields, including attacks on Makoro and Mile 38.[1456]

5157. para. 674: TF2-021 was born in 1986.[1457] He was abducted by rebels in 1995, along with other young boys from his village in Kailehun District.[1458] At the time of his abduction, TF2-021

was approximately nine years old. TF2-021 remained with the rebels until 1997 when he was captured by Kamajors in Ngiehun, Kailahun District.[1459] Seven other little boys and three women were captured at the same time.[1460] One of the captured boys was 15; the rest were all younger.[1461] The name of the Kamajor that captured TF2-021 was German (a.k.a. Jahman).[1462]

5158. para. 675: After the attack on Ngiehun, Kamajors made the boys carry looted property.[1463] TF2-021 was then taken to Base Zero for initiation.[1464] At Base Zero TF2-021 saw many other young boys who had already been initiated.[1465] About 20 other young boys were initiated at the same time as TF2-021. They were initiated by Kondewa.[1466] As part of the initiation process, the boys were told that they would be made powerful for fighting and were given a potion to rub on their bodies before going into battle.[1467]

5159. para. 676: TF2-021 stayed at Base Zero for some time after his initiation.[1468] German gave TF2-021 a gun and taught him how to shoot.[1469] After this training, TF2-021 started going on missions; his first mission was to Maisaka, where he and other young boys engaged in combat with the rebels.[1470] In the course of this fighting, TF2-021 shot an unarmed woman in the stomach. She fell and TF2-021 left her on the ground.[1471] TF2-021 and other Kamajors looted tapes, bicycles, and clothing.[1472] They also captured women and brought them back to Base Zero.[1473]

5160. para. 677: At base zero, TF2-021 saw Norman arrive in the helicopter and deliver arms and ammunitions.[1474] TF2-021 also witnessed Norman deliver arms to the Kamajor base at Gendema.[1475] These arms were used in combat at Kenema and Joru.[1476]

5161. para. 678: In addition to the fighting at Masiaka, TF2-021 participated actively in February 1998 attacks on SS Camp and Kenema.[1477] On Sunday 15 February 1998, TF2-021 was part of a group of Kamajors that searched Kenema police barracks and killed some police that were found there.[1478] TF2-021 also fought in Joru and Daru.[1479] Other boys of TF2-021's age also participated in these attacks.[1480]

5162. para. 679: In 1996, when TF2-021 was 12 years old, he was involved in screening people at checkpoints in Kenema and Joru to ensure they had Kamajor passes.[1481]

5163. para. 680: In early January 1999, Norman convened a meeting in Bo which was attended by CO Ngobeh, TF2-021's commander. After this meeting, CO Ngobeh told TF2-021 that they would participate in 6 January 1999 invasion of Freetown.[1482] TF2-021 and 3 other young boys went to Freetown by helicopter with their commanders.[1483] The boys were given guns and taken to Congo Cross, where there was heavy firing between the rebels and ECOMOG. The children

started fighting against the rebels.[1484] After the rebels were driven away, TF2-021 went to Brookfields Hotel to set up a check point.[1485]

5164. para. 681: When TF2-021 fought with the Kamajors he took marijuana. He was also supposed to take brown-brown which is a form of cocaine.[1486] Kondewa's boys gave them drugs at Base Zero.[1487]

5165. para. 682: In 1999, TF2-021 was initiated into Avondo Society, a group of Kamajors led by Kondewa.[1488] After the initiation, TF2-021 received a certificate bearing his photograph, to prove that he was one of Kondewa's Kamajors.[1489] TF2-021 was thirteen years old at this time.[1490]

5166. para. 683: TF2-004 testified that he was 20 years old at the time he testified and that he turned 20 in the year 2004.[1491] The Chamber therefore finds that he was born between 1 January 1984 and 9 November 1984.[1492] He was abducted by the rebels from Fyndah, his village in Pujehun District.1493 The rebels took TF2-004 to Maka. Kamajors attacked Maka and captured TF2-004 and five other boys who ranged in age from 10 to 16.[1494] The boys were taken from Maka to Liya, Kpaka Chiefdom, Pujehun District.[1495]

5167. para. 684: From Liya, TF2-004 was taken to Telu-Bongor. The rebels attacked the Kamajors there. TF2-004 was armed with a machete and participated in the fighting.[1496]

5168. para. 685: After the fighting at Telu-Bongor, TF2-004 returned to Liya where he was initiated by Muniro Sherrif.[1497] Many others were initiated at the same time, including children as young as ten years old.[1498] The purpose of initiation was to fight the war.[1499]

5169. para. 686: On the same day that he was initiated, TF2-004 left Liya to go fight in Zimmi.[1500] TF2-004 witnessed his commander, CO Small, kill an unarmed male collaborator who had warned the rebels that the Kamajors were approaching Zimmi.[1501] The Kamajors won the battle at Zimmi and then burnt the houses.[1502] TF2-004 was actively involved in fighting at Zimmi. After this battle, TF2-004 returned to Liya with the Kamajors.[1503]

5170. para. 687: TF2-004 was also involved in other battles with Kamajors.[1504] He does not know how long he remained with them.[1505]

(ii) The Use of Child Soldiers throughout Sierra Leone – Crimes

5171. para. 688: In addition to the evidence set out above, there is further evidence that during the time period relevant to the Indictment, children who appeared to be aged less than 15 were conscripted, enlisted, or used to participate actively in hostilities in the following locations:

Kenema;[1506] Base Zero;[1507] Bo;[1508] Daru;[1509] Masiaka;[1510] Port Loko;[1511] Yele;[1512] and Ngiehun.[1513]

1. Initiators including Kondewa used child soldiers as bodyguards at Base Zero;[1514]

2. There was a Kamajor named "Junior Spain" at Base Zero who was around 12-15 years of age;[1515]

3. In Ngiehun, Kamabote ordered a child soldier named Small Hunter who was about 12 years old to shoot TF2-035. There is still one bullet in TF2-035's body.[1516] The Chamber accepts the testimony of TF2-079 that the name Small Hunter was given to all of the child combatants in the CDF, and that children were called by that name instead of their own names;[1517]

4. In May 1998 in Daru, children as young as 13 were present and were armed with knives, cutlasses, and guns.[1518] At this time, Daru was active combat zone.[1519] It was the responsibility of a small boy in Kamajor clothing to carry a stick known as "the commander" and lead the Kamajors into combat.[1520] There is similar evidence that children as young as 7 years danced in front of the Kamajors as they went into battle.[1521]

5. Children were involved in monitoring checkpoints in Daru;[1522]

6. According to Colonel Abu Bakar, elders liked to use children in combat because they are obedient;[1523]

7. In July 1998, a small proportion of the 4000 registered Kapras in Massingbi were children under 15;[1524]

8. By mid-August 1998, between 315 and 350 children under the age of 15 had been registered in a demobilization and reintegration program in Bo;[1525]

9. In 1999, the CDF registered over 300 children aged less than 14 in a disarmament, demobilization and reintegration program in the southern province; [1526]

(iii) Norman's address at a Meeting at Base Zero – Crimes

5172. para. 689: In January 1998, Norman spoke at a meeting at Base Zero. He complained that the child combatants were outperforming the adult fighters. Children were present at this meeting.[1527]

(b) Legal Conclusions

(i) Applicable law – Other serious violations of IHL

5173. para. 138: 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

(i) There existed a nexus between the alleged offence and the armed conflict.

5174. para. 139: These two elements have already been discussed in detail above in relation to the general requirements under Article 3 of the Statute.

5175. para. 140: The Indictment charges the Accused with crimes under Article 4(c) of the Statute (Enlistment of Child Soldiers). As the prohibition against enlistment of child soldiers has its foundation in Article 4(3)(c) of Additional Protocol 11,[181] the Chamber holds that the definition of armed conflict under Additional Protocol II should be applied as outlined above.

(ii) Other serious violations of IHL – Finding on general requirements

5176. para. 698: As stated in the section on Applicable Law, the general requirements that must be established to prove an "Other Serious Violation of International Humanitarian Law" are as follows:

1. An armed conflict existed at the time of the alleged offence; and

2. There existed a nexus betw'een the alleged offence and the armed conflict.

5177. para. 699: Again, the Chamber recalls that it has taken judicial notice of the fact that an armed conflict existed in all parts of the Republic of Sierra Leone throughout the period relevant to the Indictment.[1532]

5178. para. 700: Where findings have been made on the enlistment or use of children under the age of 15 to participate actively in the hostilities (Count 8), the Chamber finds that the alleged crimes were closely related to the armed conflict.

(iii) Applicable law - Enlisting Children under the Age of 15 into Armed Forces or Groups or Using Them to Participate Actively in Hostilities

a. Jurisdiction of the SCSL to try Accused under Article 4(c) – Applicable law

5179. para. 182: The Indictment unller Count 8 charges the Accused with the offence of 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.[224] This Count alleges that the Accused are responsible for the initiation or enlistment of children under the age of 15 into armed forces or groups, or the use of children under the age of 15 to participate actively in hostilities, throughout the Republic of Sierra Leone, at all times relevant to the Indictment.[225]

5180. para. 183: The Chamber observes that the offences related to child soldiers, viewed against the background of the Statutes of the ICTY and the ICTR where no such provisions exist, are novel in the Statute of the Special Court for Sierra Leone that came into force on 16 January 2002.[226]

5181. para. 184: In this regard, the Chamber recalls the preliminary motion filed by the Accused Norman, challenging the jurisdiction of the Special Court to try him for any offence under Article 4(c) of the Statute, on the basis thal it would violate the principle of *nullum crimen sine lege*, since it did not amount to a crime under customary international humanitarian law at the time of the alleged offence. The Chamber determined that the motion raised a serious issue relating to jurisdiction under the mandatory provisi ems of Rule 72(E) of the Rules, and referred the matter to the Appeals Chamber. The Appeals Chamber dismissed the motion, and ruled that the offence of recruitment of child soldiers below the age of 15 did in fact constitute a crime under customary international law which entailed individ lal criminal responsibility prior to the time frame of the Indictment.[227]

5182. para. 185: The Chamber is ognisant of the fact that there are no express treaty provisions in the Geneva Conventions of 1949 proscribing the recruitment, conscription and enlistment, or use of children under the age of 15 to participate actively in hostilities except to the extent only of a prohibition under Article 51 (1) of the Fourth Geneva Convention on "compelling protected persons to serve in the armed or auxiliary forces."

5183. para. 186: The Chamber note; that the Geneva Conventions do not directly address the recruitment of children for the following reason:

> Where child en had participated in hostilities [during World War II] it had been as irregulars - partisans or resisters. Such participation was consequently seen by the Allied powers as voluntary and heroic or (at best) an unfortunate necessity. *It was seen as something exceptional and not, consequently, requiring legal regulation; being unlikely to be repeated*.[228]

5184. para. 187: The Chamber consders that, by the time the Additional Protocols were negotiated, the need to explicitly prohibit the recruitment of children had emerged. As noted by the Appeals Chamber, both Additiond Protocol I and Additional Protocol II explicitly proscribe the recruitment of children ullder the age of 15. Article 4(3)(c) of Additional Protocol II states categorically 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".[229] Although the prohibition in Article 77(2) of Additional Protocol I is more narrowly circumscribed, it also clearly prohibits the recruitment of children: "[t]he Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces."[230]

5185. para. 188: The Appeals Chanber also derived some support for its conclusion as to the proscription of the offences in question from the Convention on the Rights of the Child which prohibits the recruitment of children under the age of 15 as soldiers.[232]

5186. para. 189: Relying on the Appeals Chamber Decision, this Chamber acknowledges, as existing law, that "child recruitment was criminalised before it was explicitly set out as a criminal prohibition in treaty law and certainly by November 1996, the starting point of the time relevant to the Indictment", the implication being that "the principle of legality and the principle of specificity are both upheld".[233]

5187. para. 190: In this Decision, the Appeals Chamber dealt specifically with the offence of "recruitment" of child soldiers. The actual language of Article 4(c) of the Statute uses the terms "conscription," "enlistment" and "using [c]hildren to participate actively in hostilities". Count 8 of the Indictment, however, makes reference to the concepts of "enlistment", "using children to participate actively in hostilities", and also "initiation" of children into the armed forces or groups. The Chamber deems it necessary to examine these terms and their relevance to this case, specifically, whether "enlistment", "using children to participate actively in hostilities", and also "initiation" of children into the armed forces or groups, are prohibited under customary international law.

5188. para. 191: The Chamber notes that "recruitment" is the subject of the proscription under the Geneva Conventions of 1949 and the Additional Protocols of 1977 rather than "enlistment",

"conscription" or "use" of child soldiers, the terms used in the Statute. However, it is pertinent that the notion of "recruitment", is interpreted in the ICRC Commentary to Article 4(3)(c) of Additional Protocol II compendiously to encompass "conscription", "enlistment" and the "use of children to participate actively in hostilities". To this effect, paragraph 4557 of the Commentary states:

> The principle of non-recruitment also prohibits accepting voluntary enlistment. Not only can a child not be recruited, or enlist himself, but furthermore be will not be 'allowed to take part in hostilities', i.e. to participate in military operations such as gathering information, transmitting orders, transporting ammunition and foodstuffs, or acts of sabotage.[234]

5189. para. 192: Both in everyday language,[235] and in the commentary quoted above, it is clear that voluntary enlistment is but one type of enlistment. The Chamber therefore finds that the term "enlistment" could encompass both voluntary enlistment and forced enlistment into armed forces or groups, forced enlistment being the aggravated form of the crime. In the Chamber's opinion however, the distinction between the two categories is somewhat contrived. Attributing voluntary enlistment in the armed forces 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. Nonetheless, for the purposes of the Irdictment, where "enlistment" alone is alleged, the Accused is put on notice that both voluntary and forced enlistment are charged.

5190. para. 193: In defining the phrase "using children to participate actively in hostilities", the Chamber has considered the Commentary given on the relevant statutory provision in the Rome Statue establishing the ICC on the issue, 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 as decoys, couriers or at military checkpoints. It would not cover ac tivities 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.[236]

5191. para. 194: The Chamber recognises that the phrase "armed forces or groups" has been the subject of a variety of legal interpretations. Noting some treaty variations in the use of this phrase, as is the case with the reference in the Brussels Declaration of 1874 of "militia and volunteer corps" and *levees en masse* as loyal combatants, and similar usages in the Hague Convention II of 1899, the Hague Convention IV of 1907, and the Geneva Conventions of 1949, the Chamber

deems it appropriate to adopt the definition of "armed groups" given in the *Tadic* Appeal Judgement to the effect that:

> One shoulc 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.[237]

In the Chamber's view, such a group may be either State or Non-State controlled.

b. Specific elements – Applicable law

5192. para. 195: The Chamber condudes that the specific elements of enlisting children under the age of 15 years into armed forces or groups are:

> (i) One or more persons were enlisted, either voluntarily or compulsorily, into an armed force or group by the Accused;
>
> (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 enlist the said persons into the armed force or group.

5193. para. 196: 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.

5194. para. 197: The Appeals Chamber ruled that the offence of recruitment of child soldiers had crystallised under customary international humanitarian law prior to the events alleged in the Indictment. In so finding, it dismissed the applicant's argument that the offences listed under

Article 4(c) of the Statute did not constitute crimes during the time of the events. Enlistment is clearly a form of recruitment However, the "use" of child soldiers, in ordinary language, could not be said to be a form of recruitment. Whilst the Appeals Chamber did not enunciate specifically on "using child soldiers to participate actively in hostilities" the Chamber, having considered the dismissal by the Appeals Chamber of the whole Motion relating to Article 4(c) in its totality, and having considered the available authorities, considers that "using child soldiers to participate actively in hostilities" was also proscribed under customary international humanitarian law prior to the events charged in the Indictment.[238] Indeed, this is the only logical conclusion. For it would make no sense to say that recruiting children under 15 years of age for the armed forces was prohibited, but using them to fight was not.

5195. para. 198: The Indictment also charges the Accused with "initiation" of child soldiers, which is not listed as an offence in the Statute. However, it is the opinion of the Chamber that evidence of "initiation" may be of relevance in establishing liability under Article 4(c) of the Statute.

5196. para. 199: 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.[239] Furthermore, the Chambel 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.

(iv) Pleading – Dissent

5197. Separate and partially dissenting opinion only on Count 8- Justice Itoe, See CDF Judgment, Annex A, pgs. A-1 – A-34.

(v) Child soldiers – Legal Findings

5198. para. 958: In addition to the facts, listed in paragraph 721 (i) to (viii) and 809(i) (iii) above, the Chamber outlines below the facts as found in Sections V.2.2 and V.2.10 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa with respect to Count 8.

> (i) A commanders' meeting was held by Norman after the passing out parade at Base Zero in early January 1998, which had in attendance, among others, Fofana, Kondewa and commanders for the Bo attack. Norman added that the adult fighters were doing less than the children, and just eating and looting.
>
> (ii) Child fighters were present at various times at Base Zero.

a. Responsibility of Fofana – Article 6.1 Liability - Child Soldiers

5199. para. 959: The Chamber finds that the evidence adduced has not provided beyond a reasonable doubt that Fofana planned, ordered, or committed the crime of enlisting child soldiers into an armed group or using them to participate actively in hostilities.

5200. para. 960: Specifically regarding the commander's meeting, the Chamber finds that Fofana's mere presence does not demonstrate beyond reasonable doubt that he encouraged anyone to make use of child soldiers. Neither does it demonstrate beyond reasonable doubt that he aided and abetted in the planning, preparation, or execution of either the enlistment of child soldiers into the armed forces, or the use of child soldiers to participate actively in hostilities anywhere in the Republic of Sierra Leone during the time frame specified in the Indictment.

5201. para. 961: The Chamber further finds that the presence of Fofana at Base Zero where child soldiers were also seen is not sufficient by itself to establish beyond reasonable doubt that Fofana had any involvement in the commission of these criminal acts under any of the modes of liability charged in the Indictment.

5202. para. 962: The trial record contains ample evidence that the CDF as an organisation was involved in the recruitment of children under the age of 15 to an armed group, and used them to participate actively in hostilities, however, this does not demonstrate beyond reasonable doubt that Fofana was personally involved in such crimes.

5203. para. 963: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning instigating ordering committing (including through joint criminal enterprise) or otherwise aiding and abetting in the planning preparation or execution of enlistment of child soldiers into armed forces or groups or use of child soldiers to participate actively in hostilities.

b. Responsibility of Fofana – Article 6.3 Liability – Child Soldiers

5204. para. 964: In addition to the facts listed above, in paragraph 958, the Chamber outlines the fact below which it will rely on to make its legal findings on the individual criminal responsibility pursuant to Article 6(3) of Fofana with respect to Count 8:

1. In February 1998, TF2-140 passed through Koribondo, he saw Joe Tamidey, a Kamajor commander (under the command of Fofana) being

guarded by four small boys. The Witness estimated the boys to be younger than he was.

5205. para. 965: TF2-140 was 15 years old at the time he witnessed this event. The Chamber has accepted the credibility of TF2-140's statement on this event, however, there is room for doubt that the boys referred to were actually younger than 15 years of age. It is conceivable that the boys were younger than the witness but still older than 15 years of age. It is also conceivable that TF2-140 may have been incorrect in his estimation that the boys were younger than he was. Aside from that, the evidence does not establish that Fofana was aware of the situation regarding his subordinate Joe Tamidey. In conclusion, the Chamber finds that the evidence adduced does not prove beyond reasonable doubt the criminal liability of the accused.

5206. para. 966: The Chamber finds that the evidence adduced does not prove beyond a reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(3) as a superior for the enlistment or use of child soldiers to participate actively in hostilities anywhere in the Republic of Sierra Leone during the time frame specified in the Indictment. Proof of knowledge alone is insufficient to establish the individual criminal responsibility of an Accused, and the Chamber is unable to conclude that Fofana's presence alone at this or other such meetings has either a condoning or encouraging effect upon the commission of any crimes by his subordinates relating to the enlistment or use of child soldiers.

c. Fofana - Conclusion – Article 6.1 and 6.3 – Child Soldiers

5207. para. 967: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond a reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) or 6(3) for Count 8.

d. Responsibility of Kondewa – Article 6.1 and 6.3 Liability – Child soldiers

5208. para. 968: In addition to the facts, listed in paragraph 958 above, the Chamber outlines below the fact upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) of Kondewa with respect to Count 8:

(i) TF2-021 was nine years old when he was abducted by rebels. In 1997, when the witness was eleven years old he was captured by Kamajors and forced to carry looted property. The Kamajors subsequently took him to Base Zero for initiation.

(ii) At Base Zero, the witness was initiated along with around 20 other young boys. Kondewa performed the initiation and told the boys that they would be

made powerful for fighting. He gave them a potion to rub on their bodies before going into battle.

(iii) After receiving training, TF2-021 was sent on his first mission to Masiaka, where he shot a woman in the stomach and left her there on the ground. On subsequent missions, he fought with the Kamajors at Kenema, SS Camp, Joru and Daru. In 1999 TF2-021 was flown by helicopter into Freetown with three other small boys and their commanders where they were given guns and sent to support ECOMOG who were fighting the rebels at Congo Cross.

(iv) In 1999, when TF2-021 was thirteen years old, he was initiated into the Avondo Society, a group of Kamajors led by Kondewa. He received a certificate (Exhibit 18) which proved his membership in this group. The certificate bears details showing the place of initiation (Bumpeh), the initiate's name, photograph and age. It also bears Kondewa's name, signature and stamp.

5209. para. 969: The Chamber understands from the evidence that initiation into the Kamajor Society does not necessarily amount to enlistment in an armed force or group.[1576] Some parents put their children through initiation for other reasons. Thus, the Chamber has looked at the details of the actual initiation ceremony, the circumstances surrounding initiation, as well as the subsequent events, to determine whether in fact a child could be said to have been enlisted in an armed force or group.

5210. para. 970: Having considered the evidence outlined above, that during the first initiation of TF2-021 initiates were given potions to rub on their bodies before going into battle, they were told that they would be strong for fighting, were subsequently given military training and soon afterwards were sent into battle, the evidence is absolutely clear that on this occasion, the initiates had taken the first step in becoming fighters. It is beyond reasonable doubt that Kondewa, in these circumstances, when initiating boys, was also performing an act analogous to enlisting them for active military service. TF2-021 was eleven years old when Kondewa enlisted him. In the Chamber's view, there can be no mistaking a boy of eleven years old for a boy of 15 years old or older, especially for a man such as Kondewa who regularly performed initiation ceremonies. Kondewa knew or had reason to know that the boy was under fifteen years of age, and too young to be enlisted for military service. Although the Chamber found this evidence entirely sufficient to establish enlistment beyond a reasonable doubt, TF2-021 was given a second initiation, into the Avondo Society, headed by Kondewa himself, when he was thirteen years old. Exhibit 18 dated 10 June 1999 bears Kondewa's signature and stamp of approval and lists the boy's age (incorrectly) as twelve.

5211. para. 971: Thus, the Chamber concludes that this evidence establishes beyond reasonable doubt that Kondewa committed the crime of enlisting a child under the age of 15 into an armed force group.

5212. para. 972: The Indictment charges use of child soldiers as an alternative to enlistment. Therefore, having found that Kondewa is individually criminally responsible for enlisting child soldiers, the Chamber need not consider the evidence in relation to their use actively participating in armed hostilities.

5213. para. 973: Having found the Accused liable under Article 6(1) of the Statute, the Chamber need not consider the Accused's liability under Article 6(3) of the Statute.

3. Appellate Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-A, Judgment, 28 May 2008

(a) Factual Findings

5214. Not applicable.

(b) Legal Conclusions

(i) Responsibility of Kondewa – Child soldiers

5215. para. 124: The Prosecution submits that although the Trial Chamber found Kondewa responsible for enlisting Witness TF2-021, it was in error in not finding him responsible for enlisting and/or using other children.

5216. para. 125: The Appeals Chamber is of the view that the crime of enlisting children under the age of 15 years into armed forces or groups and of using them to participate actively in hostilities may be committed irrespective of the number of children enlisted by the accused person.

5217. para. 129: In the absence of evidence concerning the ages of the other boys, the Appeals Chamber finds that no reasonable trier of fact could have found that the testimony of Witness TF2-021 sufficiently establishes the age of the 20 young boys who were initiated with him.

5218. para. 132: In view of the lack of evidence of the ages of the boys who were initiated along with Witness TF2-021, as well as the absence of evidence indicating that Kondewa was involved in the initiations of Witness TF2-140 and Witness TF2-004, the Appeals Chamber finds, Justice

Winter dissenting, that the Trial Chamber was correct in not finding Kondewa liable for committing or aiding and abetting the crime of enlistment of children other than Witness TF2-021. The Prosecution's Fifth Ground of Appeal therefore fails in this respect.

5219. para. 133: Although the Prosecution has charged Kondewa in Count 8 with the use of children below the age of 15 years in hostilities, as an alternative to the charge of enlisting them as child soldiers, the Trial Chamber held that having found him individually criminally responsible for enlisting children as child soldiers, it did not need to consider the evidence in relation to the alternative charge. The Appeals Chamber holds, in the circumstances, that it cannot consider any evidence or pronounce a verdict on the alternative charge. Even if the Appeals Chamber were to consider the evidence, it would still have come to the conclusion as it earlier did that there was absence of evidence concerning the ages of the alleged children.

5220. para. 134: The Appeals Chamber opines that the Trial Chamber should have considered any evidence on the alternative charged and made findings upon such evidence even though, at the end, a verdict would be pronounced on only one of the alternative charges.

5221. para. 135: The Prosecution's Fifth Ground of Appeal therefore fails in this respect.

5222. para. 139: The Appeals Chamber affirms that the crime of recruitment 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 entailing individual criminal responsibility. Pursuant to Article 4.c. of the Statute, the crime of conscripting or enlisting children or using them to participate actively in hostilities, constitutes an other serious violation of international humanitarian law. The *actus reus* requires that the accused recruited children by way of conscripting or enlisting them or that the accused used children to participate actively in hostilities. These modes of recruiting children are distinct from each other and liability for one form does not necessarily preclude liability for the other.

5223. para. 140: According to the Trial Chamber in the AFRC Trial Judgment, enlistment means "accepting and enrolling individuals when they volunteer to join an armed force or group." The act of enlisting presupposes that the individual in question voluntarily consented to be part of the armed force or group. However, 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.

5224. para. 141: It is apparent to the Appeals Chamber that there is a paucity of jurisprudence on the question of how direct an act must be to constitute "enlistment" under Article 4.c., as well as the possible modes of enlistment. The Appeals Chamber holds that for enlistment there must be a

nexus between the act of the accused and the child joining the armed force or group. There must also be knowledge on the part of the accused that the child is under the age of 15 years and that he or she may be trained for combat. Whether such a nexus exists is a question of fact which must be determined on a case-by-case basis.

5225. para. 142: On the particular facts of this case, it is clear that the enlistment of Witness TF2-021 had taken place before he was initiated by Kondewa. The evidence shows that the Witness had first been captured by the rebels in 1995 and was later captured by the CDF in 1997. Upon his capture by the CDF, Witness TF2-021 was forced to carry looted property by the CDF. This act, in the opinion of the Appeals Chamber constituted enlistment. For this conclusion, the Appeals Chamber draws support from paragraph 4557 of the ICRC Commentary to Article 4(3)(c) of Additional Protocol II referred to by the Trial Chamber itself.

5226. para. 144: In the context of this case, in which the armed group is not a conventional military organisation, "enlistment" cannot narrowly be defined as a formal process. The Appeals Chamber regards "enlistment" in the broad sense as including any conduct accepting the child as a part of the militia. Such conduct would include making him participate in military operations.

5227. para. 145: In these circumstances, the Appeals Chamber, Justice Winter dissenting, holds the view that Witness TF2-021 had already been enlisted before Kondewa initiated him into the Kamajors.

5228. para. 146: For the above reasons, the Appeals Chamber, Justice Winter dissenting, grants Kondewa's Fifth Ground of Appeal and reverses the verdict of guilt and substitutes a verdict of not guilty on Count 8.

(ii) Responsibility of Fofana – Child Soldiers

5229. para. 152: The Appeals Chamber notes that the Trial Chamber accepted and considered the foregoing evidence in determining Fofana's criminal responsibility, but found that it did not establish beyond reasonable doubt that Fofana is responsible for child enlistment or use pursuant to any of the modes of liability under Article 6(1), including aiding and abetting. The Prosecution merely proffers arguments based on evidence which the Trial Chamber considered and rejected, but does not point to any error in the reasoning of the Trial Chamber. The Appeals Chamber emphases that on appeal, a party cannot merely repeat arguments which did not succeed at trial in the hope that the Appeals Chamber will consider them afresh, unless that party can demonstrate that rejecting them constituted an error which warrants the intervention of the Appeals Chamber.

5230. para. 153: The Appeals Chamber finds, Justice Winter dissenting, that the Prosecution has failed to demonstrate that no reasonable trier of fact could have found that Fofana was not responsible for aiding and abetting child enlistment and their use to participate actively in hostilities.

5231. para. 154: For the reasons stated, the Appeals Chamber, Justice Winter dissenting, dismisses the Prosecution's Fifth Ground of Appeal in its entirety, grants Kondewa's Fifth Ground of Appeal, reverses the verdict of guilt on Count 8 and substitutes the verdict of not guilty.

(iii) Child soldiers - Dissent

a. Justice Winter

i. Kondewa's Fifth Ground of Appeal: Enlistment of Witness TF2-021

5232. para. 7 (p.2): I do not agree with the Majority's decisions first, to acquit Kondewa for liability under Article 6(1) of the Statute for "committing" the crime of enlisting Witness TF2-021, a child under the age of 15 into an armed force or group;[1203] second, in finding that "it cannot consider any evidence or pronounce a verdict on whether Kondewa aided and abetted the 'use' of child solders;" and third, in finding Fofana not guilty of aiding and abetting the use and enlistment of child soldiers.

5233. para. 8 (p.2): In this Judgment, the Majority overturns the Trial Chamber's finding that Kondewa was guilty of enlisting Witness TF2-021 into the CDF. In overturning the Trial Chamber's decision, the Majority finds that:

> "[I]t is clear that the enlistment of Witness TF2-021 had taken place before he was initiated by Kondewa. The evidence shows that the Witness had first been captured by the rebels in 1995 and was later captured by the CDF in 1997. Upon his capture by the CDF, Witness TF2-021 was forced to carry looted property by the CDF."[1204]

5234. para. 9 (p.3): I do not agree with this interpretation and analysis on the facts of this particular case. In finding that the act of forcing Witness TF2-021 to carry looted property constituted enlistment, the Majority misapplies the concept of enlistment as it relates to the circumstances surrounding the CDF's recruitment of children under the age of fifteen.[1205] While I agree that in certain circumstances the "use" of a child soldier may constitute enlistment, based on the Trial Chamber's findings of facts in relation to Witness TF2-021, this particular "use" could not have constituted enlistment.

5235. para. 10 (p.4): Article 4.c. of the Statute punishes "conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities" (emphasis added). Our earlier interlocutory decision in this case held that conscripting and enlisting children under the age of fifteen into an armed force or group and/or using children to participate actively in hostilities is prohibited under customary international law.[1206]

5236. para. 11 (p.4-5): Enlistment entails "accepting and enrolling individuals when they volunteer to join an armed force or group."[1207] As the Majority points out, it includes any conduct accepting the child as part of an armed force or group. In my opinion, the key test to determine whether an act in question constitutes enlistment is whether the act substantially furthers the process of a child's enrolment and acceptance into an armed force or group.

5237. para. 12 (p.5): In finding that Kondewa's initiation of Witness TF2-021 did not constitute enlistment, the Majority implicitly considers that only one act could constitute enlistment. I disagree with this proposition and find that enlistment may in some circumstances be a process involving several acts which may substantially further the enrolment and acceptance of a child under the age of fifteen into an armed force or group. Religious initiation, military training and the signing of a certificate declaring a child fit for combat may all be acts that substantially further a child's enlistment. In other circumstances, enlistment may be a very short process and may constitute a single act, such as abducting a child and giving him/her a gun. In certain armed forces or groups there may be no clear record of a child's enlistment, but there may be several instances of the "use" of a child.

5238. para. 13 (p.4): In the situation where there are no formal or informal processes for enlisting individuals, especially children, the "use" of a child to participate actively hostilities may amount to enlistment. However, where the evidence demonstrates the existence of a process that contributes to the enrolment and acceptance of a child into an armed force or group, logic dictates that "use" of a child cannot constitute enlistment. Accordingly, the types of acts which constitute the crime of enlistment must necessarily depend on the particular circumstances of each case.

5239. para. 14 (p.4): In the CDF, as opposed to AFRC, the Trial Chamber findings demonstrate a clearly defined enlistment process which consisted of a child receiving ritualized initiation and military training. Although the purpose of this procedure changed as the war evolved, initiation and military training remained the cornerstones of enlistment in the CDF at all times during the conflict.[1208]

5240. para. 15 (p.4-5): The Trial Chamber's findings and the evidence in the trial record reveal that the initiation of Witness TF2-021 and the other twenty boys was a major part of the process of enrolling them and accepting them into the CDF. Witness TF2-014 testified that Kamajors went to war at an early age provided that they had been initiated.[1209] Expert Witness TF2-EW2 testified that initiation was a stepping stone to recruitment as a soldier because it was used as a means to prepare men and young boys to participate in the fighting groups.[1210] The Trial Chamber, nonetheless, acknowledged that initiation into the Kamajor society alone did not always amount to enlistment,[1211] and therefore, was very careful to evaluate whether a particular instance of initiation amounted to enlistment.[1212]

5241. para. 16 (p.5): In the circumstances of Kondewa's initiation of Witness TF2-021 and the twenty boys around his age, the Trial Chamber considered the following evidence:

> In 1997, when the witness was eleven years old he was captured by Kamajors and forced to carry looted property. The Kamajors subsequently took him to Base Zero for initiation.
>
> At Base Zero, the witness was initiated along with around 20 other young boys. Kondewa performed the initiation and told the boys that they would be made powerful for fighting. He gave them a potion to rub on their bodies before going into battle.
>
> After receiving training, TF2-021 was sent on his first mission to Masiaka, where he shot a woman in the stomach and left her there on the ground. On subsequent missions, he fought with the Kamajors at Kenema, SS Camp, Joru and Daru. In 1999 TF2-021 was flown by helicopter into Freetown with three other small boys and their commanders where they were given guns and sent to support ECOMOG who were fighting the rebels at Congo Cross.[1213]

5242. para. 17 (p.5): The Trial Chamber concluded that the evidence clearly showed that on this occasion, the initiates had become fighters."[1214] The Trial Chamber also found Witness TF2-021 was eleven years old when he was initiated by Kondewa.

5243. para. 18 (p.5-6): The Trial Chamber also found that Kondewa knew or had reason to know he was initiating an eleven year old boy into the CDF because Kondewa regularly performed initiation ceremonies, issued certificates confirming e.g. the age of eleven[1215] and would have known the difference between an eleven year old boy and a fifteen year old boy.[1216] On the basis of these findings, it is clear that Kondewa's initiation of Witness TF2-021 in 1997 was the condition sine qua non for Witness TF2-021's enrolment and acceptance into the CDF. Therefore, it was reasonable for the Trial Chamber to conclude that given these circumstances, when Kondewa was initiating the boys "he was also performing an act analogous to enlisting them for active military service."[1217]

5244. para. 19 (p.6): Furthermore, the act of carrying looted property that the Majority of the Appeals Chamber finds constituted enlistment, cannot be deemed as conduct accepting a child into an armed group or force. When Witness TF2-021, upon his capture in 1997, was forced to carry looted property by the CDF, he was not participating in active hostilities or in any activity that involves the CDF as a military organization, but was instead being forced to assist CDF soldiers in the illegal appropriation of property for the soldiers' private use. Nothing in the evidence indicates he (or the soldiers for whom he was carrying looted property) was participating actively in hostilities. Looting is a term of art used by international courts to denote the appropriation of property for private purposes rather than military necessity.[1218] The Trial Chamber understood looting to refer to the appropriation of property for private purposes.[1219] This act of carrying loot, therefore, could not have constituted enlistment into an armed force or group or the use of a child to participate actively in hostilities because it was done for private purposes.

5245. para. 20 (p.6): I, therefore, dismiss Kondewa's Fifth Ground of Appeal and affirm the Trial Chamber's conviction of Kondewa for committing the crime of enlistment of Witness TF2-021 into the CDF, punishable under Articles 4.c. and 6(1) of the Statute.

ii. Prosecution's Fifth Ground of Appeal: Kondewa's Responsibility For Enlisting Children (More Than One) Under Age of Fifteen Years into an Armed Force Or Group

5246. para. 21 (p.6-7): Having concluded that the evidence established beyond a reasonable doubt that Kondewa committed the crime of enlisting a child under the age of 15 into an armed force or group,[1220] I am of the opinion that the Trial Chamber should also have found Kondewa guilty of committing the crime of enlisting more than one child. The Trial Chamber found that Kondewa initiated Witness TF2-021 along with around twenty other young boys. Witness TF2-021 testified that he estimated the boys to be in almost the same age group as him, that means slightly younger than him.[1221] The Trial Chamber also found "beyond a reasonable doubt that Kondewa, in these circumstances, when initiating the boys, was also performing an act analogous to enlisting them for active military service."[1222]

5247. para. 22 (p.7): On the basis of these findings alone, the Trial Chamber was required to enter a conviction against Kondewa for enlisting children rather than only Witness TF2-021.

5248. para. 23 (p.7): The Majority of the Appeals Chamber concluded as well that in the absence of evidence concerning the age of the other boys, no reasonable trier of fact could have found the testimony of Witness TF2-021 sufficient to establish the age of the twenty young boys. However, as mentioned before, Witness TF2-021 testified that he estimated the boys to be in almost the

same age group as him.[1223] Given that Witness TF2-021 was eleven when Kondewa initiated him, it is therefore logical and reasonable to conclude that the other twenty boys were younger than fifteen. The Trial Chamber found no reason to doubt his testimony. On the contrary, the Trial Chamber found that his testimony was "highly credible and largely reliable," and that the "intensity of his experience has left him with an indelible recollection of the events in question."[1224] In light of the fundamental principle that a Trial Chamber is in the best position to evaluate and assess the evidence, I find that the Majority's conclusion is without merit.

5249. para. 24 (p.7-8): Other Trial Chamber findings circumstantially show that Kondewa initiated many more than 20 boys under the age of 15 and that these initiations qualified as enlistments into armed forces. In addition to the testimony given by Witness TF2-021, the Trial Chamber also accepted the evidence provided by two other former child soldiers who underwent initiation before participating in active military service.[1225] The Trial Chamber found that Witness TF2-140 was initiated into the Kamajor society at the age of 14 along with adults as well as other children who were 10 or 11 years old.[1226] Initiation fees were paid to the district initiator who then sent the fees to Kondewa, the High Priest of the Kamajors who was responsible for all of the initiators.[1227] The Trial Chamber also found that Witness TF2-004 was initiated at Liya by Muniro Sherif along with many others, including children as young as 10 years old.[1228] On the same day that he was initiated, TF2-004 left Liya to go fight in Zimmi.[1229] The purpose of the initiation was to fight the war.[1230]

5250. para. 25 (p.8): Furthermore, the Trial Chamber found that the CDF as an organization was involved in the recruitment of children under the age of 15 into an armed force or group.[1231] In particular, in 1999, the CDF registered over 300 children under the age of 14 in a disarmament, demobilization and reintegration program in the Southern Province in Sierra Leone.[1232]

5251. para. 26 (p.8): The Trial Chamber found that Kondewa performed initiations at Base Zero where he was present during its entire existence and where numerous child soldiers were also present.[1233] The Trial Chamber also found that Kondewa used child soldiers as body guards at Base Zero.[1234]

5252. para. 27 (p.8): Given that Kondewa, as the High Priest of the entire CDF organisation, accepted initiation fees of children under the age of 15 years,[1235] was the head of all CDF initiators, performed initiations at Base Zero and the fact that no Kamajor would go to war without his blessings,[1236] Kondewa must have either personally, or through an initiator subordinate to him, enlisted many children under the age of 15 years into the CDF. In light of this evidence, I find that no reasonable trier of fact could have failed to conclude that the only reasonable inference from

the evidence was that Kondewa enlisted many children under the age of 15 years into the armed forces.

5253. para. 28 (p. 8): I, therefore, hold that the Trial Chamber erred in failing to find that Kondewa enlisted children into the CDF and grant the Prosecution's Fifth Ground of Appeal in this respect and enter a conviction for Kondewa for enlisting many children into the CDF.

iii. Prosecution's Fifth Ground of Appeal: Kondewa's Liability for Aiding and Abetting the Use of Child Soldiers

5254. para. 29 (p. 9): In relation to Kondewa's liability for aiding and abetting the "use" of child soldiers, the Majority finds that it cannot consider any evidence or pronounce a verdict on whether Kondewa was liable for the "use" of child soldiers because the Trial Chamber declined to examine this issue. The Appeals Chamber corrected the Trial Chamber's error of law in considering that the Trial Chamber should have considered the evidence on the alternative charge. In light of the standard of appellate review, the Appeals Chamber was in a position to consider existing evidence concerning Kondewa's "use" of child soldiers, especially where the Trial Chamber had made findings demonstrating Kondewa's aiding and abetting the "use" of child soldiers.[1237] Therefore, I find the Majority's statement misplaced. I now turn to the merits of the Prosecution's appeal.

5255. para. 30 (p. 9): As demonstrated above, Kondewa initiated many children under the age of fifteen into the CDF. The Trial Chamber findings show that Kondewa was aware in performing these initiations for children that the purpose of initiation of many of the children was to prepare them to become fighters. Initiations were of paramount importance in Kamajor society as a prerequisite to participation in active military service. No Kamajor would go to war without Kondewa's blessings.[1238] Moreover, Kondewa's job included the preparation of herbs which the initiates smeared onto their bodies to protect themselves from bullets.[1239] He himself told initiates that the initiation would make them powerful for fighting.[1240] Furthermore, he also knew or had reason to know as demonstrated already that the children were under the age of fifteen years.[1241] On the basis of this evidence, I am also satisfied that Kondewa's initiation of these children offered practical assistance to the CDF's "use" of children under the age of fifteen to participate in active hostilities and that it had a substantial effect on the commission of this crime.

5256. para. 31 (p.10): Therefore, I find that the Trial Chamber and the Majority of the Appeals Chamber erred in failing to find Kondewa liable for aiding and abetting the use of children under the age of 15 to participate actively in hostilities. I grant the Prosecution's Fifth Ground of Appeal in this respect and I enter a conviction accordingly.

iv. Prosecution's Fifth Ground of Appeal: Fofana's Liability for Enlistment and Use of Child Soldiers

5257. para. 32 (p.10): The Majority declines to address the merits of the Prosecution's argument under this sub-ground of appeal because the Prosecution "merely proffers arguments based on evidence which the Trial Chamber considered and rejected, but does not point to any error in the reasoning of the Trial Chamber."[1242] I cannot agree with the Majority's position.

5258. para. 33 (p.10): In paragraphs 4.5 to 4.26 of the Prosecution's Appeal Brief, the Prosecution sets forth in great detail the Trial Chamber's factual findings and other evidence in the trial record and more importantly demonstrates that these findings indicate that the Trial Chamber erred in fact in finding that Fofana was not guilty of aiding and abetting the enlistment and use of children under the age of fifteen to participate actively in hostilities.[1243] I now turn to the merits of the Prosecution's appeal.

5259. para. 34 (p.10-11): Based on the Trial Chamber's findings, in my opinion, no reasonable trier of fact could have come to any conclusion other than that Fofana was aware that children were both enlisted in the CDF and "used" to participate actively in hostilities. Fofana was present at the passing out parade in early January 1998, where children involved in operations were present.[1244] At a subsequent commander's meeting held on the same day, where Fofana was present,[1245] Norman commented that "adult fighters were doing less than children, just eating and looting."[1246] Children were present at this meeting.[1247] Fofana also was one of the architects of the Black December Operation,[1248] an operation where children were present everywhere on the frontlines and in support roles.[1249] The Trial Chamber also found that Fofana was present at Base Zero for its entire existence, and was the overall boss of Base Zero and that child soldiers were present at various times at Base Zero.[1250] At Base Zero, Kondewa also initiated children into the CDF, and the child initiates were trained for war there.[1251]

5260. para. 35 (p.11): Moreover, child soldiers were present throughout CDF operations. Children who appeared to be under the age of fifteen years were conscripted, enlisted, or used to participate actively in hostilities in the following locations: Kenema, Base Zero, Bo, Daru, Masiaka, Port Loko, Yele, and Ngiehun.[1252] They participated directly in combat, often leading the Kamajors into combat, and they served at monitoring checkpoints.[1253] Thus, the only conclusion available to any reasonable Trial Chamber is that Fofana knew that children under the age of fifteen were being enlisted and used to participate actively in hostilities because Fofana, was the 'Director of War' for the CDF. He was part of the High Command and actually made many decisions along with Norman and Kondewa and was the overall boss of the Commanders at Base

Zero.[1254] Significantly, he was also the one responsible for the receipt and provision of logistics to the frontline, including the provision of manpower.[1255] Given that he had to have known that the CDF was enlisting and "using" children in active military service, his provision of logistics, manpower, and strategic directions provided practical assistance and had a substantial effect on the commission of the crime of enlisting and using children under the age of fifteen to participate actively hostilities.

5261. para. 36 (p.11): Therefore, no reasonable trier of fact could have found that Fofana aided and abetted the commission of this crime.

5262. para. 37 (p.12): Furthermore, there is ample evidence in the trial record that Fofana, as a leader in the High Command of the CDF, did not take a stand in public or at any of the commanders' meetings against the enlistment or use of children under the age of 15 in military activities. Although Fofana did not enlist or use child soldiers personally, I am satisfied that his high position within the CDF command structure and his physical presence at meetings where child soldiers were either present or were discussed, constituted tacit approval, encouragement and moral support to the commanders and Kamajors to continue to enlist and use children under the age of 15 to participate actively in hostilities.[1256] Fofana's tacit approval served to leave no doubt in the minds of the Kamajors that they enjoyed his full support in their enlistment and use of child soldiers. I am thus satisfied that Fofana's conduct had a substantial effect on the commission of this crime.

5263. para. 38 (p.12): I, therefore, grant the Prosecution's Fifth Ground of Appeal in this respect as well and find Fofana responsible under Article 6(1) for aiding and abetting the crimes of enlistment of children under the age of 15 into armed forces or groups and the use of children under the age of 15 to participate actively in hostilities, crimes punishable under Article 4.c. of the Statute.

5264. para. 39 (p.12): For the foregoing reasons I dismiss Kondewa's Fifth Ground of Appeal and grant the Prosecution's Fifth Ground of Appeal in its entirety.

CHAPTER 10 – ENSLAVEMENT

A. CHARLES TAYLOR

1. Indictment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-I, Indictment, 16 March 2006

(a) Particulars

(i) Charges

5265. By his acts or omissions in relation to the below described events, the ACCUSED, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:[287]

(ii) Count 1: Terrorizing the civilian population

5266. Members of the Revolutionary United Front (RUF), Armed Forces Revolutionary Council (AFRC), AFRC/RUF Junta or alliance, and/or Liberian fighters, including members and ex-members of the NPFL (Liberian fighters), assisted or encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, burned civilian property, and committed the crimes set forth below in paragraphs 6 through 31 and charged in Counts 2 through 11, as part of a campaign to terrorize the civilian population of Sierra Leone.[288]

(iii) Count 10: Abductions and Forced Labour

Count 10: Enslavement, a CRIME AGAINST HUMANITY, punishable under Article 2.c. of the Statute

5267. Between about 30 November 1996 and about 18 January 2002, throughout the Republic of Sierra Leone, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, engaged in widespread and large scale abductions of civilians and use of civilians as forced labour, including the following:[289]

[287] Taylor Indictment, Charges, p. 2.
[288] Taylor Indictment, para. 5.
[289] Taylor Indictment, para. 23.

i. Kenema District: Between about 1 July 1997 and about 28 February 1998, used an unknown number of civilians living in the District as forced labour in *various locations* such as Tongo Fields area;[290]

ii. Kono District: Between about 1 February 1998 and 18 January 2002, abducted an unknown number of civilians, and took them to various locations outside the district or to locations within the district such as AFRC and/or RUF camps, Tombodu or Tumbodu, Koidu and Wondedu, and used them as forced labour;[291]

iii. Kailahun District: Between about 30 November 1996 and about 18 January 2002, brought abducted civilian, men, women and children to various locations within the District and used them and residents of the District as forced labour;[292]

iv. Freetown and Western Area: Between about 21 December 1998 and about 28 February 1999, abducted an unknown number of civilians, including a large number of children, from various locations throughout Freetown and the Western Area, and used them as forced labour.[293]

2. Trial Judgement

The Prosecutor v. *Charles Ghankay Taylor*, SCSL-03-01-T, Judgement, 18 May 2012

(a) Factual findings

(i) General –Crimes

5268. para. 1611: Defence witness DCT-068 agreed in cross-examination that civilians in Sierra Leone were forced to carry ammunition boxes on footpaths.[3696] Defence witness Isatu Kallon agreed in cross-examination that the RUF forced civilians in Sierra Leone to cultivate farms, to give their harvests to the RUF, and to carry produce to the riverside with Guinea to trade. This witness also agreed that the civilians had no choice but to do these things and that it was the rebels who would actually sell or trade the produce and would keep the money or goods received in exchange.[3697] The evidence of these two witnesses establishes that in none of the incidents described by them were the civilians acting of their own free will. Thus on evidence provided by the Defence, the Trial Chamber is satisfied beyond reasonable doubt that members of the RUF intentionally exercised powers of ownership over civilians in Sierra Leone by depriving them of their liberty and forcing them to do work under the control of the RUF.

[290] Taylor Indictment, para. 24.
[291] Taylor Indictment, para. 25.
[292] Taylor Indictment, para. 26.
[293] Taylor Indictment, para. 27.

5269. para. 1612: However, such Defence evidence does not specifically identify any particular district as the place where these crimes occurred. What follows is a consideration of evidence of enslavement in the specific districts of Sierra Leone alleged in the Indictment.

5270. para. 1613: The Trial Chamber has held that as enslavement is a crime of a continuous nature, it is permissible for the Prosecution not to have pleaded specific locations within districts in which it alleges instances of enslavement occurred.[3698] Accordingly, the Trial Chamber has considered evidence of enslavement in all locations within the districts, whether or not they were specifically pleaded in the Indictment.

(ii) Kenema District – Crimes

a. Tongo Fields – Kenema District –Crimes

5271. para. 1615: In relation to enslavement alleged to have taken place in Tongo Fields the Trial Chamber has considered the evidence of witnesses TF1-371, TF1-567, TF1-062, TF1-590, DCT-068, Augustine Mallah, Issa Sesay, Dauda Aruna Fornie, Alex Bao, Karmoh Kanneh, Abdul Conteh, Alimamy Bobson Sesay, Charles Ngebeh and Exhibits P-173 and P-278.[3700]

5272. para. 1616: TF1-062 confirmed evidence he had given in the AFRC Trial and a transcript of that testimony was admitted into evidence.[3701] TF1-062 was a miner who was living and working in Tongo Field in 1997, and had six men employed to mine for him.[3702] His evidence in the AFRC Trial was that he heard on the radio on 25 May 1997 that the government in Freetown had been overthrown. At the time, CDF Kamajors were in control of the Tongo area.[3703] Sometime in August 1997, he heard gunfire and, soon after, observed soldiers entering Tongo Field, some of whom he recognized as members of the SLA. [3704] The witness identified Sam Bockarie (a.k.a. Mosquito) as the commander of the men.[3705]

5273. para. 1617: Approximately three days after capturing Tongo, Bockarie gathered the civilians of Tongo Field in a public meeting at Tongo Park attended by TF1-062.[3706] Bockarie told the civilians that the AFRC/RUF government, formed in Freetown, was now in control of Tongo[3707]. Bockarie also told the civilians that they would be asked to mine for diamonds.[3708] Soon after this meeting, Bockarie left Tongo Field, leaving other SLA commanders in charge of the mining. However, 'Mosquito' would continue to visit Tongo Field more or less at weekly intervals.[3709]

5274. para. 1618: TF1-062 stated that the civilians of Tongo Field were subsequently required to elect a civilian chairman, named Mopleh,[3710] who was responsible for organising the civilian mining. Commander Pa Seth Marrah informed the civilians, through Mopleh, that Bockarie had ordered that they should mine for "the Government" two days a week.[3711] Thereafter, the AFRC/RUF would designate certain days as 'government days'.[3712] On 'government days', the civilians of Tongo Field were forced to go and work in the mines in an area known as Cyborg Pit.[3713]

5275. para. 1619: TF1-062 worked for the AFRC/RUF government at Cyborg Pit for about four months, from August 1997 until they were ousted from Tongo Field by the CDF during the Muslim month of Ramadan.[3714]

5276. para. 1620: TF1-062 estimated that over a thousand civilians worked in the mines on 'government days'.[3715] The witness did not mine personally but instructed and supervised his six men in their work.[3716] The AFRC/RUF administration did not provide the civilians with food, mining equipment or payment for work undertaken.[3717] TF1-062 testified that civilians would not refuse to work on 'government days' since they knew that if they did so, the AFRC/RUF would mete out "discipline". The witness gave, as an example, the case of one of his worker who hid in an attempt to avoid work, but was found and beaten.[3718]

5277. para. 1621: On 'government days', civilians were compelled to hand over any diamonds found to the AFRC/RUF fighters supervising the mining.[3719] The fighters at Cyborg Pit were armed with guns, such as RPGs, LMGs, G3s, and AK-47s, and would watch the civilian miners to ensure that all diamonds found were surrendered.[3720] Civilians who attempted to keep diamonds found on a government mining day would be flogged almost to death.[3721] On two occasions, TF1-062 watched AFRC/RUF soldiers shoot and kill civilian miners who were alleged to have disobeyed orders.[3722] In addition, the witness regularly saw corpses being brought out of Cyborg Pit, and he was informed by his workers at the pit that these civilians had been shot by AFRC/RUF soldiers. To TF1-062's knowledge, no civilians in or around the pit were in possession of guns.[3723]

5278. para. 1622: On non-government days, AFRC/RUF soldiers would also be present at Cyborg Pit. The civilians were permitted to mine their own diamonds which they could sell[3724] but the AFRC/RUF would still ask them to wash gravel for them and would take some diamonds found by civilians.[3725]

5279. para. 1623: The Trial Chamber also heard evidence from Augustine Mallah, a security commander to Mike Lamin[3726] who initially spent one to two months mining in Tongo Field, from approximately June to August 1997.[3727] He went to Tongo with Captain Gweh, a junior commando, to undertake some mining because 'Mosquito' had just recaptured the Tongo area from the Kamajors.[3728] He carried out both his own private and government mining but prioritised the latter.[3729]

5280. para. 1624: Mallah estimated that between 600 and 700 civilians laboured in the Tongo mines.[3730] He testified hearing from the "OC Secretariat" about procedures the AFRC/RUF had put in place in Tongo. First, any diamond weighing above five carats was designated a government diamond.[3731] If it was less than five carats then it belonged to the 'officer or RUF soldier who took it'.[3732] Second, there was a civilian overseeing committee which would ensure the provision of civilian manpower required for 'government' mining for the AFRC/RUF junta. Third, the committee would also give guidance regarding where the most productive mining could be found. Finally, the committee would 'evaluate' the diamonds obtained from the mining.[3733]

5281. para. 1625: The witness personally visited government mining sites in Tongo and saw civilians mining there.[3734] Unless they were too sick or old to do so, civilians were forced to mine and were not permitted to refuse. Mallah himself forced civilians to mine for him.[3735] AFRC and RUF armed guards prevented civilians from escaping and forced them to carry out the tasks required of them.[3736] Anyone found escaping would be shot. The civilians were deprived of food and rest and flogged if their work was not up to the standard expected. The witness testified that he saw civilians flogged and killed and that he flogged civilians himself if they refused to mine for him.[3737]

5282. para. 1626: Mallah testified that any diamonds found at the mines were collected by the AFRC/RUF and evaluated at the OC Secretariat, who would then pass them on to PLO 2. Members of the AFRC/RUF and PLO 2 told him that the diamonds were sent to Eddie Kanneh, the resident Minister at the time who would take them straight to AFRC Johnny Paul Koroma in Freetown. The witness was also present at a meeting in February 1998 on Bockarie's veranda in Buedu when Johnny Paul Koroma referred to receiving diamonds that the AFRC and RUF had mined in Tongo and Kono.[3738]

5283. para. 1627: The witness was sent back to Tongo in November 1997 to mine for Mike Lamin and remained there for two months before returning to Kenema in January 1998.[3739] He witnessed that the conditions for the civilians in the mines had deteriorated.[3740] He described the

procedure by which civilians were gathered to work in the mines: at daybreak, the OC Secretariat, Captain Jalloh, would assemble a group of armed AFRC and RUF troops, split them into subgroups and allocate them to areas in the town of Tongo, where they would conduct house-to-house searches to capture civilians. The fighters stripped the captured civilians naked, tied them together with their shirts and marched them to the Secretariat where they were assigned to the various commanders for government mining.[3741] During his visits to Cyborg Pit, the witness saw the civilians working under 'stricter' conditions. As an example, he described how civilians mining outside hours designated by the AFRC/RUF, would be flogged by guards and if they tried to escape, they would be shot and possibly killed.[3742]

5284. para. 1628: The Trial Chamber also heard evidence from Dauda Aruna Fornie ("DAF"), who testified about organised diamond mining operations in Tongo for the combined RUF/AFRC government. Fornie stated that he worked as a radio operator for the RUF/AFRC at the battalion headquarters radio station in Tongo[3743] for approximately three months from the rainy season[3744] until November or December 1997,[3745] during which time he conducted mining for himself.[3746] Fornie testified that Bockarie organised the mining in Tongo although he was based in Kenema. The witness personally saw him in Tongo on three occasions[3747].

5285. para. 1629: Fornie described the system of 'organised mining' in which the RUF/AFRC would forcibly assemble civilians and take them to mine, particularly at Cyborg Pit. He witnessed checkpoints set up along the roads by military police officers to whom commanders would send requests for a particular number of civilians required for mining at Cyborg. At Cyborg, the AFRC/RUF would put 150 to 200 civilians to work daily extracting gravel and washing it. Some civilians were also appointed as supervisors but these supervisors were always themselves supervised by soldiers, such as Major Gweh. A man named Mopleh would collect all the diamonds at the end of the day and hand them to the commander in charge of Tongo.[3748]

5286. para. 1630: Karmoh Kanneh, (a.k.a Eagle)[3749], an RUF captain[3750], testified that he headed the successful mission to 'clear' the enemy from Tongo Field.[3751] The witness confirmed that the attack took place in 1997 but could not remember the precise date.[3752] After completion of the mission, he remained in Tongo Fields for one month to 'defend the area and put [diamond] mining activities in place'. He also undertook some personal mining.[3753] The witness stated that Sam Bockarie was the senior commander in charge of Tongo Field and Mopleh was in charge of the mining until he escaped with over a thousand diamonds.[3754]

5287. para. 1631: Karmoh Kanneh testified that the civilians did not mine willingly but were forced to 'dance to [the] tunes' of the soldiers with guns. Civilians who refused to mine would be

forced to work by being flogged and beaten. The witness saw such floggings on two occasions. 3755 On the first occasion, soldiers arrested a civilian for refusing to carry out diamond mining work. One of them beat the civilian on the buttocks and took him to work.3756 On the second occasion, a civilian tried to hide to avoid work but was discovered by soldiers, who beat him on his back and buttocks with a cane and took him back to work.[3757]

5288. para. 1632: Karmoh Kanneh testified to the imposition of two 'government days' per week when the civilians had to mine for the AFRC/RUF government.[3758] Four days were 'free' mining for soldiers and civilians and the seventh day was a rest day when no mining took place. The witness stated that any diamond found on a government day belonged to the government and was handed over to either a government committee, the AFRC, Mompleh or Sam Bockarie personally.[3759] Even on a non-government day, big diamonds were taken from the civilians.[3760]

5289. para. 1633: Alex Bao, a civil police officer based in Kenema Town in the relevant period, testified that the AFRC/RUF in Kenema Town, commanded by Issa Sesay and Akim, formed a strong force and left for Tongo Fields.[3761] Several days later, he spoke with many displaced civilians arriving in Kenema from Tongo, who told him that the AFRC/RUF had captured many able-bodied men and forced them to mine diamonds for them.[3762] The witness later heard that RUF Banya was in charge of the RUF in Tongo Field.[3763]

5290. para. 1634: Alimamy Bobson Sesay testified that during the AFRC government period both the AFRC and RUF were mining in Tongo under the control of the AFRC Secretariat led by Staff Sergeant 'Junior Sherrif'. The witness learned from a report by Sherrif that it was the civilians who were doing the mining under the orders of the RUF and AFRC. The witness knew the circumstances under which the civilians were mining in Tongo because he had experienced the same thing in Kono, where the civilians were forced to mine under gunpoint.[3764] The witness testified that "what I knew was that they had what they called two pile – two pile system. And they also used another way whereby civilians would excavate the gravel and share it between the RUF and the civilians. There were areas where they actually used force that you never had anything".[3765]

5291. para. 1635: TF1-567 testified that he was one of the fighters who attacked and captured Tongo Fields together with 'Mosquito' in 1997. He remained there until the Junta was dislodged from Freetown and the Kamajors had dislodged the AFRC/RUF from Tongo.[3766] Mosquito and Eddie Kanneh then organised mining in Tongo under the auspices of a civilian chairman. After this Chairman escaped with some of the diamonds, Sam Bockarie appointed one of his

bodyguards, Mohamed Kanneh, to channel diamonds through to him. Eddie Kanneh appointed Junior Sherrif to do the same.[3767]

5292. para. 1636: TF1-567 testified that fighters and civilians carried out 'government' mining in Tongo Fields, and specifically at Sand Sand and Cyborg Ground.[3768] Civilians were 'collected' by soldiers to do so.[3769] Civilians who were mining were watched by soldiers with guns. If a soldier suspected that a civilian had stolen a diamond, he would demand that the civilian present the diamond and if the civilian did not, the fighter would kill him. Any civilians who refused to work would be beaten up and forced to work.[3770] Any diamonds found during 'government' mining were given directly to Sam Bockarie. The witness understood that Mohamed Kanneh also channelled diamonds to Eddie Kanneh but never personally saw such diamonds being handed over.[3771]

5293. para. 1637: Abdul Conteh was a secondary school teacher who was carrying out diamond mining in 1996 and 1997 on land he had inherited in the village of Sandeyeima, Tongo Fields. In the relevant period, he was in Tongo Fields between 11 August 1997 and 10 November 1997.[3772]

5294. para. 1638: The witness testified that on 11 August 1997, while he was at his mining site, he heard heavy gunfire. He then saw a group of combatants, wearing red pieces of cloth tied to their foreheads moving from Tongo Fields to Kenema. He identified one of these combatants as Sam Bockarie, having later seen him in Tongo.[3773]

5295. para. 1639: Conteh testified that he was aware that the AFRC conducted surface diamond mining during the relevant period in the Tongo Fields area, predominantly at Cyborg Pit, which he estimated to be 400 yards from the township of Tongo.[3774] The witness estimated that at least 300 people worked there every day under the control of Sam Bockarie and his RUF soldiers. The witness's office was located on the main road and he could see civilians being marched to the township of Tongo. The wives of the captured civilians told him that their villages had been raided by the RUF soldiers. He described how the civilians were tied together in 'twos' by their shirts 'like slaves'.[3775]

5296. para. 1640: Conteh was forced to stop mining his land completely because it was requisitioned by the AFRC for their mining.[3776] After the AFRC took over, there was no further civilian mining undertaken because all mining was then done for the government.[3777] He testified to 'government' mining being carried out at Cyborg, Wuima, Bomi, Pandembu and his own area, Sandeyiema.[3778]

5297. para. 1641: The witness described three occasions in which he heard that the AFRC/RUF had sought to prevent private civilian mining continuing in Tongo Fields. First, he heard that Sam Bockarie sent child soldiers to Pandembu, a village in the Tongo Fields area,[3779] to kill civilians who were mining for themselves instead of for the AFRC/RUF government.[3780] Three civilians were killed by the child soldiers.[3781] Conteh and the other Caretaker Committee members went to investigate, and saw the three corpses with bullet wounds.[3782] He also heard reports through the Caretaker Committee at Tongo that child combatants had killed two civilians who were washing gravel and that several more had been wounded at his former mine at Sandeyeima. He also heard that three civilians were killed and two were wounded at Wuima.[3783]

5298. para. 1642: The witness saw armed RUF combatants guarding workers at Cyborg Pit.[3784] He stated that the civilians were mining in 'very rough conditions' and were fed 'two cups of garri' after a day's mining. The civilian miners were not otherwise paid for their work. The AFRC/RUF held the civilians in the 'headquarters campus' overnight and gave each group rest after three-day work cycles during which time the civilians remained 'under command'.[3785]

5299. para. 1643: Abdul Conteh was introduced to Sam Bockarie on 16 August 1997 at the OC Secretariat, Sekou Kunateh's office. He testified that Sam Bockarie did not stay in Tongo Fields permanently but came each day with rebels to collect diamonds from Sekou Kunateh, arriving every morning before 8am and leaving at 6pm for Kenema Town.[3786] He also testified to seeing AFRC soldiers in Tongo Fields during the relevant period but could not estimate the exact number, except that it was less than the number of RUF rebels.[3787] Conteh testified that he saw diamonds being counted and weighed in the office of Sekou Kunateh, the OC Secretariat. He said Kunateh told him that the diamonds were being forwarded to Sam Bockarie.[3788]

5300. para. 1644: Charles Ngebeh, was one of the RUF rebels who took part in the attack on Tongo Fields in 1997 and remained there to mine until the 'AFRC left power'.[3789] He stated that the attack took place during the rainy season of June/July 1997. He testified that the AFRC and RUF mined in Tongo using the labour of civilians forced from their homes to carry gravel and sand. If someone refused to mine he would either be killed or beaten up. Civilians were sometimes allowed to take a portion of the gravel for themselves.[3790]

5301. para. 1645: TF1-590 testified that during the relevant period he lived in Kenema for 10 months. In cross-examination, he testified to hearing about the RUF forcing people to mine diamonds in Tongo. He saw civilians being harassed by the RUF and AFRC to undertake 'government mining' and saw people who had their implements and money confiscated. The witness's extended family members, including cousins and nephews, were forced to mine.

However, the witness was never personally prevented from mining in his village or from keeping the diamonds he found.[3791]

5302. para. 1646: According to DCT-068, a member of the RUF[3792] and former miner, who visited Tongo Fields at some point in 1998 during the Junta period, the miners were guarded by men with guns at the Tongo Fields mines for 'security reason' to protect them against enemy attack, not to forcibly take the diamonds from them or for any other sort of 'coercion'.[3793] He agreed that there were incidents in which miners had been shot in the pits but played down any suggestion that this was widespread, stating that the main cause of the shootings of civilians were civilians crossing without permission into the AFRC/RUF-designated "no-go" areas.[3794]

5303. para. 1647: The Trial Chamber heard evidence from another Defence witness, Issa Sesay, that the RUF mined in Tongo Fields, in joint control with the AFRC, from August 1997 when Sam Bockarie captured the area from the Kamajors until the Kamajors pushed them out again in January 1998.[3795] He corroborated Karmoh Kanneh's evidence that he, Kanneh, took part in the attack on Tongo in 1997. Sesay stated that Bockarie then promoted Kanneh to the rank of Captain and appointed him commander of the RUF in Tongo.[3796] Issa Sesay could not give detailed evidence about the conditions for civilians in Tongo during the Junta period as he was not there on a daily basis. He testified however to having heard about forced mining there and that civilians were allowed to wash gravel for themselves on some days.[3797]

5304. para. 1648: TF1-371, an RUF commander, testified that during the Junta administration, he visited Tongo Fields, which was being run by the RUF through their mining commanders, and SLA with an SLA Secretariat. He saw 'hundreds of civilians in open fields mining diamonds' and digging for gravel, watched over by armed guards holding AK-47s.[3798] He was told by a commander there, Major Gweh, that the civilians were locals of the area who had been captured during the fighting. Others were former CDF Kamajors or their sympathisers[3799]. He testified that workers in Tongo Fields were not paid.[3800] Diamonds mined in Tongo Fields during the Junta period were handed over to Sam Bockarie and Issa Sesay.[3801]

(iii) Kono District – Crimes

a. Kono District in general - Kono District – Crimes

5305. para. 1662: Alimamy Bobson Sesay testified that when he arrived in Kono around mid-March 1998, he brought with him some civilians that he had captured in Makeni and used them to carry loads.[3806] Johnny Paul Koroma held a meeting in Koidu Town in which he declared Kono a

no-go zone for civilians and ordered the troops "to get some able bodied civilians who will assist us and they will serve as recruits".[3807] Koroma ordered that only captured civilians who were able-bodied were to be spared, the rest were to be executed.[3808] Soon after this meeting the witness and other members of his squad, including the RUF, started executing Koroma's orders and shot to death an unknown number of civilians in Koidu Town.[3809] The witness gave further evidence about organising food-finding patrols in the Kono forest, capturing unarmed civilians, taking their food and using them to carry food they had just stolen. They sometimes also took along civilians to carry the food they had taken from other civilians.[3810]

b. Koidu - Kono District – Crimes

i. Carrying of Loads - Koidu - Kono District – Crimes

5306. para. 1665: Tamba Yomba Ngekia confirmed evidence he had given in the RUF Trial 3813 and a transcript of that testimony was admitted into evidence.[3814] He testified in the RUF Trial that on 16 or 17 December 1999[3815] he was asleep in his house in Koidu Town when he heard heavy gun fire. At dawn he went outside and saw many corpses. He was captured by armed RUF men – "they all had guns"[3816] – along with almost 50 other civilians and forced to carry looted goods such as household equipment, clothes and radios to Tombodu. The men told him: "We are RUF. You are now in our control. You are no longer in ECOMOG control".[3817]

5307. para. 1666: Dennis Koker, who was in Koidu in early 1998 after the ECOMOG Intervention,[3818] testified that he saw RUF and 'juntas' capture civilians at gunpoint in Kono and use them to carry looted property. If a civilian refused, he would be shot.[3819] The rebels would fire warning shots to frighten civilians and 'put them under their control'.[3820] Koker personally used civilians to carry loads to Gandorhun.[3821] Women were also taken as 'wives'.[3822]

5308. para. 1667: Koker also testified that RUF and 'juntas' captured civilians, including many women and children, at gunpoint to provide 'reinforcement to fight for them' and forcibly 'initiated' them. Some were taken to the training base in Bunumbu.[3823] Anyone who refused was shot. He said that none of the top commanders tried to stop the practice because 'they wanted the civilians to work for them because it was for free. It was slavery'.[3824]

5309. para. 1668: Sheku Bah Kuyateh testified that he was captured in Koidu Town by an armed man and taken to work at Kainkordu Road as a mechanic for the RUF commander CO Matthew, who was a Liberian, between February and April 1998. The witness was placed under

armed guards so that he would not move without their knowledge and described himself as a 'slave'. There was 'nowhere for [him] to go away from them'. The witness met another boy, a Fullah, who told him that he had also been captured by CO Matthew and worked for him as a mechanic. The witness did not know whether the Fullah was free to leave or not.[3825] On cross-examination, he clarified a prior statement to the Prosecution in which he stated that he had remained 'over a month' with CO Matthew, confirming that he had remained between February and April. On re-examination, the witness testified that he knew that the rebels were looking for mechanics at the time so, despite his modest training, he deliberately told the Fullah boy that he was a mechanic so that the boy would not kill him.[3826]

5310. para. 1669: Komba Sumana testified that in approximately March/April 1998 he was hiding in the bush and saw his parents and siblings captured by armed "rebels" in his father's hut outside of Pakidu village.[3827] Some of the rebels "had combats, full combats on. Some others had combat trousers and civilian clothes".[3828] The witness saw the rebels ask one man for rice and when he replied that he did not have any they tipped the hot water heated for the rice over his head. The witness saw a rebel tie a rope around his father's throat and ask him for rice. When his father started crying they removed the rope and tied it around his brother's throat and asked him for rice.[3829] The man who had hot water tipped over his head had wounds all over his head and he carries the scars to this day.[3830] The witness saw that his father, mother, elder brothers and six other people had all been captured and he saw the rebels put rice and other belongings they had looted onto the heads of these people and "ask" them to carry the loads to Koidu Town.[3831] As these civilians carried the loads "there were some rebels at their back and some in front and they were in the middle".[3832] Sumana further testified that his brother Kai was being held in a house in Koidu Town by "rebels" called Killer and Peleto where he was tasked with domestic chores including doing laundry, fetching water and pounding rice.[3833]

5311. para. 1670: Alimamy Bobson Sesay testified that he took civilians on food-finding patrols in Koidu in May/June 1998 and forced them to carry loads.[3834] Bobson Sesay said that food finding was "a continuous process": "From our entry into Koidu Town right to our withdrawal it continued to happen".[3835] (The circumstances under which these civilians were forced to carry loads is more fully discussed under the heading "Kono District in general" above.)

5312. para. 1671: Exhibit P-078, a report by Amnesty International, tells of the abduction of a woman and her five children from Njalia Nimikoro, a village 10 kilometres south-west of Koidu

around 18 August 1998 as well as the release by rebels of 250 captured civilians from Koidu around 15 August 1998.[3836]

5313. Forced military training - Koidu - Kono District – Crimes para. 1680: Alimamy Bobson Sesay testified that when he arrived in Kono around mid-March 1998, he brought with him some civilians that he had captured in Makeni and used them to carry loads. Some of the able-bodied ones, including women, were trained and used for military purposes.[3841] Johnny Paul Koroma held a meeting in Koidu Town in which he declared Kono a no-go zone for civilians and ordered the troops "to get some able bodied civilians who will assist us and they will serve as recruits".[3842] Koroma ordered that only the captured civilians who were able-bodied were to be spared, the rest were to be executed.[3843] The witness testified that he and other commanders gave civilians basic weapons training at Masingbi Road in Koidu Town from mid-March to April 1998. Training was going on in two areas: "the RUF side and the SLA side".[844] Some of the civilians who were trained were small boys (SBUs) around the ages of eight, ten and twelve; some were adults between the ages of 25 to 30.[3845] Some SBUs were issued with machetes and taken to Yomandu to carry out amputations on civilians.[3846]

c. Tombodu – Kono District – Crimes

i. Carrying of Loads / Forced Labour - Tombodu – Kono District – Crimes

5314. para. 1683: Samuel Komba[3850] confirmed evidence he had given in the AFRC Trial that in March 1998,[3851] soldiers dressed in uniform took him and his wife to Giema, told them to lie down and gave orders for them to be shot if they tried to escape.[3852] They then carried luggage towards Tombodu. The soldiers also gave two other people loads to carry saying that the people should come with them because the soldiers were going to save them. The witness stated that on arrival at Tombodu, the soldiers put the loads of the civilians on the ground and "we sat down on the ground and they stood on top of us. They were our bosses".[3853] The soldiers also referred to the civilians as slaves.[3854]

5315. para. 1684: Ibrahim Fofana described being tied up while a house containing his family members was burnt. He and five other civilians were then given heavy loads of looted goods and made to carry them to Tombodu at gunpoint by soldiers in military uniform.[3855] Fofana testified that this occurred before 5 April 1998[3856] and after the three men were killed by the soldiers in February 1998 (as described earlier in his evidence).[3857]

5316. para. 1685: Sahr Charles[3858] confirmed evidence he had given in the RUF case that in Tombodu around February/March 1999,[3859] rebels "asked" civilians "with guns over [their] heads" to bring old vehicles from the bush 3 miles away, which they did.[3860] The rebels also placed packets of rice, looted goods and coffee on the heads of civilians at gunpoint and arrested civilians to make them carry the goods from the looted homes back to Tombodu.[3861]

d. Wondedu – Kono District – Crimes

i. Food finding missions / Domestic Chores - Wondedu – Kono District – Crimes

5317. para. 1690: Alex Tamba Teh testified that after he was captured in approximately April 1998, 3865 an RUF 3866 commander named Rocky took Teh to his base in Wondedu.[3867] Upon his arrival, Teh saw other captured civilians there whom he described as being 'under captivity' and who were used as 'manpower' to go food-finding for the rebels up to 50 miles away in Koronko, Koinadugu District.[3868] Any food that was found was called 'government property' and civilians who touched it would be shot to death. They were also used to cut palm nuts and palm fruits.[3869] All the captured civilians apart from Teh had "RUF" carved on their fronts and "AFRC" on their backs to prevent them from escaping and going to ECOMOG.[3870] Teh also testified that civilians were sent from Wondedu on food-finding missions, *inter alia,* to Guinea under the command of AFRC Captain KS Banya.[3871]

e. Yengema - Kono District – Crimes

5318. Forced Military Training - Yengema - Kono District – Crimes para. 1692: The Prosecution alleges that more than 100 captured civilians were forcibly trained at Yengema training base, located at Koidu Highway, from the end of 1998 until 2000. [3872]

5319. para. 1693: TF1-362 gave evidence that a training base operated at Yengema, near Koidu Highway from December 1998 until disarmament in 2000. Over a hundred civilians were forcibly trained to fight there. Some of these civilians had been transferred from the previous training camp in Bunumbu while others had been captured by the RUF in Koidu Town. The witness testified that these civilians underwent physical and practical training, were trained to use live weapons and that many died during 'crawling' training.[3873] The witness testified that recruits who attempted to escape from Yengema were killed, and that Sesay's bodyguards, instructors and other recruits

killed 5 civilians.[3874] After the training, the "recruits" were assigned to the frontline commanders including Morris Kallon, Denis Mingo and Rambo.[3875]

i. AFRC / RUF Camps (Domestic Chores / Forced Labour / Food-finding Missions) - Kono District – Crimes

5320. para. 1697: Finda Gbamanja testified that she was a young girl living in Koidu Town with her family when the rebels attacked. She was unable to say what month or year this was, but remembers that prior to this she had heard on the radio that Johnny Paul Koroma had been removed from power.[3878] She and her family fled to Baima. They stayed there "for a long period" but fled to the bush when the rebels came. She and her family left the bush during the rainy season because of the rain and went back to Baima.[3879] She spent two days there but on the third day she was captured by rebels. She saw the rebels club her mother with a gun and shoot her father to death.[3880]

5321. para. 1698: Gbamanja testified that the rebels took her to Koidu Town, where she stayed with a female rebel named Hawa and was forced to launder and cook. One day she was sent in search of vegetables and encountered Sergeant Foday, who said to her: "Madam, which of the two do you prefer, your life or going to my house?" The witness was then taken to Sergeant Foday's house, where she was forced to have sex with him every night and was forced to launder, cook and fetch water for him. She stated that she could not run away because 'they were all over the place'.[3881]

5322. para. 1699: The witness testified that when ECOMOG attacked Koidu Town she left with Sergeant Foday and went to Superman Ground. At that location she was also forced to cook, launder and have sex with him.[3882] Eventually Sgt. Foday's wife came to stay with him, so the witness was sent to Mamie's house. Mamie was the wife of a friend of Sergeant Foday, and Mamie was also a rebel. While staying with Mamie, the witness was forced to pound rice, launder and harvest palm oil.[3883] The witness said that she saw how one civilian at Superman Ground who attempted to escape was recaptured, forced to parade and then had his testicles lacerated. Rebels then forced other civilians to kill him.[3884]

5323. para. 1700: Perry Kamara identified Exhibit P-051 as a record of various lists that were normally kept by Superman and the Joint Security at Superman Ground.[3885] The witness recognised his own name amongst a list of soldiers at Superman Ground, which listed their names and ranks.[3886] The document includes another hand-written list entitled "Name of Civilians from Banya Ground and Their Care Taker", which is undated.[3887] Kamara testified that

the document coincides with the time he was at Superman Ground[3888] and that the civilian women named on the list lived with the commanders against whom their names were listed. He stated that some of the women were "wives" to the commanders with whom they stayed and could be used as labourers with the permission of their caretaker.[3889]

5324. para. 1701: Perry Kamara explained that in Exhibit P-051 under the heading 'List of manpower to go for food – SLPA[3890]/RUF'[3891] the names listed on the left of the page are civilians who went for food and the names listed on the right are the armed guards who would accompany them.[3892] Exhibit P-051 has other lists entitled 'Names of Civilians from Banya Ground' and 'Names of New Captives along Guinea/Sierra Leone highway'.[3893] Kamara also stated that the part of Exhibit P-051 entitled 'Civilian Women and Officers in Charge'[3894] indicates the RUF/AFRC fighters for whom civilians could be required to perform hard labour, domestic work or enter into a forced marriage.[3895]

5325. para. 1702: Perry Kamara testified that when the RUF went on food-finding missions from the camps around Koidu Town, including Superman Ground, Gandorhun Highway, Banya Ground, Tombodu, Sewafe pass and Yomandu, they would abduct civilians who would then be forced to carry loads, mine diamonds, and carry out domestic chores in the camps. These civilians were also used to build the Buedu airstrip and to collect arms and ammunition and food and drugs from Sam Bockarie in Buedu, Kailahun.[3896] In order to get food, the RUF rebels would go to a civilian zone, attack the civilians and force them to carry food from their homes back to the RUF bases.[3897]

5326. para. 1703: Komba Sumana, who the Trial Chamber has found was captured in April/May 1998,[3898] was taken shortly thereafter to a camp in Kissi Town. The witness said that he was captured by men wearing "uniform trousers and civilian clothes" who were speaking Liberian English[3899]. In the camp in Kissi Town he was taken to the boss of the rebels, a Major Wallace, a Liberian.[3900] The witness said he wanted to leave but was told he had to stay as he was going to become an SBU. On hearing this, the witness started crying. He wanted to go and find his family but "they didn't allow me".[3901] One evening someone came from PC Ground with a message from Issa that all those who had been captured had to assemble at PC Ground the next morning. The witness was told that "if anybody did not go, if it was found out later you, whom they would find out, if you are a civilian they will kill you".[3902] At PC Ground, Issa Sesay assembled the captured civilians and stated that Mosquito had requested that the civilians be sent to Kailahun for training. The selection process then took place at gunpoint and then they walked for 3 weeks with rebels to Buedu.[3903] The witness specifically recalled civilians being present at

Kissi Town, Banya Ground and PC Ground who had to carry out domestic chores. He testified that he personally went on food-finding missions, pounded husk rice and fetched water accompanied by an armed fighter.[3904]

5327. para. 1704: Alice Pyne, who arrived at PC Ground in February 1998,[3905] testified that the RUF rebels used to go out into the villages around PC Ground and capture civilian men, women and children. The women were taken as 'wives' of the RUF rebels to 'work for him just like a woman would work for her husband in the home'. Sometimes they were beaten but some were cared for by their 'husband' who brought them clothes and food.[3906] She testified that the civilians were forced to carry loads of property from the places where they were captured by RUF fighters. They could not refuse because the rebels had guns and if they did refuse, they would be beaten or shot.[3907]

f. Other Locations - Kono District – Crimes

5328. para. 1711: Emmanuel Bull testified that he was living with his family in Mortema, Kono, in February 1998. ECOMOG had ousted the AFRC government and the AFRC/RUF forces had fled from Mortema.[3913] However, one day Bull and his family heard approaching gunfire and feared the return of the AFRC/RUF forces, so they decided to flee to another village called Fakoyia. In all, about 21 family members fled, including Bull, his father and his elder brother Samuel. Rather than go to Fakoyia itself they decided that it was safer to hide in a cave near there. They lived in the cave for more than a month; Bull spent his birthday there on 2 March.[3914] One day Bull returned to the cave from gathering bush yams and learned that AFRC/RUF fighters had been there and had raped two girls, "A" and "B" (the girls' real names were suppressed to protect their privacy) and had taken A away with them. Bull was shocked. His love for A made him want to follow the fighters to rescue her.[3915] He planned to befriend the fighters if he could, in order to find A.[3916]

5329. para. 1712: Six or seven men, including Bull, his father and brother Samuel, set out to follow the fighters in the direction of Mortema. On the way, they encountered five well-armed AFRC/RUF fighters who warned them not to run away. Bull and his group all ran away to the bush. Some escaped but Bull was captured, along with his father and brother. The fighters took away their personal belongings and then threatened to kill them for running away. The three men begged the fighters not to kill them.[3917] They were then forced to walk at gun point towards Fakoyia. On the way, the fighters found some people hiding in the bush. The people fled but the fighters captured one of them, a woman, and took her along with them. The fighters made Bull

and the others carry the belongings of the people who had fled. Bull carried on his head a fowl coop and a gallon of palm oil. He had no choice as he believed he would be killed if he refused. His father was driven away by the fighters, who did not want old people walking with them.[3918]

5330. para. 1713: On the way, the fighters saw a palm wine tapper in a palm tree. One of them pointed a gun at him and told him to climb down. While their attention was thus distracted, Bull's brother ran away. One of the fighters threatened Bull that he would suffer for what his brother did. Bull then begged them not to kill him.[3919] The fighters decided that Bull should carry the load of rice his brother had been carrying. One of the fighters beat the palm wine tapper viciously about the head with his gun butt, so that he was bleeding from the mouth, nose and ears. Bull could not tell whether the palm wine tapper was dead but the fighters left him lying there and they all moved on.[3920] Bull was now carrying a bag of rice, the palm oil and the fowl coop. Bull testified that it was not easy; he was perspiring and exhausted but carried on.[3921] When they stopped to rest, Bull was able to befriend an AFRC/RUF fighter named Pikin. Bull's motive in doing this was to go to the fighters' camp in order to find A. When the group reached a certain area the rebels told the witness that he could put the load down and they would ask someone else to come and collect it. The witness had hopes of finding A so he pleaded to remain with them and they agreed.[3922] Pikin later allowed Bull to meet A and Bull was able to give her some advice on how to survive. After this meeting, Pikin told Bull to leave the group and Bull walked away into the forest.[3923]

5331. para. 1714: Bull testified that in April 1998 he was walking near Mamboma, Kono, when he was ambushed at gunpoint and captured by 11 to 15 AFRC/RUF men. Later in the day, the same men gave him a bag and a two-gallon rubber container of palm oil and told him to follow them 'the few yards' to Mamboma.[3924] When Bull entered Mamboma he saw dead bodies and "a head cut off and placed on a stick". One of the fighters said to him: "You, that's the way we are going to cut your head".[3925] Bull then described how he, his father and brother were instructed by AFRC/RUF men to carry loads of stolen property from Mamboma to Njaiama Nimikoro. Bull said that the man in charge was called Cobra, an RUF Liberian man, who was "the number 1 violence man, because he will go there threaten people, hit people".[3926] Everybody was heavily laden. His brother, who is handicapped, was still made to walk. Everybody was tired and Bull was walking bare foot on thorns; "it was a really, really, really, really, sad experience". The AFRC/RUF fighters kept going up and down urging the civilians to keep walking.[3927] Cobra told them "if anybody close [sic] your eyes on us…we are going to close our eyes on you". Bull understood this to mean that if anybody said they were tired they would be executed.[3928] A suckling mother who became tired was shot and somebody took her baby.[3929] About an hour

away from Njaiama Nimikoro, a quarrel broke out between the RUF and AFRC and Bull remembered one of them saying: "Okay, let's put all the civilians on one side. We will kill all of them".[3930] However, the situation was calmed and the civilians were told to remove the items they were carrying and Bull testified to walking this last stretch without load.[3931] In Njaiama Nimikoro, individual AFRC/RUF men selected civilians from the group whom they wanted to take away with them. For example, one woman later told Bull that the AFRC/RUF man who had selected her had taken her virginity and used her as his wife. A lot of women were in the group, so that one AFRC/RUF man would have four or five women. Children were also selected and taken away by AFRC/RUF men.[3932]

5332. para. 1715: Finally, Bull testified that at a location between Woama and Baima, the AFRC/RUF rebels, acting on orders from Bai Bureh, forced around 16-20 civilians, including the witness, to train for two weeks in weaponry and military manoeuvres. In relation to the training, an AFRC rebel told him 'if you don't do it, you are dead'.[3933] He testified to being forced to do hard exercise during training while sick with malaria and malnourished. If the trainees were perceived to be underperforming they would be hit on the back with a machete.[3934] The civilians were also sent on food-finding missions with armed fighters.[3935]

g. Mining - Kono District – Crimes

i. General – Mining - Kono District – Crimes

5333. para. 1720: The Trial Chamber heard evidence from TF1-367, who was a mining commander in Kono from 1998 to 2000,[3938] that civilians were captured either in the bush or by Morris Kallon and Issa Sesay in towns such as Makeni and Magburaka and forced to work in the Kono mines. The civilians worked because they 'wanted to save their lives' and those who refused were beaten. They worked without pay and any diamonds found were ultimately handed over to the witness. The civilian miners were guarded by armed 'securities' and Black Guards who protected them from harassment or molestation by other people and prevented the civilians from stealing the diamonds. The witness testified that there were rules in place that if someone lost or stole a diamond, he would be killed or seriously beaten. TF1-367 personally witnessed such a beating at Kokuima. TF1-367 estimated that on an average day, 200-300 civilians would be mining in government mines in the Kono District.[3939]

5334. para. 1721: TF1-371 who was in Kono in 1997[3940] testified that the AFRC and RUF were engaged in mining in Kono, including Koidu and 'the township'. This mining was organised and

overseen by the AFRC Secretariat and representatives of the Supreme Council including Gullit and SLA Cobra, the mining commander. Morris Kallon and Bockarie also visited occasionally.[3941]

5335. para. 1722: TF1-371 witnessed more than 500 civilians working under the supervision of RUF and SLA guards armed with AK-47s. These were local civilians who had been 'taken' by the AFRC/RUF and ordered to mine. He observed that they were dishevelled and worked 'grudgingly' and without pay, and were not allowed to take diamonds for themselves.[3942] The mined diamonds were given to the AFRC mining commander and transported to Johnny Paul Koroma in Freetown.[3943] TF1-371 testified that mining was still going on in Kono during 1998.[3944]

5336. para. 1723: TF1-371 testified that when he went back to Kono in December 1999, he again witnessed local civilians mining under armed guard in a similar way to what he had seen in 1997. The witness was unable to conclude whether the civilians were mining voluntarily because the roads had been opened up by then and it was therefore possible for the civilians to move to Freetown, Kenema or Makeni. TF1-371 stated that he knew that the armed guards were present to prevent the civilians stealing the diamonds but he did not ask Issa Sesay whether there was any other purpose for them.[3945]

5337. para. 1724: Albert Saidu, in cross-examination and re-examination, confirmed the substance of a prior statement that he gave to the Prosecution in October/November 2007 in which he stated that the RUF forced civilians to mine for them in Kono 'after the first Intervention'[3946] until disarmament. He said that some civilians also mined voluntarily for individual commanders. All civilians were watched by RUF armed guards to prevent them from stealing diamonds.[3947]

5338. para. 1725: TF1-516, who was mining in Bakundu in Kono during the Junta period,[3948] testified that at that time, civilians were forced at gunpoint to mine 'whether [they] liked it or not' in demarcated government pits under the command of Captain Moriba and, ultimately, 'Gullit'. If they refused, they would be flogged: the witness observed this happen in Bakundu Pit, Number 11, Lebanon, Small Sefadu and Ngaiya, all in Koidu. Armed security was provided to prevent the workers escaping. When asked whether these guards ever used their weapons, the witness stated that the terror was enough to make the civilians obey orders. Any diamonds found were to be reported to the mining commander who informed Bockarie. The witness stated that, unlike in other areas he visited, there was no system for sharing the mined gravel with the workers.[3949]

5339. para. 1726: The witness also testified that after the ECOMOG intervention, everyone pulled out of Kono and the mining stopped until it was re-instated in late 1998 under the control of the mining commander.[3950] The witness was no longer in Kono but heard about the mining there on the radio.[3951] He heard from 'Augustine' that, since there were no civilians left in Kono when it was re-captured, a mining unit comprising both RUF soldiers and civilians was sent from Kailahun to mine in Kono.[3952]

5340. para. 1727: TF1-516 testified that when Issa Sesay took over the mining in Koidu at the end of 1999, he was told by "Elevation", Sesay's radio operator, that mining had intensified in Kono. He heard from people in Kono that Sesay had installed a 'two-pile' system whereby one pile was reserved for the government and the other for the labourer. However, in practice, if there was 'something attractive' in a pile belonging to a labourer, that pile was also confiscated by the RUF. He was told that the mining was 'open' and that authority was given to anyone who had the ability to mine. However, 'government pits' also remained in which civilians were still forced to mine.[3953] The witness confirmed, however, that no radio messages were sent through him at that time to his commander, Benjamin Yeaten about civilians being forced to mine, even though Yeaten had requested reports on this mining situation in Kono.[3954]

5341. para. 1728: Perry Kamara testified on diamond mining in Kono after the Freetown invasion in early 1999.[3955] He gave evidence that when the mining in Kono came under the control of Issa Sesay, the RUF continued to use civilians to mine, including some who worked permanently for the government without pay.[3956]

5342. para. 1729: Mustapha Mansaray, who was appointed mining commander in Ngaiya, Kono District on 14 January 2001,[3957] testified that he was in control of the villages of Ngaiya, Yengema, Tongoma, Bandafay, and Small Ngaiya containing over 200 mining pits.[3958] He testified that he instructed AFRC/RUF fighters to gather civilians to wash gravel, which the fighters would do 'forcefully' at gunpoint. If anyone resisted, he would be beaten or killed. The witness observed civilians being beaten but could not provide a first-hand account of how many civilians had died in this way.[3959] However, he stated that he had heard from his staff that some civilians had been killed by AFRC/RUF fighters during shooting that broke out after the civilians had refused to wash gravel.[3960]

5343. para. 1730: Mansaray testified that a two-pile system was in operation in Kono while he was commander. Under that system, the gravel containing diamonds was split between the RUF/AFRC administration and the civilians. The civilians were guarded even when washing their own gravel and if a big diamond was found in a civilian's pile, the mining unit would seize

it and take it to the mining office. If the office had anything to give the civilian in return, they would do so. If the civilian refused to hand such a diamond over, it would be taken from him. Mansaray was under orders from his overall commander to beat or kill civilians who refused to hand over big diamonds to the RUF/AFRC. He gave evidence that only beatings, not killings happened in his own area.[3961] Mansaray stated that Issa Sesay's bodyguards used to capture civilians at Number 11 mine and take them to mine for the RUF.[3962]

5344. para. 1731: TF1-338 testified that a two-pile system was in operation in RUF-controlled mines between 2000 and 2002 whereby the gravel was shared between the RUF Commanders and the "government"; and the civilians were not given anything.[3963] He testified that Issa Sesay forced civilians to mine in the government pits at this time.[3964]

5345. para. 1732: Issa Sesay gave evidence for the Defence that he took over control of the mining in Kono in February 2000.[3965] He testified that from July to December 1998 there was low-key mining in the jungles around Koidu, but that there was no mining in Koidu Town itself in that period because ECOMOG was in control there. The RUF maintained a mining unit in Kono from 1998 to August 2001 when they disarmed in Kono. Effective mining recommenced in December 1998 when the RUF recaptured Kono and lasted until disarmament in July/August 2001.[3966] He testified that in 1999, mining under the RUF commander was purely for the RUF and nothing was shared. Civilians received food, medicines and sometimes clothing, but never received money.[3967]

5346. para. 1733: Issa Sesay testified that when he was in command of mining in Kono from February 2000, civilians were not forced to mine in Kono. The RUF operated a two-pile system, whereby the mined diamonds would be divided into two piles—one pile for the civilian miners and one pile for the RUF. The RUF only had rights over the RUF pile.[3968] Sesay denies that the two-pile system was mere propaganda or that from February 2000 the RUF forced any civilian from Makeni or Magburaka to go to mine in Kono. Everyone went of their own volition.[3969]

5347. para. 1734: Exhibit P-382, a document dated 21 January 2001 issued by Issa Sesay's office, grants safe passage for the bearer who is in search of 'manpower for government mining'.[3970]

ii. Tombodu – Mining - Kono District – Crimes

5348. para. 1740: Alimamy Bobson Sesay, who was in Koidu Town in June 1998,[3973] visited the Tombodu mining area when on patrol and testified to seeing an unknown number of civilians working there who had been captured by the SLA and RUF.[3974]

5349. para. 1741: TF1-567 moved to Koidu Town during 1999.[3975] The witness testified that after the RUF recaptured Koidu Town,[3976] they began mining operations in the Tombodu area under mining commander CO Lion. He described seeing civilians in the township and surrounding area 'captured forcefully' to carry out the mining.[3977]

5350. para. 1742: Tamba Yomba Ngekia testified that shortly after 16 December 1999, three RUF soldiers, who introduced themselves as Officer Med, Colonel Gibbo and Major Tactical told the witness and a group of around 50 civilians that they had been sent by Colonel Issa to take the group to mine at Tombodu Bridge. At Tombodu, the civilians were forced to dig and mine at gunpoint and could not refuse. Ngekia described seeing a town chief, Major S. E. Sogbeh, who refused to mine, shot and killed as an example to the other workers. He also heard Officer Med command the boys guarding the miners to shoot anyone who refused to work.[3978] He testified that there were 'many' civilians on his shift and that 70 new miners were delivered in chains and tied with rope around their waists. The miners were forced to work naked and at gunpoint so they would not escape. There was no medication and miners were given only one plantain a day to eat.[3979] Any diamonds they found were taken away by Officer Med.[3980]

5351. para. 1743: Sahr Charles confirmed testimony he had given in the RUF Trial[3981] and a transcript of that testimony was admitted into evidence.3982 He testified in the RUF Trial that he was living in Tombodu in 1999 when forced mining occurred in Benditu, Tombodu. Such mining went on for two years. RUF Officer Med came to Benditu, Tombodu in April 1999[3983] and told the witness and other civilians that they would be forced to mine, despite their refusal to do so. The rebels also collected civilians from other villages against their will and brought them tied in ropes to mine in Tombodu.[3984] The rebels guarded the miners with guns to prevent them running away. If miners became tired, they recovered in sheds at the mines but were not permitted to leave the pit. They could not refuse to mine because they had 'a gun over their head' and if they stopped working, the rebels would throw stones at them to force them to start again. The miners were not paid and were fed only gari.[3985] During the time the witness spent mining there, the number of civilians involved rose from 150 on the first day (the witness counted them) to 500. Any diamonds uncovered by the miners were immediately taken by the rebels.[3986] If the civilians failed to find diamonds they were assembled and accused of witchcraft, taken to a cell called the guard room,

stripped naked and were flogged, stabbed in the head and rubbed with mud.[3987] The witness denied that there was any two-pile system in Tombodu in 2000.[3988]

iii. Koidu Town – Mining - Kono District – Crimes

5352. para. 1749: Alimamy Bobson Sesay who was in Koidu Town in June 1998[3991] testified that civilians captured by the AFRC/RUF were forced to mine at gunpoint at Five-Five Spot, Masingbi Road, and Koidu Town. These civilians were also engaged in 'secret' night-time mining for Hassan Papa Bangura and 'Bazzy'.[3992] The diamonds that were mined were "government property", that is, they belonged to the RUF organisation and Superman, who was in control of the mining, had orders from 'Mosquito' to take them.[3993]

5353. para. 1750: Perry Kamara testified that mining took place throughout 1998 at Superman Ground, which was two miles from Koidu, under the direction of Sam Bockarie, Morris Kallon and mining commanders such as CO Kennedy, Mr Abdul and Mr Coomber. Captured civilians mined during the day under armed guard to prevent them escaping. They were then locked in a house or shipping containers guarded by gunmen. Kamara gave evidence that all the civilians had the letters "RUF" carved into their chests and foreheads to prevent them from escaping and that anyone caught trying to escape was killed.[3994]

5354. para. 1751: Foday Lansana, who was in Kono from January 1998 to September 1998 testified that civilians and Internal Defence Units filed many reports that Morris Kallon was killing civilians who refused to mine for him in Koidu Town.[3995]

(iv) Kailahun District – Crimes

a. Buedu - Kailahun District – Crimes

i. Carrying Loads / Domestic Chores - Buedu - Kailahun District – Crimes

5355. para. 1760: Augustine Mallah was in Buedu for two months in around February-May 1998.[4002] Mallah testified that not long after the ECOMOG intervention in February 1998, the AFRC and RUF captured civilians mostly from Kenema[4003] and brought them to Buedu where they joined other civilians. The civilians performed domestic duties, and those who were neither sick nor old were beaten if they refused to do the work assigned. Mallah personally witnessed

civilians being beaten for refusing to work. Chores included cultivating small farms, laundering, cooking, cleaning and clearing roads.[4004]

5356. para. 1761: Dennis Koker, who was in Buedu between early 1998 and 16 December 1999,[4005] testified that civilians who had been captured in Masiaka, Makeni and Koidu were taken to Buedu. The civilians worked for RUF commanders without pay, taking loads from one town to another. Those who refused to do so were beaten. Children were required to do household chores for the fighter's wives.[4006]

5357. para. 1762: TF1-371, who was in Buedu from March 1998 to April 1999, witnessed civilians being used to work for commanders. The civilians were used to do farm work, and to carry loads for combatants across the Moa River. He testified that the civilians were not paid for their work, and that they were forced to do it. They were also ordered to contribute cocoa and coffee that they had harvested to the commanders, including Sam Bockarie, in Buedu. The witness said that the RUF would go to their farms, "use them to harvest their coffee and their cocoa, and use them to bring the produce to Buedu, and Sam Bockarie take what they are producing and sell it to other businessmen who pay for it and they were not the recipient of whatever revenue was generated from the product". TF1-371 added that the locals who had cocoa and coffee farms were ordered by the RUF High Command to harvest that produce, which was then sold by the RUF High Command to generate revenue to buy other items for the fighters.[4007] Captured girls were part of the "works committee", and were used to do domestic chores such as cooking and laundry.[4008]

5358. para. 1763: Edna Bangura testified that she was captured in Masingbi in 1994 when she was 10 years of age. After being raped by three RUF rebels she was forced to carry a load on her head and walk to Buedu with other captured civilians. She said that she had no option but to carry the load and would have been killed had she refused.[4009] Shortly after arriving in Buedu, she was assigned to stay with a rebel commander named CO Scorpion and his wife, Hawa.[4010] Bangura testified that while she was in Buedu, she and other SGUs had to perform domestic chores, including laundry, cooking and pounding rice. She and other civilians were also sent by CO Scorpion on "food finding missions", which involved entering civilians' houses, threatening them with guns, then taking their food. The witness testified that they also made the captured civilians carry the looted items back to Buedu on their heads.[4011] The witness stated that she was based in Buedu from 1994 until November or December 1998 and that these food finding missions occurred throughout the time she was living in Buedu.

ii. Carrying Arms and Ammunition - Buedu - Kailahun District – Crimes

5359. para. 1767: Alex Tamba Teh testified that he was taken from Superman Ground in Kono with many other civilians under an RUF escort to Buedu. There he met other civilians who had been "taken" from all different areas. The civilians were told by their captors that they had been brought there to collect arms and ammunition from Dawa.[4013] Approximately 150 civilians from Buedu were ordered to go to Dawa and to carry arms and ammunition that had arrived on a helicopter back to Bockarie's house at Buedu. The witness and other civilians were then "asked" by Issa Sesay to carry some of this materiel on their heads to Superman Ground in Kono.[4014]

5360. para. 1768: TF1-371 testified that Augustine Gbao assembled 200 civilians from Kailahun who were ordered to carry arms and ammunition from Buedu across the Moa River towards Koidu, for an attack on Koidu, in December 1998. He personally witnessed the civilians carrying the loads to the crossing point of the Moa River. He testified that they did not carry these loads voluntarily, but were ordered to do so.[4015]

iii. Forced Military Training - Buedu - Kailahun District –Crimes

5361. para. 1770: TF1-026 testified that she was captured by RUF rebels at her home in Wellington, Freetown on 6 January 1999. The rebels shot and killed her sister and told the witness that if she did not stop crying or tried to escape she would also be killed.[4017] The RUF rebels took her and other captured civilians on a journey through Calaba Town, Waterloo and Makeni[4018] until ultimately, after about a month, she was taken to Buedu along with 19 other civilian female captives.[4019] The civilians spent six months being forcibly trained in Buedu.[4020] They were told that anyone trying to escape would be killed. The witness stated that "they will tell us to crawl using our arms and we will crawl and they will tell us to roll from one point to the other. They also taught us how to shoot a gun".[4021] When two of the civilians were caught attempting to escape, they were publicly shot and killed in order to deter others from escaping.[4022] This incident also resulted in Bockarie passing an order that all detainees have "RUF" carved into their chests with a knife in order to prevent their escape.[4023]

iv. Construction of Buedu Airstrip - Buedu - Kailahun District – Crimes

5362. para. 1773: Mohamed Kabbah testified that in April 1998, Sam Bockarie arranged a meeting in Buedu of over 100 persons, including AFRC representatives, at which he stated that

an airstrip was to be constructed in Buedu.[4025] Kabbah testified that the airfield was constructed by civilians and soldiers but was subsequently not used. Kabbah stated: "We constructed the airfield for a plane but we never saw a plane land there".[4026]

5363. para. 1774: Perry Kamara testified that pursuant to Bockarie's order, 200 to 300 civilians were sent by the RUF to Kailahun to work on the airstrip project. Kamara testified that civilians were forced to work both day and night on the project and at all times were accompanied by RUF security escorts.[4027] Some civilians had "RUF" carved into their chests or foreheads in order to prevent their escape.[4028]

5364. para. 1775: Isaac Mongor testified that civilians worked on the airstrip in Buedu which was being prepared by Sam Bockarie. Mongor testified that civilians had no option not to work, and were not paid for their work, although they were fed by the RUF.[4029]

5365. para. 1776: Abu Keita testified that he was shown the site of the airstrip by Issa Sesay in late September 1998. The MP commander Kaisoko and the G5 collected civilians from the various towns to work on the airstrip. Keita testified that civilians were not paid for their work.[4030]

5366. para. 1777: Dennis Koker told the Trial Chamber that the RUF captured civilians, who were stripped naked and tied together with a rope in order to prevent their escape. They were taken to Buedu to work on the airstrip.[4031]

b. Bunumbu / Camp Lion - Kailahun District – Crimes

i. Forced Military Training - Bunumbu / Camp Lion - Kailahun District – Crimes

5367. para. 1782: Dennis Koker was in Buedu from February 1998 to December 1999, during which time he served as the RUF Military Police (MP) Guard Commander and, later, as MP Adjutant.[4034] Koker testified that civilians captured by the RUF from different villages were brought to Buedu to the MP office. All captured civilians had been given a pass by the commanders who had captured them and at the MP office their passes were checked against a list to make sure that no one had escaped. Anyone without a pass would either be shot or put into a dungeon.[4035] Koker said that "the stronger ones were taken to the training bases – Bunumbu".[4036] Koker testified that the captured civilians in Buedu were not in good condition. They were worn out, malnourished and worked without pay. Children were taken away from

their parents and sent for military training, some as young as 12 or 14 years of age. Once trained, the civilians were sent to the front lines as reinforcements.[4037] Koker estimated that during his time in Buedu 1,300 captured civilians – 500 children and 800 men and women – went through the MP office.[4038]

5368. para. 1783: TF1-362 testified that an RUF training base named Camp Lion was established in Bunumbu in February 1998 on the orders of Sam Bockarie, and operated until the end of 1998. 4039 She testified that there were approximately 200 recruits, who were captured civilians from Freetown, Quiva and Daru, and included young boys, young girls, women and old persons.[4040] Some civilian "recruits" died during military training exercises and the High Command was informed.[4041] Recruits who tried to escape had "RUF" carved into their foreheads and chest.[4042] The trainees were also sent on food-finding missions, assisted the commanders' wives, performed domestic chores and cultivated farms.[4043]

5369. para. 1784: TF1-189 testified that she had been captured and raped in March 1998 by rebels whom she described in various parts of her evidence as "RUF rebels and the junta SLA",[4044] "RUF rebels" and "juntas",[4045] "Sankoh rebels", "Charles Taylor rebels",[4046] "RUF rebels" and "junta fighters".[4047] She was held captive in a location in Kailahun District when she heard about the attack on Freetown on 6 January 1999. Some time after that the rebels took away 20 captives, aged 12 to 18, both male and female, and she learned that they had been taken to "the training base" at which CO Monica was the commander, where they were taught "how to use guns, how to fire them, and they have to crawl under a barbed wire". She learned that if CO Monica "ordered you to do something and you refused, she will beat you up". After the training, the trainees were sent to the front lines.[4048]

5370. para. 1785: Komba Sumana, who the Trial Chamber has found was trained at Bunumbu from April/May 1998 to approximately August 1998,[4049] testified that civilians were taught how to handle weapons, and how to attack towns and houses.[4050] He said that civilians were beaten during their training, and sometimes were not provided with food.[4051]

5371. para. 1786: TF1-371 heard that throughout 1998, Bunumbu training base in Kailahun was used for training civilians who had been captured in Kono.[4052]

5372. para. 1787: Exhibit D-013, a report by a Training Commander at Camp Lion, Bunumbu from 21 May 1998, indicates that there were 603 recruits at Bunumbu training base in May 1998.[4053]

c. Locations in Luawa Chiefdom - Kailahun District – Crimes

i. Mining - Locations in Luawa Chiefdom - Kailahun District – Crimes

5373. para. 1791: Aruna Gbonda testified that diamond expert Patrick Bangula, who was appointed by Issa Sesay and Sam Bockarie to look for diamonds, gathered and directed the civilians of Yandohun in mining activities. When asked to give a date, Gbonda replied: "It looks like it was in '97 or '98, in between. That was the time that happened. I think so".[4055] Gbonda also told the Trial Chamber that he heard that there was mining by civilians at a location by the Moa River between Monfidor and Sahbahun.[4056] When asked about the treatment of civilians in these locations, the witness stated that "they were capturing forcefully. If you were a civilian and they told you to do something, you had to do it".[4057]

d. Talia - Kailahun District – Crimes

i. Farming and fishing - Talia - Kailahun District –Crimes

5374. para. 1796: Aruna Gbonda, a rice farmer and Deputy Chiefdom Commander, testified that he worked for the rebels near Talia village from 1996.[4062] In Talia, the RUF would tell the civilians to farm for them, and the civilians would clear the bush, farm the land, harvest the rice and give it to the rebels. Up to 50 people farmed in Talia between 1996 and 2000. Civilians were not paid for their work and were beaten for failing to perform the labour assigned to them. The witness himself was beaten by a rebel for refusing to work.[4063]

5375. para. 1797: The witness said that in 1997, 1998 and 1999, civilians were also asked to contribute cacao that they had harvested in Talia. They would then transport the cacao to the rebels at the riverside near Kailahun Town, who would ultimately turn it over to Augustine Gbao.[4064]

5376. para. 1798: Gbonda testified that from 1997 to 1999, Gbao told civilians to contribute palm oil. The civilians harvested the palm oil and gave it to the rebels on three different occasions in Giema or near the riverside near Kailahun Town. The rebels would then trade the palm oil for rice, Maggi, salt and cigarettes and the civilians then carried these items to a store in Kailahun Town.[4065]

5377. para. 1799: In addition, female civilians were forced to fish for the RUF in February and March, between 1994 and 2000, and the witness saw one woman who refused to fish beaten by

the rebels.[4066] Male civilians were also forced to give game that they had hunted to Sam Bockarie.[4067]

e. Giema - Kailahun District – Crimes

i. Farming - Giema - Kailahun District –Crimes

5378. para. 1805: Aruna Gbonda testified that he and approximately 150 other civilians were told by rebels, including Issa Sesay, to cultivate a big farm in Kambama, just outside Giema in 1997 in order to supply the rebels with rice. According to the witness, "every village people [sic] would have to cultivate a farm for rebels".[4069] Gbonda also testified that between 1996 and 2000 he and other civilians cultivated a swamp farm right outside Giema growing rice for Issa Sesay.[4070]

5379. para. 1806: Dennis Koker, who was in Buedu between early 1998 and 16 December 1999,[4071] testified that civilians were forced to work on "Mosquito's farms. Morris Kallon's farm [. . .] Issa's farms". If civilians refused to work on the farms, their property would be burned or they would be detained in military cells.[4072] He testified that civilians worked on farms without pay.[4073]

ii. Domestic Chores / Cultivation of Rice - Giema - Kailahun District – Crimes

5380. para. 1810: Finda Gbamanja testified that while she was staying with Sergeant Foday's mother in Giema, she performed domestic chores such as pounding rice, cooking, laundering, and fishing. She was also forced to do "government work" for the RUF consisted of planting seeds and weeding while she was in Giema and Ngeigor.[4075] On one occasion, when she was very tired and refused to do the government work, she was put in "the dungeon" for a day as punishment. She spent one Christmas in Giema.[4076]

5381. para. 1811: TF1-189 testified that while she and other captives were at Mamboma, from September 1998 to July 1999, they performed domestic tasks such as cooking, cleaning, washing clothes and cultivating a farm for RUF rebels. She indicated that when they were taken from Kailahun Town to Mamboma, she did not try to escape as she had been warned not to.[4077]

iii. Mining - Giema - Kailahun District –Crimes

5382. para. 1814: Aruna Gbonda testified that he personally saw a mine at Giema, where the mining workforce comprised "many" civilians.[4081] He testified that civilians who refused to work were seriously beaten.[4082]

f. Kailahun Town - Kailahun District – Crimes

i. Carrying Loads / Arms and Ammunition - Kailahun Town - Kailahun District – Crimes

5383. para. 1817: Augustine Mallah testified that when the AFRC and RUF forces retreated from Kenema in February 1998, they captured over 400 civilians along the way, and took them to Kailahun Town.[4085]

5384. para. 1818: In Exhibit D-060, notes of an interview given by Sheku Alex Bao to the Prosecution, Bao stated that he personally witnessed "soldiers/rebels" abducting civilians to carry their loot when they left Kenema.[4086]

5385. para. 1819: Dennis Koker testified that the RUF captured civilians in Kono, including women and children. They were given loads to carry and those civilians who refused were shot. 4087 These civilians were brought to Kailahun Town with the fighters[4088], and they were given arms and ammunition to carry on their heads from Kailahun Town to Jokibu on the frontlines at some point after March 1998.[4089]

5386. para. 1820: TF1-189 testified that after ECOMOG attacked Koidu Town in August 1998, she and hundreds of other civilians left and travelled with the rebels to Kailahun. The civilians carried loads or boxes of ammunition on their heads, or carried wounded rebels. TF1-189 witnessed the rebels kill a 12-year old boy who had stopped because the box of ammunition that he was carrying was too heavy. The rebels and SLAs were carrying guns during this march.[4090]

ii. Manual Labour / Domestic Chores - Kailahun Town - Kailahun District – Crimes

5387. para. 1825: TF1-189 testified that once the captured civilians from Koidu reached Kailahun she was forced to stay with a commander named Gogomeh, together with five other

female captives and four rebels.[4093] TF1-189 testified that during this time, she and the other captured women and girls were made to cook, wash the rebel's clothes and were "wives".[4094]

5388. para. 1826: TF1-189 said that she left Gogomeh's place only twice, on both occasions to accompany a female rebel to shop for food items.[4095] She did not try to escape again because she was warned that if she tried to do so "it would not be good for [her]". None of the other captive women and girls escaped.[4096] The witness was in Kailahun Town from August to September 1998.[4097]

5389. para. 1827: Aruna Gbonda testified that when he was deputy chiefdom commander in Kailahun Town from 1996-2000, a rebel called Morrie Fekai would relay messages to him via another rebel called Sellu to gather civilians to weed the grass in Kailahun Town. He estimated that around 400-800 civilians were used to weed.[4098]

g. Pendembu - Kailahun District – Crimes

i. Domestic chores - Pendembu - Kailahun District –Crimes

5390. para. 1832: Mustapha Mansaray testified that between May 1999 and July 2000 he was in charge of the screening in Pendembu, under the overall command of IDU commander Augustine Gbao.[4102] The witness testified that during this time period, the RUF screened up to 500 civilians in Pendembu. Some women who were captured by the fighters were not brought to the screening process but were kept by the fighters, and the witness never knew what happened to them.[4103] Some of these civilians were assigned to fighters' homes, where they performed domestic duties. Women were also screened as part of this process and assigned to fighters' homes where they were forced to have sexual intercourse and to perform domestic duties.[4104] When asked if they went with the fighters voluntarily, the witness replied with an unequivocal "no".[4105] When asked the same question later in his testimony he stated that he did not know what was in the women's minds and did not know whether they were willing or not.[4106] However, the witness stated that there were many complaints from captured women that they had lost their property and had been forced to come with the fighters.[4107]

(v) Other Locations – Crimes

a. Carrying Loads / Arms and Ammunition - Other Locations – Crimes

5391. para. 1836: Mustapha Mansaray testified that civilians captured by the RUF and AFRC in Daru and Segbwema were brought to Pendembu for screening at some point after May/June 1999 when the witness was posted to Pendembu.[4111] In Exhibit D-060, notes of an interview given by Sheku Alex Bao to the Prosecution, Bao states that when the rebels captured Segbwema, they abducted many civilians to carry their things.[4112]

5392. para. 1837: Albert Saidu testified that in 2000, strong civilians were used by rebels to carry ammunition, which had come from Vahun, from Bomaru to Pendembu, then to Manowa Ferry and further into Kailahun.[4113]

b. Farming - Other Locations – Crimes

5393. para. 1841: Aruna Gbonda testified that civilians in Sandialu contributed coffee which they had harvested to the rebels, which was ultimately given to Augustine Gbao.[4116]

(vi) Freetown and the Western Area – Crimes

i. General - Freetown and the Western Area –Crimes

5394. para. 1846: Documentary evidence corroborates the sworn evidence discussed below that large-scale abductions and crimes against humanity occurred in Freetown and the Western Area during this period. Exhibit P-204B (Confidential), is a report in which it is calculated that 99% of the patients treated at the FAWE 4120 sexual violence counselling and health care program in Freetown in 1999 had been abducted, with the majority abducted during the Freetown attack.[4121] Exhibit D-191, a Report of the Secretary General on the United Nations Observer Mission in Sierra Leone, reports that rebels abducted an unverifiable number of people in Freetown.[4122] Exhibit P-365 states that 3000 children were reported missing and believed to have been abducted by rebels.[4123]

5395. para. 1847: Another report, Exhibit P-077 (Confidential), states that rebels advancing into the city on January 6-7 forced civilians into the streets to act as human shields,[4124] that during the attack, rebels abducted a large but unverifiable number of people,[4125] and that thousands of children were abducted by rebels.[4126] Exhibit P-328, a Human Rights Watch report, states that a

central feature of the Freetown attack was the use of civilians as human shields, and that rebels marched in or behind thousands of civilians making up the human shield.[4127] Human Rights Watch also reported that thousands of civilians were abducted as rebels retreated from the city, and family members were often beaten or killed if they attempted to resist the abductions.[4128]

5396. para. 1848: What follows is a consideration of the sworn evidence of enslavement alleged to have been perpetrated in specific locations in Freetown and the Western Area.

ii. Carrying Loads - Freetown and the Western Area –Crimes

5397. para. 1849: Ibrahim Wai testified that on 23 December 1998, "SLA/RUF" soldiers entered Tombo and looted his goods. A commander named "Mohammed" then ordered the witness to carry these goods to the "station" in Tombo. He was told that if he attempted to turn back, he would be shot.[4129]

5398. para. 1850: Perry Kamara testified that by the time his convoy reached Benguema around 25 December 1998, the RUF/AFRC had more than 1,000 civilians carrying loads for them. He stated that "the father who was among us was full of admiration saying that we were able to control the civilians who were carrying loads for us".[4130]

5399. para. 1851: TF1-026 testified that on 6 January 1999, she was captured by RUF rebels under the command of CO Rocky from her home near Wellington and that over 50 civilians were forced to carry bags of looted property for the rebels on the way from Calaba Town to Waterloo. The rebels told them that they would be shot if they tried to escape, and the witness saw them kill one man who tried to run away.[4131]

5400. para. 1852: Abu Bakarr Mansaray confirmed evidence he had given in the AFRC Trial that he was captured in Freetown on 8 January 1999 by three rebels armed with AK-47s, who were under the command of Gullit. They forced him to go to State House where he was locked in the kitchen with approximately 50 other civilians for four days without food or water. He testified that civilians who attempted to escape were stopped by rebels who pointed guns at them.[4132] He was then chained and forced to carry a heavy bomb for the 45 minute trek to Calaba Town.[4133] On cross-examination (in the AFRC Trial), it was suggested to him that it would have been impossible for him to get from Freetown to Calaba Town in 45 minutes while carrying a heavy bomb after not having eaten for four days.[4134] Mansaray was also cross-examined on this aspect of his evidence in the present trial and he explained that the reason he stated a time of 45 minutes was because the rebels told him it had taken them 45 minutes to reach Calaba Town.[4135]

5401. para. 1853: Alimamy Bobson Sesay testified that in about the third week of January 1999, the civilians who had been captured in Freetown moved with the RUF/AFRC rebels, including the witness, through Kissy. The civilians, including women, were all given loads to carry of goods that had been looted from Freetown including rice, clothing and jeans. He testified that they were guarded so that they would not escape.[4136]

5402. para. 1854: TF1-023 confirmed testimony she had given in the AFRC Trial[4137] and a transcript of that testimony was admitted into evidence.[4138] The witness testified in the AFRC Trial that she was abducted by rebels from Calaba Town on 22 January 1999 along with four men, three women and a young child. They joined a group of other captured civilians and moved with the rebels to Allen Town, where they joined another group of captured civilians (totalling 100 in all). During the journey, TF1-023 was given a small bag to carry. The civilians stayed at Allen Town for three days and were guarded by SBUs with guns to prevent them escaping.[4139]

5403. para. 1855: Paul Conteh confirmed testimony he had given in the AFRC Trial[4140] and a transcript of that testimony was admitted into evidence[4141]. Conteh testified that on 23 January 1999, during the retreat from Freetown, the AFRC looted his house and forced him to carry the looted goods to a camp at Kola Tree, where approximately 200 civilians were also being held captive. During the journey, they beat him so that he would walk more quickly, and after showing him the corpse of a civilian who had been shot, told him that this is what would happen to him if he tried to escape.[4142] After staying at Kola Tree, the civilians were then forced to carry loads as they moved with the rebels towards Regent on approximately 28 January 1999.[4143]

5404. para. 1856: Akiatu Tholley testified that she was captured in the RUF/AFRC rebel attack on Wellington on 5 January 1999[4144] and was beaten up. She and other civilians were then forced to carry heavy boxes of ammunition in a convoy to Allen Town. She testified that if civilians refused to carry the ammunition, they would be killed. The witness personally saw some civilians killed for refusing to carry these boxes.[4145] When the civilians reached Allen Town, they refused to carry the ammunition any further, and the rebels ordered them to strip naked and told them they would be killed. The civilians escaped when jets flew overhead and the rebels took shelter.[4146]

b. Domestic Chores and other tasks - Freetown and the Western Area – Crimes

5405. para. 1865: Patrick Sheriff testified that he and three other civilians were captured in the bush by an armed AFRC member in Mabureh Town in the Western Area, on 30 December 1998. They were forced to process palm fruits in order obtain palm oil, even though the witness was injured. The witness stated that he did the job "to save his life". He also saw approximately 30

captured civilians in the town, who were used by the rebels to cook, pound rice and collect water.[4148]

5406. para. 1866: Alimamy Bobson Sesay testified that when the AFRC fighters were at PWD and Ferry Junction towards the third week of January, they would use civilians to look for tyres and burn them in order to light up the area.[4149]

5407. para. 1867: Alimamy Bobson Sesay also testified that 400 civilians[4150] were "placed under strict monitoring" and forced by fighters based in Benguema in February-March 1999 to do various tasks including pounding rice, cooking, laundering, going on patrols and ambushes, going on food finding missions and carrying loads.[4151]

5408. para. 1868: Paul Conteh's testimony in the AFRC Trial, a transcript of which was admitted into evidence, was that on around 22 January 1999, at the camp in Kola Tree, civilians were forced to work for AFRC commanders by cooking or doing domestic chores. One of the AFRC fighters showed him a corpse and told him that this might happen to him if he tried to escape.[4152]

5409. para. 1869: Conteh gave further evidence in the AFRC Trial that a few days later, he went with a group of captured civilians and rebels to Benguema, where there were already 200 civilians. He testified that civilians were forced by AFRC fighters to destroy a bridge under the supervision of armed fighters and to perform domestic duties, including cooking, laundry and pounding rice.[4153]

(b) Legal Conclusions

(i) Applicable Law - Crimes Against Humanity ("CAH")

5410. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Applicable Law – CAH – paras. 504 – 515 [1383].

(ii) CAH – Findings on general requirements

5411. See above: Chapter 2 – Taylor – Trial Judgment – Legal Conclusions – Applicable Law – CAH – Findings on general requirements – paras. 547 – 559 [1395].

5412. para. 1659: The Trial Chamber has already found that the chapeau requirements in relation to the crime of enslavement have been proved beyond reasonable doubt. The Trial Chamber further finds in relation to Kenema District that the acts of the perpetrators in each of the above

crimes of enslavement formed part of the attack directed against the civilian population and that the perpetrators knew that the abductions of civilians and their use as forced labour formed a part of that attack. The Trial Chamber therefore finds that the elements of enslavement as a crime against humanity (Count 10) have been proved beyond reasonable doubt.

5413. para. 1754: The Trial Chamber has already found that the chapeau requirements in relation to the crime of enslavement have been proved beyond reasonable doubt.[3997] The Trial Chamber further finds in relation to Kono District that the acts of the perpetrators in each of the above crimes of enslavement formed part of the attack directed against the civilian population and that the perpetrators knew that the abductions of civilians and their use as forced labour formed part of that attack. The Trial Chamber therefore finds that the elements of enslavement as a crime against humanity (Count 10) have been proved beyond reasonable doubt.

5414. para. 1844: The Trial Chamber has already found that the chapeau requirements in relation to the crime of enslavement have been proved beyond reasonable doubt.[4118] The Trial Chamber further finds in relation to Kailahun District that the acts of the perpetrators in each of the above crimes of enslavement formed part of the attack directed against the civilian population and that the perpetrators knew that the abductions of civilians and their use as forced labour formed part of that attack. The Trial Chamber therefore finds that the elements of enslavement as a crime against humanity (Count 10) have been proved beyond reasonable doubt.

5415. para. 1876: The Trial Chamber has already found that the chapeau requirements in relation to the crime of enslavement have been proved beyond reasonable doubt.[4155] The Trial Chamber further finds in relation to Freetown and the Western Area that the acts of the perpetrators in each of the above crimes of enslavement formed part of the attack directed against the civilian population and that the perpetrators knew that the abductions of civilians and their use as forced labour formed part of that attack. The Trial Chamber therefore finds that the elements of enslavement as a crime against humanity (Count 10) have been proved beyond reasonable doubt.

(iii) Applicable Law – Enslavement

5416. para. 445: The Accused is charged under Count 10 with enslavement, a crime against humanity, punishable under Article 2(c) of the Statute.[1067]

5417. para. 446: In addition to the *chapeau* requirements of Crimes against Humanity pursuant to Article 2 of the Statute, the following specific elements of the crime of enslavement must be proved beyond reasonable doubt:

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

ii. The perpetrator exercised these powers intentionally.[1068]

5418. para. 447: Indicia of enslavement include "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".[1069] "Lack of consent" is not an element of the crime of enslavement, but may be relevant from an evidentiary perspective.[1070] There is no requisite duration of the relationship between the Accused and the victim which must exist in order to establish enslavement, but duration may be relevant in determining the quality of the relationship.[1071]

5419. para. 448: In order to establish forced labour as enslavement, the relevant consideration is whether "the relevant persons had no choice as to whether they would work",[1072] which is a factual determination that must be made in light of the *indicia* of enslavement identified. However, the subjective belief of labourers that they were forced to work is not sufficient to establish forced labour, but must be supported by objective evidence.[1073]

5420. para. 449: The Prosecution submits that in relation to the mental elements for this offence, it must be established that the perpetrator "either intended enslavement or acted in the reasonable knowledge that it was likely to occur", as this approach would be consistent with the mental elements of other crimes in the Statute, the approach of Trial Chamber I, and the ICC Statute.[1074]

5421. para. 450: However, the Trial Chamber notes that this requirement is not supported by the *AFRC* Trial Judgement, which was not overturned on appeal on this point, nor by the jurisprudence of the Appeals Chamber of the ICTY.[1075] Such an expansion of the mental elements requirement/*mens rea* is unwarranted, as it is difficult to envisage what the requirement of "acting in the reasonable knowledge that enslavement was likely to occur" would entail in the context of enslavement where the *actus reus* requires exercising the powers of ownership.

(iv) Kenema District - Enslavement

5422. Tongo Fields – Kenema District – Enslavement para. 1649: The Trial Chamber has already determined that the AFRC and RUF attacked Tongo Fields in August 1997 and conducted mining

operations there under the command and control of Sam Bockarie. The AFRC and RUF left Tongo Fields in January 1998 when attacked by the CDF and Kamajor fighters.[3802]

5423. para. 1650: On the basis of the foregoing evidence, the Trial Chamber is satisfied that the AFRC and RUF abducted and forced a large but unknown number of civilians to engage in mining in Tongo Fields during the relevant period. With the exception of Defence witness DCT-068, all the witnesses testified to civilians being forced to mine in Tongo Fields, predominantly at Cyborg Pit. Further, Augustine Mallah, Dauda Aruna Fornie, Alex Bao, TF1-567, Abdul Conteh, Charles Ngebeh and TF1-371 provided testimony that civilians were 'collected' or 'captured' and forced to go to the mines to work. Augustine Mallah is the only witness to suggest that civilians were initially gathered for work by a committee of civilian elders, with forcible abductions from civilians' homes only occurring in late 1997. The Trial Chamber notes however that Mallah's evidence pertaining to the earlier civilian involvement in the collecting of civilians to work in the mines is based on hearsay as Mallah testified to hearing this from the OC Secretariat, whereas the later evidence of worsened conditions, including the abductions of civilians, is an eye-witness account. The evidence of the other witnesses points overwhelmingly to a systematic practice of civilian abductions as a precursor to the enforced mining in the Tongo Fields.

5424. para. 1651: The evidence shows that those civilians who refused to work met with violence. For example, Augustine Mallah testified to witnessing civilians both flogged and killed and to flogging civilians himself if they refused to mine for him, while TF1-062 described how one of the men working with him was beaten for seeking to avoid work. Karmoh Kanneh also described two occasions when civilians were flogged or beaten for refusing to work.

5425. para. 1652: On the basis of the testimony of TF1-062, Augustine Mallah, Karmoh Kanneh, TF1-567, Abdul Conteh, DCT-068 and TF1-371, the Trial Chamber finds that civilians were forced to labour in the presence of armed guards, who beat or killed those who attempted to escape or committed other perceived breaches of the mining rules. The AFRC/RUF thereby controlled the civilians' physical environment and took measures to prevent their escape. For example, TF1-062 testified to watching, on two occasions, AFRC/RUF soldiers shoot and kill civilian miners who were alleged to have disobeyed orders.

5426. para. 1653: The explanation provided by DCT-068 that the armed guards were stationed at the mines to protect civilians from attacks by government forces is not accepted by the Trial Chamber, since it is contrary to the wealth of evidence demonstrating that the armed guards were there to prevent the civilians from escaping and/or stealing diamonds.

5427. para. 1654: The Trial Chamber further finds that such work was undertaken either entirely without substantive pay or that civilians were given wholly insufficient compensation in the form of meagre food items. Civilians were forced to deliver diamonds they found to members of the AFRC or RUF and any attempt by a civilian to keep a mined diamond was met with violence. For example, TF1-062 testified that civilians received no food, mining equipment or payment from the AFRC/RUF administration. Augustine Mallah described how civilians were deprived of food and any diamonds found would be confiscated by the AFRC/RUF, a fact corroborated by Dauda Aruna Fornie, Karmoh Kanneh and TF1-567. Abdul Conteh testified to witnessing miners being given only 'two cups of garri' for their work.

5428. para. 1655: Although the Trial Chamber heard evidence from TF1-062, Karmoh Kanneh and Issa Sesay that civilians were permitted to keep and sell diamonds collected on some days of the week and may have worked voluntarily on 'non-government days', this does not alter its finding that, at least on 'government days' civilians were forced to mine without pay and without their consent.

5429. para. 1656: Whilst the evidence before the Trial Chamber is not conclusive about the number of civilians mining at any one time in the Tongo Fields area, witnesses provided estimates of between 150-200 (DAF) and over 1000 (TF1-062). The Trial Chamber finds it reasonable to conclude that the total number exceeds these figures given the testimonies it has heard describing how civilians continued to be abducted and forced to work in Tongo Fields throughout AFRC/RUF occupation.

5430. para. 1657: The Trial 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. The Trial Chamber is therefore satisfied beyond reasonable doubt that through abductions, deprivation of liberty and forced mining without pay in 1997 and 1998, members of the AFRC/RUF forces intentionally asserted and exercised powers of ownership over civilians in Kenema District.

5431. para. 1658: The evidence adduced by the Prosecution proves beyond reasonable doubt that in Kenema District during the Indictment period, members of the AFRC/RUF forces[3803] intentionally exercised powers of ownership over a large but unknown number of civilians by depriving them of their freedom and forcing them to mine for diamonds in various locations in the Tongo Fields area.

(v) Kono District - Enslavement

a. Kono District in general - Kono District - Enslavement

5432. para. 1663: Alimamy Bobson Sesay's evidence establishes that civilians captured by the RUF and AFRC in Kono District were forced to carry loads, go on food-finding missions and carry the looted food back, in circumstances in which they had no freedom of choice or movement in that they were kept in captivity in a very vulnerable position by armed men. The Trial Chamber is therefore satisfied beyond reasonable doubt that by depriving the civilians of their liberty and forcing them to work, members of the AFRC/RUF forces[3811] intentionally exercised powers of ownership over these civilians from around mid-March 1998.

b. Koidu - Kono District - Enslavement

5433. Carrying of Loads - Koidu - Kono District - Enslavement para. 1672: Exhibit P-078 provides corroborative evidence that members of the AFRC/RUF forces[3837] abducted civilians in and around Koidu in August 1998.

5434. para. 1673: Considering the circumstances of Ngekia's capture in Koidu Town in December 1999, with many corpses lying around and men armed with guns telling the civilians that they were now in RUF control, the Trial Chamber is satisfied that the civilians were forced to carry the looted goods to Tombodu. The Trial Chamber is satisfied beyond reasonable doubt that members of the RUF/AFRC, by depriving the civilians of their liberty and forcing them to carry loads, intentionally exercised powers of ownership over the civilians.

5435. para. 1674: Dennis Koker's first-hand evidence that civilians were captured at gunpoint and forced to carry loads under threat of being shot if they refused, establishes that civilians were deprived of their liberty and forced to carry loads against their will. The Trial Chamber is satisfied beyond reasonable doubt that members of the AFRC/RUF forces thereby intentionally exercised powers of ownership over them in early 1998. (Koker also testified that other civilians were captured and recruited into their forces, and that some civilians were brought to Bunumbu. His evidence in relation to the training of these civilians at Bunumbu has been considered in the section on Bunumbu/Camp Lion in Kailahun District.[3838])

5436. para. 1675: Kuyateh gave first-hand evidence that when he was initially captured he was told by his captor he would not be released and that he was put under armed guard while under RUF CO Matthew's control. The Trial Chamber is therefore satisfied beyond reasonable doubt

that Kuyateh was deprived of his liberty and forced to work as a mechanic and that members of the RUF/AFRC thereby intentionally exercised powers of ownership over him between February and April 1998.

5437. para. 1676: In relation to the carrying of loads by Komba Sumana's parents, brothers and other civilians, the Trial Chamber is satisfied on the evidence that they were forced to do so. The presence of armed men and the earlier demonstrations of violence by the rebels created circumstances in which it was not possible that these civilians acted under their own free will. The Trial Chamber therefore finds that it has been proved beyond reasonable doubt that the rebels, who were members of the AFRC/RUF forces,[3839] by depriving these civilians of their liberty and forcing them to carry loads, intentionally exercised powers of ownership over them in around March/April 1998.

5438. para. 1677: Further, Sumana gave first-hand evidence that his brother was prevented from escaping from the house in Koidu Town where he was held captive by the rebels, who had refused Sumana's requests for his release. Accordingly, the Trial Chamber is satisfied that Sumana's brother, Kai, was deprived of his liberty and forced to do domestic chores. Consequently, the Trial Chamber is satisfied beyond reasonable doubt that members of the AFRC/RUF forces intentionally exercised powers of ownership over him.

5439. para. 1678: In relation to Alimamy Bobson Sesay's evidence that civilians carried loads on food-finding missions, the Trial Chamber has found that these civilians were deprived of their liberty and forced to carry loads by members of the AFRC/RUF who intentionally exercised powers of ownership over them (See under heading "Kono District in general" above).

i. Forced military training - Koidu - Kono District - Enslavement

5440. para. 1681: The Trial Chamber finds on this evidence that it was not possible that these civilians, in particular the small boys, were receiving military training of their own free will. The Trial Chamber is satisfied beyond reasonable doubt that members of the AFRC/RUF forces, by depriving these civilians of their freedom and forcing them to undergo military training, intentionally exercised powers of ownership over them at Masingbi Road in Koidu Town from mid-March until April 1998.

c. Tombodu – Kono District - Enslavement

i. Carrying of Loads / Forced Labour - Tombodu – Kono District - Enslavement

5441. para. 1686: Samuel Komba's evidence establishes that he and three other persons, including his wife, were forced to carry baggage from Giema to Tombodu in March 1998. As the fighters gave orders that the civilians should be killed if they escaped, and stood on top of the civilians claiming that they were the "boss", the Trial Chamber is satisfied that the fighters exercised physical control over the movements of the civilians, and that the civilians had no choice but to carry these loads. As the fighters referred to the civilians as slaves, the Trial Chamber is satisfied that they acted intentionally in forcing the civilians to carry these loads. The Trial Chamber therefore finds that it has been proved beyond reasonable doubt that members of the AFRC/RUF forces[3862] intentionally exercised powers of ownership over these civilians.

5442. para. 1687: The Trial Chamber accepts Fofana's evidence of being forced to carry loads by the soldiers. His evidence is corroborated to a certain extent by Exhibit P-014, which is a video clip concerning the rebel attack on Fofana's village and the subsequent atrocities committed by them. Accordingly, the Trial Chamber is satisfied that Fofana and four other civilians were forced to carry heavy loads of looted goods to Tombodu. That they were forced to carry these goods at gunpoint guarded by armed fighters indicates that the rebels exerted physical control over their movement and that they had no choice but to perform this work. The Trial Chamber therefore finds that it has been proved beyond reasonable doubt that members of the ARFC/RUF forces[3863] intentionally exercised powers of ownership over Fofana and the other civilians sometime between February and April 1998.

5443. para. 1688: Sahr Charles' evidence establishes that in February/March 1999 civilians were forced to carry old vehicles from the bush to Tombodu and that they were also forced to carry loads of food and looted items. As the civilians had been arrested and forced to carry these goods at gunpoint, the Trial Chamber is satisfied that the rebels exerted physical control over their movements and that they had no choice but to perform this work. The Trial Chamber therefore finds that it has been proved beyond reasonable doubt that members of the AFRC/RUF forces intentionally exercised powers of ownership over these civilians.

d. Wondedu – Kono District - Enslavement

i. Food finding missions / Domestic Chores - Wondedu – Kono District - Enslavement

5444. para. 1691: The Trial Chamber is satisfied on the evidence of Alex Tamba Teh that in about April 1998 civilians in Wondedu were forced to go on food-finding missions and carry out domestic chores. It is further satisfied that all the civilians had "AFRC" and "RUF" carved into their bodies to prevent them from escaping. The Trial Chamber accordingly finds that the civilians were deprived of their liberty and had no choice but to undertake the food-finding missions and domestic chores. The Trial Chamber is therefore satisfied beyond reasonable doubt that members of the AFRC/RUF forces intentionally exercised powers of ownership over these civilians.

e. Yengema - Kono District - Enslavement

i. Forced Military Training - Yengema - Kono District - Enslavement

5445. para. 1694: TF1-362's evidence establishes that civilians died on the training base due to the harshness of the training, and that those who attempted to escape were killed. The Trial Chamber is therefore satisfied that the RUF/AFRC deprived these civilians of their liberty, exercised control over their movements, and forced them to undergo military training under the threat of physical violence. Accordingly, the Trial Chamber is satisfied beyond reasonable doubt that from approximately December 1998 onwards, members of the RUF/AFRC, including TF1-362, intentionally exercised powers of ownership over an unknown number of civilians at Yengema.

f. AFRC / RUF Camps (Domestic Chores / Forced Labour / Food-finding Missions) - Kono District - Enslavement

5446. para. 1705: The Trial Chamber is satisfied on Gbamanja's evidence that she was forced to perform domestic chores for Hawa and Sergeant Foday in Koidu Town, for Sergeant Foday and Mamie at Superman Ground and for Sergeant Foday's mother and the RUF at Giema. The Trial Chamber accepts her evidence that in none of the circumstances described in her evidence was she able to run away, that attempting to escape would be met by extreme violence and that refusing to do work would also lead to punishment. The Trial Chamber is therefore satisfied that none of the domestic duties she performed was done of her own free will. (The Trial Chamber

has previously found that she was also held in captivity by Sergeant Foday and used as a sex slave[3908]. Evidence on this aspect of her captivity is considered in the section dealing with the crime of sexual slavery.)

5447. para. 1706: The Trial Chamber is satisfied beyond reasonable doubt that members of the AFRC/RUF forces[3909] perpetrated the crime of enslavement in relation to Gbamanja in the following instances:

i. The female rebel Hawa intentionally exercised powers of ownership over Gbamanja by depriving her of her liberty and forcing her to perform domestic duties.

ii. Mamie, a female rebel, intentionally exercised powers of ownership over Gbamanja by depriving her of her liberty and forcing her to perform domestic duties.

5448. para. 1707: The Trial Chamber is satisfied from the context that these incidences of enslavement in relation to Gbamanja occurred from around April until at least December 1998.

5449. para. 1708: Perry Kamara's evidence is consistent with the evidence given by Alimamy Bobson Sesay that the RUF captured civilians and forced them to go on food finding missions and to carry looted food back to RUF bases. Kamara's evidence also corroborates the evidence of Finda Gbamanja that captured civilians were used by the RUF to perform domestic chores at Superman Ground. The Trial Chamber finds that Kamara's evidence is further proof to establish beyond reasonable doubt that the RUF captured civilians and intentionally exercised rights of ownership over them by depriving them of their liberty and using them as forced labour. (Kamara's evidence regarding the use of civilians to build the airstrip at Buedu has been considered in the section on Kailahun.[3910])

5450. para. 1709: Sumana's evidence establishes that he and other civilians at Kissi Town, Banya Ground and PC Ground carried out domestic chores such as pounding rice, fetching water and went on food-finding missions. Sumana testified that he was captured by armed rebels, that he wanted to leave Kissi Town but was told he could not, that he was told that any civilian who did not assemble at PC Ground would be killed. The Trial Chamber is satisfied beyond reasonable doubt on this evidence that he was deprived of his liberty and forced to perform these tasks and that members of the RUF thereby intentionally exercised powers of ownership over him from around April/May 1998. (The Trial Chamber has considered Sumana's evidence regarding military training in Bunumbu in the section on Kailahun.[3911])

5451. para. 1710: In relation to Alice Pyne's evidence regarding the use of civilian women as wives at PC Ground, the Trial Chamber has previously found on this evidence that these civilians were used as sex slaves.[3912] The Trial Chamber is further satisfied on her previously considered evidence that civilians in PC Ground were forced carry loads of looted property under threat of being beaten or shot if they refused. The Trial Chamber therefore finds that it has been proved beyond reasonable doubt that RUF fighters intentionally exercised powers of ownership over these civilians from around February 1998.

g. Other Locations - Kono District - Enslavement

5452. para. 1716: The Trial Chamber is satisfied, based on Bull's evidence, that he and other civilians were forced to carry loads from Mortema to an unidentified location. After being captured by well-armed AFRC/RUF rebels, Bull and the other civilians were threatened that they were going to be killed, were forced to walk at the point of a gun, saw a palm wine tapper viciously beaten, and were forced to carry very heavy loads. The evidence very clearly establishes that these civilians were deprived of their liberty and did not carry loads for the rebels of their own free will. The Trial Chamber accordingly finds that it has been proved beyond reasonable doubt that members of the AFRC/RUF forces[3936] intentionally exercised powers of ownership over these civilians.

5453. para. 1717: Furthermore, Bull's evidence concerning the march from Mamboma to Njaiama Nimikoro establishes beyond reasonable doubt that the witness and other civilians were forced to carry their loads under threat of death. The Trial Chamber therefore finds that it has been proved beyond reasonable doubt that members of the AFRC/RUF forces intentionally exercised rights of ownership over these civilians by depriving them of their liberty and forcing them to carry loads.

5454. para. 1718: Furthermore, in relation to the training that Bull and 16 to 20 other civilians underwent at a location between Woama and Baima, Bull's evidence establishes that he was threatened with death if he refused to undergo the training, that he was required to perform training exercises while he was sick, and that trainees who were perceived to be underperforming were hit on the back with machetes. The Trial Chamber is therefore satisfied that the perpetrators deprived the civilians of their liberty, exercised control over their movement and took measures to prevent their escape. The Trial Chamber therefore finds that it has been proved beyond reasonable doubt that members of the AFRC/RUF forces intentionally exercised powers of ownership over these civilians at a location between Woama and Baima.

h. Mining - Kono District - Enslavement

i. General – Mining - Kono District - Enslavement

5455. para. 1735: TF1-367 testified that civilians were captured either in the bush or in other towns such as Makeni and Magburaka and forced to work in the mines. Mustapha Mansaray also testified that AFRC/RUF fighters would forcefully "gather" civilians to wash gravel for the AFRC/RUF fighters and that Issa Sesay's bodyguards used to capture civilians at Number 11 mine and take them to mine for the RUF. TF1-371 testified that civilians living locally were taken by the AFRC/RUF and ordered to mine. Exhibit P-382 provides corroborative evidence that the AFRC/RUF forces needed manpower to carry out their mining operations. The Trial Chamber is satisfied on this evidence that members of the AFRC/RUF forces abducted a large but unknown number of civilians from locations within and outside of Kono District to labour in the mines.

5456. para. 1736: TF1-367 testified that the civilians worked in the mines under armed guards in order to save their lives. TF1-371 testified that civilians working in the minds did so grudgingly and without pay. Albert Saidu testified that the RUF forced civilians to mine for them under armed guards. TF1-516 testified that civilians were forced at gunpoint to mine and would be flogged if they refused. Perry Kamara testified that the RUF used civilians to mine, including some who worked permanently for the government without pay. Mustapha Mansaray testified that civilians worked in the mines under armed guards and that he had heard of some civilians being killed by AFRC/RUF fighters for refusing to work. TF1-338 testified that civilians were not given anything from the two-pile system that was in operation and that Issa Sesay forced civilians to mine in the government pits.

5457. para. 1737: All of such evidence contradicts Issa Sesay's testimony that civilians were not forced to mine during this period. The Trial Chamber accordingly does not accept the testimony of Issa Sesay. Not only is his testimony outweighed by the overwhelming evidence, but he also has a motivation to downplay civilian mistreatment while he was in command of mining.

5458. para. 1738: The Trial Chamber finds that the overwhelming evidence led by the Prosecution establishes that the civilians working in the mines were not doing so of their own free will. Such evidence proves beyond reasonable doubt that from at least January 1998 through the remainder of the Indictment period members of the AFRC/RUF forces[3971] intentionally exercised

powers of ownership over a large but unknown number of civilians by depriving them of their liberty and forcing them to work in the diamond mines in many locations in Kono District.

5459. Tombodu – Mining - Kono District - Enslavement para. 1744: The evidence of Alimamy Bobson Sesay, TF1-567, Ngekia and Sahr Charles establishes that the AFRC/RUF forced an unknown number of civilians to engage in mining in various locations in Tombodu. The Trial Chamber is satisfied on such evidence that the AFRC/RUF forces systematically captured civilians from villages around Tombodu and forced them to labour in the mines in Tombodu. Ngekia testified that new miners were brought to the mines in chains, and Charles testified that civilians were gathered in villages against their will and tied together with ropes to be brought to the mines.

5460. para. 1745: The Trial Chamber is also satisfied from the evidence of Ngekia and Charles, that civilians were guarded by armed fighters to prevent them from escaping and that, as Ngekia testified, the miners were forced to work naked to prevent escape. Both witnesses described how civilians were punished if they refused to work, or if they did not find diamonds. Ngekia described how the town chief who refused to mine was killed to set an example for the other miners, while Charles testified that civilians were stripped naked and flogged if they failed to find diamonds. The evidence of Ngekia and Charles also establishes that the miners worked without pay and were fed only subsistence rations.

5461. para. 1746: Ngekia testified that there were 50 civilians in his group that were taken to Tombodu Bridge and that they were later joined by 70 other civilians. Charles testified that there were initially 150 civilians mining at Bintuma but that this number grew to 500. As Ngekia was mining at Tombodu Bridge, and Charles at Bintuma, the Trial Chamber is satisfied that up to 620 civilians were forced to mine in Tombodu during this period.

5462. para. 1747: Accordingly, the Trial Chamber is satisfied beyond reasonable doubt on the evidence adduced by the Prosecution that members of the AFRC/RUF forces intentionally exercised power of ownership over a large but unknown number of civilians by depriving them of their liberty and forcing them to work in mines in Tombodu, at around June 1998 and throughout 1999-2000.

5463. Koidu Town – Mining - Kono District - Enslavement para. 1752: The Trial Chamber accepts the first-hand accounts of Alimamy Bobson Sesay and Perry Kamara, as corroborated by Foday Lansana, that civilians were forced by AFRC/RUF commanders to mine at various locations in and around Koidu Town, including Masingbi Road, Five-Five Spot and Superman

Ground. On the basis of their evidence that such civilians were under armed guards, had "RUF" carved into their bodies to prevent them escaping, and that anyone who tried to escape would be killed, the Trial Chamber is satisfied beyond reasonable doubt that from February 1998 onwards, members of the AFRC/RUF forces intentionally exercised powers of ownership over these civilians by depriving them of their liberty and forcing them to labour in the mines.

i. Conclusion – Kono District – Enslavement

5464. para. 1753: The foregoing findings by the Trial Chamber establish that the Prosecution has proved beyond reasonable doubt that members of the AFRC/RUF forces[3996] engaged in widespread and large scale abductions of civilians in Kono District and used them as forced labour to carry loads, perform domestic chores, go on food-finding missions, undergo military training, and work in diamond mines as detailed in the various crimes discussed above.

(vi) Kailahun District – Enslavement

a. Buedu - Kailahun District – Enslavement

i. Carrying Loads / Domestic Chores - Buedu - Kailahun District – Enslavement

5465. para. 1764: Based on the testimonies of Mallah, Koker and TF1-371, the Trial Chamber is satisfied that civilians were used to do domestic chores, such as laundry, cooking, cultivating small farms and carrying loads. Given the testimonies of Mallah and Koker that they witnessed civilians being beaten for refusing to work, and TF1-371's testimony that the civilians were forced to work and were not paid for their labour, the Trial Chamber is further satisfied that the civilians had no option but to work, and that this constituted forced labour. The Trial Chamber therefore finds that it has been proved beyond reasonable doubt that members of the RUF intentionally exercised powers of ownership over these civilians. Although the witnesses testified about slightly different time periods during which this forced labour occurred, the Trial Chamber is satisfied that this labour began after the Intervention in around February 1998 and continued until some point in 1999.

5466. para. 1765: The Trial Chamber accepts the evidence of TF1-371 that civilians who owned cocoa and coffee farms were forced to farm by the RUF and that the RUF took the produce and kept the proceeds of its sale. The Trial Chamber therefore finds that the civilians

were not farming of their own free will. The Trial Chamber accordingly finds that it has been proved beyond reasonable doubt that members of the RUF, by forcing these civilians to farm and to hand over the produce, intentionally exercised powers of ownership over them from March 1998 to April 1999.

5467. para. 1766: Edna Bangura's evidence relating to domestic chores is vague as to the time period in which she was forced to perform these chores. The Trial Chamber cannot therefore be satisfied that such crimes occurred during the Indictment period. However, she testified that the food-finding missions continued until she left Buedu at the end of 1998. The Trial Chamber accepts her evidence and is satisfied that during the Indictment period she and other civilians were forced to go on food-finding missions. The Trial Chamber therefore finds that the Prosecution has proved beyond reasonable doubt that members of the AFRC/RUF forces[4012] intentionally exercised powers of ownership over Bangura and other civilians by depriving them of their liberty and forcing them to go on food-finding missions.

ii. Carrying Arms and Ammunition - Buedu - Kailahun District – Enslavement

5468. para. 1769: Alex Tamba Teh's evidence establishes that approximately 150 civilians carried loads of arms and ammunition from Dawa to Sam Bockarie's house in Buedu. His evidence that Issa Sesay then ordered an unknown number of civilians to carry some of these arms and ammunition to Superman Ground in Kono is corroborated by the testimony of TF1-371, who testified that approximately 200 civilians were forced to carry arms and ammunition from Buedu across the Moa River to Superman Ground in December 1998 and that they did not do so voluntarily. The context indicates that this occurred at around November/December 1998.[4016] In the circumstances described by the witnesses, and given that the AFRC/RUF forces were engaged in widespread and large scale abductions of civilians in Kailahun District for use as forced labour, the Trial Chamber draws the conclusion that these civilians carried arms and ammunition for their captors because they were forced to do so. The Trial Chamber thus finds it proved beyond reasonable doubt that members of the AFRC/RUF forces intentionally exercised powers of ownership over the civilians by depriving them of their liberty and forcing them to carry arms and ammunition.

iii. Forced Military Training - Buedu - Kailahun District – Enslavement

5469. para. 1771: Based on TF1-026's first-hand evidence, the Trial Chamber is satisfied that at least 19 civilians were forcibly trained in Buedu from approximately February to July 1999. The evidence that recruits who attempted to escape were publicly shot, and that "RUF" was carved into the chests of the other recruits to prevent them escaping, establishes that the rebels deprived these civilians of their liberty and exercised control over them, so that the civilians had no choice but to undergo this training. The Trial Chamber is therefore satisfied that it has been proved beyond reasonable doubt that members of the AFRC/RUF forces, including Bockarie, intentionally exercised powers of ownership over these civilians.

iv. Construction of Buedu Airstrip - Buedu - Kailahun District – Enslavement

5470. para. 1778: The Trial Chamber is satisfied that under orders from Sam Bockarie, at least 200 civilians were forced to provide their labour, both day and night, without pay, for the purposes of constructing the RUF airfield outside Buedu at some point in 1998.

5471. para. 1779: Given evidence that the civilians worked on the airstrip without pay, that they were forced to work both day and night, that they had "RUF" carved on their chests to prevent them escaping and that they were accompanied by security escorts, the Trial Chamber is satisfied that the movement of the civilians was controlled. It further finds that the use of violence and threats of violence by the perpetrators to deter escape indicates that the civilians were deprived of their liberty and did not work of their own free will. The Trial Chamber is therefore satisfied beyond reasonable doubt that members of the AFRC/RUF forces exercised the powers of ownership over at least 200 civilians who worked on the airstrip at some point in 1998, and that they exercised these powers intentionally.

5472. para. 1780: The issue of whether the Accused gave the order to Bockarie to build the airstrip has been addressed in the section on the responsibility of the Accused.[4032]

b. Bunumbu / Camp Lion - Kailahun District – Enslavement

i. Forced Military Training - Bunumbu / Camp Lion - Kailahun District – Enslavement

5473. para. 1788: The Trial Chamber accepts the first-hand evidence of witnesses Koker, Sumana and TF1-362 regarding the military training of civilians at Bunumbu from approximately February 1998 until the end of 1998, as corroborated by Exhibit D-013 and the evidence of TF1-371 and TF1-189.

5474. para. 1789: Given the evidence that the recruits were beaten and sometimes deprived of food, that some had "RUF" carved into their chests to prevent their escape, and given that they were on the base in the presence of many armed fighters, the Trial Chamber is satisfied that the RUF exercised control over the trainees' movements, and that the civilians were forced to undergo military training under the threat of physical violence. Koker, TF1-362 and TF1-189 testified that civilians who were trained at Bunumbu were later sent to the frontlines. The Trial Chamber finds that this military training, which was a preparatory step to sending these civilians to the frontlines as fighters, constituted forced labour. The Trial Chamber is therefore satisfied beyond reasonable doubt that from approximately February to December 1998, members of the AFRC/RUF forces intentionally exercised powers of ownership over an unknown number of civilians at Bunumbu.

c. Locations in Luawa Chiefdom - Kailahun District – Enslavement

i. Mining - Locations in Luawa Chiefdom - Kailahun District – Enslavement

5475. para. 1792: The Trial Chamber notes that Gbonda did not visit the mine in Yandohun or the location between Monfidor and Sahbahun personally. He was told about the mining in Yandorhun by civilians who had worked there, whom he spoke to in Buedu.[4058] There is no indication from his evidence of how he knew about the mining at the other location.

5476. para. 1793: Gbonda's evidence did not indicate whether or not the civilians who worked in the mines were forced to do so, or did so voluntarily. He did state that civilians had been captured forcefully, but since he was not at either location mentioned above it is not clear how he knew this. The Prosecution alleges that at the location between Monfidor and Sahbahun, "civilians were beaten if they delayed the work; the witness himself was beaten many times".[4059]

However, the witness did not state that civilians were beaten at these locations, but at a location in Giema.[4060]

5477. para. 1794: There was no other evidence of mining in Kailahun District, or that civilians were forced to mine in these regions or in any other part of Kailahun District. Therefore, the Trial Chamber finds that Gbonda's uncorroborated hearsay evidence fails to prove beyond reasonable doubt that civilians were enslaved and forced to mine at these locations.

d. Talia - Kailahun District – Enslavement

5478. Farming and fishing - Talia - Kailahun District – Enslavement para. 1800: The Trial Chamber is satisfied on Gbonda's testimony that at least 50 civilians were forced to farm near Talia from 1996 to 2000. While some of the time period during which this farming occurred may fall outside of the Indictment period, the Trial Chamber is satisfied that such farming also occurred from 30 November 1996 until 2000. As the civilians were not paid for their work and were beaten if they refused to work, the Trial Chamber is satisfied that they were forced to work against their will and that this farming constituted forced labour. The Trial Chamber therefore finds that it has been proved beyond reasonable doubt that members of the RUF intentionally exercised powers of ownership over at least 50 civilians in Talia from 30 November 1996 to some point in 2000.

5479. para. 1801: Gbonda testified that from 1997 to 1999, civilians were told to contribute cacao and palm oil to RUF rebels which was ultimately given to Augustine Gbao. Civilian men were also told to contribute game that they had hunted to Sam Bockarie. However, there was no evidence that the civilians were forced to grow cacao or palm oil or forced to hunt, or that they were guarded or deprived of their liberty while doing so. While the evidence indicates that the contributions were not voluntary, this does not constitute forced labour. Accordingly, the Trial Chamber finds that the elements of the crime of enslavement have not been proved beyond reasonable doubt in relation to these incidents.

5480. para. 1802: Gbonda also testified that civilians had to carry items that had been traded for the palm oil to a store in Kailahun. However, he provided no evidence about whether these civilians did so voluntarily or whether they were forced to do so. The Trial Chamber accordingly finds that the elements of the crime of enslavement have not been proved beyond reasonable doubt in relation to this incident.

5481. para. 1803: The Trial Chamber is satisfied that Gbonda's evidence does establish that RUF members ordered women to fish, and that women who refused to fish would be beaten. The Trial Chamber is satisfied that the rebels exercised control over their movement, and that the women had no choice but to fish for the rebels. While some of this time period during which the fishing occurred falls outside of the Indictment, there is evidence that this fishing also occurred from 30 November 1996 until 2000. The Trial Chamber is therefore satisfied that it has been proved beyond reasonable doubt that from 30 November 1996 to 2000, members of the RUF intentionally exercised powers of ownership over an unknown number of women who were forced to fish.

e. Giema - Kailahun District – Enslavement

5482. Farming - Giema - Kailahun District – Enslavement para. 1807: The Trial Chamber is satisfied from the evidence of Koker and Gbonda that civilians worked on swamp farms outside Giema belonging to RUF commanders. Gbonda testified that this farming occurred from 1996 until 2000, while Koker, who was in Buedu from early 1998 to December 1999, does not give a precise time during which this farming occurred. As the civilians worked on these farms without pay, and were threatened with detention or having their property burned if they refused to work, the Trial Chamber is satisfied that they were deprived of their liberty and had no choice but to work. The Trial Chamber is therefore satisfied beyond reasonable doubt that members of the RUF, including Issa Sesay, intentionally exercised powers of ownership over an unknown number of citizens who worked on swamp farms from 30 November 1996 to 2000.

5483. para. 1808: The evidence also establishes that civilians cultivated a large farm outside Giema in 1997 for Issa Sesay. Given Koker's evidence as to the fate of civilians who refused to work on farms for the rebels, the Trial Chamber is satisfied that the civilians did not cultivate this large farm of their own free will, but did so in fear of what would happen to them if they refused to do so. The Trial Chamber is therefore satisfied beyond reasonable doubt that those civilians were forced to work on the big farm and that members of the RUF thereby intentionally exercised the powers of ownership over them.

i. Domestic Chores / Cultivation of Rice - Giema - Kailahun District – Enslavement

5484. para. 1812: Based on Gbamanja's first-hand evidence, the Trial Chamber is satisfied that she performed domestic chores for Sergeant Foday's mother in Giema, and did other work, such as weeding, in Giema and Ngeigor. Given that she was punished when she refused to do this

work, the Trial Chamber is satisfied that she had no choice but to do so. The Trial Chamber is therefore satisfied beyond reasonable doubt that members of the AFRC/RUF forces[4078] intentionally exercised powers of ownership over Gbamanja. The Trial Chamber is satisfied from the context that this occurred at some point in late 1998.[4079]

5485. para. 1813: Gbamanja also testified that civilians were sent to other towns such as Dodo, Balahun and Mamboma, but her evidence did not indicate what they did in these locations.[4080] However, TF1-189 gave evidence of what the captive civilians were forced to do in Mamboma. The Trial Chamber is satisfied on her evidence that civilians were used to perform domestic and other duties in Mamboma, and that they did so against their will. The Trial Chamber therefore finds it proved beyond reasonable doubt that members of the RUF intentionally exercised powers of ownership over TF1-189 and other captive civilians by depriving them of their liberty in Mamboma from September 1998 to July 1999.

ii. Mining - Giema - Kailahun District – Enslavement

5486. para. 1815: The witness did not give any evidence capable of proving that the mining occurred during the Indictment period. The Trial Chamber therefore finds that it has not been proved beyond reasonable doubt that civilians were enslaved at this location at a time relevant to the Indictment.

f. Kailahun Town - Kailahun District – Enslavement

i. Carrying Loads / Arms and Ammunition - Kailahun Town - Kailahun District – Enslavement

5487. para. 1821: The allegation by the Prosecution that captured civilians were used to carry loads from Kenema to Kailahun Town is not supported by the evidence. Mallah did not testify that the civilians carried anything. The only mention Bao makes of civilians being forced to carry looted goods was in an interview with the Prosecution on 25 November 2004 (Exhibit D-060), but Bao did not mention any such fact in any of his sworn evidence in the AFRC Trial, the RUF Trial or the present trial.[4091] The Trial Chamber therefore finds that is has not been proved beyond reasonable doubt on this evidence that civilians were forced to carry loads from Kenema District to Kailahun Town during the retreat in February 1998.

5488. para. 1822: However, Koker's testimony leaves no doubt that the civilians carrying arms and ammunition from Kailahun Town to Jokibu were forced to do so under fear of death. The Trial Chamber is therefore satisfied beyond reasonable doubt that members of the RUF intentionally exercised powers of ownership over these civilians by depriving them of their liberty and forcing them to carry arms and ammunition some point after March 1998.

5489. para. 1823: Furthermore, TF1-189 gave first-hand evidence that civilians were made to carry loads of ammunition on their heads or carry wounded rebels on the way from Koidu to Kailahun in August 1998, and that she witnessed a civilian being killed for refusing to do this work. The Trial Chamber is satisfied on this evidence that the civilians had no choice but to carry these loads. It therefore finds that it has been established beyond reasonable doubt that members of the AFRC/RUF forces intentionally exercised powers of ownership over these civilians.

ii. Manual Labour / Domestic Chores - Kailahun Town - Kailahun District – Enslavement

5490. para. 1828: The evidence that TF1-189 was forced to have sexual intercourse has already been considered in the context of sexual slavery, and the Trial Chamber has found that TF1-189 was used as a sexual slave in Kailahun Town between August and September 2009.[4099] Such evidence will therefore not be considered in this section.

5491. para. 1829: TF1-189's evidence that she and other captured civilians were used to do domestic chores and that they were threatened with the consequences should they try to escape, establishes that they were forced to labour in the commanders' homes against their will. Consequently, the Trial Chamber finds that it has been proved beyond reasonable doubt that members of the AFRC/RUF forces[4100] the rebels intentionally exercised powers of ownership over her and the other civilians from August until September 1998 in Kailahun Town.

5492. para. 1830: In relation to Gbonda's evidence that civilians were used to weed the grass in Kailahun District, Gbonda stated that the civilians who did the weeding were gathered by himself (not by the AFRC/RUF forces) and there was nothing in his evidence to indicate that these civilians were forced to work against their will. The Trial Chamber accordingly finds that, in this instance, forced labour has not been proved beyond a reasonable doubt.

g. Pendembu - Kailahun District – Enslavement

i. Domestic chores - Pendembu - Kailahun District – Enslavement

5493. para. 1833: The Trial Chamber is satisfied from Mansaray's testimony that between May 1999 and July 2000 in Pendembu, civilians who had been abducted by the RUF were assigned to fighters, and made to perform domestic duties. Based on his evidence, the Trial Chamber finds that these civilians did not do so of their own free will. Some women were also used as sexual slaves (this aspect of their captivity is considered in the section dealing with sexual slavery[4108]). Accordingly, the Trial Chamber finds that it has been proved beyond reasonable doubt that, by depriving the civilians of their liberty and forcing them to work, members of the AFRC/RUF forces intentionally exercised rights of ownership over them.

h. Conclusion – Kailahun District – Enslavement

5494. para. 1843: The foregoing findings by the Trial Chamber establish that the Prosecution has proved beyond reasonable doubt that members of the AFRC/RUF forces[4117] engaged in widespread and large scale abductions of civilians in Kailahun District and used them as forced labour to carry loads, farm, fish, carry out domestic chores, go on food-finding missions, undergo military training and construct an airfield as detailed in the various crimes discussed above.

(vii) Other Locations – Enslavement

a. Carrying Loads / Arms and Ammunition - Other Locations – Enslavement

5495. para. 1838: Although Mustapha Mansaray stated that civilians were captured in Daru and Segbwema by the RUF and AFRC in January 1999, there is no mention in his evidence of civilians being forced to carry loads while travelling to Pendembu. Exhibit D-060 contains notes of an interview given by Sheku Alex Bao to the Prosecution on 25 November 2004, in which he stated that when rebels captured Segbwema, they abducted civilians to carry their things. No indication is given in the document of when this occurred. Moreover, Bao did not mention any such incident in his sworn evidence in this trial, nor in the evidence he gave in the AFRC or RUF trials. The Trial Chamber therefore finds that the elements of the crime of enslavement have not been proved beyond reasonable doubt in relation to this incident.

5496. para. 1839: Albert Saidu's evidence is that civilians assisted the soldiers to transport the ammunition, but there is no mention of the civilians having been forced to do so. Accordingly, the

Trial Chamber finds that it has not been proved beyond reasonable doubt that the civilians were used as forced labour.[4114]

b. Farming - Other Locations – Enslavement

5497. para. 1842: Gbonda gives the only evidence of coffee harvesting in this particular location, and his evidence is not strong. He did not make it clear whether he personally witnessed civilians in Sandialu harvesting coffee or contributing it to the rebels, nor did he provide any specific dates during which the harvesting of coffee at this location occurred. Further, his evidence does not indicate whether the civilians contributed this produce voluntarily, or whether they were forced to do so. The mere contribution of coffee does not of itself constitute forced labour. Accordingly, the Trial Chamber finds that the elements of the crime of enslavement have been not been proved beyond reasonable doubt in relation to this incident.

(viii) Freetown and the Western Area – Enslavement

5498. Carrying Loads - Freetown and the Western Area – Enslavement para. 1857: The Trial Chamber is satisfied, based on Ibrahim Wai's first-hand evidence that he was forced by RUF/AFRC soldiers to carry goods looted from his house to the station in Tumbo, and that he was told that he would be shot if he turned back. The Trial Chamber accordingly finds that it has been proved beyond reasonable doubt that members of the AFRC/RUF forces[4147] intentionally exercised powers of ownership over Wai on 23 December 1998 in Tumbo, Western Area.

5499. para. 1858: The Trial Chamber finds that Perry Kamara's detailed first-hand account of how the RUF/AFRC fighters controlled the civilians, and how the civilians were forced to carry loads against their will, proves beyond a reasonable doubt that members of the AFRC/RUF forces intentionally exercised powers of ownership over approximately 1000 civilians on the way to Benguema on 25 December 1998.

5500. para. 1859: On the basis of TF1-026's first-hand testimony, the Trial Chamber is satisfied that she and over 50 other civilians carried bags of looted property from Calaba Town to Waterloo. As the RUF rebels threatened the civilians with death if they tried to escape, and as the witness personally saw them kill one civilian who had tried to run away, the Trial Chamber is satisfied that these civilians had no choice but to carry these loads. The Trial Chamber therefore finds that it has been proved beyond a reasonable doubt that members of the AFRC/RUF forces intentionally exercised powers of ownership over at least 50 civilians from Calaba Town to Waterloo on 6 January 1999.

5501. para. 1860: Mansaray's first-hand testimony establishes that he and approximately 50 other captured civilians were locked in a kitchen at State House under armed guards for approximately 4 days without food and water. The Trial Chamber is therefore satisfied that the physical movement of the civilians was controlled. The Trial Chamber accepts Mansaray's testimony of being forced to carry a bomb from there to Calaba Town in January 1999. He has sworn this evidence on oath in both the AFRC Trial and the present trial and although his estimate of 45 minutes may not be accurate, the Trial Chamber has no doubt that he was telling the truth about being forced to carry a bomb. The Trial Chamber is accordingly satisfied beyond reasonable doubt that members of the AFRC/RUF forces intentionally exercised powers of ownership over him.

5502. para. 1861: Alimamy Bobson Sesay gave a detailed first-hand account about civilians carrying loads through Kissy. As the civilians had been previously abducted, and were guarded by armed fighters as they moved through Kissy, the Trial Chamber is satisfied that the AFRC/RUF fighters exercised physical control over the movement of the civilians, who had no choice but to carry the loads. The Trial Chamber accordingly finds that members of the AFRC/RUF forces intentionally exercised powers of ownership over an unknown number of civilians in Kissy in the third week of January 1999.

5503. para. 1862: On the basis of TF1-023's first-hand evidence, the Trial Chamber is satisfied that she was abducted with eight other people in Calaba Town, was told by the rebels to carry a bag, and that she was taken to Allen Town where she was held for three days with 100 other civilians. Given that the civilians were guarded by armed SBUs to prevent them escaping, the Trial Chamber is satisfied that the rebels exercised control over the physical movement of the civilians. The Trial Chamber accordingly finds that it has been proved beyond reasonable doubt that members of the AFRC/RUF forces exercised powers of ownership over TF1-023 for approximately 3 days from 22 January 1999.

5504. para. 1863: On the basis of Conteh's first-hand testimony, the Trial Chamber is satisfied that AFRC/RUF fighters forced him to carry goods they had looted from his home to a camp in Kola Tree on 23 January 1999, and that he and other civilians were then forced to carry loads to Regent approximately 28 January 1999. As the witness was abducted, beaten, and threatened with death if he attempted to escape, the Trial Chamber is satisfied that he had no choice but to carry the loads. The Trial Chamber accordingly finds that it has been proved beyond reasonable doubt that members of the AFRC/RUF forces intentionally exercised the powers of ownership over Conteh and other civilians on 23 and approximately 28 January 1999.

5505. para. 1864: Akiatu Tholley's evidence proves beyond reasonable doubt that she and other civilians were forced by RUF/AFRC rebels to carry heavy boxes of ammunition from Wellington to Allen Town. Considering her evidence that they were threatened with death if they refused to work, that she personally witnessed civilians being killed, and that they were ordered to strip naked and threatened with death when they refused to carry the ammunition any further, the Trial Chamber is satisfied beyond reasonable doubt that members of the AFRC/RUF forces intentionally exercised powers of ownership over Tholley and an unknown number of civilians from Wellington to Allen Town in late January 1999. (Although the witness testified that this incident occurred on 5 January 1999, her subsequent movement with her captors from Wellington to Allen Town to Waterloo to Masiaka indicates that this occurred as the rebels withdrew from Freetown through Wellington later in January 1999.)

a. Domestic Chores and other tasks - Freetown and the Western Area – Enslavement

5506. para. 1870: Sheriff's evidence establishes that he and three other captured civilians were ordered to process palm fruits, despite the fact that he was injured, and that he did the job to "save his life". The Trial Chamber is therefore satisfied that these civilians did not do the work of their own free will. Accordingly, the Trial Chamber finds that it has been proved beyond reasonable doubt that members of the AFRC/RUF forces intentionally exercised powers of ownership over four civilians in Mabureh Town around 30 December 1998.

5507. para. 1871: Sheriff also testified that he saw in Mabureh about 30 civilians carrying out domestic chores, but did not state whether they were doing so voluntarily or not. The Trial Chamber therefore cannot establish that the elements of enslavement are proved in this instance.

5508. para. 1872: Alimamy Bobson Sesay's evidence that civilians were used to look for tyres to burn does not go so far as to give any indication of whether the civilians were forced to carry these tyres or whether they did so voluntarily, nor of how long the civilians were occupied in doing this.[4154] Accordingly, the Trial Chamber finds that the elements of the crime of enslavement have not been proved beyond reasonable doubt in relation to this incident.

5509. para. 1873: As regards the Kola Tree incident, the Trial Chamber is satisfied on the first-hand evidence of Paul Conteh that AFRC commanders used civilians to cook and perform domestic chores around 22 January 1999. As the civilians had been abducted and brought to Kola Tree against their will, and as one of the fighters threatened Conteh with death if he attempted to escape, the Trial Chamber is satisfied that the civilians had no choice but to do this

work. The Trial Chamber accordingly finds that it has been proved beyond reasonable doubt that members of the AFRC/RUF forces intentionally exercised powers of ownership over civilians at Kola Tree in Freetown around 22 January 1999.

5510. para. 1874: As regards the Benguema incident, Paul Conteh's and Alimamy Bobson Sesay's first-hand evidence establishes that in approximately February-March 1999, civilians were used by AFRC/RUF fighters to perform various duties, including domestic chores such as cooking, laundry and pounding rice, as well as destroying a bridge. As one of the rebels threatened Conteh that he might be killed if he attempted to escape, as the civilians were supervised by armed fighters, and "under strict monitoring", the Trial Chamber is satisfied that the physical movement of the civilians was restricted and that there were means taken to deter their escape. The Trial Chamber accordingly finds that it has been proved beyond reasonable doubt that between February and March 1999, members of the AFRC/RUF forces intentionally exercised powers of ownership over a group of approximately 400 civilians in Benguema, Western Area.

b. Conclusion - Freetown and the Western Area – Enslavement /

5511. para. 1875: The foregoing findings by the Trial Chamber establish that the Prosecution has proved beyond reasonable doubt that members of the AFRC/RUF forces engaged in widespread and large scale abductions of civilians in Freetown and the Western Area and used them as forced labour to carry loads, perform domestic chores and destroy a bridge, as detailed in the various crimes discussed above.

5512. Regarding Taylor's individual criminal responsibility (Aiding and Abetting), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Aiding and Abetting - paras. 6904-6906 [6351], 6910-6915 [6354], 6918-6924 [6360], 6927-6937 [6367], 6940-6946 [6378], 6947-6952 [6385], 6953 [6391].

5513. Regarding Taylor's individual criminal responsibility (Planning), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Planning - paras. 6957 [6392], 6958-6968 [6393], 6969-6970 [6404], 6971 [6406].

5514. Regarding Taylor's individual criminal responsibility (Instigating), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Instigating - para. 6972 [6407].

5515. Regarding Taylor's individual criminal responsibility (Ordering), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Ordering - para. 6973 [6408].

5516. Regarding Taylor's superior responsibility, see below: Chapter 13 (Article 6.3 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.3 of the Statute - Superior Responsibility - paras. 6977 6986 [8613].

3. Appellate Judgment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-A, Judgment, 26 September 2013

(a) Factual Findings

5517. para. 253: The Trial Chamber found that the RUF/AFRC's operational strategy was characterised by a campaign of crimes against the Sierra Leonean population, including the crimes charged in all 11 Counts of the Indictment,[578] which were inextricably linked to the strategy of the military operations themselves. This strategy entailed a campaign of terror against civilians as a primary modus operandi, to achieve military gains at any civilian cost and political gains in order to attract the attention of the international community and improve the RUF/AFRC's negotiating stance with the Sierra Leonean government (the "Operational Strategy").[579]

5518. para. 254: In assessing Taylor's alleged criminal liability, the Trial Chamber found that Taylor, by his acts and conduct, was "critical in enabling" the RUF/AFRC's Operational Strategy, "supported, sustained and enhanced" the functioning of the RUF/AFRC and its capacity to implement its Operational Strategy, planned an attack of terror as the modus operandi of the attack on Freetown and had a substantial effect on the crimes committed by the RUF/AFRC.[580] It further found that Taylor knew of the RUF/AFRC's Operational Strategy, knew that his acts and conduct assisted the commission of crimes in the implementation of that Operational Strategy and knew the essential elements of the crimes in which he was participating.[581]

5519. Regarding the RUF/AFRC's Operational Strategy, see below: Chapter 12 (Article 6.1. Liability) -Taylor - Appellate Judgment - Findings and Conclusions - The RUF/AFRC's Operational Strategy - paras. 257-302 [6411].

5520. para. 303: The Appeals Chamber has reviewed the Trial Chamber's assessment of the evidence and affirmed the findings in the Judgment.[821] It has further affirmed the Trial Chamber's finding that the RUF/AFRC leadership pursued an Operational Strategy to commit the crimes charged in Counts 1-11 of the Indictment.[822]

5521. Regarding Taylor's Acts, Conduct and Mental State, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Acts, Conduct and Mental State - paras. 303 - 343 [6457].

(b) Legal Conclusions

5522. See below: Annex B encompasses the discussion of the evaluation of evidence relating to all the crimes [Annex B].

5523. Regarding Taylor's Criminal Liability, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Criminal Liability - paras. 497-595 [6630].

B. RUF

1. Indictment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-2004-15-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

5524. Paragraph 19 through 39 are incorporated by reference.[294]

5525. These attacks [para.41: 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] were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against

[294] RUF Indictment, para. 40.

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.[295]

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

5526. Members of the AFRC/RUF subordinate to and/or acting in concert with Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, committed crimes set forth below in paragraphs 45 through 82, and charged in counts 3 through 14, as part of a campaign to terrorize the civilian population. The AFRC/RUF also committed the crimes to punish the civilian population or 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.[296]

(iii) Count 13: Abductions and Forced Labour:

5527. 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 of diamond miners. The abductions and forced labour included the following:[297]

> i. Kenema District: 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;[298]
>
> ii. Kono District: 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 within the District such as AFRC/RUF camps, Tombodu, Koidu, Wondedu, and Tomendeh. At these locations the civilians were used as forced labour, including domestic labor, and as diamond miners in the Tombodu area;[299]
>
> iii. Koinadugu District: Between 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;[300]

[295] RUF Indictment, para. 42.
[296] RUF Indictment, para. 44.
[297] RUF Indictment, para. 69.
[298] RUF Indictment, para. 70.
[299] RUF Indictment, para. 71.
[300] RUF Indictment, para. 72.

iv. Bombali District: Between about 1 May 1998 and 31 November 1998, in Bombali District, members of AFRC/RUF abducted an unknown number of civilians and used them as forced labour;[301]

v. Kailahun District: At all times relevant to this indictment, captured men, women, and children were brought to various locations within the district and used as forced labour;[302]

vi. Freetown and Western Area: Between about 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 Western Area, including Peacock Farm, Kissy, and Calaba Town. These abducted civilians were used as forced labour;[303]

vii. Port Loko: About the month of February 1999, the AFRC/RUF fled from Freetown to various locations in 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 Port Loko District including Port Loko, lunsar, and Masiaka. AFRC/RUF forces also abducted and used as forced labour civilians from various locations in the Port Loko District including Tendakum and Nonkoba;[304]

5528. 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.[305]

2. Trial Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-T, Judgement, 2 March 2009

[301] RUF Indictment, para. 73.
[302] RUF Indictment, para. 74.
[303] RUF indictment, para. 75.
[304] RUF Indictment, para. 76.
[305] RUF Indictment, para. 76.

(a) Factual Findings

(i) Kono District – Crimes

a. Background to Kono District – Kono District – Crimes

5529. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Background to Kono District – paras. 1136 – 1139 [208].

b. Forced labour of civilians (Feb to Apr 1998) – Kono District – Crimes

5530. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Forced labour of civilians (Feb to Apr 1998) – paras. 1215 – 1217 [284].

c. Treatment of civilians in RUF Camps – Kono District – Crimes

5531. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Treatment of civilians in RUF Camps – paras. 1218-1224, 1227– 1239 [287].

d. Forced mining in Kono (Dec 1998 to Jan 2000) – Kono District – Crimes

5532. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Forced mining in Kono (Dec 1998 to Jan 2000) – paras. 1240 – 1259 [309].

e. Forced military training at Yengema (Dec 1998 to Jan 2000) – Kono District - Crimes

(Note: no legal conclusions in this respect, as also noted by the Appeals Chamber)

5533. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kono District – Crimes - Forced military training at Yengema (Dec 1998 to Jan 2000) – paras. 1260 - 1265 [329].

(ii) Kenema District – Crimes

a. Background to Kenema District – Kenema District - Crimes

5534. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Background to Kenema District - paras. 1042 – 1044 [335].

b. Tongo Field – Kenema District – Crimes

5535. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kenema District – Crimes – Tongo Field - Forced mining at Tongo Field and Cyborg Pit – paras. 1080 – 1095 [373].

(iii) Kailahun District – Crimes

a. Background to Kailahun District – Kailahun District – Crimes

5536. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Background to Kailahun District – paras. 1380 – 1385 [413].

5537. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Forced labour – Overview – paras. 1414 - 1416 [447].

b. Forced farming – Kailahun District – Crimes

5538. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Forced labour – Forced farming – RUF "government" farms – paras. 1417 - 1424 [450].

5539. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Forced labour – Forced farming – Farms of RUF Commanders – paras. 1425 - 1426 [458].

5540. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Forced labour – Forced farming – Forced subscription of produce – paras. 1427 - 1429 [460].

5541. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Forced labour – Forced farming – Forced Labour for trading of produce – paras. 1430 - 1431 [463].

c. Forced mining – Kailahun District – Crimes

5542. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Forced labour – Forced mining – paras. 1432 -1433 [465].

d. Forced military training – Kailahun District – Crimes

5543. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Forced labour – Forced military training – para. 1434 [467].

5544. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Forced labour – Forced military training – Bayama Training Base (1996-1997) – para. 1435 [468].

5545. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Forced labour – Forced military training – Bunumbu Training Base (Camp Lion) (1998) – paras. 1436 – 1442 [469].

e. Other forms of forced labour – Kailahun District – Crimes

5546. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Kailahun District – Crimes – Forced labour – Other forms of forced labour – para. 1443 [476].

(iv) Freetown and the Western Area – Crimes

a. Background to Freetown and the Western Area - Freetown and the Western Area – Crimes

5547. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area – para. 1510 [477].

5548. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Perpetrators of the Attack on Freetown – paras. 1511 – 1515 [478].

5549. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Targeting of the civilian population in Freetown – paras. 1516 – 1520 [483], 1522 [489].

b. Wellington - Freetown and the Western Area – Crimes

5550. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Wellington - Killing, Looting and Abduction at a clinic – para. 1538 [505].

c. Kissy - Freetown and the Western Area – Crimes

5551. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings, Amputations and Looting of TF1-022 and others – paras. 1553- 1554 [520].

5552. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Abduction of nuns at Kissy Mental Home – para. 1557 [524].

d. Allan Town, Calaba Town and Benguema - Freetown and the Western Area – Crimes

5553. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Allan Town, Calaba Town and Benguema - 'Forced Marriage' of TF1-023 – para. 1558 [525].

5554. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Allan Town, Calaba Town and Benguema - 'Forced Marriage' of TF1-029 – paras. 1562 – 1565 [529].

(v) Koindugu District – Crimes

5555. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 – 1505 [533].

(vi) Bombali District – Crimes

5556. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 – 1509 [543].

(vii) Port Loko District – Crimes

5557. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras. 1609 – 1613 [547].

(b) Legal Conclusions

(i) Applicable law - CAH

5558. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Applicable law - CAH – paras. 75 – 90 [1582].

(ii) CAH – Findings on general requirements

5559. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – CAH – Findings on general requirements – paras. 942 – 943 [1598].

(iii) Applicable law – Enslavement

5560. para. 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]

5561. para. 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]

5562. para. 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.

5563. para. 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]

5564. para. 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]

5565. para. 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 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]

5566. para. 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.

5567. para. 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]

5568. para. 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 illtreatment, 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]

(iv) Pleading

a. Criminal acts and events - Pleading

5569. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Criminal acts and events – paras. 411-413, 416– 419 [604].

b. Locations – Pleading

5570. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Locations – paras. 420 – 422 [613].

c. Timeframes – Pleading

5571. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Timeframes – paras. 423 – 432 [616].

d. CAH – Pleading

5572. See above: Chapter 2 – RUF – Trial Judgment – Legal conclusions – Pleading – CAH – paras. 448 - 449 [1628].

(v) Kono District – Enslavement

5573. See above: Chapter 2 – RUF – Trial Judgment – Legal Conclusions – Kono District – Unlawful killings - paras. 1266 - 1267 [1630].

5574. para. 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]

a. Use of civilians for forced labour by AFRC/RUF forces – Kono District – Enslavement

5575. para. 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, 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.

5576. para. 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.

b. Forced labour in RUF Camps – Kono District – Enslavement

5577. para. 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.

5578. para. 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 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.

5579. para. 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.

5580. para. 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.

c. Forced mining in Tombodu and throughout Kono District – Kono District – Enslavement

5581. para. 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.

5582. para. 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 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.

5583. para. 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.

(vi) Kenema District – Enslavement

5584. para. 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]

5585. para. 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.

5586. para. 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]

5587. para. 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 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.

5588. para. 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]

5589. para. 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.

(vii) Kailahun District – Enslavement

5590. para. 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).

5591. para. 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.

5592. para. 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]

5593. para. 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 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]

a. Forced farming – Kailahun District – Enslavement

5594. para. 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]

5595. para. 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.

5596. para. 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 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.

5597. para. 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.

5598. para. 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.

b. Enslavement of civilians to carry loads – Kailahun District – Enslavement

5599. para. 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.

5600. para. 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.

c. Civilians forced to mine for diamonds – Kailahun District – Enslavement

5601. para. 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.

5602. para. 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.

d. Forced military training – Kailahun District – Enslavement

5603. para. 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 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.

5604. para. 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.

e. Other forms of Forced Labour – Kailahun District – Enslavement

5605. para. 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.

(viii) Freetown and the Western Area – Enslavement

5606. para. 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).

5607. para. 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.

5608. para. 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 the Rule 98 Decision that the Prosecution did not adduce any evidence on the location of Peacock Farm.[3032]

5609. para. 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]

5610. para. 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]

5611. para. 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.

(ix) Koindugu District – Enslavement

5612. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 – 1505 [533].

(x) Bombali District – Enslavement

5613. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 – 1509 [543].

(xi) Port Loko District – Enslavement

5614. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras. 1609 – 1613 [547].

3. Appellate Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-A, Judgment, 26 October 2009

(a) Factual Findings

(i) Kenema District

5615. para. 77: Sesay's contention that the failure of notice caused the Trial Chamber to commit an "error of law" such that it found, allegedly inconsistently, "that recruits [who] had been captured in Kono District were trained at [Yengema] base" and "that recruits from Kono and Bunumbu base were trained at Yengema"[162] appears to be an alleged error of fact rather than of law. Even so, his argument is misplaced. The Trial Chamber found that the RUF training base was moved in December 1998 from Bunumbu, Kailahun District to Yengema, Kono District and that civilians from both Bunumbu in Kailahun and from Kono were trained at Yengema.[163]

(ii) Kono District

5616. para. 67: In relation to enslavement at Yengema in Kono District, the Trial Chamber found 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 to its operation. The Chamber therefore [found] that Sesay knew that an unknown number of civilians were enslaved there between December 1998 and January 2000."[146]

5617. para. 77: Sesay's contention that the failure of notice caused the Trial Chamber to commit an "error of law" such that it found, allegedly inconsistently, "that recruits [who] had been captured in Kono District were trained at [Yengema] base" and "that recruits from Kono and Bunumbu base were trained at Yengema"[162] appears to be an alleged error of fact rather than of law. Even so, his argument is misplaced. The Trial Chamber found that the RUF training base was moved in December 1998 from Bunumbu, Kailahun District to Yengema, Kono District and that civilians from both Bunumbu in Kailahun and from Kono were trained at Yengema.[163]

5618. para. 146: Kallon argues that the Trial Chamber erroneously found that he abducted approximately 400 civilians in Makeni in Bombali District in 1999-2000 and sent them to Kono. He argues this event is outside the scope of the Indictment because (i) Makeni is in Bombali District, not Kono District; (ii) the Indictment limits the time-frame for abductions in Bombali District to "[b]etween about 1 May 1998 and 31 November 1998"; and (iii) the dates of abduction

are after the time-frame provided in the Supplemental Pre-Trial Brief for enslavement in Kono District.[283]

5619. para. 149: Kallon submits, in part, that his convictions for enslavement in Kono District fall outside the timeframe for which he was provided notice in the Supplemental Pre-Trial Brief. The Appeals Chamber notes that paragraph 481 of the Supplemental Pre-Trial Brief states that AFRC/RUF forces abducted hundreds of civilians and took them to various locations, both within and outside Kono District, where they were used as forced labour "[b]etween 14 February 1998 and 30 June 1998," whereas paragraph 71 of the Indictment, to which paragraph 481 of the Supplemental Pre-Trial Brief expressly refers, alleges the crimes took place "[b]etween about 14 February 1998 to January 2000." The Appeals Chamber recalls that the "primary accusatory instrument" is the Indictment[285] and the crimes for which Kallon was convicted fall within the period alleged therein. The pre-trial brief serves the purpose of addressing the relevant factual and legal issues by developing the Prosecution strategy at trial. The pre-trial brief is relevant to the case only insofar as it develops such strategy in accordance with the Indictment.[286]

5620. para. 150: In light of the fact that the timeframe alleged in the Indictment includes the period of time during which the acts for which he was convicted were perpetrated, the Appeals Chamber finds that the Indictment was not defective in this regard and Kallon did not suffer prejudice.

5621. para. 151: Kallon further argues that the abductions found by the Trial Chamber to have been committed took place outside the timeframe pleaded in the Indictment. As Kallon notes, the Trial Chamber made the finding in the context of its findings of enslavement in Kono District. The captured civilians were gathered by Kallon from Makeni in Bombali District, jailed and then taken daily to Kono in trucks sent by Sesay.[287] Once in Kono, these civilians were forced to mine diamonds for the RUF,[288] and the forced labour formed the basis for Kallon's conviction for enslavement pursuant to his participation in the JCE within the timeframe of the Indictment.[289] Kallon has not demonstrated that the abductions themselves were the basis of a conviction and therefore he has not shown how an error, if any, invalidated the decision. His submission is therefore rejected.

5622. para. 428: As an introductory remark, the Appeals Chamber notes that the crimes in Kono District were found to have been committed after the ECOMOG intervention on 14 February 1998 ousted the AFRC/RUF Junta from Freetown. The Trial Chamber found that AFRC/RUF troops launched a failed attack on Kono District in the second half of February, but that around 1 March 1998 they get to capture Koidu Town.[1066] After this successful attack, the AFRC and RUF were

found to have organised an integrated command structure in Koidu Town, which included the JCE members Johnny Paul Koroma, Sesay, Superman and Bazzy.[1067] The Trial Chamber found that in early April 1998 ECOMOG troops forced the AFRC/RUF to retreat from Koidu Town.[1068]

(b) Legal Conclusions

(i) Pleading

5623. para. 67: In relation to enslavement at Yengema in Kono District, the Trial Chamber found 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 to its operation. The Chamber therefore [found] that Sesay knew that an unknown number of civilians were enslaved there between December 1998 and January 2000."[146]

5624. para. 69: The Trial Chamber found that Sesay's *mens rea* as a superior with respect to these crimes was "pleaded explicitly in paragraph 39 of the Indictment and incorporated into each Count by paragraph 40 [and therefore Sesay's] knowledge of the crimes and his failure to prevent or punish those crimes ... is adequately pleaded in the Indictment."[151] Paragraph 39 of the Indictment states:

> 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.[152]

5625. para. 70: The case law of the ICTY Appeals Chamber suggests that there are at least two ways in which the *mens rea* for superior responsibility can be adequately pleaded in an indictment.[153] In the *Blaškić* Appeal Judgment, the ICTY Appeals Chamber summarized these possible approaches as follows:

> With respect to the mens rea, there are two ways in which the relevant state of mind may be pleaded: (i) either the specific state of mind itself should be pleaded as a material fact, in which case, the facts by which that material fact is to be established are ordinarily matters of evidence, and need not be pleaded; or (ii) the evidentiary facts from which the state of mind is to be inferred, should be pleaded.[154]

5626. para. 71: The Appeals Chamber notes that the form of pleading in the Indictment is consistent with the first formulation, and endorses the view that this is sufficient in the circumstances of some cases. Sesay has not offered any argument that specific acts or conduct relied upon by the Trial Chamber to infer his *mens rea* constituted material facts that should have been pleaded in the Indictment. The facts relied upon by the Trial Chamber are related to the functions of the RUF command, the nature of which was sufficiently pleaded in the Indictment.[155] The Appeals Chamber therefore dismisses this part of Sesay's submissions.

5627. para. 72: In relation to enslavement of civilians at the military base at *Yengema*, Sesay argues that he lacked notice of the identity of his alleged subordinates and what measures he was alleged to have failed to take to prevent or punish them.156 The Trial Chamber found that (i) "RUF rebels enslaved an unknown number of civilians at the military training base at Yengema between December 1998 and January 2000";[157] (ii) Sesay was a RUF superior Commander during this period, and that he exercised effective control over RUF subordinates at Yengema;[158] (iii) the training Commander at Yengema reported to Sesay;[159] (iv) 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 to its operation;"[160] (v) Sesay actively monitored the prolongation of the commission of enslavement; and (vi) there was no evidence that he attempted to prevent or punish it.[161]

5628. para. 73: Paragraphs 20-23 of the Indictment specify the command positions held by Sesay at the relevant times as follows:

> 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.

5629. para. 74: The above paragraphs, in addition to paragraphs 34, 39 and 44 of the Indictment indicate the subordinates subject to Sesay's command were fighters of the RUF and AFRC/RUF forces. Paragraph 34 provides that Sesay "exercised authority, command and control over all subordinate members of the RUF, Junta and AFRC/RUF forces." Paragraph 39 alleges that "while holding positions of superior responsibility and exercising effective control over [his] subordinates," Sesay is "individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute." It further alleges that he "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." Paragraph 44 provides that "[m]embers 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."

5630. para. 75: In relation to the specific crimes at the military training camp at *Yengema*, paragraph 40 incorporates the previous paragraphs. Paragraph 71 particularises the charge of enslavement in relation to Kono District, and states:

> 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;
>
> 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.

5631. para. 76: These paragraphs demonstrate that Sesay's command position and his relationship with his subordinates were pleaded at all the relevant times. They further show that he was alleged not to have taken the necessary and reasonable measures to prevent or to punish the crimes alleged. The manner in which these material facts were to be proven was a matter of evidence and thus not for pleading. The Appeals Chamber, therefore, dismisses Sesay's sub-ground of appeal concerning the pleading of his relationship to his subordinates.

5632. para. 77: Sesay's contention that the failure of notice caused the Trial Chamber to commit an "error of law" such that it found, allegedly inconsistently, "that recruits [who] had been captured in Kono District were trained at [Yengema] base" and "that recruits from Kono and *Bunumbu* base were trained at Yengema"[162] appears to be an alleged error of fact rather than of law. Even so, his argument is misplaced. The Trial Chamber found that the RUF training base was moved in December 1998 from Bunumbu, Kailahun District to Yengema, Kono District and that civilians from both Bunumbu in Kailahun and from Kono were trained at Yengema.[163]

5633. para. 91: Sesay argues that the Trial Chamber erred in law and in fact in concluding that he was given adequate notice that he was charged for acts of enslavement other than "domestic labour and use as diamond miners" under Count 13 of the Indictment.[175] For relief, Sesay requests the Appeals Chamber to dismiss the charges under Count 13 concerning acts of forced military training, forced farming and forced carrying of loads.[176]

5634. para. 92: Given the vagueness of Sesay's complaint, the Appeals Chamber will only answer the general question of whether Sesay lacked notice of the criminal acts that form the basis of his conviction for enslavement when it was only pleaded that he used forced labour as enslavement. The question on appeal is whether the particular acts of forced labour amount to "criminal acts which form the basis for a conviction" such that they are material facts and should have been pleaded in the Indictment, or if they are part of the evidence by which the Prosecution intended to prove the material fact of forced labour as enslavement. The Appeals Chamber notes that the offence charged under Count 13 is enslavement, not forced labour. In the present case, forced labour is the criminal act which the Prosecution alleges constituted enslavement. This pleading provided the particularisation that the forms of enslavement were limited to acts of forced labour amounting to the exercise of a power attaching to the right of ownership over a person. The Appeals Chamber holds that this pleading of the underlying acts of enslavement provided Sesay sufficient notice of the charge.

5635. para. 93: Our holding is supported by the fact that enslavement is not an umbrella crime, such as the broadly defined crimes of persecution or other inhumane acts, for which the Prosecution is required to specify the conduct it will rely upon to prove the offence.[178] Forced labour is also not charged here as a violation of the law of armed conflict, in relation to which the ICTY Appeals Chamber has held that "the military character or purpose of the alleged incidents of forced labour also needed to be pleaded as a material fact."[179] In this case, as noted above, the charge is for enslavement as a crime against humanity, and the acts of forced labour must indicate the exercise of a power attaching to the right of ownership over a person. The Appeals Chamber

therefore considers that the pleading of acts of forced labour as enslavement provided notice of the underlying criminal acts with sufficient specificity to enable Sesay to prepare his defence.

5636. para. 132: Kallon challenges the pleading of his liability as a superior for crimes in Kono District. The Appeals Chamber notes that he was convicted pursuant to Article 6(3) of the Statute of the following crimes in Kono District:

> (...) (v) Enslavement (Count 13) in relation to events in unspecified locations in Kono District;

5637. para. 133: Kallon makes general submissions that he lacked notice that he was alleged to have superior responsibility for crimes committed in Kono District, but he fails to provide substantiating arguments.[257] His submissions are at odds with a plain reading of the Indictment. It charges that Kallon "was a senior officer and Commander in the RUF, Junta and AFRC/RUF forces,"[258] and that when he was a "Battle Field Inspector, … he was subordinate only to the RUF Battle Group Commander, the Battlefield Commander, the leader of the RUF … and the leader of the AFRC."[259] Kallon was BFI at the times relevant to his convictions for crimes in Kono.[260] The Indictment further charges that in his position, Kallon "exercised authority, command and control over all subordinate members of the RUF, Junta and AFRC/RUF forces"[261] and that he "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 … failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof."[262] The Indictment expressly lists locations in Kono District as those at which the crimes charged under Counts 6-9 and 13 were committed[263] and states that by his "acts or omissions in relation to these events, … MORRIS KALLON …, pursuant to … Article 6.3. of the Statute, [is] individually criminally responsible for" the crimes charged under Counts 6-9 and 13.[264]

5638. para.134: In relation to sexual violence, forced marriages and acts of terrorism at Kissi Town in Kono District, Kallon additionally argues that his subordinates at Kissi Town "were never sufficiently or at all particularized."[265] The Appeals Chamber notes, however, that in addition to the pleading of Kallon's superior position, discussed above, the Indictment states that the crimes were committed by "members of AFRC/RUF" at "Kissi-town (or Kissi Town)… and AFRC/RUF camps such as … Kissi-town (or Kissi Town) camp."[266] The Indictment, therefore, puts Kallon on notice of the charge that ARFC/RUF members who were his subordinates at *Kissi Town* committed the crimes charged in Counts 6-9. Kallon fails to argue how this pleading did not sufficiently identify his subordinates.

5639. para. 149: Kallon submits, in part, that his convictions for enslavement in Kono District fall outside the timeframe for which he was provided notice in the Supplemental Pre-Trial Brief. The Appeals Chamber notes that paragraph 481 of the Supplemental Pre-Trial Brief states that AFRC/RUF forces abducted hundreds of civilians and took them to various locations, both within and outside Kono District, where they were used as forced labour "[b]etween 14 February 1998 and 30 June 1998," whereas paragraph 71 of the Indictment, to which paragraph 481 of the Supplemental Pre-Trial Brief expressly refers, alleges the crimes took place "[b]etween about 14 February 1998 to January 2000." The Appeals Chamber recalls that the "primary accusatory instrument" is the Indictment[285] and the crimes for which Kallon was convicted fall within the period alleged therein. The pre-trial brief serves the purpose of addressing the relevant factual and legal issues by developing the Prosecution strategy at trial. The pre-trial brief is relevant to the case only insofar as it develops such strategy in accordance with the Indictment.[286]

5640. para. 150: In light of the fact that the timeframe alleged in the Indictment includes the period of time during which the acts for which he was convicted were perpetrated, the Appeals Chamber finds that the Indictment was not defective in this regard and Kallon did not suffer prejudice.

5641. para. 151: Kallon further argues that the abductions found by the Trial Chamber to have been committed took place outside the timeframe pleaded in the Indictment. As Kallon notes, the Trial Chamber made the finding in the context of its findings of enslavement in Kono District. The captured civilians were gathered by Kallon from Makeni in Bombali District, jailed and then taken daily to Kono in trucks sent by Sesay.[287] Once in Kono, these civilians were forced to mine diamonds for the RUF,[288] and the forced labour formed the basis for Kallon's conviction for enslavement pursuant to his participation in the JCE within the timeframe of the Indictment.[289] Kallon has not demonstrated that the abductions themselves were the basis of a conviction and therefore he has not shown how an error, if any, invalidated the decision. His submission is therefore rejected.

5642. para. 492: The Appeals Chamber holds that so long as Gbao agreed to the Common Criminal Purpose and was, therefore, a member of the JCE as the Trial Chamber found,[1256] he is responsible for all crimes that he either intended, or were naturally foreseeable would be committed by members of the JCE or persons under their control. This is consistent with the pleading of the crimes in the Indictment (which must be read in its entirety) and which pleaded each of the crimes in Count 1 to 14 as either within the JCE or as a reasonably foreseeable consequence of the JCE.[1257]

(ii) Pleading – Dissents

a. Justice Fisher:

5643. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Pleading-Dissents – Justice Fisher – para. 20 (p.517), para. 22 (p.518), para. 23 (p.518), para. 24 (p.518-519) [1704].

(iii) Crimes charged as criminal means of furthering Common Criminal Purpose - Enslavement

5644. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 333, 348 [751].

5645. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 377 -378 [754].

5646. para. 361: The Trial Chamber found that the Common Criminal Purpose of the JCE was furthered in Bo District through (i) forced mining activity; (ii) the use by the AFRC and RUF of the levers of State power in an attempt to destroy any support within the civilian population for the Kamajors; and (iii) attacks in June 1997 on Tikonko, Sembehun and Gerihun.[871]

5647. para. 364: The forced mining found by the Trial Chamber to have furthered the Common Criminal Purpose in Bo District consisted of the alluvial diamond mining in Kenema and Kono Districts.[879] Sesay does not dispute that this activity, once it commenced, did further the Common Criminal Purpose in Bo. His position is that it could not have done so before August 1997. However, the Trial Chamber did not find otherwise. In particular, no conviction was entered against Sesay based on these forced mining activities before August 1997.[880] On its own, the finding that diamond mining in Tongo Field in Kenema District did not commence until August 1997 does not render unreasonable the Trial Chamber's conclusion that the JCE included Kenema District from the inception of the JCE.[881] Sesay thus fails to show an error.

5648. para. 365: The Trial Chamber did not expressly link its finding regarding the AFRC/RUF's use of "the levers of State power" to any particular attempt to destroy civilian support for the Kamajors in Bo District.[882] Yet Sesay's present argument neither disputes the veracity of this finding nor does he explain how the alleged fact that it is "meaningless" constitutes an error leading to a miscarriage of justice.[883] His argument is therefore rejected.

5649. para. 366: Turning to the attacks on Tikonko, Sembehun and Gerihun in June 1997, the Appeals Chamber notes that the Trial Chamber did not explicitly find that they were planned by members of the JCE. However, the basis on which the Trial Chamber found that crimes committed during these attacks were committed in furtherance of the Common Criminal Purpose is clear from other parts of the Trial Judgment, for instance, the following finding:

> The temporal and geographic proximity of the various attacks [including those on Tikonko, Sembehun and Gerihun], 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.[884]

5650. para. 367: Although made in relation to the *chapeau* requirements of crimes against humanity, these findings are equally important to the Trial Chamber's findings regarding the JCE. Indeed, in those latter findings, it held that "the conduct of [AFRC/RUF joint] operations demonstrates that the Junta intended, through wholly disproportionate means, to suppress all opposition to their regime"[885] and that 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."[886] Moreover, "the AFRC/RUF alliance intended through the spread of extreme fear … to dominate and subdue the civilian population in order to exercise power and control over captured territory."[887] The attacks on Tikonko, Sembehun and Gerihun in June 1997, all of which included acts intended to spread extreme fear among the civilian population,[888] fall squarely within this finding. The parts of Witness TF1-054's testimony Sesay invokes for his claim to the contrary neither support his allegation that a delegation was sent to Gerihun before the attack,[889] nor render unreasonable the Trial Chamber's reliance on other parts of TF1-054's testimony for its findings on this attack.[890]

5651. para. 368: In addition, the Trial Chamber found that Bockarie, himself a JCE member,[891] led the attack on Sembehun.[892] Sesay's assertion that Bockarie acted on his own volition in this regard is unpersuasive.[893] First, while claiming an absence of findings on Bockarie's interaction with other JCE members at this time, Sesay fails to account for the Trial Chamber's holdings that it was Bockarie who instructed Superman to move with his troops to Freetown after Sankoh's public order to unite with the AFRC after the coup[894] and that Bockarie became a member of the Supreme Council, the highest decision-making body in the Junta regime.[895] Second, Sesay refers to TF1-008's testimony that Bockarie "said that he was the one who has captured this place, that this place was under his control."[896] Simply citing this evidence, Sesay fails to show how the Trial Chamber's assessment thereof was erroneous,[897] in particular given that Bockarie when entering Sembehun "identified himself as a member of the RUF."[898] Third, the fact that Bockarie pillaged

Le 800,000 in Sembehun[899] supports rather than refutes that such conduct was contemplated as a means by the JCE members to further the Common Criminal Purpose.[900] Bockarie himself being a JCE member, it is not determinative whether the money stayed with him. Lastly, because pillage (Count 14) constituted a means to further the Common Criminal Purpose notwithstanding whether it amounted to terrorism, Sesay's argument that this incident fell beyond the Common Criminal Purpose fails.

5652. para. 369: The Appeals Chamber therefore finds that Sesay's Ground 26 fails to demonstrate an error in the Trial Chamber's findings on the means employed to achieve the objective of the JCE in Bo District. Sesay's Ground 26 is dismissed in its entirety.

(iv) Crimes charged and JCE *mens rea* (short review) - Enslavement

5653. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged and JCE *mens rea* (short review) – paras. 467-493 [756] and see, also, Justice Fisher's and Justice Winter's Dissenting Opinions in that regard.

(v) CAH - Existence of a widespread and systematic attack

a. Kenema District – CAH – Existence of widespread and systematic attack

5654. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Existence of a widespread and systematic attack – Kenema District – paras. 637, 642 – 644 [1711].

(vi) CAH – Attack against civilian population

a. Kailahun District

5655. See above – Chapter 2 – RUF – Appellate judgment – Legal conclusions – CAH – Attack against civilian population – Kailahun District – paras. 714, 719 – 724 [1715].

(vii) Kenema District - Enslavement

5656. para. 355: Sesay also disputes that the Supreme Council itself was involved in crime. The Appeals Chamber notes that, while the Supreme Council "discussed … the security of the Junta; revenue generation; the resolution of conflicts between the AFRC and the RUF; and harassment of civilians,"[848] the Trial Chamber also inferred from the "widespread and systematic nature of the crimes, in particular the attacks on Bo and the forced labour in Kenema District" that such conduct

"was a deliberate policy of the ARFC/RUF" that must have been "initiated by the Supreme Council."[849] Contrary to Sesay's claim,[850] the basis for that inference was sufficiently supported by evidence.[851]

5657. para. 356: Indeed, Sesay himself recognises the finding that the Supreme Council was involved in the planning and organisation of the enslavement at Tongo Fields in Kenema from August 1997. However, he argues, the only crimes committed before that point in time were the terror attacks in Bo in June 1997, and so there were no crimes on the basis of which the Trial Chamber could infer the existence of a JCE.[852] However, although the enslavement at Tongo Fields commenced in August 1997,[853] it is evident from the Trial Chamber's findings that the "planned and … systematic policy of the Junta" which devised the large scale enslavement and implemented it "pursuant to a centralised system" must have started much earlier.[854] Indeed, "[w]ithin a week of the coup of 25 May 1997, RUF rebels and the military Junta were in full control of" Kenema Town.[855] Moreover, whether or not it amounted to acts of terrorism,[856] sexual violence in Kailahun was a means to achieve the AFRC/RUF objective throughout the Junta period.[857] The fact that the victims of the forced marriages were initially captured before the Indictment period does not detract from the finding that these crimes were "for the benefit … of the Junta" throughout their continuous commission.[858]

5658. para. 364: The forced mining found by the Trial Chamber to have furthered the Common Criminal Purpose in Bo District consisted of the alluvial diamond mining in Kenema and Kono Districts.[879] Sesay does not dispute that this activity, once it commenced, did further the Common Criminal Purpose in Bo. His position is that it could not have done so before August 1997. However, the Trial Chamber did not find otherwise. In particular, no conviction was entered against Sesay based on these forced mining activities before August 1997.[880] On its own, the finding that diamond mining in Tongo Field in Kenema District did not commence until August 1997 does not render unreasonable the Trial Chamber's conclusion that the JCE included Kenema District from the inception of the JCE.[881] Sesay thus fails to show an error.

5659. para. 367: Although made in relation to the *chapeau* requirements of crimes against humanity, these findings are equally important to the Trial Chamber's findings regarding the JCE. Indeed, in those latter findings, it held that "the conduct of [AFRC/RUF joint] operations demonstrates that the Junta intended, through wholly disproportionate means, to suppress all opposition to their regime"[885] and that 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."[886] Moreover, "the

AFRC/RUF alliance intended through the spread of extreme fear … to dominate and subdue the civilian population in order to exercise power and control over captured territory."[887] The attacks on Tikonko, Sembehun and Gerihun in June 1997, all of which included acts intended to spread extreme fear among the civilian population,[888] fall squarely within this finding. The parts of Witness TF1-054's testimony Sesay invokes for his claim to the contrary neither support his allegation that a delegation was sent to Gerihun before the attack,[889] nor render unreasonable the Trial Chamber's reliance on other parts of TF1-054's testimony for its findings on this attack.[890]

5660. para. 370: The Trial Chamber found that acts of unlawful killings, physical violence and enslavement were committed in Kenema District, some of which amounted to terror and collective punishment.[901] It found that these crimes fell within time period of the Junta and that the common plan and plurality of person remained the same.[902]

5661. para. 374: In his first argument, Sesay essentially submits that the low number of crimes committed in furtherance of the Common Criminal Purpose in Kenema District between 25 May 1997 and 11 August 1997 and in Kenema Town between 25 May 1997 and late January 1998 negates the existence of a JCE covering these areas.[909]

5662. para. 375: The Appeals Chamber notes that the Trial Chamber could not determine the specific dates of each crime committed in Kenema Town during the Junta period.[910] It therefore remains unclear whether Sesay is correct that a low number of crimes were committed in Kenema from the onset of the Junta on 25 May 1997 until the commencement of the forced mining activities in August 1997. However, even assuming that Sesay is correct in that regard, the Appeals Chamber is not persuaded that this renders unreasonable the Trial Chamber's finding that a JCE existed which encompassed "the territory of Sierra Leone", *i.e.* also Kenema District.[911] While evidence of the number of crimes committed in a certain area may be relevant to the assessment of whether a JCE existed, it is not determinative thereof. The Trial Chamber was entitled to consider, as it did, factors such as the geographic proximity of various crimes, including those in Kenema, their similar *modus operandi*[912] and their widespread and systematic nature[913] in its assessment of that question. Sesay's present submission does not challenge this assessment. In addition, the Appeals Chamber recalls that although the forced mining in Tongo Fields did not commence until August 1997,[914] it is clear from the Trial Chamber's findings that the planned and systematic policy of the Junta and the centralised system pursuant to which this large scale enslavement was implemented must have been devised much earlier.[915] Indeed, "[w]ithin a week of the coup of 25 May 1997, RUF rebels and the military Junta were in full control of" Kenema Town.[916]

5663. para. 376: The Appeals Chamber therefore finds that Sesay fails to demonstrate that no reasonable trier of fact could have found that the JCE extended to Kenema District from the onset of the Junta.

5664. para. 379: This evidence therefore does not render unreasonable the Trial Chamber's balanced conclusion that, even though Bockarie was "disillusioned with the RUF's limited role in the AFRC government" and left for Kenema, and even though "this strained the relationship between the two factions," the cooperation between the ARFC and RUF leadership continued.[927] As to Bockarie's own continued cooperation with members of the JCE, the Trial Chamber found that he was involved in the diamond mining in Tongo Field in Kenema, where the AFRC/RUF Secretariat, headed by Gullit and Sergeant Junior, reported directly to him.[928] Gullit was SAJ Musa's representative at the mines.[929] The proceeds from the diamonds, one of the AFRC/RUF regime's major sources of income, were delivered to Bockarie.[930] Sesay's challenges to these findings have been dismissed elsewhere.[931] His additional reference to temporally unspecific and vague evidence that "things were going beyond control" as a result of unequal weapons distribution between the AFRC and RUF fails to support his claim that Bockarie withdrew cooperation with the AFRC for that reason.[932]

5665. para. 380: Sesay refers to evidence that the AFRC and RUF kept separate command structures in Kenema.[933] This evidence, which was cited by the Trial Chamber in its analysis of the AFRC/RUF organisation in Kenema,[934] does not detract from the finding that the two groups collaborated in Kenema.[935] Moreover, in none of these arguments does Sesay juxtapose the evidence he invokes with the evidence the Trial Chamber relied on, or otherwise attempt to demonstrate why the Trial Chamber could not reasonably have preferred the latter evidence over that which he proffers.

5666. para. 382: Furthermore, that Bockarie ensured continued cooperation from Kenema is buttressed by the finding that the forced mining activities, which included acts of terrorism,[940] were jointly conducted and controlled by the AFRC and RUF.[941] The Appeals Chamber now turns to Sesay's challenges to this finding.

5667. para. 383: Sesay submits that the AFRC and RUF operated separate forced mining operations in Tongo Field and therefore that these operations do not evidence a common criminal purpose between the two groups.[942] In support of this submission Sesay relies on the evidence given by TF1-045 and TF1-371, but, save for one exception, he either merely offers an alternative reading of this evidence without explaining why the Trial Chamber's assessment thereof was unreasonable, or ignores other evidence relied on by the Trial Chamber.

5668. para. 384: The one exception concerns the Trial Chamber's reliance on TF1-371's testimony to find that the Supreme Council decided to appoint senior members to supervise alluvial mining in Kono and Kenema.[943] Sesay argues that TF1-371 testified that Koroma, and not the Supreme Council, took this decision.[944] The Appeals Chamber notes that, while TF1-371 did testify as argued,[945] this evidence is not necessarily inconsistent with the impugned finding, because Koroma was the Chairman of the Supreme Council and significant decisions were made by himself, SAJ Musa and certain "other Honourables."[946] More importantly, the fact that Koroma made the decision in question does not detract from other evidence, for example, that the forced mining in Kenema was planned and organised in the Supreme Council,[947] on which the Trial Chamber relied to find that the RUF and the AFRC cooperated in respect of Tongo Fields.[948] Because Sesay's present argument does not address this evidence he fails to demonstrate an error.

5669. para. 385: The Appeals Chamber therefore finds that Sesay does not show an error in the Trial Chamber's findings regarding the criminal means employed to achieve the objective in Kenema District.

5670. para. 490: In respect of the crimes committed in Kenema District, the Trial Chamber found in paragraph 2060 of the Trial Judgment that

> [T]he 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 joint criminal enterprise or persons under their control.

5671. Regarding Sesay's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District – JCE – Participation in and shared intent – Sesay – paras.617, 619 – 623 [7580].

5672. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Existence of a widespread and systematic attack – Kenema District – paras. 637, 642 – 644 [1711].

5673. para. 671: The Trial Chamber found that AFRC/RUF rebels forced an unknown number of civilians to mine for diamonds at Cyborg Pit in Tongo Field, Kenema District between about 1 August 1997 and about 31 January 1998, and found that this constituted enslavement and an act of terrorism.[1707] It held that Sesay incurred JCE liability for these crimes.[1708]

5674. para. 674: Sesay submits that the Trial Chamber erred in disregarding certain exculpatory evidence.[1720] He essentially argues that this evidence was exculpatory because it demonstrated that

the mining in Tongo Field was not forced. This is a mere reiteration of Sesay's position at trial, which the Trial Chamber, contrary to his assertion, expressly considered. In fact, the Trial Chamber "[did] not discount the possibility raised by the Sesay Defence that there may have been civilians who mined voluntarily."[1721] However, the Trial Chamber did "not accept as credible evidence that no civilians were forced to mine in Kenema District."[1722] That finding was underpinned by numerous findings of fact.[1723]

5675. para. 675: In his Appeal, Sesay he argues that "every" civilian went on strike following a shooting at Cyborg Pit, and not merely "a group" of them, as found by the Trial Chamber, adding that Bockarie "requested forgiveness" and "begged" that the mining continue.[1724] This argument, even if true, does not by itself exclude a finding of enslavement or account for the Trial Chamber's finding that the civilians were detained and beaten during the strike and that another massacre followed some days later, and therefore fails to show that the labour was not forced.[1725]

5676. para. 676: The Appeals Chamber is not satisfied that Sesay's references to the testimonies of TF1-035 and TF1-045 establish that no reasonable trier of fact could have found that the AFRC/RUF engaged in forced mining in Tongo Field from August to December 1997.[1726] While TF1-035 testified about forced mining at Cyborg Pit in the days after the AFRC/RUF arrived in Tongo Field in August 1997 as argued by Sesay, the witness also testified that the AFRC/RUF remained in Tongo Field until December 1997.[1727] Sesay does not account for this latter part of the testimony. As for TF1-045, Sesay is correct that the witness left Tongo Field for Freetown in August/September 1997,[1728] but fails to acknowledge that the witness was sent back to Tongo Field in December 1997 in order to mine diamonds.[1729] Sesay's submission is dismissed.

5677. para. 677: Turning to Sesay's challenge to the number of victims,[1730] the Appeals Chamber notes that, although the Trial Chamber found that "up to 500 civilians in Tongo Field" worked in the mining sites between August and December 1997, it actually convicted him for the enslavement of "an unknown number of civilians" forced to mine for diamonds at Cyborg Pit in Tongo Field.[1731] Sesay fails to allege how an error in finding that "500 civilians," as opposed to 200, 300 or 400 as allegedly testified by the witnesses he refers to, were enslaved in Tongo Fields invalidates this conviction. This submission is dismissed.

5678. See above: Chapter 1 – RUF – Appellate Judgment – Legal conclusions – Kenema District, paras. 678[809], 679[810] (in relation to enslavement at Cyborg Pit in Kenema District as an act of terrorism).

5679. Regarding Kallon's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District – JCE – Participation in and shared intent – Kallon – paras. 798, 801 – 804 [7598], 928, 931 – 933 [7607].

5680. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District – JCE – Participation in and shared intent – Gbao – paras. 946-948, 951– 955 [7615].

5681. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

5682. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras. 4 – 28 [7454].

5683. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

(viii) Kono District - Enslavement

5684. para. 364: The forced mining found by the Trial Chamber to have furthered the Common Criminal Purpose in Bo District consisted of the alluvial diamond mining in Kenema and Kono Districts.[879] Sesay does not dispute that this activity, once it commenced, did further the Common Criminal Purpose in Bo. His position is that it could not have done so before August 1997. However, the Trial Chamber did not find otherwise. In particular, no conviction was entered against Sesay based on these forced mining activities before August 1997.[880] On its own, the finding that diamond mining in Tongo Field in Kenema District did not commence until August 1997 does not render unreasonable the Trial Chamber's conclusion that the JCE included Kenema District from the inception of the JCE.[881] Sesay thus fails to show an error.

5685. para. 384: The one exception concerns the Trial Chamber's reliance on TF1-371's testimony to find that the Supreme Council decided to appoint senior members to supervise alluvial mining in Kono and Kenema.[943] Sesay argues that TF1-371 testified that Koroma, and not the Supreme Council, took this decision.[944] The Appeals Chamber notes that, while TF1-371 did testify as argued,[945] this evidence is not necessarily inconsistent with the impugned finding, because Koroma was the Chairman of the Supreme Council and significant decisions were made by himself, SAJ Musa and certain "other Honourables."[946] More importantly, the fact that Koroma made the decision in question does not detract from other evidence, for example, that the forced mining in Kenema was planned and organised in the Supreme Council,[947] on which the Trial Chamber relied to find that the RUF and the AFRC cooperated in respect of Tongo Fields.[948] Because Sesay's present argument does not address this evidence he fails to demonstrate an error.

5686. para. 451: Sesay argues that the Trial Chamber provided insufficient reasoning for imputing the following crimes in Kono District to members of the JCE:[1147] (i) the enslavement, by using civilians for forced labour, between February and April 1998 (Count 13);[1148] (ii) the acts of pillage during the February/March 1998 attack on Koidu;[1149] and (iii) the looting of funds from the Tankoro bank in Koidu on or about March 1998.[1150] This submission is dismissed on the basis that Sesay fails to address any of the numerous findings on which the Trial Chamber relied to impute these crimes of enslavement[1151] and pillage[1152] to the JCE members.

5687. Regarding Sesay's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Sesay – paras.624, 627 – 634 [7658].

5688. para. 690: The Trial Chamber found Sesay liable for planning the enslavement of hundreds of civilians to work in mines in Tombodu and throughout Kono District between December 1998 and January 2000.[1773] The Trial Chamber relied primarily on Witnesses TF1-077 and TF1-304 for its findings on the mining in Tombodu.[1774]

5689. para. 691: Sesay's first argues that the Trial Chamber disregarded TF1-304's evidence that the mining in Tombodu did not start in 1999, but instead, that it started between March and April 2000.[1775] He specifically impugns the findings at paragraph 1255 of the Trial Judgment, which concern events relating to mining in Tombodu that, the Trial Chamber found, took place "in April 1999." The Trial Chamber relied on TF1-304's testimony-in-chief for these findings.[1776] Sesay correctly notes that, when cross-examined on when the mining commenced, the witness repeatedly

stated it started in 2000.[1777] The latter evidence, if accepted, would place the mining in Tombodu largely outside the timeframe pleaded for the relevant charges in the Indictment.[1778]

5690. para. 692: The Appeals Chamber, however, is not satisfied that it was unreasonable for the Trial Chamber to rely on TF1-304's testimony-in-chief to find that the mining activities described in paragraph 1255 of the Trial Judgment took place in April 1999. The reason is that a comparison of other parts of TF1-304's testimony with key events in the case demonstrates that TF1-304's chronological description of events corresponds with other findings of the Trial Chamber. TF1-304 testified that Junta forces attacked Tombodu in March 1998,[1779] which is consistent with the finding that the AFRC/RUF attacked Kono on or about March 1998.[1780] After the RUF attack on Tombodu, TF1-304 fled for Guinea and returned to Tombodu in February 1999, at which point in time the RUF was in Tombodu.[1781] This evidence corresponds with the Trial Chamber's finding that, after the RUF re-captured Koidu Town on 16 December 1998,[1782] Kono District remained largely under RUF control throughout the Indictment period.[1783] While in Tombodu, TF1-304 continued, around March 1999 he was forced by the rebels to retrieve vehicles from the bush,[1784] and carried luggage for them and performed other tasks.[1785] TF1-304 testified that "when we ceased carrying the luggages [*sic*]" diamond mining began when Officer Med came in April 1999.[1786] Sesay's reference to the testimony of TF1-071 does not support his contention that Officer Med first arrived in Tombodu in 2000; at most, this evidence merely places Officer Med in Tombodu at that time, but it is silent on when he arrived.[1787] His additional reference to the testimony of TF1-012 is equally unpersuasive.[1788] Sesay's challenge to the Trial Chamber's reliance on TF1-304 in paragraph 1255 is therefore rejected.

5691. para. 693: Next, Sesay challenges the Trial Chamber's assessment of TF1-077. The Trial Chamber found that TF1-077 was "mistaken about the year" when testifying to being captured in Koidu Town in December 1999 and then sent to Tombodu to mine, since the witness testified that this incident occurred during the recapture of Koidu, which took place in December 1998.[1789] Sesay essentially argues that the Trial Chamber's interpretation is contrary to TF1-077's pre-trial statement, that the witness testified that Officer Med, who allegedly arrived in *Tombodu* in 2000, was among his capturers, and that the witness mined until disarmament, which did not occur in Kono during 1999.[1790] The Appeals Chamber is not persuaded by Sesay's arguments. First, Sesay does not address why the Trial Chamber was unreasonable to rely on the witness's reference to the recapture of Koidu, as opposed to other events, to find that the witness was mistaken about the year. Second, as already noted, TF1-071 did not testify when Officer Med arrived in Tombodu in 2000. In fact, TF1-071 indicated that diamond mining by hand occurred in Tombodu from 1998.[1791] Third, the Trial Chamber's interpretation that TF1-077 was mistaken about the year is

consistent with TF1-304's testimony in examination-in-chief that the mining in Tombodu began in 1999. The Appeals Chamber is satisfied on this basis that the Trial Chamber's impugned finding was reasonable. Sesay's argument is rejected.

5692. para. 694: Sesay correctly notes that while the Trial Chamber limited its legal findings on Count 13 in Kono District between December 1998 and January 2000 to holding that enslavement was committed in Tombodu,[1792] it nonetheless held him responsible for planning enslavement in mines in "Tombodu and throughout Kono District."[1793] It provided no reasons for this addition to the scope of Sesay's liability. The Appeals Chamber finds that this constitutes an error of law. The error invalidates the verdict insofar as Sesay was convicted for planning enslavement between December 1998 and January 2000 in parts of Kono District other than Tombodu. This part of Sesay's appeal is granted. The Appeals Chamber will consider any implications of this finding on sentence.

5693. para. 695: In remaining parts, Sesay's complaint about a lack of reasoned opinion is confined to the Trial Chamber's introductory findings providing an "overview" of the mining process in Kono District between December 1998 and January 2000 and its findings on "government" mining sites in Kono.[1794] He does not, however, address the Trial Chamber's findings on the mining in Tombodu, which he was convicted for having planned and which is challenged under his present ground of appeal.[1795] In this respect, the Appeals Chamber recalls that the Trial Chamber was required only to make findings on those facts which were essential to the determination of Sesay's guilt on Count 13.[1796]

5694. para. 696: Moreover, Sesay attempts to support his position by an incomplete and selective reading of the findings and alleges contradictions therein where there are none. For instance, he avers that the Trial Chamber failed to address his "real defence" that there was no organised system of enslavement in Kono, but ignores its findings showing precisely such a system.[1797] That the Trial Chamber found there was such a system in spite of his position that there was none, does not establish that the Trial Chamber failed to address his "real defence." He also argues without support that the Trial Chamber's finding that "[c]ivilians would go to the surrounding villages on the weekends to find food and would then return to work" contradicts the findings that "[c]ivilians who refused to mine were beaten" and "were constantly supervised by armed men [and so] there was no possibility of escape."[1798] Similarly, he fails to explain how the finding indicating that some civilians may have been "willing volunteers" detracts from the findings that other civilians were "captured and brought forcefully to mining sites … and forced to work at gunpoint."[1799] The findings that Sesay points to are neither legally contradictory in view of the law of enslavement

nor factually contradictory in the context of the Trial Chamber's findings as a whole. Contrary to Sesay's contention, then, the Trial Chamber did not err in failing to explain these "contradictions." In this regard, Sesay alleges an error of fact, arguing that TF1-367 testified that some of the 200 to 300 civilians captured and forced to work at *Kaisambo* volunteered and that the civilians were not forced to return, but fails to avert to the evidence supporting the finding that civilians who refused to mine were beaten.[1800] Further relevant indicia of enslavement is found in the holdings that the "conditions for the hundreds of civilians forced to mine were poor; they were neither paid nor given adequate housing, food or medical treatment" and "they were constantly supervised by armed men."[1801]

5695. para. 698: The Appeals Chamber notes that Sesay's claims regarding TF1-367's "lies" are in effect submissions that TF1-367's testimony contradicts other evidence.[1802] Sesay does not explain how, or in what respects, these contradictions caused the Trial Chamber to err. As to TF1-367's alleged motives to implicate Sesay, the Appeals Chamber is not satisfied that the evidence Sesay invokes[1803] precluded a reasonable trier of fact from finding, as the Trial Chamber did, that the witness was "generally credible."[1804] Sesay's submission is dismissed.

5696. Regarding Sesay's responsibility for planning in relation to enslavement in Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – Planning – Sesay - paras. 681 - 704 [7695].

5697. para. 706: The Trial Chamber found Sesay liable under superior responsibility for the enslavement of an unknown number of civilians at Yengema training base in Kono District between December 1998 and about 30 January 2000.[1823]

5698. para. 709: Sesay complains about a lack of sufficiently specific findings.[1832] The Appeals Chamber recalls that the Trial Chamber was required only to make findings on those facts which were essential to the determination of guilt on a particular count.[1833] In the present instance, Sesay does not explain how the Trial Chamber's identification of his culpable subordinates as "RUF rebels" at the Yengema base,[1834] the victims as "[c]ivilians who had been captured in Kono,"[1835] or the duration of their captivity as "from 1998 until disarmament"[1836] were insufficiently reasoned so as to undermine the Trial Chamber's determination of Sesay's guilt under superior responsibility.

5699. para. 710: However, the Appeals Chamber notes *proprio motu* that the Trial Chamber's findings are insufficient in another respect, namely, in that the Trial Chamber never made a legal finding on whether the forced military training at the Yengema base between December 1998 and

January 2000 met the legal elements of enslavement. Whereas the Trial Chamber made factual findings on the events at the Yengema base,[1837] the Trial Judgment is silent on whether these events amounted to the crime of enslavement.[1838] The forced military training at the Yengema base is not mentioned among the underlying acts that the Trial Chamber found constituted enslavement in Kono District. Rather, those underlying acts are limited to: (i) forced labour of civilians, including carrying loads, food-finding missions and domestic labour;[1839] (ii) various forms of forced labour of civilians detained in RUF camps (as distinct from camps for forced military training);[1840] and (iii) forced mining.[1841]

5700. para. 711: The Trial Chamber's failure to make a finding on the fundamental issue whether the events at the Yengema base fulfill the legal elements of the crime charged cannot reasonably be deemed to have resulted from mere oversight. This is buttressed by the fact that, when considering whether the enslavement in Kono District amounted to acts of terrorism, the Trial Chamber recalled its prior legal findings on which acts constituted enslavement, without making any reference to forced military training.[1842]

5701. para. 712: In the absence of a finding as to whether the forced military training at the Yengema base amounted to the crime of enslavement, there was no legal basis on which the Trial Chamber could find that Sesay incurred superior responsibility for this crime at the Yengema base. The Trial Chamber therefore erred in law in so finding.[1843] This error invalidates Sesay's conviction under Article 6.3 of the Statute insofar as it relates to enslavement at the Yengema training base between December 1998 and about 30 January 2000.[1844] Any implications of this finding will be considered in sentence. Having thus found, the Appeals Chamber need not consider the remainder of Sesay's present ground of appeal.

5702. Regarding Kallon's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Kallon – paras.806, 810 – 815, 928, 931 – 933 [7667].

5703. Regarding Kallon's superior responsibility for enslavement in Kono District, see below: Chapter 13 (Article 6.3. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – Superior responsibility – Kallon – Enslavement – paras. 863[8766], 864[8767], 868 - 875 [8768].

5704. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and

Conclusions – Kono District – JCE – Participation in and shared intent – Gbao – paras. 946-948, 951– 955 [7615].

5705. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

5706. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras. 4 – 28 [7454].

5707. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

(ix) Kailahun District - Enslavement

5708. See above: Chapter 5 – RUF – Appellate Judgment – Legal Conclusions – Kailahun District – paras. 386-391[3315].

5709. Regarding Sesay's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Sesay – para.635 [7694].

5710. See above – Chapter 2 – RUF – Appellate judgment – Legal conclusions – CAH – Attack against civilian population – Kailahun District – paras. 714, 719 – 724 [1715].

5711. para. 742: The Trial Chamber found that an unknown number of civilians were forced to work on RUF "government" farms and farms owned by Commanders in Kailahun District from 30 November 1996 to about 15 September 2000, and that this constituted enslavement.[1921] It held that Sesay incurred JCE liability for this crime.[1922]

5712. para. 745: Sesay's arguments that TF1-330's testimony was limited as to the geographical scope of the enslavement and the number of victims, and that Exhibits 81 to 84 showed cooperation and food in exchange for work,[1929] fail to address the other evidence the Trial Chamber relied on to arrive at its findings on the geographical scope[1930] and the number of

victims[1931] of the enslavement, the forced nature of the work,[1932] and the lack of food provided.[1933] Sesay's additional argument that TF1-330 was motivated to give "partisan testimony" is not borne out by the cited testimony.[1934] These allegations are therefore dismissed. His additional challenges to Witness TF1-108 have been addressed elsewhere.[1935]

5713. para. 746: Sesay contends that the Trial Chamber contradicted itself by finding that the civilians received no rewards, and at the same time recognising that the "government" farms were "organised to support the fighters and civilians."[1936] The Appeals Chamber is not satisfied that the finding that the "RUF established 'government' farms which were organised to support the fighters and civilians"[1937] detracts from all the other findings showing that the civilian labour on the RUF farms, both of the "government" and private commanders, was forced.[1938] The Appeals Chamber recalls that the finding that members of the RUF might have acted legally in some respects does not necessarily render unreasonable the finding that they acted illegally in others. Sesay's argument in this regard is dismissed.

5714. para. 747: Sesay further misrepresents the Trial Chamber's findings in arguing that it placed undue emphasis on financial remuneration as opposed to payment in kind.[1939] First, the Trial Chamber found that the workers were not given adequate food.[1940] Sesay ignores the evidence in support of this finding. Second, it found that medical and other services provided to some part of the population "cannot be exculpatory or excusatory for the forced labour and coercive conditions that the civilian population endured."[1941] Sesay's challenge to this finding is both unsupported and undeveloped.[1942] Third, the Trial Chamber considered several other indicia of enslavement,[1943] such as control of movement,[1944] abuse,[1945] and forced labour.[1946] Ignoring the evidence the Trial Chamber relied on for these findings and instead simply proffering other evidence he argues supports his position that the civilians and RUF cooperated or that the former were remunerated in kind, Sesay fails to show an error in these findings.[1947] His argument is therefore untenable.

5715. Regarding Kallon's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Kallon – paras. 817, 820 – 824, 928, 931 – 933 [7759].

5716. Regarding Gbao's participation in and shared intent of the JCE in relation to Kailahun District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kailahun District – JCE – Participation in and shared intent – Gbao – paras. 998, 1004 – 1022 [7820], 1054 – 1055 [7838], 1062 [7846], 1094 – 1098 [7849].

5717. para. 1071: The Trial Chamber found that Gbao incurred JCE liability for the crime of enslavement in Kailahun District.[2949] Among the underlying acts constituting enslavement in Kailahun District were forced farming on RUF "government" farms and farms owned by Commanders, including Gbao,[2950] and forced mining.[2951] It concluded that "Gbao was directly involved in the planning and maintaining of a system of enslavement" in Kailahun District.[2952]

5718. para. 1072: Gbao submits that the Trial Chamber erred in finding that enslavement existed in Kailahun District during the Indictment period and that he played a role therein.[2953]

5719. para. 1082: As a preliminary legal matter, the Appeals Chamber observes that lack of remuneration is not an element of the crime against humanity of enslavement under Article 2.c of the Statute. Rather, absence of remuneration for labour allegedly underlying the offence may constitute a relevant evidentiary factor in determining whether the labour was forced, which in turn may be an indicia of whether enslavement has been committed.[2988] In this regard, the Appeals Chamber endorses the Trial Chamber's reference to the *Kunarac et al*. Appeal Judgment, which quoted the following passage from the *Pohl* case:

> 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.[2989]

5720. para. 1083: Turning to the present case, Gbao argues that the civilians who farmed and mined for the RUF in Kailahun were remunerated "in kind," primarily by receiving free education and medical care. However, even assuming that Gbao is correct, this does not evince an error because such remuneration was not a determinative factor for the Trial Chamber's conclusion that the labour was forced. It found 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.[2990]

5721. para. 1084: Gbao does not challenge this finding, and the Appeals Chamber notes that it accords with the law as set out above that "there is no such thing as benevolent slavery." Moreover, this finding is not in contradiction with the Trial Chamber's findings that the RUF opened schools in Kailahun and provided non-discriminatory medical services in Giema, while continuing to commit crimes against civilians in Kailahun throughout the Indictment period.[2991]

Gbao's challenge to the finding that the civilian miners in *Giema* "worked without food," fails as it simply offers an alternative interpretation of TF1-330's testimony.[2992]

5722. para. 1085: For these reasons, the Appeals Chamber need not address the remainder of Gbao's argument, which centres on showing that the labour was remunerated "in kind." Gbao's argument is rejected. The Appeals Chamber now turns to Gbao's other submissions on why the labour in his view was not forced.

5723. para. 1086: Gbao first argues that the Trial Chamber erroneously disregarded a number of Defence witnesses' testimonies.[2993] Yet Gbao himself acknowledges that some of these witnesses testified that armed men oversaw the workers on the farms, albeit stating they did so to protect the civilians.[2994] Moreover, merely referring to a select number of witnesses and asking the Appeals Chamber to "accept their evidence" based on an unsubstantiated assertion of bias by the Trial Chamber, as Gbao does here,[2995] is insufficient to show an error. This prong of Gbao's appeal therefore fails.

5724. para. 1087: With regard to the remaining submissions, the Appeals Chamber notes, by way of introduction, that Gbao omits to address the evidence for certain important findings regarding the forced nature of and his role in the labour. For example, he does not address the testimony of TF1-330 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.[2996]

5725. para. 1088: Gbao similarly omits to mention TF1-330's testimony that the RUF had a "subscription" system in Kailahun, whereby civilians were required to surrender produce to the G5, that Gbao instructed the G5 Commander on the farming products to demand from the civilians, which instructions were conveyed to civilians,[2997] and that the produce subscribed to the G5 or S4 were to be transmitted to Gbao.[2998]

5726. para. 1089: Turning to the findings that Gbao challenges, he first argues that the finding that "[c]ivilians were also forced to work in Gbao's farm in *Giema*" is erroneous because the parts of TF1-330's testimony relied on do not corroborate TF1-108's testimony.[2999] This is incorrect. TF1-330 testified that he worked on Gbao's farm in the general context of describing the forced nature of the labour to which he was subjected in the different locations where he worked.[3000] This was sufficient corroboration to accept TF1-108's evidence in the present regard. TF1-330's

testimony also corroborated TF1-108's evidence for the finding, impugned by Gbao on the same basis, that "Gbao had a bodyguard on his farm called Korpomeh who 'guarded' the civilians who worked there."[3001] Presented with the reliable evidence of TF1-330 on the matter, it was reasonable for the Trial Chamber to rely on TF1-366 and TF1-108 to find that "civilians were required to work on [the] farm[] owned by … Gbao" and that the civilians working there "were treated badly, forced to work at gun point and sometimes beaten."[3002]

5727. para. 1090: Second, Gbao submits, without support, that mining only occurred after the 6 to 14 February 1998 ECOMOG intervention, and he further ignores the Trial Chamber's reference to TF1-371's testimony for its finding that the "work in the mines was carried out by civilians who were forced to work under the supervision of AFRC/RUF fighters."[3003]

5728. para. 1091: Third, Gbao challenges the Trial Chamber's reliance on TF1-367's testimony, arguing that the witness testified about Kono and not Kailahun.[3004] This challenge relates to the finding that "[m]any of the civilians were forced to live in 'zoo bushes', which were mining or farming communities guarded by RUF fighters for 'protection.'"[3005] Gbao's submission is without merit because he fails to address the additional evidence relied on for the impugned finding, namely TF1-113, and does not explain why TF1-113 in this instance required corroboration.

5729. para. 1092: Fourth, Gbao's argument that the Trial Chamber relied on evidence of TF1-108 and DIS-157 which is not on the record, relates to the finding that "civilians carried … palm oil, cocoa and coffee" to trading places "to exchange it for items such as rice, salt, Maggi and sometimes clothes."[3006] Gbao's challenge fails because it was not unreasonable to infer that the civilians were forced from DIS-157's testimony that they were escorted by armed men,[3007] and Gbao omits to mention the testimonies of TF1-330 and DAG-110, both cited by the Trial Chamber,[3008] corroborating that inference.[3009]

5730. para. 1093: For the foregoing reasons, the Appeals Chamber rejects Gbao's challenge to the Trial Chamber's conclusion that the farming and mining in Kailahun District was forced. That conclusion was open to a reasonable trier of fact on the totality of the evidence.

(x) Bo District - Enslavement

5731. See above: Chapter 10 – RUF – Appellate Judgment – Legal Conclusions - Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 361-369 [5646].

C. AFRC

1. Indictment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

5732. Paragraphs 21 through 36 are incorporated by reference.[306]

5733. 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 ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, 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. [307]

5734. These attacks were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property. [308]

5735. 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

[306] AFRC Indictment, para. 37.
[307] AFRC Indictment, para. 38.
[308] AFRC Indictment, para. 39.

children, including amputating their hands or feet and carving "AFRC" and "RUF" on their bodies. [309]

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

5736. Members of the AFRC/RUF subordinate to and/or acting in concert with ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, committed the crimes set forth below in paragraphs 42 through 79 and charged in Counts 3 through 14, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF. [310]

(iii) Count 10: Abductions and Forced Labour (Enslavement)

5737. 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:[311]

i. Kenema District - 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; [312]

ii. Kono District - 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; [313]

iii. Koinadugu District - 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; [314]

[309] AFRC Indictment, para. 40.
[310] AFRC Indictment, para. 50.
[311] AFRC Indictment, para. 66.
[312] AFRC Indictment, para. 67.
[313] AFRC Indictment, para. 69.
[314] AFRC Indictment, para. 69.

iv. Bombali District - 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; [315]

v. Kailahun District - 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; [316]

vii. Freetown and the Western Area - 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; [317]

viii. Port Loko - 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; [318]

5738. By their acts or omissions in relation to these events, ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, 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.[319]

2. Trial Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-T, Judgement, 20 June 2007

(c) Factual Findings

(i) Preliminary Remarks – Crimes

5739. para. 1279: The Indictment alleges that "[a]t all times relevant to this Indictment, AFRC/RUF engaged in widespread and large scale abductions of civilians and use of civilians as

[315] AFRC Indictment, para. 70.
[316] AFRC Indictment, para. 71.
[317] AFRC Indictment, para. 72.
[318] AFRC Indictment, para. 73.

forced labour. Forced labour included domestic labour and use of diamond miners."[2355] The Indictment specifies that such acts allegedly occurred in various locations in the territory of Sierra Leone, including Kenema District between about 1 August 1997 and about 31 January 1998; Kono District between about 14 February 1998 to January 2000; Koinadugu District between about 14 February 1998 and 30 September 1998; Bombali District between about 1 May 1998 and 31 November 1998; Kailahun District at all times relevant to the Indictment; Freetown and the Western Area between 6 January 1999 and 28 February 1999; and Port Loko District about February 1999.[2356] The Accused are thus charged with enslavement, a crime against humanity, punishable under Article 2(c) of the Statute.

5740. para. 1280: The Trial Chamber recalls that the Prosecution has pleaded specific locations at which abductions and forced labour are alleged to have occurred in Kenema, Kono, Koinadugu, Freetown and Western Area and Port Loko, but has not provided such particulars in respect of Bombali and Kailahun Districts. Given the continuous nature of the offence, and in the interests of justice, the Trial Chamber has considered all the evidence of enslavement adduced in relation to each District, provided that it falls within the timeframe specified in the Indictment.[2357]

5741. para. 1281: Submissions by the Parties in respect of particular incidents or witnesses have been discussed as they arise on the evidence below. In addition, however, the Parties made several general submissions on the evidence with respect to enslavement.

5742. para. 1282: The Prosecution submits that the evidence adduced establishes the legal requirements for a finding of enslavement as a crime against humanity.[2358] The Prosecution argues that it is not necessary for a finding of enslavement to prove that the perpetrators intended to detain the victims under constant control for a prolonged period of time, citing the ICTY Appeals Chamber decision in *Kunarac* in support of this proposition.[2359] The Trial Chamber accepts that a person may be enslaved for a short period of time provided that in that time the perpetrator intentionally exercises a degree of control over the person sufficient to constitute the *actus reus* of the crime.

5743. para. 2: The Brima Defence submits that there is no evidence before the Trial Chamber capable of supporting a charge of enslavement.[2360] [320]

5744. para. 1283: The Kanu Defence also submits that the evidence presented during the trial does not support a conviction on enslavement.[2361] The Kanu Defence submits in relation to forced

[319] AFRC Indictment, para. 73.

labour that the evidence must prove objectively that the witness was forced to work. The Kanu Defence argues that some of the evidence adduced by the Prosecution fails to fulfil this requirement as it was subjective, meaning that the evidence proved only the witness's personal conviction that she or he was compelled to work.[2362] The Trial Chamber emphasises that the legal definition of enslavement is framed objectively.[2363] When considering the evidence below, the Trial Chamber has looked for objective indications that civilians were forced to work, such as threats or use of violence by the perpetrators and lack of compensation. Findings are made only where the Trial Chamber is satisfied beyond reasonable doubt that the civilians were forced to work by AFRC/RUF soldiers

5745. para. 1284: The Kanu Defence further submits that evidence of abduction does not suffice for a finding of enslavement and rather, the Prosecution must prove that victims were abducted and then subjected to enslavement. The Kanu Defence argues that much of the Prosecution evidence deals only with abducted civilians and it cannot be inferred that these abducted civilians were used as forced labour on the basis of evidence of different incidents in which abducted civilians were so used.[2364]

5746. para. 1285: The Trial Chamber accepts the submission that evidence that civilians were abducted, in the absence of proof of what subsequently occurred to them, is not sufficient per se to prove that these civilians were enslaved. However, the Trial Chamber relies on evidence of abductions insofar as it corroborates the evidence of witnesses who were abducted and then enslaved by AFRC/RUF troops.

5747. para. 1286: The Trial Chamber has considered the evidence adduced below to determine whether the *actus reus* of enslavement is proved beyond reasonable doubt in respect of the locations and time frames pleaded in the Indictment. The Trial Chamber finds that where the *actus reus* of the crime has been established, the only reasonable inference on the evidence is that the perpetrators intentionally exercised powers attaching to the right of ownership over the abductees. The Trial Chamber is also satisfied that each of the perpetrators was aware that their acts formed part of the widespread and systematic attack on the civilian population which was taking place at the time the crime was committed. In such circumstances the requisite *mens rea* element of the offence is established.

[320] This paragraph does not have a correct paragraph number in the Judgment and is paragraph numbered as "2".

(ii) Kenema District – Crimes

5748. para. 1287: The Prosecution alleges that "[b]etween about 1 August 1997 and 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".[2365]

5749. para. 1288: In arriving at the following findings of fact, the Trial Chamber has considered the available evidence, in particular the testimony of Prosecution witnesses TF1-062, TFl-122, TFl-334 and TF1-045 and Defence witnesses DAB-147, DAB-033 and DBK-063.

a. Tongo Field – Kenema District – Crimes

5750. para. 1289: Witness TF1-062 is a miner who was living and working in Tongo Field in 1997, with six men employed to mine for him.[2366] On an unspecified date in August 1997, witness TF1-062 heard gunfire and soon after observed soldiers entering Tongo Field. Some of these soldiers wore combat and others were in civilian clothing. The witness recognised the soldiers in combat as members of the SLA.[2367] The witness identified Sam Bockarie ('Mosquito') as the commander of the men, since he entered in a jeep and spoke to the civilians.[2368]

5751. para. 1290: Approximately three days later, 'Mosquito' gathered the civilians of Tongo Field in a public meeting at Tongo Park attended by witness TF1-062.[2369] He informed the civilians that the AFRC/RUF government, formed in Freetown, was now in control of Tongo. The civilians were told that 'Mosquito' had set up a secretariat, under Lieutenant Dennis, to handle any of their complaints. In addition, 'Mosquito' told the civilians that they were going to mine for diamonds.[2370] Witness TF1-062 testified that soon after this meeting, 'Mosquito' left Tongo Field, leaving SLA commander Jamayo Kati in charge of the mining. Kati was subsequently killed and replaced by SLA soldier Set Marrah.[2371] However, 'Mosquito' would visit Tongo Field more or less at weekly intervals.[2372]

5752. para. 1291: Witness TF1-062 stated that the civilians of Tongo Field were subsequently required to elect from their number a chairman, named Mompleh, who would be responsible for organising the civilian mining. Commander Pa Set Marrah informed the civilians, through Mompleh, that 'Mosquito' had ordered that they should mine for "the Government" two days a week.[2373] Witness TF1-062 testified that thereafter the AFRC/RUF would designate certain days as 'government days'.[2374] On 'government days', the civilians of Tongo Field were forced to go and work in the mines in an area known as Cyborg Pit.[2375]

5753. para. 1292: Witness TF1-062 estimated that over a thousand civilians worked in the mines on 'government days'.[2376] The AFRC/RUF government did not provide the civilians with food or mining equipment.[2377] Witness TF1-062 testified that civilians would not refuse to work on 'government days' since they knew that if they did so, the AFRC/RUF would mete out "discipline"[2378] The witness stated, as an example, that one of his workers hid in an attempt to avoid work, but was found and beaten.[2379]

5754. para. 1293: On 'government days', civilians were compelled to hand over any diamonds found to the AFRC/RUF soldiers supervising the mine work.[2380] The supervising soldiers at Cyborg Pit were armed with guns, such as RPGs, LMGs, G-3s, and AK-47s, and would watch the civilian miners to ensure that all diamonds found were surrendered[2381] Civilians who attempted to keep diamonds found during a government mining day would be flogged almost to death.[2382] Witness TF1-062 watched AFRC/RUF soldiers shoot and kill civilian miners that disobeyed orders on two occasions.[2383] In addition, the witness regularly saw corpses being brought out of the Cyborg pit, and he was informed by his workers that these civilians had been shot by AFRC/RUF soldiers.[2384] Even on non-government days, AFRC/RUF soldiers would be present at Cyborg Pit and would take diamonds found by civilians.[2385]

5755. para. 1294: Witness TF1-062 worked for the AFRC/RUF government at Cyborg Pit for about four months, until they were ousted from Tongo Field by the CDF Kamajors in approximately December 1997.[2386] His evidence regarding events at Cyborg Pit was corroborated by that of witnesses TFl-045 and TF1-122, each of whom testified that the AFRC/RUF forced civilians to labour in the diamond mines at Tongo Field in the period May 1997 through February 1998.

5756. para. 1295: Witness TFl-122, a civil police officer based in Kenema Town in the relevant period, testified that on an unspecified date the AFRC/RUF in Kenema Town formed a strong force and left for Tongo Field.[2387] Several days later, he spoke with displaced civilians arriving from Tongo, who told him that the AFRC/RUF had captured many able-bodied men and forced them to mine diamonds for them.[2388]

5757. para. 1296: Witness TF1-045 was an RUF Major who spent two to three months in Tongo Field, from approximately July to September 1997.[2389] He was sent there by his RUF commanding officer to mine diamonds and he did so using captured civilians given to him by the AFRC/RUF. The witness stated that the civilians he used did not mine for him voluntarily, although he gave them some food and money.[2390]

5758. para. 1297: Witness TF1-045 was unable to give an estimate of the number of civilians labouring in the mines, but stated that it could have been than 300 or 500.[2391] He described the process by which civilians were collected for work. The AFRC oversaw the formation of civilian committees that were in charge of organising their civilian colleagues for government work, in return for which they reputedly earned a commission from the diamonds found.[2392] The witness observed civilians being rounded up. He stated that armed men accompanied the committees to search for civilians and collected them at gunpoint.[2393] Once captured, the armed men tied the civilians together with their shirts and brought them to the mine where they were forced to work at gunpoint.[2394] When asked what happened to civilians who resisted, the witness replied that, from his observations, "If [you] refused to mine and you are captured, you will be beaten. You will undergo serious torture, if –and if you are not lucky you will die. They will shoot you with a gun."[2395] The witness clarified in cross-examination that he saw civilians shot and killed on two occasions.[2396]

5759. para. 1298: Witness TF1-045 testified that upon his arrival in Tongo Field, Captain Kati was the AFRC commander in charge of a company consisting of both RUF and AFRC troops.[2397] Kati reported to 'Mosquito', who was the overall commander of Tongo Field at this time.[2398] The witness testified that there were several other AFRC/RUF commanders involved in the mining operation in Tongo Field in this period, including Kati's deputy, RUF Major 'Eagle'; the OC Secretariat, AFRC Sergeant 'Junior'; and the AFRC PLO 2, whose name the witness did not recall.[2399]

5760. para. 1299: Witness TF1-045 testified that any diamonds found at the mines were handed over to the armed guards, who would then pass them on to the PLO 2. The witness was present at the AFRC Secretariat on occasions when the PLO 2 would weigh the diamonds. The PLO 2 told him that the diamonds were to be sent to Eddie Kanneh, the resident Minister at the time. However, on one occasion the witness observed the PLO 2 giving diamonds to 'Mosquito'.[2400]

5761. para. 1300: The Trial Chamber recalls its finding that the Accused Brima was the PLO 2 during the AFRC period, but that in this position he was involved in mining in Kono District and not Kenema.[2401] Although the witness was clearly mistaken in his recollection that the 'PLO 2' was in Tongo Field, the Trial Chamber accepts the remainder of his evidence in relation to the use of forced labour as it was detailed and consistent in all material respects and the witness remained unshaken on cross-examination.

5762. para. 1301: The Brima Defence submits that witness TF1-045 did not describe any actual events which led him to conclude that the labour at the mines was forced.[2402] The Trial Chamber

considers that a reasonable inference may be drawn from the evidence of witness TF1-045 that civilians were collected and taken to the mines at gunpoint, with resistance being met by violence, that their labour was extracted by force and without consent. While the witness does not give particulars of specific incidents in which he saw violence being inflicted on civilians, the Trial Chamber is satisfied that his evidence on this point is reliable, given that he personally used forced civilian labour in Tongo Field for a substantial period of time.

5763. para. 1302: Witness TF1-334 also gave evidence that during the AFRC government period both the SLA and the RUF were mining in Tongo. Each faction supervised its own mining sites, but the mining of both factions was under the overall control of the AFRC Secretariat led by Staff Sergeant 'Junior Sheriff. The AFRC Secretariat was under the command of Secretary of State East, Captain Eddie Kanneh.[2403] While the witness does not state that civilians were forced to mine diamonds, the evidence corroborates the testimony of witnesses TF1-062 and TF1-045 that the AFRC were involved in diamond mining in Tongo Field.

5764. para. 1303: The Trial Chamber notes that Defence witnesses DAB-147, DAB-033 and DAB-063 gave evidence to the effect that the RUF were solely responsible for forced mining at Cyborg Pit in Tongo Field.

5765. para. 1304: Witness DAB-147 visited Kenema on two occasions in the period May 1997 through February 1998. He testified that both AFRC and RUF troops were stationed there. The witness stated that the RUF were mining at Cyborg Pit and they would kill civilians that went there to mine. The RUF commanders in Tongo, according to witness DAB-147, were named Manawa and Mopleh and they reported to Bockarie.[2404] However, he also stated at one point that the OC Secretariat Sergeant-Major 'Junior' was in charge of Tongo in this period. Witness DAB-047 testified that while he was in Tongo, he did not see AFRC soldiers forcing civilians to work in the mines.[2405] However, in cross-examination he agreed with the proposition that the AFRC government in Kenema forced civilians to mine for diamonds, before stating repeatedly that he had no knowledge of any AFRC mining operations and he could only testify to RUF mining in Tongo Field.[2406]

5766. para. 1305: Witness DAB-033, a member of the SLA, was posted to Tongo in July 1997 and remained there until January 1998. He gave evidence that Tongo was under RUF command.[2407] Witness DAB-033 agreed that civilians were forced to mine at Cyborg Pit, but testified that the RUF was in control of all mining operations there.[2408] Although there were SLAs in Tongo, led by Captain Kati and Seth Marrah, they were under RUF control and did not force civilians to mine.[2409] Under cross-examination, witness DAB-033 agreed that there was an AFRC

secretariat in Tongo that monitored the mining operations. He also agreed that SLAs and RUF worked together at the secretariat, and SLA 'Junior Sheriff was one of the commanders.[2410] Further, the witness's evidence discloses that the SLAs conducted mining in Tongo, since he states that good mining sites were taken from them by the RUF.[2411]

5767. para. 1306: Witness DBK-063, a member of the SLA, was posted in Tongo for six months commencing soon after June 1997.[2412] He testified that both RUF and SLA members were stationed in Tongo in this period. The RUF were commanded by 'Mosquito' and Eddie Kanneh, who was the SLA Secretary of State for Kenema.[2413] However, he gave evidence that the RUF and the SLA did not work together in Kenema District because they did not take commands from each other.[2414] According to Witness DBK-063, he was sent to Tongo along with other SLAs because the RUF were "not under control" and 'Mosquito' was stealing diamonds.[2415] He testified that Captain Kati, an SLA officer was killed when he went to Cyborg Pit to try and stop the mining, although this occurred prior to the witness's arrival in Tongo Field.[2416]

5768. para. 1307: Having considered the cross-examination of Defence witnesses DAB-033 and DAB-147, the Trial Chamber finds their testimony unreliable insofar as they both assert that the SLA had no involvement in the forced mining that occurred at Cyborg Pit. Witness DBK-063 did not state whether or not the AFRC were involved in mining operations. The Trial Chamber considers that the fact that these witnesses could testify only to RUF involvement in forced mining does not necessarily mean that the AFRC were not also engaging in the practice. Witness DAB-147 visited Tongo Field only twice and never went to Cyborg Pit.[2417] There is no evidence that witness DAB-033 or DBK-063 ever visited Cyborg Pit. The Trial Chamber prefers the more detailed evidence of Prosecution witnesses TF1-062 and TF1-045 in relation to the involvement of the AFRC in forced labour at Cyborg Pit, as both these witnesses were involved in mining operations there for a significant period of time.

5769. para. 1308: The Trial Chamber notes the evidence of Witness DBK-063 that the two factions worked separately in Tongo Field and also that of DAB-033 that the SLAs were under RUF control. Having accepted that the evidence above establishes beyond reasonable doubt that the AFRC were involved in mining operations using forced civilian labour at Cyborg Pit, the Trial Chamber finds it unnecessary to determine conclusively the working dynamic between the two factions, which was often frictional.

(iii) Kono District – Crimes

5770. para. 1310: The Prosecution alleges that "[b]etween 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".[2418]

5771. para. 1311: No evidence of enslavement has been adduced with respect to Tomendeh.[2419]

5772. para. 1312: In arriving at the following findings of fact, the Trial Chamber has considered the available evidence, in particular the testimony of Prosecution witnesses TF1-072, TF1-216, TF1-334, TF1-198 and TF1-033 and Defence witnesses DAB-098, DAB-042 and DAB-131.

a. Tombodu – Kono District – Crimes

5773. para. 1313: Witness TFl-334 arrived in Koidu Town in Kono District in early March 1998.[2420] He testified that several days after his arrival, the AFRC/RUF began capturing civilians on the order of Johnny Paul Koroma, especially the strong men and the young women, from Tombodu, Yamadu and other surrounding villages in Kono District. Civilians who tried to escape were executed.[2421] The AFRC/RUF used the civilians to carry their food, and trained some of them as soldiers for the movement.[2422]

5774. para. 1314: In March 1998, witness TF1-072 and his friend encountered seven soldiers in uniform near Gbaima while looking for food. Accompanying the soldiers was a civilian, tied with rope.[2423] The soldiers tied up witness TF1-072 and his friend and forced them to walk to Gbaima. The witness states that he and his friend could not refuse the soldiers as they were 'big men'. On arrival at Gbaima, the two men were made to lie down. They overheard the armed soldier left to guard them being instructed to shoot them if they tried to escape.[2424]

5775. para. 1315: Witness TF1-072, his friend, and the other civilian who had been with the soldiers were then taken, still tied, into Gbaima. Witness TF1-072 observed many "bags and bundles" lying around the town. The men were untied and forced by the soldiers to carry these loads on their heads towards Tombodu.[2425] Along the way, the soldiers encountered other civilians, whom they forced to join them, also making them carry loads on their heads.[2426] In Tombodu the civilians, of whom by now there were fourteen, were taken to a compound where

they were beaten.[2427] The leader of the soldiers in the compound was called 'Savage.'[2428] 'Savage' mutilated Witness TF1-072' s right hand before he managed to escape.[2429]

5776. para. 1316: On 14 April 1998, witness TFl-216 and his three children were captured by a group of soldiers near Paema.[2430] The soldiers tied up the witness and forced him and six other civilians to carry loads to Tombodu at gunpoint.[2431] Upon arrival, the seven were tied together outside a house.[2432] At that point, a group of soldiers arrived with some other civilians. 'Staff Alhaji' whom the soldiers had identified as their leader, ordered the soldiers to put the civilians in the house. Witness TF1-216 overheard one of the soldiers reporting to 'Staff Alhaji' that there were 53 people in the house.[2433] 'Staff Alhaji' told Witness TF1-216 and four of the other civilians that they were to be used to take a message to President Kabbah. All five then had their hands amputated before being released.[2434]

5777. para. 1317: At an unspecified time after March 1998, witness DAB-098 and five others were captured by "rebels" near Gbongbor Junction while looking for food. Witness DAB-098 states that the "rebels" shot around them and there was no way for them to escape.[2435] The "rebels" took the group of civilians to Tombodu, where they were kept in a house for six months and subjected to regular beatings.[2436] Whilst in captivity, witness DAB-098 and the other civilians were required to go fishing, clean, carry goods, and collect food for the "rebels".[2437] He stated that while under their command, he felt that he had to accept anything they did to him or otherwise they would kill him.[2438] During his captivity, witness DAB-098 learnt that the leader of the "rebels" was named 'Savage'.[2439]

5778. para. 1318: The Trial Chamber recalls its finding that 'Savage' was an AFRC commander in charge of a battalion of mixed AFRC/RUF soldiers in Tombodu in the period from approximately mid March until at least the end of April 1998, with 'Staff Alhaji' as his deputy.

5779. para. 1319: Witness TF1-033 testified that in March 1998, he was abducted in Tombodu, along with many other civilians, by AFRC fighters under the command of 'Gullit', whose subordinate was 'Savage'. He stated that he both saw and heard 'Gullit' issue the command to abduct the civilians, and that the AFRC fighters told him that if he tried to escape they would kill him.[2440] In April 1998, when 'Gullit' ordered the AFRC fighters to retreat to Yaya due to the advance of ECOMOG witness TF1-033 was forced to accompany them.[2441] The witness remained with the AFRC until the retreat from Freetown in 1999.[2442]

5780. para. 1320: Under cross-examination, witness TF1-033 gave only very general information in relation to his abduction. He repeated his assertion that upon arrival in Tombodu, he

encountered 'Gullit' and AFRC fighters and simultaneously overheard 'Gullit' ordering the fighters to abduct him.[2443] He stated that there were many other abducted civilians in Tombodu, and they stayed in houses under the strict supervision of AFRC fighters.[2444] Witness TF1-033 lived in the house of Staff Alhaji.[2445] He did not specify what, if anything, the civilians did in this period or describe any incidents that occurred involving himself or other abductees.

5781. para. 1321: The Kanu and Brima Defence submit that witness TF1-033' s testimony in relation to his abduction is unreliable as the witness was not an abducted civilian, but rather an active AFRC supporter.[2446] The Brima Defence further submits that the evidence of witness TF1-033 is unreliable as he was a former AFRC member who stood to gain from embellishing his testimony to the detriment of the three Accused.[2447]

5782. para. 1322: Witness TF1-033's evidence that abductions of civilians were taking place in Tombodu in the period after February 1998 is corroborated by witnesses TF1-072, TFl-216 and TF1-334. However, the Trial Chamber is of the view that the evidence that the witness himself was forcibly captured in Tombodu is not probative, for several reasons. First, in a prior statement to the Prosecution, the witness stated that he decided to flee from Freetown with the AFRC troops in February 1998.[2448] Secondly, the Trial Chamber has found, on the basis of reliable evidence from other witnesses, that the Accused Brima was not in Kono in this period.[2449] Thirdly, the witness's account of his own abduction and captivity lacked the detail contained in the testimony of witnesses TF1-072, TF1-216 and DAB-098. The Trial Chamber therefore does not rely on the evidence of witness TF1-033 in making findings on enslavement in Kono District.

5783. para. 1323: The Trial Chamber notes that witnesses TF1-334 and DAB-098 gave evidence of diamond mining in the Tombodu area, however their evidence concerned the AFRC government period and therefore falls outside the Indictment period for Kono District for Count 13.[2450] No other evidence was adduced of diamond mining in the Tombodu area.

b. Koidu – Kono District – Crimes

5784. para. 1324: In July 1998, witness DAB-131 and his family were captured, along with an unspecified number of other civilians, in the bush around Tuyor, near Koidu.[2451] Their captors identified themselves as RUF soldiers.[2452] After they were captured, they pounded husk rice for the RUF and were forced to carry it into Koidu Town on their heads.[2453]

5785. para. 1325: Upon arrival in Koidu, witness DAB-131 and his group of civilians were sent by an RUF commander to a mining unit in an unspecified location in Kono District and told that

they would work for the RUF.[2454] Witness DAB-131 testified that there were 240 civilians mining diamonds for the rebels, guarded by RUF soldiers. He knew the number of civilians since they were counted every morning. The commander of the soldiers introduced himself to the civilians as RUF Major Kumba. Any diamonds found were handed over to him.[2455]

5786. para. 1326: The civilians mined for the RUF for three months, until ECOMOG displaced the RUF from Kono. At this point, witness DAB-131 and an unspecified number of other civilians were forced to carry loads on their heads for the RUF from Koidu Town to Burkina (also known as Buedu) in Kailahun District.[2456] The civilians walked for two days and two nights, accompanied by the RUF, before arriving in Burkina.[2457] He observed the RUF soldiers killing civilians who were unable to carry their loads. Their loads were then transferred on to the heads of others. In addition, the soldiers would confiscate clothing and footwear that was in good condition from the civilians.[2458] The witness testified that by the time the group arrived in Kailahun, it included over 500 civilians.[2459]

5787. para. 1327: After an unspecified time in Burkina, witness DAB-131 and some 230 other civilians were forced to carry loads for the rebels back to Kono, to a location that the witness refers to as 'Joe Bush'.[2460] At 'Joe Bush' the civilians were forced to mine diamonds, supervised by armed RUF guards.2461 The witness stated that diamonds found at the mine were taken by escort to Sam Bockarie, since the civilians were told that everything they recovered was for the RUF movement.[2462] Witness DAB-131 and the other civilians mined at Joe Bush for three to four months, until December 1998 when the rebels moved them to Koidu Town.[2463] The witness remained a captive of the RUF until "the ceasefire".[2464]

c. Wondedu – Kono District – Crimes

5788. para. 1328: At an unspecified time after February 1998, witness TFl-217 observed that RUF rebels brought around ten girls to Wondedu in open vehicles.[2465] He saw one of the girls crying. At that same time, the witness's sister was forcefully captured by RUF Captain Bai Bureh, who said that she was his wife. Witness TF1-217 testified that his sister did not want to go with Bureh, but the witness did not dare to intervene because Bureh threatened that he would take either his life or his sister.[2466] The witness did not know the fate of his sister or the ten girls.

5789. para. 1329: The Trial Chamber recalls that evidence of abductions alone IS insufficient to prove enslavement.[2467] In the absence of other evidence of enslavement in W Wondedu, the Trial Chamber makes no finding of enslavement in respect of this location.

d. Other locations in Kono District – Crimes

5790. para. 1330: In late 1999, witness DAB-042 was captured by RUF rebels in Yengema.[2468] The witness, along with many other civilians, was taken to Kailahun and forced to carry loads, consisting of objects such as beds, baling machines, rice and beans, to the Mende land area.[2469] The witness remained with the rebels for three months.[2470]

5791. para. 1331: Around mid-1998, witness TF1-198 and her family met a group of around seven armed "soldiers" in Koiduwar, who tied up her husband and forced him, along with five other men, to carry loads on their heads to Yardu Gbensa.[2471]

5792. para. 1332: Witness DAB-025 was captured by RUF rebels in Mortema in an unspecified year and forced to undergo military training and work at an RUF checkpoint near Yengema.[2472] As the Trial Chamber was unable to ascertain the time period in which these events occurred, the Trial Chamber does not rely on this evidence.

(iv) Koinadugu District – Crimes

5793. para. 1334: The Prosecution alleges that "[b]etween 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".[2473]

5794. para. 1335: No evidence of enslavement was led in respect of Kamadugu and Heremakono.[2474]

5795. para. 1336: In arriving at the following findings of fact, the Trial Chamber has taken into consideration the available evidence, in particular the testimony of Prosecution witnesses TF1-153, TF1-094, TFl-209 and TFl-133 and Defence witnesses DAB-089, DAB-081, DAB-082, DAB-078, DAB-088, DAB-090 and DAB-085.

5796. para. 1337: The Trial Chamber has considered the evidence of witnesses TF1-209 and TF1-094 in its findings under Count 9.[2475] The evidence contained therein establishes beyond reasonable doubt that these witnesses were also enslaved by AFRC troops in Koinadugu District. Their evidence is discussed below insofar as it relates to the abduction and forced labour of other civilians in Koinadugu District.

a. Kabala – Koinadugu District – Crimes

5797. para. 1338: Witness TFl-209 testified that during the rainy season in 1998, a number of other civilians were captured by 'juntas" along with herself, near Kabala.[2476] The 'juntas' took rice and ground nuts from the civilians and forced them to carry these items into Kabala town.[2477] En route, other civilians were captured and made to carry loads.[2478] Upon arriving in Kabala town, the civilians were taken to a man named 'Mongo' who was dressed in combat uniform. 'Mongo' wrote down their names so that none of them could go missing.[2479] Witness TFl-209 was taken to Koinadugu Town and 'married' to a man named Jabie. She gave no further evidence regarding the other civilians.

b. Kumala – Koinadugu District – Crimes

5798. para. 1339: The available evidence of abductions and forced labour in Kumala consisted of the testimony of Prosecution witness TF1-133. The Trial Chamber has considered the evidence of this witness in its findings under Count 9.[2480] The evidence contained therein establishes beyond reasonable doubt that she was also enslaved by AFRC troops in Koinadugu District.

c. Koinadugu – Koinadugu District – Crimes

5799. para. 1340: At an unspecified time in 1998, DAB-089 was abducted at gun point near Koinadugu by persons he identified only as 'gunmen' and forced to join a group of other civilians carrying loads to Koinadugu Town.[2481] Upon arrival in Koinadugu, the witness was handed over to a man named Albert, who threatened that he would kill him if he escaped and marked his forehead and chest with 'RUF'.[2482] Witness DAB-089 remained with Albert for eight days, in which time he followed orders to carry loads of food and communications equipment and logged wood.[2483] He overheard conversations in which Albert referred to his leaders as 'Superman' and SAJ Musa.[2484] Witness DAB-089 then managed to escape.[2485]

5800. para. 1341: In about August 1998, witness DAB-081 was captured by RUF rebels near Koinadugu.[2486] The rebels made the witness take them at gunpoint to Dankawalli village and then the following day to Koinadugu.[2487] In Koinadugu, the witness was housed with 50 other abductees and kept captive for several months.[2488] He testified that while he worked for the RUF, both RUF and SLA fighters used civilians for labour.[2489] The captives were forced to search for food for the RUF and SLA troops in Koinadugu. Abductees also had to build over 20 huts and

guard posts along the road to Koinadugu for the RUF fighters.[2490] The RUF flogged their civilian workers, including witness DAB-081, with sticks.[2491]

5801. para. 1342: At an unspecified time after February 1998, witness TF1-153 and other civilians of Yirayie Town were captured by RUF commander Komba Gbundema and his men in the bush near Yirayie.[2492] The men ordered the civilians to hand over all their food and property.[2493] The men carried guns and the civilians were told that anyone who ran away would be killed. Gbundema ordered witness TFl-153 and the other civilians to carry the property which had been taken from them to Yirayie Town.[2494]

5802. para. 1343: Upon arrival in Yirayie, witness TFl-153 observed women pounding rice, children carrying loads on their heads and other commanders arriving from the bush with civilians.[2495] Witness TF1-153 states that the commanders and soldiers in Yirayie were from both the AFRC and the RUF. The Trial Chamber accepts that the witness was able to distinguish between the two factions as he came from a family background of affiliation with the military.[2496] That night, Witness TF1-153 was forced by Gbundema's men to carry one bag of rice on his head to Koinadugu.[2497] He was released upon his arrival because by chance one of the soldiers there was his cousin.[2498]

d. Other locations in Koinadugu District - Crimes

5803. para. 1344: On 22 May 1998, witness DAB-078 was captured during an attack on his town in Koinadugu District by three armed men, one wearing a soldier's uniform and the other two wearing civilian clothing.[2499] He was forced to carry loads, along with about 15 other captured civilians, on the road to Makeni.[2500] He overheard his captors saying that their leaders were 'Captain Ishmael' and 'Colonel Born Trouble'.[2501] 'Captain Ishmael' was a deputy to 'Savage'.[2502] Witness DAB-078 overheard in discussion that both 'Ishmael' and 'Savage' were SLA soldiers.[2503] When the group reached Kanikay that same night, the witness managed to escape.[2504]

5804. para. 1345: Witness DAB-085 testified that between early September 1998 until about March 1999, 'Savage' and his men, including 'Ishmael', regularly looted his town in Koinadugu District.[2505] 'Savage's men would force young people from the witness's community to carry loads from the town to their base at Kamabai.[2506] As the Indictment period for Koinadugu District for Count 13 ends at 30 September 1998, the Trial Chamber relies on the witness's evidence primarily to corroborate the evidence of enslavement of other witnesses in relation to Koinadugu District.

5805. para. 1346: At an unspecified time after February 1998, rebels wearing civilian clothing captured witness DAB-082 and 14 other civilians in their village in Koinadugu District.[2507] The following day, the rebels sent witness DAB-082 and other civilians on food-finding missions.[2508] According to the witness, the civilians were told by the rebels to build a farm hut for themselves to use, and the rebels decided to call this place "Joe Bush". Every morning, the rebels would "bring out" the civilians and tell them to go to "Joe Bush". The civilians would spend the day there and return in the evening.[2509]

5806. para. 1347: While the Trial Chamber found the witness credible, his evidence lacked detail. It is unclear whether the civilians were forced to obey the instructions given to them by the rebels or whether their autonomy was restricted in any other aspect. The witness did not explain what he and other civilians did at "Joe Bush", and therefore there is no evidence that the rebels accrued any gain from the civilians' activities. In the absence of such indicia, the Trial Chamber finds that it is not established beyond reasonable doubt that witness DAB-082 or other civilians in his company were used as forced labour.

5807. para. 1348: Witness DAB-090 testified that at an unspecified time after April 1998, rebels attacked Yifin. They remained in Yifin until the end of the year when they were disarmed.[2510] Throughout this period, the rebels used the children of Yifin to carry rice and other looted goods in loads on their heads to Kayima. The children told the witness that if they did not walk very fast on these trips they were seriously beaten.[2511] The rebels also forced the civilians of Yifin to cultivate a rice farm for them. The civilians were made to harvest the rice and then hand it over to the rebels.[2512]

5808. para. 1349: Witnesses TF1-094 and DAB-088 testified that in Yomadugu in around August 1998, there were many civilian men, women and children captured from surrounding villages. The civilians were forced to work for the rebels and SLAs, performing tasks such as harvesting rice in the bush, pounding rice, laundering and cooking. If civilians refused to work, they would be beaten or killed, and many such punishments were meted out.[2513]

(v) Bombali District – Crimes

5809. para. 1351: The Indictment alleges that "[b]etween about 1 May 1998 and 31 November [sic] 1998, in Bombali District, members of the AFRC/RUF abducted an unknown number of civilians and used them as forced labour".[2514]

5810. para. 1352: The evidence adduced on Bombali District concerns the alleged enslavement of civilians by AFRC troops between approximately April and July 1998 during their movement

from Mansofinia (Koinadugu District) to Rosos (Bombali District) under the command of the Accused Brima, accompanied by the Accused Kamara and Kanu.[2515] The Trial Chamber will consider first the evidence pertaining to incidents which took place during the journey to Rosos and then the evidence regarding events that occurred while the troops were at Rosos.

5811. para. 1353: In arriving at the following findings, the Trial Chamber has considered the evidence adduced, in particular the testimony of Prosecution witnesses George Johnson, TF1-334, TF1-184, TF1-157, TF1-158, TF1-055 and TF1-058 and Defence witnesses DBK-101, DBK-100, DBK-089 and DBK-094.

5812. para. 1354: The Trial Chamber recalls that Prosecution witnesses TF1-157 and TF1-158 were abducted from Bornoya in 1998 by AFRC troops en route to Rosos and used as child soldiers. Their evidence, considered in the Trial Chamber's findings on Count 12, establishes beyond reasonable doubt that these witnesses were enslaved in Bombali District.[2516] Their testimony is considered below insofar as it demonstrates that an unknown number of other civilians were abducted and used as forced labour in Bombali District.

a. Journey to Rosos – Bombali District – Crimes

5813. para. 1355: Witness TFl-334 testified that 'Gullit' ordered at Mansofinia that any strong civilian encountered on the journey north should be captured and made part of the troop.[2517]

5814. para. 1356: Witnesses DBK-l0l and DBK-l00 testified that fighters abducted a number of civilians in the attack on Kamagbengbeh in May 1998. When some of the abductees subsequently escaped and returned to the village, they told the other civilians that the attackers had forced them, under threat of violence, to carry loads to Kamabai.[2518]

5815. para. 1357: Witnesses living in Karina at the time of the AFRC forces' attack testified that the troops abducted a number of civilians, some of whom were personally known to the civilians.[2519] Witness TF1-058 was captured during the attack on Karina and ordered to sit with a group of other civilians being guarded by armed 'juntas".[2520] The "juntas" instructed some of the civilians to stand up and form two lines. The men were forced to carry goods and the women to follow behind. All of the women were naked, except for one who was wearing a loincloth. Armed men accompanied the civilians.[2521]

5816. para. 1358: Witness TF1-334 was present during the attack on Karina, which he stated took place in the early morning, from around 2am until 7am.[2522] He testified that around 35

women were abducted in Karina and placed under the command of one Woyoh, who stripped the women naked.[2523] Small children were also abducted. Woyoh then handed control of the women to the Chief of Staff 'FiveFive'.[2524] 'Gullit' subsequently ordered, in the presence of the witness, that the children be distributed among the various commanders.[2525] After the attack on Karina, the soldiers arrived in Gbendembu, where they captured several young men and women.[2526]

5817. para. 1359: While the evidence above relates primarily to abductions, witnesses George Johnson and TF1-157, who were travelling with the troops, testified that the abducted civilians were used as forced labour. Johnson stated that hundreds of civilians were forcefully captured in the villages on the journey and the women were used as cooks, while the men were either used to carry arms, ammunition and food, or trained as fighters.[2527] Witness TF1-157 stated that civilians were forcefully abducted in Bornoya, Daraya, Mayogbo, Kagbemneh, Kamanameh, Kamatelun, Kamabai and Karina in Bombali District and compelled to carry looted goods for the rebels to Rosos.[2528]

b. Rosos – Bombali District - Crimes

5818. para. 1360: While at Rosos, the troops staged an operation to nearby village of Gbendembu, where additional civilians were abducted.[2529] The troops remained at Rosos for three months.[2530] Civilian abductees were used in this period to perform domestic labour, including food finding, fetching water and cleaning dishes.[2531]

5819. para. 1361: Abductees were also forced to undergo military training.2532 Trainees that attempted to escape were killed.[2533] The duration of the training program at Rosos was three weeks.[2534] The exercises encompassed weapon handling, tactics, firing and maneuvering.[2535] Witness George Johnson estimated that approximately 520 civilians, including both adults and children, were trained in this manner at Rosos.[2536] At the completion of the training program, the civilians were integrated into the battalions by FAT Sesay.[2537]

5820. para. 1362: The Trial Chamber notes that witness TF1-184, who travelled with SAJ Musa's group of troops to meet the Accused Brima's group at 'Colonel Eddie Town', testified that SAJ Musa's group was accompanied by civilians who were free to leave at any time without fear of reprisal.[2538] The Kanu Defence submits that these civilians were not subjected to enslavement.[2539] Given that the AFRC faction led by the Accused Brima was not with SAJ Musa's group or subject to SAJ Musa's command until after they departed from Rosos, this evidence is not material to the Trial Chamber's consideration of the above evidence on Bombali District.

(vi) Kailahun District - Crimes

5821. para 1364: The Indictment alleges that "[a]t all times relevant to the Indictment, captured men, women and children were brought to various locations within the District and used as forced labour".[2540]

5822. para. 1365: In reaching the following factual findings, the Trial Chamber has considered the evidence adduced, in particular the testimony of Prosecution witnesses TF1-113 and TF1-114 and Defence witnesses DAB-135, DAB-140 and DAB-027.

5823. para. 1366: The Trial Chamber has divided the evidence on Kailahun District into two periods, the first being the AFRC government period from May 1997 to February 1998, and the second the period from February 1998 until January 2000.

a. May 1997 - February 1998 – Kailahun District – Crimes

5824. para. 1367: The Trial Chamber notes the evidence of witness TF1-113 that 67 persons accused by AFRC/RUF soldiers of being Kamajors were detained and used as forced labour in Kailahun Town for approximately two or three months during this period. As it has not been established beyond reasonable doubt that these persons were in fact civilians, the Trial Chamber makes no finding of enslavement on this evidence.[2541]

5825. para. 1368: Around May 1997, witness DAB-135 was captured with 19 other civilians in the fields near Jagbwema Town by armed RUF rebels wearing mixed combat and civilian clothing.[2542] The rebels took thirteen of the civilians to Jagbwema Town where they met other civilians that had been captured. Witness DAB-135 was taken before the rebel leader Major Kangoma, who questioned him, kicked him and hit him with a gun butt.[2543] A rebel named 'Captain Death Squad' then took witness DAB-135 and two of his sisters and ordered them to pound a drum of husk rice and launder clothes for him.[2544]

5826. para. 1369: The following day the civilians were taken to Tueyor, where they were again forced to pound rice and launder clothes, without being fed.[2545] Three days later, witness DAB-135 was ordered to go to Buedu in Kailahun Chiefdom with the rebels, carrying loads for them.[2546] The witness spent about two days in Kailahun Chiefdom, working for the rebels while being given very little food.[2547] The rebels then took witness DAB-135 back to Kono District, stopping along the way in a village called Manjama where the rebels forced the witness to pound

rice and they captured other civilians.[2548] Upon returning to Kono, the witness spent two years and six months with the rebels before being reunited with his family.[2549]

5827. para. 1370: In approximately May 1997, Witness DAB-140 was captured by rebels in the bush near Buedu and brought into Buedu Town. The rebels, whose commander was Sam Bockarie, required the witness, along with other civilians in Buedu, to "report for duty" every morning to a rebel leader.[2550] One of the tasks that the witness was regularly forced to undertake was carrying heavy loads.[2551] Specifically, the witness stated that the rebels used to take corrugated iron and doors from people's houses in Buedu and force civilians, under threat of violence, to carry the iron to Liberia and the doors to Guinea.[2552] Civilians who refused to take loads were beaten or killed.[2553]

b. February 1998 - January 2000 – Kaliahun District – Crimes

5828. para. 1371: Witness TF1-114, a military police adjutant in Buedu, testified that the RUF engaged in forced labour after February 1998.[2554] One of his duties was to take the names of civilians reporting for 'government work'. 'Government work' typically included working on commanders' farms, constructing roads and carrying loads for commanders and was carried out involuntarily by civilians who received no remuneration.[2555]

5829. para. 1372: The Kanu Defence submits that the evidence of witness TF1-114 in relation to forced labour in Kailahun establishes that the responsibility for this crime falls to members of the RUF.[2556] Under cross-examination, Witness TF1-114 gave confusing and contradictory evidence regarding his affiliation with the SLA and RUF factions. He consistently asserted that throughout the period he worked in Buedu, he was a member of the RUF.[2557] Accordingly, the Trial Chamber finds that it has not been established beyond reasonable doubt that the AFRC was involved in the forced labour described.

5830. para. 1373: At an unspecified time in 1998, witness DAB-027 and a group of other civilians were captured in the bush near Bendu by RUF rebels and taken to Jagbema village.[2558] After several days, the civilians were taken to Tueyor, from where they were divided into two groups.[2559] The younger ones, including the witness, were taken to Bunumbu Camp Lion Training Base, in Kailahun District.[2560] Witness DAB-027 and many other captive civilians were given military training at Bunumbu.[2561] Over a month later, the witness was then sent to Gandorhun, in Kono District, and some time later to Sengema. Throughout this time he was required to work for RUF rebels.[2562]

5831. Freetown and the Western Area – Crimes para. 1375: The Indictment alleges that "[b]etween 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."[2563]

5832. para. 1376: No evidence of enslavement was led in relation to Peacock Farm.[2564]

5833. para. 1377: In reaching the following findings of fact, the Trial Chamber has taken into account the evidence adduced, in particular the testimony of Prosecution witnesses TF1-024, TF1-227, TF1-084, TF1-023, TF1-085, George Johnson and TF1-334.

5834. para. 1378: The Trial Chamber has considered the evidence of Prosecution witnesses TF1-023 and TF1-085 in its findings under Count 9[2565] and TF1-157 under Count 12.[2566] The evidence therein establishes beyond reasonable doubt that these witnesses were enslaved in Freetown and the Western Area. Their testimony is considered below insofar as it demonstrates that an unknown number of other civilians were abducted and used as forced labour.

c. Freetown – Freetown and the Western Area – Crimes

5835. para. 1379: Prosecution witness George Johnson testified that as the AFRC faction advanced on Freetown on 6 January 1999, they were accompanied by a large number of abductees who carried arms, ammunition and foodstuffs.[2567]

5836. para. 1380: Approximately three weeks later, at a meeting of senior commanders in the Upgun area during the retreat from Freetown, 'Gullit' ordered that troops should begin abducting civilians, saying that this would attract the attention of the international community.[2568] Witness TF1-334 subsequently observed troops breaking into houses and capturing civilians, especially young girls, and taking them to headquarters at the PWD.[2569] The witness stated that at this time 'almost everybody had civilians,' including the commanders.[2570] It was the responsibility of the abducting commander to ensure that the civilians were 'well-secured', which the witness explained meant that they could not escape.[2571]

d. Kissy – Freetown and the Western Area – Crimes

5837. para. 1381: While the troop was based at Ferry Junction, during the retreat from Freetown, 'Gullit' issued a further order for abductions to start again.[2572] As ECOMOG advanced towards Ferry Junction, the AFRC withdrew towards Kissy. In accordance with the Accused Brima's orders, the troops captured civilians as they withdrew. These civilians were taken to Kissy Mental Home.[2573]

5838. para. 1382: This evidence is corroborated by Witness TF1-084, who was in Kissy, Freetown, during the January 1999 retreat. He observed 'rebels' in military dress capturing people, putting them in vehicles and driving them away. The witness testified that among those captured he recognised a 14 year old girl. He did not see any of the people captured again.[2574]

e. Calaba Town – Freetown and the Western Area – Crimes

5839. para. 1383: Witness TF1-024 testified that on 8 January 1999, he was captured in Freetown by three armed rebel boys who were dressed in ECOMOG uniforms and taken to State House.[2575] The rebel boys who had captured the witness beat him and then locked him inside the kitchen at State House.[2576] The witness stated that there were 50 other civilians in the kitchen and they remained locked there for four days without food or water.[2577] After four days, as ECOMOG approached State House, the rebels forced witness TF1-024 and the other civilians to accompany them on their flight out of Freetown. The rebels made the witness carry a heavy bomb to Calaba Town.[2578] At Calaba Town, the rebels took the bomb from witness TF1-024 and he escaped.[2579]

5840. para. 1384: On the afternoon of 22 January 1999, witness TF1-023 and ten other civilians were captured by an armed young boy in Calaba Town. The boy was with a group of about 200 people, consisting of rebels and civilians whom the rebels had just captured.[2580] The rebels took the civilians to a location that the witness was unable to identify. The civilians were told that they had been captured to use as human shields, but that they would not be harmed and so they should not be scared. The rebels gave the civilians food and the boy that had captured Witness TF1-023 gave her a small bag to carry. The following day, the civilians were taken to Allen Town, where they met around 300-400 armed rebels and around 100 other civilians.[2581] The civilians were guarded by armed boys that prevented them from moving around freely.[2582]

f. Other locations in Freetown and Western Area – Crimes

5841. para. 1385: In late January 1999, witness TF1-227 was captured in Kola Tree by soldiers who accused him of being a Kamajor.[2583] Witness TF1-227 remained in captivity for 10 months. At Kola Tree, there were about 200 civilians who were forced by the AFRC to join them in the retreat to Benguema.[2584]

5842. para. 1386: While the above evidence relates primarily to abductions, the Trial Chamber is satisfied on the basis of the following evidence that AFRC soldiers used the civilians abducted during the retreat from Freetown as forced labour.

5843. para. 1387: Witness TF1-227 testified that during the retreat to Benguema, AFRC soldiers used civilians to carry loads, perform domestic tasks or act as guards.[2585] Witnesses TF1-334 and TF1-227 testified that when the troops arrived at Benguema, they were accompanied by several hundred civilians who had been abducted in Freetown. During the month in which the troops were based there, the civilians went on food finding missions, pounded rice, carried looted items and participated in cooking.[2586] Witness TF1-334 stated that the civilians were obliged to perform these tasks because there was no way that they could escape.[2587]

5844. para. 1388: From Benguema, the troops retreated to Newton, where they remained about a month, performing similar tasks.[2588] At Newton, 'Five-Five' was responsible for all the young girls at the camp. Witness TF1-334 observed problems with the girls being reported to him.[2589]

(vii) Port Loko District – Crimes

5845. para. 1390: The Indictment alleges that "[a]bout 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 in the Port Loko District, including Tendakum and Nonkoba".[2590]

5846. para. 1391: In arriving at the following findings, the Trial Chamber has examined the entire evidence in relation to enslavement in Port Loko District, in particular the testimony of witnesses TF1-334 and George Johnson. No evidence was adduced of enslavement in February 1999 in Port Loko, Lunsar, Tendakum and Nonkoba.

a. Other locations in Port Loko District – Crimes

5847. para. 1392: In Mammah Town, the troops were ordered by the Accused Kamara to use civilians to dig a large ditch in the road to create an obstacle for ECOMOG forces. Civilians did so, using pick axes, under the supervision of the Accused Kamara.[2591] The Trial Chamber is of the view that this isolated incident of forced labour of short duration does not involve the exercise of powers attaching to the right of ownership over the victims. It is therefore of an insufficient gravity to prove the *actus reus* of enslavement.

5848. para. 1393: Witnesses testified that about 700 people, including abducted civilians, were at the AFRC base in Gberi Bana under the command of the Accused Kamara[2592] However, in the absence of further evidence as to whether the abductees were used as forced labour, and in light of the evidence of witness TFl-334 that civilians joined the AFRC troops retreating from Benguema did so since they feared for their lives,[2593] the Trial Chamber finds that there is reasonable doubt as to whether these civilians were enslaved.

(d) Legal Conclusions

(i) Applicable law – Crimes against humanity ("CAH")

a. The Law

5849. See above: Chapter 2 – AFRC – Legal Conclusions – Applicable law – Crimes against humanity – The Law - paras. 211 – 213 [1941].

b. There must be an attack

5850. See above: Chapter 2– AFRC – Legal Conclusions – Applicable law – Crimes against humanity – The Law - There must be an attack - para. 214 [1944].

c. The attack must be widespread or systematic

5851. See above: Chapter 2 – AFRC – Legal Conclusions – Applicable law – Crimes against humanity – The Law - The attack must be widespread or systematic - para. 215 [1945].

d. The attack must be directed against any civilian population

5852. See above: Chapter 2 – AFRC – Legal Conclusions – Applicable law – Crimes against humanity – The Law - The attack must be directed against any civilian population - para. 216 – 219 [1946].

e. The acts of the perpetrator must be part of the attack

5853. See above: Chapter 2 – AFRC – Legal Conclusions – Applicable law – Crimes against humanity – The Law - The attack must be directed against any civilian population - para. 220 [1950].

f. The perpetrator must have knowledge that his acts constitute part of a widespread or systematic attack directed against a civilian population

5854. See above: Chapter 2 – AFRC – Legal Conclusions – Applicable law – Crimes against humanity – The Law - The perpetrator must have knowledge that his acts constitute part of a widespread or systematic attack directed against a civilian population - paras. 220 – 222 [1950].

(ii) CAH – Findings on general requirements

5855. See above: Chapter 2 – AFRC – Legal Conclusions – Applicable law – Crimes against humanity – CAH – Findings on general requirements - para. 224 – 226 [1954].

(iii) Applicable law – Enslavement

5856. para. 739: Count 12 alleges the crime of enslavement by abductions and forced labour, not sexual slavery. Although sexual slavery can lead to a conviction for enslavement, the Trial Chamber has considered the crime of sexual slavery under Count 9 (Outrages upon Personal Dignity).

5857. para. 740: The Accused are charged under Count 13 with enslavement, a crime against humanity, punishable under Article 2(c) of the Statute, in that "[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."

5858. para. 741: The Indictment alleges that the abductions and forced labour included the districts of Kenema, Kono, Koinadugu, Bombali, Kailahun, Freetown and the Western Area and Port Loko. It is alleged that the Accused, by their acts or omissions in relation to these events,

pursuant to Article. 6(1) and, or alternatively, Article 6(3) of the Statute, are individually criminally responsible for the said crimes.

5859. para. 742: The crime of 'enslavement' has long been criminalised under customary international law. 1434 The Slavery Convention of 1926 defined slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."1435 Being an indication of 'enslavement',[1436] forced labour has been defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."[1437]

5860. para. 743: 'Enslavement' was listed both as a war crime and a crime against humanity in the Nuremberg Charter,[1438] with convictions entered on this count in a number of cases.[1439] The International Law Commission consistently included 'enslavement' as a crime against humanity in its Draft Codes of Crimes Against the Peace and Security of Mankind.[1440] The ICTY Trial Chamber in the *Krnojelac* case held that the express prohibition of slavery in Additional Protocol II of 1977, which relates to internal armed conflicts, confirms the conclusion that slavery is prohibited by customary international humanitarian law outside the context of a crime against humanity. The Trial Chamber considers that the prohibition against slavery in situations of armed conflict is an inalienable, non-derogable (sic) and fundamental right, one of the core rules of general customary and conventional international law.[1441]

a. Elements of the crime – Enslavement

5861. para. 744: In *Kunarac*, the ICTY Trial Chamber held that "enslavement as a crime against humanity in customary international law consisted of the exercise of any or all of the powers attaching to the right of ownership over a person"[1442] (*actus reus*), while the *mens rea* of the violation consists in the intentional exercise of such powers".[1443]

5862. para. 745: The *Kunarac* Trial Chamber held that "[u]nder this definition, indications of enslavement include elements of control and ownership; the restriction or control of an individual's autonomy, freedom of choice or freedom of movement; and, often, the accruing of some gain to the perpetrator. The consent or free will of the victim is absent. It is often rendered impossible or irrelevant by, for example, the threat or use of force or other forms of coercion; the fear of violence, deception or false promises; the abuse of power; the victim's position of vulnerability; detention or captivity, psychological oppression or socio-economic conditions. Further indications of enslavement include exploitation; the exaction of forced or compulsory

labour or service, often without remuneration and often, though not necessarily, involving physical hardship; sex; prostitution; and human trafficking."[1444]

5863. para. 746: The ICTY Appeals Chamber further clarified this definition by finding that "lack of consent" is not an element of the crime of enslavement, although it may be a significant issue in terms of evidence of the status of the alleged victim.[1445]

5864. para. 747: The definition set forth in Kunarac was later reiterated in Krnojelac, in which it was stated that enslavement as a crime against humanity was the "exercise of any or all of the powers attaching to the right of ownership over a person. The *actus reus* of enslavement is the exercise of those powers, and the *mens rea* is the intentional exercise of such powers."[1446]

5865. para. 748: In Krnojelac, the allegations concerned enslavement for the purpose of forced labour.[1447] It was held by the Chamber that to establish forced labour constituting enslavement, the Prosecutor must demonstrate that "the Accused (or persons for whose actions he is criminally responsible) forced the detainees to work, that he (or they) exercised any or all of the powers attaching to the right of ownership over them, and that he (or they) exercised those powers intentionally."[1448]

5866. para. 749: In addition to the chapeau requirements of Crimes against Humanity pursuant to Article 2 of the Statute, the Trial Chamber therefore adopts the following elements of the crime of enslavement:

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty;

2. the intentional exercise of such powers.[1449]

(iv) Kenema District– Enslavement

a. Tongo Fields – Kenema District – Enslavement

5867. para. 1309: On the basis of the preceding evidence, and without predetermining the individual responsibility of the three Accused, the Trial Chamber is satisfied beyond reasonable doubt 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 in Kenema

District. The Trial Chamber accordingly finds that the elements of enslavement, as charged in Count 13, are established.

(v) Kono District– Enslavement

a. Tombodu, Koidu and Wondedu – Enslavement

5868. para. 1333: In light of the foregoing evidence, the Trial Chamber is satisfied beyond reasonable doubt that between about 14 February 1998 to January 2000, an unknown number of civilians were abducted and used as forced labour in various locations in Kono District, including Tombodu, by AFRC/RUF forces under the command of 'Savage'. The Trial Chamber is further satisfied that in this same period, RUF forces abducted an unknown number of civilians and used them as forced labour at various locations in Kono District, including the RUF camp known as 'Joe Bush', Koidu Town and Yengema. The Trial Chamber accordingly finds, without predetermining the individual responsibility of the three Accused, that the elements in relation to Count 13 have been established.

(vi) Koinadugu District– Enslavement

a. Kabala, Kumala, Koinadugu and 'Other locations' in Koinadugu District – Enslavement

5869. para. 1350: In light of the preceding evidence, the Trial Chamber is satisfied beyond reasonable doubt that between about 14 February 1998 and 30 September 1998, an unknown number of civilians were abducted and used as forced labour by AFRC/RUF forces in various locations in Koinadugu District, including Kabala, Kumala, Koinadugu, Yifin and Yomadugu. The Trial Chamber accordingly finds, without predetermining the individual responsibility of the three Accused, that the elements in relation to Count 13 have been established.

(vii) Bombali District– Enslavement

a. Journey to Rosos and Rosos - Enslavement

5870. para. 1363: In light of the foregoing evidence, the Trial Chamber is satisfied beyond reasonable doubt that between about 1 May 1998 and 30 November 1998, an unknown number of civilians were abducted and used as forced labour, as well as being forced to undergo military training, by AFRC troops in various locations in Bombali District including Bomoya,

Kamagbengbeh, Karina, Daraya, Mayogbo, Kagbemneh, Kamanameh, Kamatelun, Kamabai, Rosos and Gbendembu. The Trial Chamber accordingly finds, without predetermining the individual responsibility of the three Accused, that the elements in relation to Count 13 have been established in Bombali District.

(viii) Kailahun – Enslavement

5871. para. 1374: In light of the foregoing evidence, the Trial Chamber is satisfied beyond reasonable doubt that during the Indictment period, RUF troops abducted an unknown number of civilians and used them as forced labour, including military training, in various locations in Kailahun District, including Jagbwema Town, Buedu and Bunumbu. The Trial Chamber accordingly finds that the elements of enslavement, as charged in Count 13, are established. However, the Trial Chamber finds that the Prosecution has not established beyond reasonable doubt that AFRC troops were involved in the enslavement of civilians in Kailahun District.

(ix) Freetown and Western Area – Enslavement

a. Freetown, Kissy, Calaba Town and 'Other locations' in Freetown and Western Area – Enslavement

5872. para. 1389: On the basis of the evidence above, the Trial Chamber is satisfied beyond reasonable doubt that between 6 January 1999 and 28 February 1999, members of the AFRC abducted large numbers of civilians from locations including Freetown, Kissy, Calaba Town and Kola Tree and used these civilians as forced labour in locations including Benguema and Newton in the Western Area. The Trial Chamber accordingly finds, without predetermining the individual responsibility of the three Accused, that the elements in relation to Count 13 have been established.

(x) Port Loko District – Enslavement

5873. para. 1394: The Trial Chamber accordingly finds that the Prosecution has failed to establish that civilians were enslaved in February 1999 in Port Loko District.

(xi) Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers

5874. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment -Findings and Conclusions - Responsibility for Crimes of Enslavement,

Sexual Slavery and Child Soldiers - paras. 1820-1837 [8191], 1970-1972 [8208], 2089-2098 [8211].

5875. Regarding Brima's, Kamara's, and Kanu's superior responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers - paras. 1820-1834 [9075], 1838 [9076], 1973-1975 [9078], 1977 [9081].

3. Appellate Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-A, Judgement, 22 February 2008

(a) Factual Findings

5876. Not applicable.

(b) Legal Conclusions

(i) Pleading

a. Prosecution's Second Ground of Appeal: Locations Not Pleaded in the Indictment

i. Trial Chamber's Findings

5877. para. 46: The substance of the Prosecution's Second Ground of Appeal is that the Trial Chamber erred in law and in fact in failing to make findings on the responsibility of each Appellant in respect of crimes committed in several locations in Koindugu and Bombali Districts, Freetown and other parts of the Western Area and in Port Loko District including other locations enumerated in the Ground of Appeal, in respect of which evidence had been led.

5878. para. 47: The Trial Chamber in ruling on the submission of Brima complaining among other things, that the Indictment was impermissibly vague, because particulars of where the crimes occurred were not given, stated that:

> "the Prosecution has led a considerable amount of evidence with respect to killings, sexual violence, physical violence, enslavement and pillage which occurred in locations not charged in the indictment [and that] while such evidence

> may support proof of the existence of an armed conflict or a widespread or systematic attack on a civilian population, no finding of guilt for those crimes may be made in respect of such locations not mentioned in the indictment."[91]

5879. para. 48: It had been pleaded in several paragraphs of the Indictment that particular acts took place in several named locations in named Districts. It was made clear that the named locations were not exhaustive of the locations where the acts took place. An example is paragraph 45 of the Indictment where it was alleged that "members of AFRC/RUF unlawfully killed several hundred civilians in various locations in Kono District, including Koidu, Tombodu, Foindu, Willifeh, Mortema and Biaya." Commenting on this manner of pleading the Trial Chamber stated:

> "Moreover, the jurisprudence of international criminal tribunals makes it clear that an accused is entitled to know the case against him and is entitled to assume that any list of alleged acts contained in an indictment is exhaustive, regardless of the inclusion of words such as "including", which may imply that other unidentified crimes in other locations are being charged as well."[92]

5880. para. 49: The Trial Chamber found that with respect to crimes alleged in the Indictment, the Prosecution led evidence of offences which occurred in locations not specifically pleaded. As a consequence, it held that with the exception of Counts 9, 12 and 13 the crimes of recruitment of child soldiers, abductions and forced labour and sexual slavery (the three "enslavement crimes"), the Indictment was defective and that it would not make any findings on crimes perpetrated in locations not specifically pleaded. It is to be noted that the exception made by the Trial Chamber was because the Accused had "not specifically objected to lack of specificity with respect to locations [in] relation to enslavement, sexual slavery and child soldier recruitment in Counts 9,[93] 12 and 13," and that in the interest of justice they would treat pleading of those counts as permissible. The Trial Chamber held that evidence of crimes perpetrated in locations not specifically pleaded would only be considered "for proof of the chapeau requirements of Articles 2, 3 and 4 where appropriate, that is the widespread or systematic nature of the crimes and an armed conflict."[94]

ii. Prosecution's Submissions

5881. para. 50: The Prosecution submits that contrary to the Trial Chamber's findings, "locations" were properly pleaded in the Indictment and that in the alternative any defects in the Indictment were cured by providing timely, clear and consistent information to the Accused.[95]

5882. para. 51: It submits that the Indictment is not defective with respect to the pleading of locations and that whilst certain locations may not have been listed exhaustively, they were

nonetheless correctly pleaded. The Indictment uses the terms "various" and 'including" to demonstrate clearly that named locations within districts of Sierra Leone were not an exhaustive list of locations where alleged crimes occurred. This it is argued is sufficient for an Indictment to be properly pleaded and satisfies the requirement that material facts must be pleaded with sufficient specificity in an indictment.

5883. para. 52: In support of its argument, the Prosecution submitted that Kamara had filed a preliminary motion at the pre-trial stage alleging just such a lack of specificity in the pleading of locations in the Indictment.[96] Kamara's argument, however, was expressly rejected by Trial Chamber I[97] which had at the time dealt with the preliminary motion. Consequently, the Prosecution contends that Trial Chamber II's finding in its Judgment that locations were not properly pleaded, amounted to a "[reversal of] previous interlocutory decisions in the case .. or [a decision] *proprio motu* that the Indictment was defective."[98] It further argues that in so doing, Trial Chamber II committed an error of law or procedure in that it reversed a previous interlocutory decision "without first giving the parties the opportunity to argue the point."[99]

5884. para. 53: The Prosecution further asserts that apart from Kamara's preliminary motion, the Accused never raised an objection with respect to the pleading of locations in the Indictment. In particular, the Accused did not raise the issue in motions for acquittal pursuant to Rule 98 of the Rules, nor did the Trial Chamber in its Rule 98 Decision give notice to the: Parties that it "had taken a decision not to consider evidence relating to locations not specifically pleaded ... otherwise than for the purpose of establishing whether there was a widespread and systematic attack against the civilian population."[100]

5885. para. 54: The Prosecution submits, that as it was not aware that the Trial Chamber would not consider evidence relating to locations not specifically pleaded in the Indictment, and was never afforded an opportunity to make representations on the issue,[101] it was "entitled to proceed at trial on the basis that the Indictment was not defective in pleading the locations in the way that it did ...."[102]

5886. para. 55: The Prosecution further submits that as a general principle of law, locations of crimes should be pleaded in an indictment but that the degree of specificity depends on the nature of the Prosecution's case. In circumstances where crimes are alleged on a large scale, details of precise locations of events need not be pleaded.[103] It further submits that the Trial Chamber recognised these principles and the large scale and prolonged nature of the conflict in Sierra Leone. Notwithstanding this recognition, it argues that the Trial Chamber failed to apply the law with respect to the pleading of locations.[104]

5887. para. 56: Finally, the Prosecution submits that the Appellant" made no motions during the trial ... in respect of Prosecution evidence of crimes in locations not specifically pleaded ... [and that therefore, the Appellant] waived their right to now claim [they were] prejudiced."[105] This failure to object, it argued, requires the Appellant to bear the burden of establishing that the pleading of locations in the Indictment was defective, and of establishing that their ability to prepare a defence was materially impaired by that defect.[106]

5888. para. 57: As a consequence of its submissions, the Prosecution requests the Appeals Chamber to revise the Trial Chamber's finding or remit matters back to the Trial Chamber for further "findings of fact on whether each of the Accused is individually responsible for these crimes."[107]

iii. Response of the Accused

5889. para. 58: In response, Brima and Kamara contend that Trial. Chamber I's "Decision and Order on Defence Preliminary Motion for Defects in the Form of 1he Indictment" suggests that words as: "such as", "various locations"', or "various areas ... including" are contextual and that in context, that Decision supports the use of such terms only to demonstrate the widespread and systematic nature of an attack.[108] They argue that the Prosecution's contention that it was not put on notice of defects in the Indictment so far as the pleading of locations is concerned is without merit and that the Trial Chamber's "Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98" was unambiguous in its meaning and effect.[109]

5890. para. 59: The Appellant Kanu submits that the Indictment failed to specify adequately locations in which certain crimes were committed and was therefore defective.[110] According to Kanu, where an Indictment is found to be defective, consideration must also be given to whether the Appellant was accorded a fair trial. In this instance, Kanu insists that he was entitled to assume that the list of alleged locations in the Indictment was exhaustive. He contends that "the word 'including' in the Indictment, in so far as it left the list of places open, did not make it clear that the crimes in question were also committed in locations ... other than those expressly mentioned."[111] According to Kanu, this defect materially affected his ability to prepare his defence and is contrary to the general principle of law requiring that "the location of crimes alleged to have been committed be specified in the Indictment with as much clarity as possible so that the Accused is not materially prejudiced in the preparation of his defence."[112]

5891. para. 60: All the Appellants therefore submit that the Trial Chamber correctly arrived at its conclusion and in so doing protected the fair trial rights of the Appellant.

iv. Discussion: Reversal of a Previous Interlocutory Decision

5892. para. 61: We find that Trial Chamber II reconsidered the decision reached by Trial Chamber I and came to a different conclusion with respect to the pleading of locations in the Indictment.

5893. para. 62: It seems to us that the following questions arise for determination:

> (i) Whether Trial Chamber II properly reconsidered issues relating to the alleged defects in the Indictment;
>
> (ii) If Trial Chamber II had such power, whether it ought not to have given the parties an opportunity to be heard on the matter.

5894. para. 63: In the *Ntagerura et al*. case, the ICTR Appeals Chamber held that it falls within the discretion of a Trial Chamber to reconsider a previous decision is a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice. We endorse that opinion. Consequently, whether or not an issue relating to the form of an indictment should be reconsidered should be determined on a case-by-case basis having regard to the state of proceedings, the issues raised by the earlier decision and the effect of reconsideration or reversal on the rights of the Parties.

5895. para. 64: With regard to question (ii) the Parties ought to have been given an opportunity to be heard on the matter as natural justice demands. However, even if they failed to accord the Parties that opportunity, this Chamber has the power to review the situation and come to its own conclusion in the interest of justice. In all the circumstances of the case, we opine that the Trial Chamber's error in not expressly giving notice to the Parties of its intention to reconsider the pre-trial decision, and its failure to re-open the hearings did not invalidate the decision. The Trial Chamber's limited treatment of the evidence of crimes committed in such locations was a proper exercise of its discretion in the interest of justice, taking into account that it .s the Prosecution's obligation to plead clearly material facts it intends to prove, so as to afford the Appellants a fair trial.

5896. para. 65: The Prosecution's Second Ground of Appeal therefore fails.

D. CDF

1. Indictment

The Prosecutor v. Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa, SCSL-03-14-I, Indictment, 4 February 2004

5897. Not applicable.

2. Trial Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-T, Judgement, 2 August 2007

(a) Factual Findings

5898. Not applicable.

(b) Legal Conclusions

5899. Not applicable.

3. Appellate Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-A, Judgment, 28 May 2008

(a) Factual Findings

5900. Not applicable.

(b) Legal Conclusions

5901. Not applicable.

CHAPTER 11 – PILLAGE

A. CHARLES TAYLOR

1. Indictment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-I, Indictment, 16 March 2006

(a) Particulars

(i) Charges

5902. By his acts or omissions in relation to the below described events, the ACCUSED, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:[321]

(ii) Count 1: Terrorizing the civilian population

5903. Members of the Revolutionary United Front (RUF), Armed Forces Revolutionary Council (AFRC), AFRC/RUF Junta or alliance, and/or Liberian fighters, including members and ex-members of the NPFL (Liberian fighters), assisted or encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, burned civilian property, and committed the crimes set forth below in paragraphs 6 through 31 and charged in Counts 2 through 11, as part of a campaign to terrorize the civilian population of Sierra Leone.[322]

(iii) Count 11: Looting

> **Count 11: Pillage**, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.f. of the Statute

5904. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the ACCUSED, engaged in widespread unlawful taking of civilian property, including the following:[323]

[321] Taylor Indictment, Charges, p. 2.
[322] Taylor Indictment, para. 5.
[323] Taylor Indictment, para. 28.

i. Kono District: Between about 1 February 1998 and about 31 December 1998, in various locations including Koidu, Tombodu or Tumbodu, and Bumpe;[324]

ii. Bombali District: Between about 1 February 1998 and about 30 April 1998, in various locations, including Makeni;[325]

iii. Port Loko District: Between about 1 February 1998 and about 30 April 1998, in various locations, including Masiaka;[326]

iv. Freetown and Western Area: Between about 21 December 1998 and about 28 February 1999, throughout Freetown and the Western Area.[327]

2. Trial Judgment

The Prosecutor v. *Charles Ghankay Taylor*, SCSL-03-01-T, Judgement, 18 May 2012

(a) Factual Findings

(i) Kono District – Crimes

5905. para. 1879: The Prosecution submits that the looting which occurred in Kono District "marked the culmination of Operation Pay Yourself and, thereafter, the settlement of the District by AFRC/RUF forces. Looting also took place during the Indictment timeframe in the context of Kono being declared a 'No Go Zone for Civilians'".[4164]

5906. para. 1880: Several witnesses testified to various acts of looting in areas of Kono District outside of Koidu and Tombodu[4165] or to looting in the District generally, without specifying a more precise location.[4166] Such evidence does not fall within the scope of the Indictment, and is relevant only insofar as it demonstrates that the activity was widespread, and therefore assists in establishing the chapeau requirements. Evidence of looting in Kono District prior to the Indictment period[4167] and after the Indictment period[4168] has not been considered.

[324] Taylor Indictment, para. 29.
[325] Taylor Indictment, para. 30.
[326] Taylor Indictment, para. 30A.
[327] Taylor Indictment, para. 31.

a. Koidu Town – Kono District – Crimes

5907. para. 1881: The Trial Chamber relies on the evidence of Sheku Bah Kuyateh, Samuel Bull, Perry Kamara, TF1-371, Alimamy Bobson Sesay, TF1-367, Dennis Koker and Issa Sesay in relation to these allegations.

5908. para. 1882: Sheku Bah Kuyateh, who was in Koidu Town in mid-February 1998,[4169] testified that "[t]he very day that we heard that ECOMOG had dislodged the juntas from Freetown, on that same day the juntas [both AFRC and RUF troops][4170] started looting right from the first day and the following day they continued their looting spree".[4171] Although the civilian population of Koidu Town temporarily "dislodged" the "juntas"[4172] and invited the Kamajors in to defend the town,[4173] the town came under attack two weeks later and the witness fled along with much of the civilian population.[4174] Upon returning to Koidu Town a couple of days later, Kuyateh observed that those who had perpetrated the attack on Koidu, were led by a member of the RUF[4175] and "were looting and they were on an operation that they referred to as Operation Pay Yourself".[4176] This looting spree continued for two days.[4177] Kutateh further testified that later, in April 1998,[4178] there was "rampant looting"[4179] in Koidu Town.

5909. para. 1883: TF1-375 gave evidence that approximately a month after the ECOMOG Intervention "[w]e attacked Kono and we took over the town. We started looting".[4180] Kuyateh and TF1-375 described this as the first attack on Koidu following the ECOMOG intervention.[4181]

5910. para. 1884: Samuel Bull testified that in February 1998, Koidu Town was subject to "a lot of looting […] done by the AFRC and the People's Army. They broke into shops using guns and they took everything from the shops".[4182] The witness did not see the property taken away but he saw the empty shops and other consequences of the alleged attack.[4183]

5911. para. 1885: Witness Alice Pyne testified that she was in Gaya, in Kono District, when she heard from civilians and members of the RUF and AFRC coming from Koidu Town that looting took place in Koidu Town as part of "Operation Pay Yourself".[4184]

5912. para. 1886: There is also evidence of the looting of a bank in Koidu Town. In this regard, the Prosecution asserts that before AFRC and RUF forces "burned Koidu Town to the ground", the Commercial Bank in Koidu Town was looted. The Prosecution submits that the "[w]hile the details vary as to whether the raid was carried out on the orders of Superman, the evidence is consistent that it was members of the AFRC/RUF who carried out the raid and that the money and diamonds taken were later taken to Sam Bockarie in Buedu".[4185]

5913. para. 1887: TF1-367 stated that upon the arrival of in Koidu Town of the RUF/AFRC and STF fighters that had left Freetown following the February 1998 ECOMOG Intervention,[4186] a group of SLAs and STF organised to break into a bank in Koidu.[4187] The break-in occurred at night and was the first joint operation of the SLAs and the STF.[4188] TF1-367 testified that when Superman learned of the break-in from his bodyguards,[4189] Superman ordered Ray, Peleto and others to go and find the perpetrators.[4190] Some escaped, but others were arrested and the money seized.[4191] The money was in Superman's possession when Sam Bockarie sent a message for Superman to give the money to TF1-367 to take to Bockarie in Kailahun.[4192] Superman then gave 56 million leones to TF1-367 in a travelling bag to deliver to Sam Bockarie.[4193]

5914. para. 1888: Alimamy Bobson Sesay, a member of the AFRC, testified that he participated in the looting of the bank just prior to the ECOMOG bombardment of Koidu Town which occurred in the post-Intervention period.[4194] The witness stated that he, Superman and Bomb Blast broke into the bank and took six bags of money.[4195] The money was in Superman's possession until it was given to Eldred Collins in Koidu Gieya to bring to Kailahun.[4196] The witness said that Superman told him and the other looters that Mosquito had called and told them that the money should be taken to Kailahun.[4197]

5915. para. 1889: TF1-371 was in Kailahun Town when he learned about the robbery of the Commercial Bank in Koidu Town, which happened during the post-ECOMOG Intervention period.[4198] TF1-371 testified that when Sam Bockarie heard about the looting, he instructed Denis Mingo, aka Superman, to take the looted money from the bank and to bring it to him in Buedu.[4199]

5916. para. 1890: Witness Dennis Koker testified that during the attack on Koidu Town in the post- ECOMOG Intervention period, RUF and AFRC fighters broke into the bank and stole money and diamonds.[4200] Koker stated that he saw the fighters break into the bank and saw 18 bags of money taken from the premises.[4201] Koker testified that he was there and "saw it all".[4202] After the bank was robbed, he left for Gandorhun with Johnny Paul Koroma, Morris Kallon and others.[4203]

5917. para. 1891: Defence witness Issa Sesay testified that in early April 1998, AFRC, RUF and STF fighters broke into a bank in Kono.[4204] Issa Sesay heard that Superman arrested the perpetrators when he found out about the break-in.[4205]

5918. para. 1892: Witness Perry Kamara, a radio operator, was in Koidu Town at the time the Commercial Bank was looted during the post ECOMOG Intervention period.[4206] Kamara

testified that Superman implemented the orders of Sam Bockarie to "destroy" the bank.[4207] Kamara stated that the bank was "destroyed" and that he saw leones, sterling pounds, US dollars and a cup half filled with diamonds in Superman's house.[4208] The proceeds were recorded and the information sent to Sam Bockarie.[4209]

5919. para. 1893: Prosecution witnesses and Defence witness Issa Sesay all testified that the bank in Koidu Town was looted by AFRC, RUF and STF fighters in February or March or April 1998. The evidence also establishes that cash was taken from the bank.

5920. para. 1894: In another incidence of looting, witness Gibril Sesay testified that in Koidu in February 1998[4210] a group of armed "juntas and RUF rebels"[4211] "went around midnight knocking at doors, raping women, looting people's property"[4212] and that "[a]fter looting people's property they took away those property".[4213] The witness went on to say that this group looted his baling machine and some of his furniture.[4214] The witness estimated that the baling machine had a market value of 500,000 leones but was unsure as to the value of the furniture.[4215]

b. Tombodu - Kono District – Crimes

5921. para. 1895: Witness Sahr Bindi testified that members of the RUF and AFRC violently looted his and his family's property[4216] in the "bush" around Tombodu.[4217] A group of AFRC and RUF troops approached the hut in which Bindi was living, ordered the inhabitants to leave the hut and demanded that they hand over food and valuable property, including diamonds, or face death.[4218] Bindi stated that "they blindfolded us, they beat us up and they asked us to take out the money and the diamonds, the palm oil, the rice and we said we did not have and they tripped us and we fell into the ants, and they pointed a gun in my stomach and they said if I did not take out the money and the diamonds they would kill me".[4219] The witness was beaten and stabbed in the head during this incident, leaving a scar that he showed to the Trial Chamber during his testimony.[4220] Fearing that "death was near" Bindi provided the fighters with money, a bike and food.[4221]

5922. para. 1896: Bindi estimated that the attack on Tombodu had occurred in February 1998[4222] during the dry season.[4223] He stated that he had moved to Tombodu from Koidu because of an AFRC/RUF attack on Koidu Town. He was unable to remember the date of the attack on Koidu Town, but it had occurred after the re-instatement of President Kabbah.[4224] President Kabbah was re-instated in March 1998.[4225] Therefore, the Trial Chamber is satisfied that the looting described by the witness took place during the Indictment period.

c. Bumpe – Kono District – Crimes

5923. para. 1897: The Trial Chamber relies on the evidence of Perry Kamara and Ruko Turay in relation to allegations of looting in Bumpe.

5924. para. 1898: Perry Kamara testified that RUF and AFRC forces retreated from Freetown in February 1998,[4226] passing through Bumpe, amongst other towns and villages, and that, as they went along, they looted civilian goods and abducted school children and women from their husbands "and they killed the husbands".[4227]

5925. para. 1899: Ruko Turay confirmed testimony she had given in the RUF Case, a transcript of which was admitted into evidence.[4228] Turay testified in the RUF Case that, while in her home in Bumpe in the rainy season of 1998, a young man in combat uniform – a rebel[4229] - took "the better articles" from her bag. "The ones he didn't want he threw away. The others he went away with them".[4230] The witness testified that later the rebels removed all her clothes and left her naked and she was then raped. She heard one of the rebels say: "We have got clothes. We have got rice. We have got everything".[4231] The rebel who had taken her things came back with them and placed them down near her while he raped her.[4232] The witness stated that the rebels declared that they were going to kill her and the other women held captive so, when she got the chance, she fled naked into the bush. As she fled, a rebel shot at her, hitting her in the hand.[4233]

(ii) Bombali District – Crimes

a. Makeni – Bombali District – Crimes

5926. para. 1901: Witnesses TF1-367, Alimamy Bobson Sesay, Dennis Koker, Alice Pyne and TF1-174 provided first-hand accounts of looting by RUF and AFRC forces in Makeni from February to March 1998 during the looting spree referred to as 'Operation Pay Yourself'.[4235] Their evidence is corroborated by the evidence of Issa Sesay, who arrived in Makeni after the looting had occurred,[4236] Charles Ngebeh[4237] and Exhibit P-303, a "Humanitarian Situation Report for Sierra Leone" from the Office of the United Nations Humanitarian Coordinator, covering the period 21 January to 12 February 1998, which refers to the "abduction" of vehicles in Makeni.

5927. para. 1902: TF1-367, a member of the RUF, testified that he participated in looting in Makeni, and that he and members of the AFRC/RUF and STF forces, shouting "Operation Pay

Yourself", looted civilian property such as food, clothing, vehicles and "whatever you came across that could be moved".[4238]

5928. para. 1903: The looting is corroborated by Alimamy Bobson Sesay, who saw RUF members and others break into shops and loot food and other items during this time period.[4239]

5929. para. 1904: Alimamy Bobson Sesay also testified that he was in Makeni for two days during Operation Pay Yourself[4240] and that during this time, he, Ibrahim Bazzy Kamara and Hassan Papa Bangura (also known as "Bomb Blast") broke into a bank and took money from a safe.[4241]

5930. para. 1905: Dennis Koker testified that he saw RUF rebels looting clothing and household property from civilians in Makeni during this time period.[4242]

5931. para. 1906: Alice Pyne testified that she saw Operation Pay Yourself taking place in Makeni, where AFRC/RUF forces were looting civilians' property from their houses.[4243]

5932. para. 1907: TF1-174 testified that looting in Makeni began on 17 February 1998 and continued until 2 or 3 March 1998.[4244] The witness gave evidence that, during this period, combined RUF and AFRC forces engaged in Operation Pay Yourself, in which they looted the seminary, the schools, civilian houses, including his own, and the bishop's vehicles at the mission.[4245]

5933. para. 1908: Defence witness Issay Sesay testified that AFRC/RUF forces carried out Operation Pay Yourself in Makeni by taking people's property and cars forcefully from them. Shops, houses and even a Catholic hospital were looted.[4246]

5934. para. 1909: Defence witness Charles Ngebeh admitted in cross-examination that AFRC/RUF forces engaged in looting from the time they retreated from Freetown until they reached Kono, including looting in Masiaka, Makeni, the Peninsula Road route, Fogbo and Koidu. Ngebeh agreed that the looting was called "Operation Pay Yourself".[4247]

(iii) Port Loko District – Crimes

a. Masiaka – Port Loko District – Crimes

5935. para. 1912: Witnesses TF1-371, Dennis Koker, Charles Ngebeh and Issa Sesay gave evidence of looting in Masiaka by the AFRC/RUF forces in the period from 1 February 1998 to 30 April 1998.

5936. para. 1913: Prosecution witness TF1-371 testified that during this time period in Masiaka he observed that civilians were forced out of their houses by the combatants, who looted whatever civilian property they could lay their hands on.[4250]

5937. para. 1914: Prosecution witness Dennis Koker testified that he travelled through Masiaka during the retreat from Freetown after the February 1998 ECOMOG Intervention, and that his "colleagues" entered into civilians' houses and took property from them, including food, motorcycles, and bicycles.[4251] Koker testified that the perpetrators were "[t]he group in which I was, RUF, the juntas, we were all one group now".[4252]

5938. para. 1915: Defence witness Charles Ngebeh testified in cross-examination that AFRC/RUF forces engaged in looting from the time they retreated from Freetown until they reached Kono, including looting in Masiaka, Makeni, the Peninsula Road route, Fogbo and Koidu. Ngebeh agreed that the looting was called "Operation Pay Yourself".[4253]

5939. para. 1916: Defence witness Issa Sesay testified that when the AFRC/RUF forces reached Masiaka they entered civilian homes and took people's property from them. Sesay said that "that was what they called Operation Pay Yourself, because if you saw someone's vehicle and you commandeered it, when the person was not willing to hand it over to you, that was paying yourself".[4254]

(iv) Freetown and the Western Area – Crimes

5940. para. 1919: The Prosecution submits that the looting in Freetown and the Western Area from 21 December 1998 to 28 February 1999 occurred in the context of the Freetown attack, and that it was widespread and committed in conjunction with other crimes.[4257]

5941. para. 1920: In considering these allegations, the Trial Chamber relies on the evidence of TF1-143, Alimamy Bobson Sesay, Perry Kamara, Abu Bakarr Mansaray, Paul Nabieu Conteh, Allusein Conteh, Mohammed Sampson Bah, Samuel Radder John, TF1-021, TF1-083, TF1-026, Ibrahim Wai, Akiatu Tholley, Sarah Koroma and Exhibits P-077 and P-328.

a. Freetown and the Western Area in general – Freetown and the Western Area – Crimes

5942. para. 1921: TF1-143 testified that he was a small boy when he was abducted by an RUF commander named Kabila[4258] and taken to SAJ Musa's group, which was a mix of AFRC and RUF fighters.[4259] "It was AFRC who made up – who was dominant, but they were mixed. Some

of them wore black and they had red bandanas on their heads. Kabila told us that we were mixed in the group. That is SAJ Musa's group. We were mixed with RUF and AFRC".[4260]

5943. para. 1922: TF1-143 testified that on the evening of SAJ Musa's burial,[4261] he and the mixed group of RUF and AFRC he was with came to Waterloo Junction and headed towards Freetown.[4262] He testified that his group broke into and looted shops on the way to Freetown.[4263]

5944. para. 1923: Alimamy Bobson Sesay gave evidence that during the January 1999 invasion of Freetown, he and the members of his "fighting force" captured civilians as ordered by Gullit.[4264] During their retreat from Freetown, these civilians were forced to carry large quantities of goods that he and the other members of the fighting forces had taken from civilians in Freetown.[4265] He further explained that "[t]hey were the people we took the things from and, like I said, 'from your pocket to my pocket', and if you refused you will die".[4266] The witness described the looted items as "[…] rice, sometimes valuable materials like good clothing and jean materials. Those were - but they were more of valuables that we moved with, more of food and valuable items. Those were the things that we looted when we came to Freetown, and also money because we did not joke about money issues".[4267]

5945. para. 1924: Perry Kamara testified that he heard that, while Rambo's forces and the Red Lion Battalion retreated from Freetown after the January 1999 invasion, the civilians who were with them carried "loads of properties that had been looted from civilians in Freetown".[4268]

5946. para. 1925: Exhibit P-328, a Human Rights Watch Report from July 1999, stated that, in conjunction with the January 1999 Freetown attack, "the rebels went on systematic looting raids in which families were hit by wave after wave of rebels demanding money and valuables".[4269] Confidential Exhibit P-077 also indicated that during the first days of the January 1999 rebel offensive in Freetown and in the subsequent period, rebels engaged in "widespread theft of money and looting of residences and business properties".[4270]

5947. para. 1926: Based on the foregoing evidence, the Trial Chamber is satisfied beyond reasonable doubt that members of the AFRC/RUF forces[4271] intentionally appropriated property without the consent of the owners throughout Freetown and the Western Area during the Indictment period.

5948. para. 1927: The Prosecution also adduced the following specific incidences of looting at places within Freetown and the Western Area.

5949. State House and Berry Street – Freetown and the Western Area – Crimes para. 1928: Alimamy Bobson Sesay testified that on 6 January 1999, he and other members of the AFRC/RUF forces broke into the UN House and "commandeered" vehicles, which they took to State House.[4272] These vehicles were later used by Gullit and other senior commanders.[4273]

5950. para. 1929: Witness Abu Bakarr Mansaray[4274] confirmed testimony he had given in the AFRC Case, a transcript of which was admitted into evidence.[4275] In that case, he testified that he was abducted by Gullit's forces as they retreated from Freetown following the attack on the capitol in January 1999.[4276] During this retreat, the witness observed rebels looting properties.[4277] He testified that he saw the retreating rebels loot from the Vice President's office, loot a car on Berry Street and also loot the car of the witness's father.[4278] He also testified that the rebels looted his shirt, trousers and shoes.[4279]

b. Kissy – Freetown and the Western Area – Crimes

5951. para. 1931: TF1-143 testified that following SAJ Musa's burial[4280] he and seven other boys working under the command of Adama Cut Hand looted things from a shop and loaded them into a vehicle.[4281] While the boys were looting the shop, two men present in the shop protested against the looting.[4282] As Adama Cut Hand had instructed the boys to bring any civilians to her who objected to having their possessions taken, the witness and the other boys took the two men to Adama Cut Hand. She then amputated an arm from each man.[4283]

5952. para. 1932: Following this incident, TF1-143 went with another of Adama Cut Hand's boys, to Kissy Market where the boys attempted to enter another shop with two men inside.[4284] When the two men would not open the door, they forcibly entered the shop and amputated a hand from each man.[4285] TF1-143 further recalled that, after the amputations, "[w]hilst they were crying we just took what we wanted from the shop and we went".[4286]

c. Falcon Street – Freetown and the Western Area – Crimes

5953. para. 1934: Allusein Conteh testified that a "gang" arrived on Falcon Street in Kissy sometime around 8 January 1999 and demanded to stay at his house.[4288] The apparent leader of the gang, as well as the women and children in the gang, wore civilian clothes, and there were other men and boys in the gang also wearing civilian clothes.[4289] The witness recalled that they called each other "junta"[4290] and he concluded that they belonged to the RUF because they were not wearing uniforms; they came in plain clothes and had young girls with them.[4291]

5954. para. 1935: During their stay in the area, the witness testified that this gang took and slaughtered a sheep and was "going around taking people's chickens and asking the boys around to take people's chickens around and they killed them".[4292]

5955. para. 1936: Allusein Conteh testified further that two or three days after the departure of this gang, two or three other men, whom he described as "combatants" because they were wearing military uniforms,[4293] came to his house on Falcon Street.[4294] After searching the house, the combatants threatened him and demanded money.[4295] They then cocked a gun at his back.[4296] The witness gave the combatants 50,000 Leones and they went away.[4297]

d. Rowe Street – Freetown and the Western Area – Crimes

5956. para. 1938: Mohammed Sampson Bah confirmed testimony he had given in the AFRC Trial,[4298] a transcript of which was admitted into evidence.[4299] In the AFRC case he testified that on or about 6 January 1999 "rebels" dressed in military clothing arrived in Kissy and "raided the area".[4300] The witness also testified that later in the month of January the rebels began "taking people's properties".[4301] The "rebels" entered people's houses and took their "televisions, radios, whatever is [a] valuable thing, they will take it, put it in a vehicle and go with it".[4302] Bah also testified that a rebel named Akim threatened to turn Kissy into a desert.[4303]

5957. para. 1939: The witness further testified that in January 1999 he, along with some other civilians who were attempting to hide from the rebels, were arrested by the rebels on Rowe Street.[4304] Upon their arrest, "[the rebels] took all we had with us".[4305] After the civilians were placed in a queue, the rebels searched the witness and the others and took what they had, including money.[4306] Bah testified that the rebels took his watch and 200 dollars from his pocket.[4307] The rebel who took his wristwatch placed it on his own wrist.[4308] Shortly thereafter, the witness's hand was amputated.[4309]

e. Congress Road – Freetown and the Western Area – Crimes

5958. para. 1941: Samuel Radder John testified that when the rebels entered Freetown in January 1999 he met some RUF fighters that he had known some years earlier[4311] and also met someone he had been to school with who was now an RUF rebel.[4312] The witness also confirmed testimony he had given in the AFRC Trial, a transcript of which was admitted into evidence.[4313] In the AFRC Trial, the witness testified that on 18 January 1999 a group of military men entered the establishment in Kissy where the witness was employed.[4314] The witness described the men

as a mix of "junta" and RUF because of their "ordinary and haphazard military attire".[4315] These men used sticks to beat the witness and other civilians.[4316] Later that day he was shot and wounded by these men, but was able to run away.[4317]

5959. para. 1942: The witness collected his family and hid in the hills for about two days. He and his family then returned to his home on Congress Road to collect food and other belongings before fleeing again.[4318] While there, three of these men came back.[4319] The witness testified that two of the men were wearing plain clothes and military trousers and the third man wore a full military uniform and carried a gun.[4320] The witness stated that these were the same men he had encountered earlier at his place of employment.[4321] While the witness was arguing with one of the men, the other two took money and food from his bags, and left.[4322]

f. Rogbalan Mosque – Freetown and the Western Area – Crimes

5960. para. 1944: TF1-021, who is now deceased, testified in the AFRC Trial and a transcript of that testimony was admitted into evidence pursuant to Rule 92quater.[4323] TF1-021 testified in the AFRC Trial that he was present at Rogbalan Mosque on a Friday in January of 1999, between noon and 1 p.m., when a group of men in "mixed up dressings" with charcoal covering their skin entered the mosque.[4324] The group consisted of at least 15 men, some of whom were armed with guns while others were armed with machetes.[4325] The armed men stated "…We are going to kill all of you…"[4326] TF1-021 begged the men to accept money and leave the civilians in peace, but the men refused the money.[4327] TF1-021 then collected a sum of 80,000 Leones from the congregation and offered it to the men "so we [the civilians] could live".[4328] The armed men then told him and the others that "[e]ven if you give us all the money that's in your pocket, we must kill all of you".[4329] The men then accepted the 80,000 leones from the witness, and began firing indiscriminately in the mosque, killing most of the people there.[4330]

5961. para. 1945: TF1-021 testified that he fell to the floor during this shooting, and that after the men stopped shooting, they stood on his stomach.[4331] While he was still on the ground, the men reached into his pocket and took 15,000 Leones.[4332]

g. Kola Tree – Freetown and the Western Area – Crimes

5962. para. 1947: Paul Nabieu Conteh confirmed testimony he had given in the AFRC Trial,[4334] a transcript of which was admitted into evidence.[4335] In that trial, he testified that on 19 January 1999, he and his family left Calaba Town in order to escape hostilities involving an exchange of

fire between ECOMOG and the AFRC and RUF.[4336] From Calaba Town, the witness proceeded towards Allen Town, with Jui as his final destination.[4337] Because of ECOMOG barriers, the witness was unable to make it to Jui, so he went to Kola Tree where he stayed at an unfinished house for three days.[4338] While he was there, three soldiers, who the witness identified as members of the AFRC, entered the house.[4339] The apparent leader of these soldiers, who the witness referred to as Corporal Bastard, took the witness's wedding ring and an unspecified amount of money from his pocket.[4340] The other two soldiers went inside the other rooms and "started taking things".[4341] They then made a big bundle out of the items and left.[4342]

h. Thunder Hill and Samuels Area – Freetown and the Western Area – Crimes

5963. para. 1949: TF1-083, who is now deceased, gave evidence in the AFRC Trial and a transcript of that testimony was admitted into evidence pursuant to Rule 92quater.[4343] TF1-083 testified in the AFRC Trial that around 22 January 1999, two armed rebels dressed in combat uniforms entered the house at Thunder Hill where the witness and other civilians were staying.[4344] Once inside, the rebels asked the civilians for money.[4345] The rebels then took an unspecified amount of money and left.[4346]

5964. para. 1950: TF1-083 testified that a second set of three rebels came to the same house later and "[. .] asked for money, they asked for change. They asked for valuable things. They asked for things to wear".[4347] TF1-083 and the others in the house gave the rebels money and other items.[4348]

5965. para. 1951: TF1-083 testified further that a third set of rebels arrived at the house after the second set had left. This third set of rebels also asked for money, which was handed over by the people inside the house.[4349] This group of rebels then instructed the witness and other civilians to leave the house because more rebels were coming who might kill them.[4350] The witness, along with other civilians, left Thunder Hill and headed to New Road.[4351] When he arrived at the Samuels area, he encountered more rebels who were wearing caps that covered most of their faces and carried guns and machetes.[4352] One of these rebels took the witness's shirt and put it on. The rebels then ordered him and the other civilians to remove their clothes, and as he was removing his trousers, one of the rebels struck him on the waist with a knife and took an unspecified amount of money from his trousers.[4353]

i. Calaba Town – Freetown and the Western Area – Crimes

5966. para. 1953: TF1-026 testified that sometime after 6 January 1999 she and other captured civilians were forced to carry bags filled with things the RUF rebels had taken from the homes of civilians in Calaba Town and along the way to Waterloo.[4355]

j. Tombo – Freetown and the Western Area – Crimes

5967. para. 1955: Ibrahim Wai testified that on 23 December 1998 he was told by civilians in the area that rebels had moved from Waterloo to attack Tombo.[4357] That same night "SLA/RUF soldiers" attacked his house in Tombo.[4358] The witness recalled that he awoke in the night and noticed that his neighbour's house was on fire.[4359] The witness took a bag with some belongings and tried to escape his home, but met a rebel named Mohamed at his door. Mohamed pushed him back inside and "[Mohamed] said I should gather all of my things. He took my tape and my bag and he even had the money with him - a tape recorder, my money, my bag".[4360]

k. Wellington – Freetown and the Western Area – Crimes

5968. para. 1957: Akiatu Tholley testified that her family home was looted on two separate occasions in Wellington in January 1999.[4361] She recalled that on the first occasion, on 5 January 1999, "[t]hey asked my mother to give them money and my mother responded that she hadn't any money. They beat us up and they forced my mother to show them where she had the money and she did and they took the money and returned".[4362] The witness testified that she did not know how much money the rebels took on that occasion.[4363]

5969. para. 1958: Tholley testified that rebels wearing black pants, black shirts and headbands returned to her home the following day.[4364] During this visit, the rebels "took the food that we had and they took it away".[4365] She was unable to identify which specific groups were involved in these attacks, defining them only as "rebels" armed with pistols and machetes.[4366]

5970. para. 1959: Sarah Koroma, as mentioned previously in the section on physical violence, testified that on 6 January 1999 she was at her home in Wellington when rebels wearing "combat"[4367] arrived and she ran into the bush.[4368] She came out of the bush about one week later and she and her husband were captured by rebels who killed her husband and amputated her arm.[4369] After her arm was amputated, the witness was then captured by another set of rebels near the Brewery "around Calaba Town".[4370] (TF1-169, in his statement dated 11 December 2008, places the Brewery in Wellington.[4371]) These rebels, who were armed with a knife and

gun, threw beer bottles at her, cut her, and while she lay in a ditch, they reached inside her dress and took 50,000 leones that she had sewn into her underwear.[4372] One of the rebels then returned 5,000 leones to her so that she could seek medical treatment for her amputation wound.[4373]

l. Benguema and Waterloo – Freetown and the Western Area – Crimes

5971. para. 1961: TF1-143 testified that the mixed group of AFRC and RUF[4375] that he was with looted shops at Benguema "after they had buried SAJ", which was in late December 1998,[4376] and that they then took the highway up to Waterloo and did the same there.[4377]

(b) Legal Conclusions

(i) Applicable law – War Crimes / Violations of Common Article 3

5972. See above: Chapter 1 – Taylor – Trial Judgment – Legal Conclusions – Applicable Law – War Crimes / Violations of Common Article 3 – paras. 561-565, 567 – 568 [111].

(ii) Applicable law – War Crimes / Violations of Common Article 3 – Findings on general requirements

5973. See above: Chapter 1 – Taylor – Trial Judgment – Legal Conclusions – Applicable Law – War Crimes / Violations of Common Article 3 – Findings on general requirements – paras. 571 – 574 [119].

(iii) Applicable law – Pillage

5974. para. 451: The Accused is charged under Count 11 with pillage, a violation of Additional Protocol II, punishable under Article 3(f) of the Statute.[1076]

5975. para. 452: In addition to the *chapeau* requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute, the following specific elements of the crime of pillage must be proved beyond reasonable doubt:

(i) The perpetrator appropriated property;

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

(iii) The perpetrator intended to deprive the owner of the property.[1077]

5976. para. 453: Article 3(f) of the Statute contains a general prohibition against pillage which covers both organised or systematic appropriation and the isolated acts of individuals,[1078] and extends to all types of property, including both public and private property.[1079]

(iv) Kono District – Pillage

5977. para. 1900: Based on the evidence above, the Trial Chamber is satisfied beyond reasonable doubt that between about 1 February 1998 and about 31 December 1998 members of the AFRC/RUF and STF forces[4234] intentionally appropriated property without the consent of the owners in Koidu Town, Tombodu and Bumpe in Kono District.

(v) Bombali District – Pillage

a. Makeni – Bombali District – Pillage

5978. para. 1910: On the basis of the foregoing evidence, the Trial Chamber is satisfied beyond a reasonable doubt that between about 1 February 1998 and about 30 April 1998, AFRC/RUF forces intentionally appropriated property without the consent of the owners in Makeni in Bombali District.

5979. para. 1911: The Prosecution also led evidence of looting in Karina Town in Bombali District, which was not pleaded in the Indictment.[4248] As the Trial Chamber has held above,[4249] such evidence does not fall within the scope of the Indictment but is relevant to proof of the chapeau requirements.

(vi) Port Loko District – Pillage

a. Masiaka – Port Loko District – Pillage

5980. para. 1917: On the basis of this evidence the Trial Chamber is satisfied beyond a reasonable doubt that between about 1 February 1998 and 30 April 1998 members of the AFRC/RUF forces intentionally appropriated property without the consent of the owners in Masiaka in Port Loko District.

5981. para. 1918: The Prosecution also led evidence of pillage in Lunsar in Port Loko District, which was not pleaded in the Indictment.[4255] As the Trial Chamber has held above,[4256] such evidence does not fall within the scope of the Indictment but is relevant to proof of the chapeau requirements.

(vii) Freetown and the Western Area – Pillage

a. State House and Berry Street – Freetown and the Western Area – Pillage

5982. para. 1930: The Trial Chamber is satisfied beyond reasonable doubt on this evidence that during the Indictment period, members of the AFRC/RUF forces intentionally appropriated vehicles without the consent of the owners, which they brought back to State House, and also intentionally appropriated other civilian property without the consent of the owners including a car from Berry Street, items from the Vice President's office, and clothing from the witness.

b. Kissy – Freetown and the Western Area – Pillage

5983. para. 1933: The Trial Chamber is satisfied beyond a reasonable doubt that TF1-143 and his companions, who were members of the AFRC/RUF forces,[4287] intentionally appropriated civilian property from two stores in Kissy without the consent of the owners during the Indictment period.

c. Falcon Street – Freetown and the Western Area – Pillage

5984. para. 1937: The Trial Chamber is satisfied beyond reasonable doubt on this evidence that members of the AFRC/RUF forces intentionally appropriated a sheep and chickens from civilians in the area of Falcon Street, and also looted 50,000 leones without the consent of the owners.

d. Rowe Street – Freetown and the Western Area – Pillage

5985. para. 1940: The Trial Chamber is satisfied beyond reasonable doubt on this evidence that on or about 6 January 1999 in Kissy members of the AFRC/RUF forces[4310] intentionally appropriated a watch and 200 dollars from Mohammed Sampson Bah without his consent, and in January 1999 on Rowe Street intentionally appropriated other items, including televisions and radios from civilians without their consent.

e. Congress Road – Freetown and the Western Area – Pillage

5986. para. 1943: The Trial Chamber finds that this evidence proves beyond a reasonable doubt that on Congress Road in January 1999 members of the AFRC/RUF forces intentionally appropriated Samuel Radder John's money and food without his consent.

f. Rogbalan Mosque – Freetown and the Western Area – Pillage

5987. para. 1946: The Trial Chamber is satisfied beyond a reasonable doubt on this evidence that members of the AFRC/RUF forces[4333] intentionally appropriated money from the witness Due to the coercive circumstances that surrounded this event, the Trial Chamber finds beyond reasonable doubt that the money was taken from the witness without his consent.

g. Kola Tree – Freetown and the Western Area – Pillage

5988. para. 1948: The Trial Chamber is satisfied beyond a reasonable doubt on this evidence that at Kola Tree in approximately the end of January 1999 members of the AFRC forces intentionally appropriated various items of civilian property from a house in Kola Tree, as well as Paul Nabieu Conteh's wedding ring and an unspecified amount of his money, without the owners' consent.

h. Thunder Hill and Samuels Area – Freetown and the Western Area – Pillage

5989. para. 1952: The Trial Chamber finds that given the violence shown by the AFRC/RUF forces during the Freetown invasion, and given that the civilians in these incidents were confronted by armed rebels, it has been proved beyond reasonable doubt[4354] that members of the AFRC/RUF forces intentionally appropriated the money and other possessions taken from the civilians without their consent, and intentionally appropriated TF1-083's clothing and money without TF1-083's consent.

i. Calaba Town – Freetown and the Western Area – Pillage

5990. para. 1954: The Trial Chamber is satisfied beyond reasonable doubt on this evidence that members of the AFRC/RUF forces[4356] intentionally appropriated property from the homes of civilians without their consent in Calaba Town during the Indictment period.

j. Tombo – Freetown and the Western Area – Pillage

5991. para. 1956: The Trial Chamber is satisfied beyond reasonable doubt that on the night of 23 December 1998 a member of the AFRC/RUF forces intentionally appropriated the witness's personal property in Tombo without his consent.

k. Wellington – Freetown and the Western Area – Pillage

5992. para. 1960: The Trial Chamber finds that the foregoing evidence proves beyond a reasonable doubt that in January 1999 members of the AFRC/RUF forces[4374] intentionally appropriated food and money from civilians in Wellington without their consent.

l. Benguema and Waterloo – Freetown and the Western Area – Pillage

(viii) Conclusion – Pillage

5993. para. 1962: The Trial Chamber is satisfied beyond a reasonable doubt on the evidence of TF1-143 that in approximately late December 1998 members of the AFRC/RUF forces[4378] intentionally appropriated property from shops in Benguema and Waterloo without the consent of the owners.

The Prosecution has proved beyond a reasonable doubt that members of the AFRC/RUF forces[4379] committed the crime of pillage in the following places in Sierra Leone:

(i) Kono District, between about 1 February 1998 and about 31 December 1998, in Koidu Town, Tombodu and Bumpe;

(ii) Bombali District, between about 1 February 1998 and about 30 April 1998, in Makeni;

(iii) Port Loko District, between about 1 February 1998 and about 30 April 1998, in Masiaka;

(iv) Freetown and the Western Area, between about 21 December 1998 and about 28 February 1999, throughout Freetown and the Western Area and specifically in State House and Berry Street, Kissy, Falcon Street, Rowe Street, Congress Road, Rogbalan Mosque, Kola Tree, Thunder Hill and Samuels Area, Calaba Town, Tombo, Wellington, Benguema and Waterloo.

5994. para. 1963: The Trial Chamber recalls that the Prosecution has proved beyond reasonable doubt that there was an armed conflict in Sierra Leone at all times relevant to the Indictment, involving among others, members of the RUF, AFRC and CDF. The Trial Chamber is satisfied

that for all of the aforementioned acts of looting in Kono, Bombali, and Port Loko Districts and Freetown and the Western Area there was a nexus between the acts of physical violence and the armed conflict, that each of the victims was not taking an active part in the hostilities at the time of physical violence, and that the perpetrators knew this fact. Therefore, the Trial Chamber is satisfied that the aforementioned acts of looting in Kono, Bombali, and Port Loko Districts and Freetown and the Western Area constitute pillage as a war crime under Article 3 of the Statute.

5995. Regarding Taylor's individual criminal responsibility (Aiding and Abetting), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Aiding and Abetting - paras. 6904-6906 [6351], 6910-6915 [6354], 6918-6924 [6360], 6927-6937 [6367], 6940-6946 [6378], 6947-6952 [6385], 6953 [6391].

5996. Regarding Taylor's individual criminal responsibility (Planning), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Planning - paras. 6957 [6392], 6958-6968 [6393], 6969-6970 [6404], 6971 [6406].

5997. Regarding Taylor's individual criminal responsibility (Instigating), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Instigating - para. 6972 [6407].

5998. Regarding Taylor's individual criminal responsibility (Ordering), see below: Chapter 12 (Article 6.1 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute - Ordering - para. 6973 [6408].

5999. Regarding Taylor's superior responsibility, see below: Chapter 13 (Article 6.3 Liability) - Taylor - Trial Judgment - Findings and Conclusions - Legal Findings on Responsibility Pursuant to Article 6.3 of the Statute - Superior Responsibility - paras. 6977 - 6986 [8613].

3. Appellate Judgment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-A, Judgment, 26 September 2013

(a) Factual Findings

6000. para. 253: The Trial Chamber found that the RUF/AFRC's operational strategy was characterised by a campaign of crimes against the Sierra Leonean population, including the crimes charged in all 11 Counts of the Indictment,[578] which were inextricably linked to the strategy of the

military operations themselves. This strategy entailed a campaign of terror against civilians as a primary modus operandi, to achieve military gains at any civilian cost and political gains in order to attract the attention of the international community and improve the RUF/AFRC's negotiating stance with the Sierra Leonean government (the "Operational Strategy").[579]

6001. para. 254: In assessing Taylor's alleged criminal liability, the Trial Chamber found that Taylor, by his acts and conduct, was "critical in enabling" the RUF/AFRC's Operational Strategy, "supported, sustained and enhanced" the functioning of the RUF/AFRC and its capacity to implement its Operational Strategy, planned an attack of terror as the modus operandi of the attack on Freetown and had a substantial effect on the crimes committed by the RUF/AFRC.[580] It further found that Taylor knew of the RUF/AFRC's Operational Strategy, knew that his acts and conduct assisted the commission of crimes in the implementation of that Operational Strategy and knew the essential elements of the crimes in which he was participating.[581]

6002. Regarding the RUF/AFRC's Operational Strategy, see below: Chapter 12 (Article 6.1. Liability) -Taylor - Appellate Judgment - Findings and Conclusions - The RUF/AFRC's Operational Strategy - paras. 257-302 [6411].

6003. para. 303: The Appeals Chamber has reviewed the Trial Chamber's assessment of the evidence and affirmed the findings in the Judgment.[821] It has further affirmed the Trial Chamber's finding that the RUF/AFRC leadership pursued an Operational Strategy to commit the crimes charged in Counts 1-11 of the Indictment.[822]

6004. Regarding Taylor's Acts, Conduct and Mental State, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Acts, Conduct and Mental State - paras. 303 - 343 [6457].

(b) Legal Conclusions

6005. See below: Annex B encompasses the discussion of the evaluation of evidence relating to all the crimes [Annex B].

6006. Regarding Taylor's Criminal Liability, see below: Chapter 12 (Article 6.1 Liability) - Taylor - Appellate Judgment - Findings and Conclusions - Taylor's Criminal Liability - paras. 497-595 [6630].

B. RUF

1. Indictment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-2004-15-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

6007. Paragraph 19 through 39 are incorporated by reference.[328]

6008. These attacks [para.41: 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] were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property.[329]

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

6009. Members of the AFRC/RUF subordinate to and/or acting in concert with Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, committed crimes set forth below in paragraphs 45 through 82, and charged in counts 3 through 14, as part of a campaign to terrorize the civilian population. The AFRC/RUF also committed the crimes to punish the civilian population or 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.[330]

[328] RUF Indictment, para. 40.
[329] RUF Indictment, para. 42.
[330] RUF Indictment, para. 44.

(iii) Count 14: Looting and Burning

6010. At all times relevant to this indictment, AFRC/RUF engaged in widespread burning of civilian property. This looting and burning included the following:[331]

i. Bo District: 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;[332]

ii. Koinadugu District: 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;[333]

iii. Kono District: 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, Yardu Sando, where virtually every home in the village was looted and burned;[334]

iv. Bombali District: Between about 1 March 1998 and 31 November 1998, AFRC/RUF forces burnt an unknown number of civilian buildings in Bombali District, such as Karina and Mateboi;[335]

v. Freetown and Western Area: Between 6 January 1999 and 28 February 1999, AFRC/RUF forces engaged in widespread looting and burning throughout Freetown and Western Area. The majority of houses that were destroyed were in the areas of Kissy, Wellington and Calaba Town, other locations included Fourah Bay, Upgun, State House and Pademba Road areas of the city;[336]

6011. 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.[337]

[331] RUF Indictment, para. 77.
[332] RUF Indictment, para. 78.
[333] RUF Indictment, para. 79.
[334] RUF Indictment, para. 80.
[335] RUF Indictment, para. 81.
[336] RUF Indictment, para. 82.
[337] RUF Indictment, para. 82.

2. Trial Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-T, Judgement, 2 March 2009

(a) Factual Findings

(i) Kono District – Crimes

a. Background to Kono District – Kono District – Crimes

6012. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Background to Kono District – paras. 1136 – 1139 [208].

b. Koidu Town – Kono District – Crimes

6013. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Koidu Town – Looting and Burning upon arrival in Koidu – paras. 1140 – 1144 [212].

6014. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Koidu Town – Looting of Tankoro bank – para. 1145 [217].

6015. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Koidu Town – Burning during retreat from Kono – paras.1156 - 1158 [228].

c. Tombodu – Kono District – Crimes

6016. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Tombodu – Burning of civilian homes – paras. 1159 - 1160 [231].

6017. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Tombodu – Beating and Looting of civilian petty traders – paras. 1161 - 1164 [233].

d. RUF Camps – Kono District – Crimes

6018. See above: Chapter 1 – RUF – Trial Judgment – Factual Findings – Kono District – Crimes – Treatment of civilians in RUF Camps – paras. 1225 - 1226 [294].

(ii) Bo District – Crimes

a. Background to Bo District – Bo District - Crimes

6019. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bo District – Crimes – paras. 991 - 992 [389].

b. Tikonko – Bo District – Crimes

6020. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bo District – Crimes – Tikonko – First attack on Tikonko - paras. 993 – 994 [391].

6021. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bo District – Crimes – Tikonko – Second attack on Tikonko – para. 1002 [400], 1005 [403].

c. Sembehun – Bo District – Crimes

6022. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bo District – Crimes – Sembehun – paras. 1006 - 1007 [404], 1009 [407].

d. Gerihun – Bo District – Crimes

6023. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bo District – Crimes – Gerihun – para. 1014 [412].

(iii) Freetown and the Western Area – Crimes

a. Background to Freetown and the Western Area - Freetown and the Western Area – Crimes

6024. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area– para. 1510 [477].

6025. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Perpetrators of the Attack on Freetown – paras. 1511 – 1515 [478].

6026. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Background to Freetown and the Western Area - Targeting of the civilian population in Freetown – paras. 1516 – 1518 [483], 1522 [489].

b. Kingtom - Freetown and the Western Area – Crimes

6027. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kingtom – para. 1524 [491].

c. Guard Street – Freetown and the Western Area – Crimes

6028. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Guard Street – para. 1525 [492].

d. Upgun and Fourah Bay – Freetown and the Western Area – Crimes

6029. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Upgun and Fourah Bay – paras. 1526 [493], 1529 [496].

e. Wellington - Freetown and the Western Area – Crimes

6030. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Wellington - Killing and Looting of TF1-235 and his family – paras. 1531 – 1535 [498].

6031. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Wellington - Killings and Amputations at Loko Town – paras. 1536 - 1537 [503].

6032. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Wellington - Killing, Looting and Abduction at a clinic – para. 1538 [505].

6033. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Wellington - Looting and Burning of TF1-235's home – para. 1539 - 1540 [506].

f. Kissy - Freetown and the Western Area – Crimes

6034. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings and Beatings at a clinic – para. 1545 [512].

6035. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings at Rogbalan Mosque – para. 1550 [517].

6036. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Killings, Amputations and Looting of TF1-022 and others – para. 1553 [520].

6037. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Freetown and the Western Area – Crimes – Kissy - Amputations and Looting of TF1-097 and others – paras. 1555 - 1556 [523].

(iv) Koindugu District – Crimes

6038. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras.1496 – 1505 [533].

(v) Bombali District – Crimes

6039. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 – 1509 [543].

(vi) Port Loko District – Crimes

6040. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras. 1609 – 1613 [547].

(b) Legal Conclusions

(i) Applicable law - War crimes / Violations of Common Article 3

6041. See above: Chapter 1 – RUF – Trial Judgment – Legal conclusions – Applicable law - War crimes / Violations of Common Article 3 – paras. 91 – 105 [552].

(ii) War crimes / Violations of Common Article 3 – Findings on general requirements

6042. See above: Chapter 1 – RUF – Trial Judgment – Legal conclusions – War crimes / Violations of Common Article 3 – Findings on general requirements – paras.964 – 988 [567].

(iii) Applicable law – Pillage

6043. para. 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 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]

6044. para. 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]

6045. para. 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]

6046. para. 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]

6047. para. 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]

6048. para. 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]

6049. para. 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 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]

6050. para. 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]

6051. para. 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.

(iv) Pleading

a. Criminal acts and events - Pleading

6052. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Criminal acts and events – paras. 412 [605], 418 - 419 [611].

b. Locations – Pleading

6053. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Locations – paras. 420 – 422 [613].

c. Timeframes – Pleading

6054. See above: Chapter 1 – RUF – Trial Judgment – Legal Conclusions – Pleading – Timeframes – paras. 423 – 432 [616].

d. Conduct charged under Common Article 3 and Additional Protocol II – Pleading

6055. See above: Chapter 1– RUF – Trial Judgment – Legal conclusions – Pleading - Conduct charged under Common Article 3 and Additional Protocol II – paras. 436 – 447 [626].

(v) Kono District – Pillage

6056. See above: Chapter 2 – RUF – Trial Judgment – Legal Conclusions – Kono District – Unlawful killings - paras. 1266 – 1267 [1630].

6057. para. 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]

6058. para. 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]

6059. para. 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.

6060. para. 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.

a. Tombodu – Kono District – Pillage

6061. para. 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.

b. Koidu Town – Kono District – Pillage

i. Looting during February/March attack on Koidu – Koidu Town – Kono District – Pillage

6062. para. 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.

6063. para. 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.

ii. Looting of Tankoro Bank – Koidu Town – Kono District – Pillage

6064. para. 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.

c. Pillaging of diamonds – Kono District – Pillage

6065. para. 1339: The Chamber notes the Prosecution's submission that AFRC/RUF rebels systematically and unlawfully appropriated diamonds by mining throughout Kono District, but 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.

(vi) Bo District – Pillage

6066. para. 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).

6067. para. 1016: The Chamber is satisfied that each of the acts described in the following paragraph was 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.

6068. para. 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]

6069. para. 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 property is appropriated.[1998]

a. Tikonko – Bo District - Pillage

6070. para. 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.

b. Sembehun – Bo District - Pillage

6071. para. 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.

c. Gerihun – Bo District - Pillage

6072. para. 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.

(vii) Freetown and the Western Area – Pillage

6073. para. 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).

6074. para. 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.

6075. para. 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.

6076. para. 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.

6077. para. 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 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]

6078. para. 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.

(viii) Koindugu District – Pillage

6079. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Koinadugu District – paras. 1496 – 1505 [533].

(ix) Bombali District – Pillage

6080. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Bombali District – paras. 1506 – 1509 [543].

(x) Port Loko District – Pillage

6081. See above: Chapter 1 – RUF – Trial Judgment – Factual findings – Port Loko District - paras. 1609 – 1613 [547].

3. Appellate Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-A, Judgment, 26 October 2009

(a) Factual Findings

(i) Kono District

6082. See above: Chapter 1 – RUF – Appellate Judgment – Factual Findings – Kono District – para. 428 [712].

(b) Legal Conclusions

(i) Pleading

6083. para. 153: Kallon argues that the Trial Chamber erroneously convicted him for the looting 800,000 Leones from Ibrahim Kamara in June 1997 in Bo District. He argues this crime was not specifically pleaded in the Indictment and therefore Kallon did not have adequate notice of the charges against him.[290] Kallon further submits that this defect was not cured.[291]

6084. para. 155: Kallon was convicted, pursuant to his participation in a JCE 1, for pillage in relation to the unlawful appropriation of 800,000 Leones by Bockarie from Ibrahim Kamara. The Trial Chamber found that Bockarie, who was also found to be a member of the JCE,[293] and his subordinates were the principal perpetrators of the crime. The Appeals Chamber recalls that the Indictment pleaded that "Kallon and … Bockarie[, among others,] in concert with each other, … exercised command and control over subordinate members of the RUF, Junta and AFRC/RUF forces,"[294] pursuant to a "joint criminal enterprise … to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas,[295] through criminal means that included[296] "unlawful taking … of civilian property … include[ing]"[297] in Bo District, "[b]etween 1 June 1997 and 30 June 1997, AFRC/RUF forces [who] looted and burned an unknown number of civilian houses in Telu, Sembehun, Mamboma and Tikonko."[298] Thus, the act of pillage, a pleaded crime within the JCE, occurred in a named location, during the month pleaded in the Indictment, by a member of the JCE. This is adequate notice of Kallon's liability for the crime.

6085. para. 492: The Appeals Chamber holds that so long as Gbao agreed to the Common Criminal Purpose and was, therefore, a member of the JCE as the Trial Chamber found,[1256] he is responsible for all crimes that he either intended, or were naturally foreseeable would be committed by members of the JCE or persons under their control. This is consistent with the pleading of the crimes in the Indictment (which must be read in its entirety) and which pleaded each of the crimes in Count 1 to 14 as either within the JCE or as a reasonably foreseeable consequence of the JCE.[1257]

6086. para. 935: The Trial Chamber found that Kallon incurred JCE liability for the following instances of pillage: (i) the looting of Le 800,000 by Bockarie from Ibrahim Kamara in June 1997 in Sembehun in Bo District;[2447] (ii) the appropriation of a bicycle, Le 500,000 and other items from TF1-197 near Tombodu in Kono District;[2448] (iii) an unknown number of acts of pillage during the February/March 1998 attack on Koidu Town;[2449] and (iv) the looting of funds from

Tankoro Bank in Koidu Town.[2450] The Trial Chamber found that Kallon was present at a meeting when Johnny Paul Koroma ordered that all houses in Koidu Town should be burned to the ground, which message Sesay reiterated.[2451] Looting of civilian property was committed during the execution of the order.[2452] Civilians complained to Kallon and Superman, who were Commanders on the ground, about the burning, harassment and looting, but they took no action in response.[2453]

6087. para. 938: Concerning Kallon's notice of his alleged liability for the looting of a bank in Koidu Town, the Appeals Chamber recalls that the specificity required for the pleading of locations will depend on factors including those previously listed.[2461] The Trial Chamber found that Kallon significantly contributed to the looting from Ibrahim Kamara by his participation in the JCE,[2462] and that his liability derives from his conduct in relation to other events and crimes,[2463] and in particular, his participation in unlawful killings in Koidu Town, which were pleaded.[2464]

6088. para. 939: The Appeals Chamber recalls that the Trial Chamber found that nonexhaustive pleading of locations may be adequate in light of the "sheer scale" of the alleged crimes.[2465] The Appeals Chamber has not found error in the Trial Chamber's general approach to applying the exception,[2466] and Kallon has not offered any argument as to why this exception to the requirements for pleading specificity should not apply to pillage in Koidu Town. Accordingly, this submission is rejected.

6089. Justice Fisher, para. 63 (p.528-529) – Concurring part: In Ground 22, Kallon objects to the pleading of looting of the Tankoro Bank in Koidu Town. The Appeals Chamber finds that Kallon did not need the location to be pleaded with greater specificity in order to prepare his defence, because the conduct giving rise to Kallon's JCE liability for the looting included his participation in killings in Koidu Town, which were specifically pleaded.

6090. Justice Fisher, para. 64 (p.529) – Concurring part: I concur that Kallon was given adequate notice of the location of the charged conduct, but because the looting was part of a massive and "systematic campaign,"[87] called "Operation Pay Yourself", which started in Bombali District and spread to numerous locations including Koidu Town.[88] As a consequence of "Operation Pay Yourself", looting civilian property became a "key component"[89] and systemic feature of AFRC/RUF operations.[90] In light of the pervasiveness of this crime and that it was happening simultaneously in many locations in the larger area (Kono District) in which Koidu Town is situated, it was sufficient and accurate for the Indictment to plead that there was "widespread looting … in various locations in [Kono] District."[91]

(ii) Pleading – Dissents

a. Justice Fisher:

6091. See above: Chapter 2 – RUF – Appellate Judgment – Legal Conclusions – Pleading-Dissents – Justice Fisher – para. 20 (p.517), para. 22 (p.518), para. 23 (p.518), para. 24 (p.518-519) [1704].

(iii) Crimes charged as criminal means of furthering Common Criminal Purpose - Pillage

6092. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 333, 348 [751].

6093. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged as criminal means of furthering Common Criminal Purpose – paras. 377 - 378 [754].

6094. para. 368: In addition, the Trial Chamber found that Bockarie, himself a JCE member,[891] led the attack on Sembehun.[892] Sesay's assertion that Bockarie acted on his own volition in this regard is unpersuasive.[893] First, while claiming an absence of findings on Bockarie's interaction with other JCE members at this time, Sesay fails to account for the Trial Chamber's holdings that it was Bockarie who instructed Superman to move with his troops to Freetown after Sankoh's public order to unite with the AFRC after the coup[894] and that Bockarie became a member of the Supreme Council, the highest decision-making body in the Junta regime.[895] Second, Sesay refers to TF1-008's testimony that Bockarie "said that he was the one who has captured this place, that this place was under his control."[896] Simply citing this evidence, Sesay fails to show how the Trial Chamber's assessment thereof was erroneous,[897] in particular given that Bockarie when entering Sembehun "identified himself as a member of the RUF."[898] Third, the fact that Bockarie pillaged Le 800,000 in Sembehun[899] supports rather than refutes that such conduct was contemplated as a means by the JCE members to further the Common Criminal Purpose.[900] Bockarie himself being a JCE member, it is not determinative whether the money stayed with him. Lastly, because pillage (Count 14) constituted a means to further the Common Criminal Purpose notwithstanding whether it amounted to terrorism, Sesay's argument that this incident fell beyond the Common Criminal Purpose fails.

(iv) Crimes charged and JCE *mens rea* (short review) - Pillage

6095. See above: Chapter 1 – RUF – Appellate Judgment – Legal Conclusions – Crimes charged and JCE *mens rea* (short review) – paras. 467, 468, 482, 492, 493 [756] and see, also, Justice Fisher's and Justice Winter's Dissenting Opinions in that regard.

(v) Kono District - Pillage

6096. para. 451: Sesay argues that the Trial Chamber provided insufficient reasoning for imputing the following crimes in Kono District to members of the JCE:[1147] (i) the enslavement, by using civilians for forced labour, between February and April 1998 (Count 13);[1148] (ii) the acts of pillage during the February/March 1998 attack on Koidu;[1149] and (iii) the looting of funds from the Tankoro bank in Koidu on or about March 1998.[1150] This submission is dismissed on the basis that Sesay fails to address any of the numerous findings on which the Trial Chamber relied to impute these crimes of enslavement[1151] and pillage[1152] to the JCE members.

6097. Regarding Sesay's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Sesay – paras. 624, 627 – 634 [7658].

6098. Regarding Kallon's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Kallon – paras. 806, 810 – 815, 935, 938, 939, 941 – 943 [7667].

6099. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kono District – JCE – Participation in and shared intent – Gbao – paras. 946-948, 951– 955 [7615].

6100. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

6101. Regarding Gbao's participation in and shared intent of the JCE in relation to Kono District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and

Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras. 4 – 28 [7454].

6102. Regarding Gbao's participation in and shared intent of the JCE in relation to Kenema District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

(vi) Bo District - Pillage

6103. Regarding Sesay's participation in and shared intent of the JCE in relation to Bo District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Bo District – JCE – Participation in and shared intent – Sesay – paras. 612[7905], 614[7906].

6104. Regarding Kallon's participation in and shared intent of the JCE in relation to Bo District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Bo District – JCE – Participation in and shared intent – Kallon – paras. 791, 794 - 796, 935, 940 [7908].

6105. Regarding Gbao's participation in and shared intent of the JCE in relation to Bo District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District (also, Bo District) – JCE – Participation in and shared intent – Gbao – paras. 946-948, 951– 955 [7615].

6106. Regarding Gbao's participation in and shared intent of the JCE in relation to Bo District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

6107. Regarding Gbao's participation in and shared intent of the JCE in relation to Bo District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras.4 – 28 [7454].

6108. Regarding Gbao's participation in and shared intent of the JCE in relation to Bo District, see, also, below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

(vii) Kenema District - Pillage

6109. Regarding Sesay's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District – JCE – Participation in and shared intent – Sesay – paras. 617, 619 – 623 [7580]. (note: Kenema district not pleaded for Count 14 and no findings on pillage in Kenema District – see, TC Judgment paras 1096 et seq dealing with crimes committed in Kenema District - but, see TC Judgment para. 2056).

6110. Regarding Kallon's participation in and shared intent of the JCE in relation to Kenema District, see below: Chapter 12 (Article 6.1. Liability) – RUF – Appellate Judgment – Findings and Conclusions – Kenema District – JCE – Participation in and shared intent – Kallon – paras. 798, 801, 802, 803, 804 [7598] (note: Kenema district not pleaded for Count 14 and no findings on pillage in Kenema District – see, TC Judgment paras 1096 et seq dealing with crimes committed in Kenema District - but, see TC Judgment para. 2056).

C. AFRC

1. Indictment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-PT, Indictment, 13 May 2004

(a) Particulars

(i) Charges

6111. Paragraphs 21 through 36 are incorporated by reference.[338]

6112. 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 ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, conducted armed attacks throughout the territory of the Republic of Sierra Leone, including Bo, Kono, Kenema,

[338] AFRC Indictment, para. 37.

Koinadugu, Bombali and Kailahun and Port Loko Districts and the city of Freetown and the Western Area. Targets of the armed attacks included civilians. [339]

6113. These attacks were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property. [340]

6114. 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. [341]

(ii) Counts 1-2: Terrorizing civilian population and collective punishments

6115. Members of the AFRC/RUF subordinate to and/or acting in concert with ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, committed the crimes set forth below in paragraphs 42 through 79 and charged in Counts 3 through 14, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF. [342]

[339] AFRC Indictment, para. 38.
[340] AFRC Indictment, para. 39.
[341] AFRC Indictment, para. 40.
[342] AFRC Indictment, para. 41.

(iii) Count 14: Looting and Burning (Pillage)

6116. 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: [343]

> i. Bo District - 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; [344]
>
> ii. Koinadugu District - 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; [345]
>
> iii. Kono District - 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; [346]
>
> iv. Bombali District - 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; [347]
>
> v. Freetown and the Western Area - 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; [348]

6117. By their acts or omissions in relation to these events, ALEX T AMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, 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. [349]

[343] AFRC Indictment, para. 74.
[344] AFRC Indictment, para. 75.
[345] AFRC Indictment, para. 76.
[346] AFRC Indictment, para. 77.
[347] AFRC Indictment, para. 78.
[348] AFRC Indictment, para. 79.
[349] AFRC Indictment, para. 79.

2. Trial Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-T, Judgement, 20 June 2007

(a) Factual Findings

6118. para. 1397: The Trial Chamber recalls its finding that the burning of property does not satisfy the legal elements of pillage.[2596] Therefore, the Trial Chamber will only examine the evidence relating to the underlying acts of looting.

6119. para. 1398: The Trial Chamber recalls that on several occasions, senior AFRC and RUF commanders declared operations that authorised their forces to plunder civilian property. Following the retreat from Freetown in February 1998, Johnny Paul Koroma declared "Operation Pay Yourself' over BBC Radio.[2597] Witness TF1-334 testified that Koroma announced this operation, which encouraged the troops to loot property, since without access to state revenue he could no longer pay them.[2598] Sam Bockarie declared a similar operation to his soldiers in Kenema District in February 1998.[2599] Looting with reference to 'Operation Pay Yourself' continued long after their announcement.[2600]

6120. para. 1399: Given this context, the Trial Chamber is satisfied that the looting described below was directly linked to the war efforts of the AFRC and RUF and that the perpetrators were aware of the existence of an armed conflict and of the protected status of the owner of the property.

6121. para. 1400: The Trial Chamber is satisfied, in respect of each incident of looting described below, that the perpetrators intended to deprive the civilians of their property, without their consent, and appropriate it for their personal use.

(i) Bo District – Crimes

6122. para. 1401: The Prosecution alleges that "[b]etween 1 June 1997 and 30 June 1997, AFRC/RUF forces looted [...] in Telu, Sembehun, Mamboma and Tikonko".[2601]

6123. para. 1402: The Trial Chamber has previously found that no evidence on pillage was adduced with respect to Telu, Sembehun and Mamboma.[2602] The Trial Chamber finds that no evidence has been adduced of acts of looting with respect to Tikonko.

(ii) Koinadugu District – Crimes

6124. para. 1403: The Prosecution alleges that "[b]etween about 14 February 1998 and 30 September 1998, AFRC/RUF forces engaged in widespread looting [...] in the District, including Heremakono, Kabala, Kamadugu and Fadugu".[2603]

6125. para. 1404: The Trial Chamber has previously held that the Prosecution has not led evidence on pillage with respect to Heremakono and Kamadugu.[2604] No evidence was adduced of looting within the Indictment period in Fadugu.

6126. para. 1405: In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on Prosecution witnesses TF1-147, TF1-153 and TF1-199, Defence witness DAB-078 and Exhibit P-57.

a. Kabala – Koinadugu District - Crimes

6127. para. 1406: Witness TF1-147 testified that following a "rebel" attack on Kabala on 27 July 1998, property of civilians, including his personal belongings, were looted.[2605] The witness did not see the perpetrators, but concluded that the "rebels" who attacked the town were responsible.[2606] In a second attack on 17 September 1998, fighters again looted civilian property from houses.[2607] The witness believed that the attack was conducted by the same "rebels" who had staged the July attack.[2608]

6128. para. 1407: Witness TF1-147 was not able to identify the faction that attacked Kabala town on those two occasions. However, witness DAB-078 stated that around September 1998 he heard that troops under the command of 'Savage' had looted a house in Kabala.[2609]

6129. para. 1408: Form the date given of the attacks and the overall evidence adduced, the Trial Chamber finds beyond reasonable doubt that the attacks on Kabala were conducted by troops associated with SAJ Musa and/or Dennis Mingo.

(iii) Kono District – Crimes

6130. para. 1410: The Prosecution alleges that "[b]etween about 14 February 1998 and 30 June 1998, AFRC/RUF engaged in widespread looting and burning in various locations in the District, including Tombudu, Foindu and Yardu Sando, where virtually every home in the village was looted [...]." [2610]

6131. para. 1411: The Trial Chamber has previously found that no evidence on pillage was led with respect to Foindu.[2611]

6132. para. 1412: In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on Prosecution witnesses TF1-0 19 and TF1-072.

a. Tombudu – Kono District – Crimes

6133. para. 1413: Witness TF1-072 testified that in March 1998, soldiers under the command of 'Savage,[2612] on the way to Tombodu forcefully appropriated five gallons of palm wine from a civilian and consumed the palm wine.[2613]

b. Yardu Sando – Kono District – Crimes

6134. para. 1414: Witness TF1-0 19 testified that on 16 April 1998, AFRC soldiers and RUF rebels attacked Yardu Sando[2614] and took boxes and other valuable property from civilian houses.[2615] The fighters were singing enjoy about the property they looted.[2616]

(iv) Bombali District – Crimes

6135. para. 1416: The Prosecution alleges that "[b]etween 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".[2617]

6136. para. 1417: Although the Prosecution adduced evidence with respect to looting in Karina, Makeni and Camp Rosos, acts of looting are not alleged in the Indictment with regard to Bombali District. The Trial Chamber accordingly makes no findings on this evidence.

(v) Freetown and the Western Area – Crimes

6137. para. 1418: The Prosecution alleges that "[b]etween 6 January 1999 and 28 February 1999, AFRC/RUF forces engaged in widespread looting [...] throughout Freetown and the Western Area" [2618]

6138. para. 1419: Given that burning does not constitute an act of pillage, the Trial Chamber has not made findings on the destruction of civilian houses in Kissy, Wellington and Calaba Town, as pleaded in the Indictment.[2619] The Trial Chamber makes findings only on incidents of looting which occurred within Freetown and not the greater Western Area.

6139. para. 1420: In arriving at the following findings of fact, the Trial Chamber has considered the available evidence and relies on the testimony of Prosecution witnesses Gibril Massaquoi, TFl-334, and TF1-083.

a. State House – Freetown and the Western Area – Crimes

6140. para. 1421: On 6 January 1999 at State House, witness TFl-334 was present when the Accused Brima ordered the Operation Commander to collect the vehicles parked at UN House and bring them to State House, since the commanders needed vehicles for transportation within the city. Following the order, the Operation Commander moved towards 'UN House' and subsequently returned to State House with jeeps and Toyota Land Cruisers.[2620]

6141. para. 1422: Moreover, Gibril Massaquoi testified that whilst present at State House during the January 1999 invasion of Freetown, he observed that "almost all" AFRC faction commanders had vehicles. He stated that he saw the Accused Brima entering State House with a jeep and the Accused Kanu with a white 'Hilux' with an 'UNDP' logo, while other vehicles being used had the 'UNWFP' logo.[2621] Accordingly, the witness understood that these vehicles had been looted.[2622]

6142. para. 1423: Witness TFl-334 testified that on 6 January 1999 he observed extensive looting within State House. He stated that the Presidential Office and all other offices were completely vandalised.[2623] The Trial Chamber is satisfied that this looting was carried out by AFRC troops, as State House was the headquarters of the AFRC troops during the Freetown invasion.

b. Kissy – Freetown and the Western Area – Crimes

6143. para. 1424: On 6 January 1999, two men wearing plain clothes and military trousers and one other man wearing full military uniform and carrying a gun took away money and food from witness TF1-1 04 and his family.[2624]

6144. para. 1425: One Friday at about 12:30 p.m. during the January 1999 invasion of Freetown, a congregation of people were gathered inside Rogbalan mosque to attend Juma prayers when "armed men" with carrying guns, cutlasses and axes attacked the people. Witness TF1-021 testified that these armed men took 15,000 Leones from his pocket.[2625]

6145. para. 1426: During the January 1999 invasion of Freetown, "rebels" wearing military uniforms raided Kissy area and stole civilian property.[2626] Witness TF1-084 was present in Kissy area and saw the looting taking place. He stated that the "rebels" led by 'Akim' entered civilian

houses, loaded televisions, radios and other goods onto their vehicles and drove off.[2627] The rebels also attacked houses on Rowe Street where they captured eight civilians, including witness TF1-084, and took away all their money.[2628] Shortly thereafter, Commander 'Tafaiko' removed the witness' gold plated wrist watch and took it from him. 'Tafaiko' also took an amount of $200 which he had removed from the witness's pocket.[2629]

6146. para. 1427: On 22 January 1999, "rebels" wearing combat and armed with guns and machetes broke into a house on Old Road. Witness TF1-083 stated that the "rebels" demanded money and other valuables, including clothes, which they took from him and other civilians in the house.[2630]

6147. para. 1428: On the same day, Witness TF1-083 also encountered several "rebels" armed with guns, machetes, knives and axes at Locust and Samuel's area at Old Road. One of the "rebels" took the witness's shirt and wore it. Another "rebel" took money from the witness's pockets. [2631]

(b) Legal Conclusions

(i) Applicable law - War crimes / Violations of Common Article 3

6148. See above: Chapter 1 – AFRC – Legal Conclusions – Applicable law - War crimes / Violations of Common Article 3 - paras. 241 – 242 [1023].

a. There must have been an armed conflict whether non-international or international in character at the time the offences were allegedly committed

6149. See above: Chapter 1 – AFRC – Legal Conclusions – There must have been an armed conflict whether non-international or international in character at the time the offences were allegedly committed - paras. 243 – 245 [1025].

b. There must be a nexus between the armed conflict and the alleged offence

6150. See above: Chapter 1 – AFRC – Legal Conclusions – There must be a nexus between the armed conflict and the alleged offence - paras. 246 – 247 [1028].

c. The victims were not directly taking part in the hostilities at the time of the alleged violation

6151. See above: Chapter 1 – AFRC – Legal Conclusions – The victims were not directly taking part in the hostilities at the time of the alleged violation - para. 248 [1030].

(ii) War crimes / Violations of Common Article 3 – Findings on general requirements

6152. See above: Chapter 1 – AFRC – Legal Conclusions – War crimes / Violations of Common Article 3 – Findings on general requirements - paras. 249 – 254 [1031].

(iii) Applicable law – Pillage

6153. para. 750: In Count 14 of the Indictment, the Prosecution alleges that "[a]t all times relevant to this Indictment, AFRC/RUF engaged in widespread unlawful taking and destruction by burning of civilian property." The Accused are thus charged with pillage, a violation of Common Article 3, punishable under Article 3(f) of the Statute.[1450]

6154. para. 751: The prohibition of the unlawful appropriation of public and private property in armed conflict is well-established in customary international law where it has been variously referred to as "pillage", "plunder" and "looting".[1453]. It was charged both as a war crime and as a crime against humanity in many of the trials based on the Nuremberg Charter and Control Council Law No. 10, including the trial of the major war criminals in Nuremberg.[1454] Pillage has been adjudicated in a number of cases before the ICTY.[1455]

a. Elements of the Crime

6155. para. 752: Trial Chamber I was of the opinion that the crime of pillage included the following constitutive elements in addition to the *chapeau* requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute:

(1) The perpetrator appropriated private or public property;

(2) The perpetrator intended to deprive the owner of the property and' to appropriate it for private or personal use;

(3) The appropriation was without the consent of the owner.[1456]

6156. para. 753: That definition of the crime of pillage is apparently based on the Rome Statute, Elements of Crimes, Article 8(2)(b)(xvi). The inclusion of the words "private or personal use"

excludes the possibility that appropriations justified by military necessity might fall within the definition. Nevertheless, the definition is framed to apply to a broad range of situations. As was stated by Trial Chamber I, "the ICTY in the case of *Celebici* noted that 'plunder' should be understood as encompassing acts traditionally described as 'pillage', and that pillage extends to cases of 'organised' and 'systematic' seizure of property from protected persons as well as to 'acts of looting committed by individual soldiers for their private gain'".[1457]

6157. para. 754: Inclusion of the element of "private or personal use" in the definition appears to be at variance with *Celebici*, since it may not include 'organized' and 'systematic' seizure of property. The Trial Chamber is therefore of the view that the requirement of "private or personal use" is unduly restrictive and ought not to be an element of the crime of pillage.

6158. para. 755: Accordingly and in addition to the chapeau requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute, the Trial Chamber concludes that the crime of pillage within the meaning of Article 3(t) of the Statute is comprised of the following specific elements:

1. The perpetrator appropriated property.

2. The appropriation was without the consent of the owner.

3. The perpetrator intended to deprive the owner of the property.

6159. para. 756: The Prosecution submits that "destroying property by burning, as part of a series of acts involving ruthless plundering to remove anything of value followed by the total removal of the value of the buildings themselves, falls within the concept of 'wilful and unlawful appropriation of property' ."[1458] All three Accused contend that 'burning' does not fall under the definition of 'pillage'.[1459]

6160. para. 757: In its Rule 98 Decision, the Trial Chamber deferred a final decision on this issue until the end of the tria1.[1460] Having carefully examined all relevant sources, the Trial Chamber is of the opinion that the inclusion of 'burning' in the crime of 'pillage', as suggested by the Prosecution, is untenable. First, a review of military manuals shows that most countries do not regard the destruction of enemy property as pillage.[1461] Second, the jurisprudence is unambiguous in requiring that the property be appropriated,[1462] an element which is not satisfied in the event that property is burned and destroyed. The Rome Statute also makes a distinction between appropriation and destruction of property.[1463]

6161. para. 758: Moreover, the destruction of civilian property may be brought and adjudged under a number of other provisions, 1464 which the Prosecution has not done in this case.

(iv) Bo District – Pillage

6162. para. 1402: The Trial Chamber has previously found that no evidence on pillage was adduced with respect to Telu, Sembehun and Mamboma.[2602] The Trial Chamber finds that no evidence has been adduced of acts of looting with respect to Tikonko.

(v) Koinadugu District – Pillage

6163. para. 1409: On the basis on the foregoing evidence and without predetermining the individual responsibility of the three Accused, the Trial Chamber finds beyond a reasonable doubt that between about 14 February 1998 and 30 September 1998, AFRC/RUF forces engaged in looting in Kabala in Koinadugu District.

6164. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Koinadugu District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment - Findings and Conclusions – Koinadugu District - paras. 1686-1696 [8045], 1904-1906 [8056], 2015-2018 [8060].

6165. Regarding Brima's, Kamara's and Kanu's superior responsibility in relation to Koinadugu District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Koinadugu District - paras. 1686 [8933], 1697-1699 [8934], 1904 [8937], 1907-1910 [8938], 2015 [8942], 2019-2024 [8943].

(vi) Kono District – Pillage

a. Tombodu and Yardu Sando – Kono District - Pillage

6166. para. 1415: On the basis on the foregoing evidence and without predetermining the individual responsibility of the three Accused, the Trial Chamber finds beyond a reasonable doubt that between about 14 February 1998 and 30 June 1998, AFRC/RUF forces engaged in looting in Tombodu and Yardu Sando in Kono District.

6167. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Kono District, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment -Findings and Conclusions - Kono District - paras. 1665-1668 [8017], 1856-1861 [8021], 1997-2000 [8027].

6168. Regardings Brima's, Kamara's, and Kanu's superior responsibility in relation to Kono District, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Kono District - paras. 1665 [8868], 1669-1673 [8869], 1856 [8874], 1862-1893 [8875], 1997 [8907], 2001-2005 [8908].

(vii) Bombali District – Pillage

6169. para. 1417: Although the Prosecution adduced evidence with respect to looting in Karina, Makeni and Camp Rosos, acts of looting are not alleged in the Indictment with regard to Bombali District. The Trial Chamber accordingly makes no findings on this evidence.

(viii) Freetown and the Western Area – Pillage

a. State House and Kissy – Freetown and the Western Area – Pillage

6170. para. 1429: On the basis on the foregoing evidence and without predetermining the individual responsibility of the three Accused, the Trial Chamber finds beyond reasonable doubt that between 6 January 1999 and 28 February 1999, AFRC forces engaged in looting in State House in Freetown and Kissy in the Western Area.

6171. Regarding Brima's, Kamara's, and Kanu's individual criminal responsibility in relation to Freetown and Western Area, see below: Chapter 12 (Article 6.1 Liability) - AFRC - Trial Judgment -Findings and Conclusions - Freetown and Western Area - paras. 1745-1786 [8102], 1929-1941 [8144], 2045-2064 [8157].

6172. Regarding Brima's, Kamara's, and Kanu's superior responsibility in relation to Freetown and Western Area, see below: Chapter 13 (Article 6.3 Liability) - AFRC - Trial Judgment - Findings and Conclusions - Freetown and Western Area - paras. 1745 [8997], 1787-1810 [8998], 1929 [9022], 1942-1950 [9023], 2045 [9032], 2065-2080 [9033].

3. Appellate Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-A, Judgement, 22 February 2008

(a) Factual Findings

6173. Not applicable.

(b) Legal Conclusions

6174. Not applicable.

D. CDF

1. Indictment

The Prosecutor v. Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa, SCSL-03-14-I, Indictment, 4 February 2004

(a) Particulars

(i) Charges

6175. Paragraph 4 through 21 is incorporated by reference.[350]

6176. These actions [para. 23: The CDF, largely Kamajors, engaged the combined RUF/AFRC forces in armed conflict in various parts of Sierra Leone - to include the towns of Tongo Field, Kenema, Bo, Koribondo and surrounding areas and the Districts of Moyamba and Bonthe.] by the CDF, largely Kamajors, which also included looting, destruction of private property, personal injury and the extorting of money from civilians, were intended to threaten and terrorize the civilian population. Many civilians saw these crimes committed; others returned to find the results of these crimes - dead bodies, mutilated victims and looted and burnt property. Typical CDF actions and the resulting crimes included: [Paragraphs 24.a to 24.f incorporated by reference].[351]

(ii) Counts 6-7: Terrorizing the Civilian Population and Collective Punishments

6177. At all times relevant to this Indictment, the CDP, largely Kamajors, committed the crimes set forth in paragraphs 22 through 27 and charged in counts 1 through 5, including threats to kill, destroy and loot, as part of a campaign to terrorize the civilian populations of those areas and did terrorize those populations. The CDP, largely Kamajors, also committed the crimes to punish the civilian population for their support to, or failure to actively resist, the combined RUFf AFRC forces.[352]

[350] CDF Indictment, para. 22.
[351] CDF Indictment, para. 24.
[352] CDF Indictment, para. 28.

(iii) Count 5: Looting and Buring

6178. Looting and burning included, between about 1 November 1997 and about 1 April 1998, at various locations including in Kenema District, the towns of Kenema, Tongo Field and surrounding areas, in Bo District, the towns of Bo, Koribondo, and the surrounding areas, in Moyamba district, the towns of Sembehun, Gbangbatoke and surrounding areas, and in Bonthe District, the towns of Talia (Base Zero), Bonthe Town, Mobayeh, and surrounding areas, the unlawful taking and destruction by burning of civilian owned property.[353]

6179. By their acts or ommissions in relation to these events, SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA, pursuant to Article 6.1. and, or alternatively, Article 6.3.ofthe Statute, are individually criminally responsible for the crime alleged below:

> **Count 5: Pillage**, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.f of the Statute.[354]

2. Trial Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-T, Judgement, 2 August 2007

(a) Factual Findings

(i) Tongo Field – Crimes

a. Lalehun – Tongo Field – Crimes

6180. para. 410: From mid-February to at least mid-March, Kamajors looted in Lalehun: they took doors, roofs and zinc from houses. They also burnt nine houses, including TF2-016's father's house.775 Kamajors were told to take what they wanted.[776] There was an organized operation whereby the town was divided into different areas and civilians were woken every morning at 6:00am to gather at the town harri, where they were ordered to carry loads for the Kamajors. If the civilians refused, they would be threatened or kept in the guard room.[777]

[353] CDF Indictment, para. 27.
[354] CDF Indictment, para. 27.

(ii) Bo District – Crimes

a. Koribondo – Bo District – Crimes

i. Burning of Houses – Koribondo – Bo District – Crimes

6181. para. 427: Bombs were launched during the Kamajor attack on Koribondo on 13 February 1998; as a result some houses were destroyed or burnt.[824] The nine-room house of TF2-032 was partially destroyed.[825] The consequences of this continue to upset TF2-032 as since the destruction of his home, his children are scattered and, despite his advanced age, he now sleeps in a kitchen.[826]

6182. para. 428: Between 13 and 15 February 1998,[827] after the capture of Koribondo, Kamajors went on a rampage in Koribondo and burnt down 25 houses. Dry grass was used to set the houses ablaze.[828] Houses belonging to Daniel Habib, Saidu Bah, Pa Musa and others were burnt.[829] Some of those whose houses were burnt were discouraged others feared for their lives.[830]

6183. para. 429: Albert J Nallo burnt the compound of Shekou Gbaoj he had been ordered to do so by Norman at a private meeting at Base Zero. Albert J Nallo had also been ordered to kill Shekou Gbao but could not find him.[831] Albert] Nallo also burnt the house of Father Mike Lamin[832] and the compound of Mr. Biyo on the order of Norman.[833]

ii. Looting in Koribondo – Bo District – Crimes

6184. para. 430: After the capture of Koribondo, the Kamajors looted property from houses, including videos, tape-recorders, money and generators.[834] Kamajors took about 20 bushels of rice from TF2- 162 and also confiscated his household property.[835] Bob Tucker looted fifty-six bundles of eightfoot zinc.[836] Most of the looted properties were taken at Jimmi Highway on Jimmi Road.[837]

b. Bo Town – Bo District – Crimes

i. Mistreatment of TF2-00 1 and Looting of his Property – Bo Town – Bo District – Crimes

6185. para. 454: After witnessing [the beating of OC Bundu], TF2-001 returned to his house where he found Kamajors looting his property. Property worth 3,500,000 leones including a bed, a mattress and his children's property were bundled up by the Kamajors. When TF2-001 objected, the Kamajors threatened to kill him.[886] TF2-001was distressed by this situation.[887]

ii. Kamajors Looted TF2-119's Property – Bo Town – Bo District - Crimes

6186. para. 456: On 15 February 1998, a group of Kamajors entered TF2-119's house and threatened him. They searched his house for ammunition and soldiers. While searching the Kamajors broke suitcases and took valuables from the property belonging to TF2-119's family.[888]

iii. Kamajors Arrest TF2-00l and Loot His Property - Bo Town – Bo District – Crimes

6187. para. 460: After witnessing the death of James Vandy, TF2-001 attempted to flee but was chased by Kamajors because he had been identified as a policeman. The Kamajors were armed with cutlasses and guns but they retreated after hearing heavy gunfire from the direction of Freetown.[894] TF2-001 followed a large crowd of civilians in the direction of Kenema until they reached Kandeyama,[895] where under orders of Kamajor leaders including Agbamu Murray, the Kamajors separated civilians from police. TF2-001 was identified as a policeman and was arrested along with other policemen. The Kamajors searched TF2-001 and took from him 15,000 leones and his watch.[896]

iv. Looting and Burning of MB Sesay's House – Bo Town – Bo District – Crimes

6188. para. 463: Upon their arrival in Bo on 15 February 1998, the Kamajors under TF2-017's command went to MB Sesay's hotel on Sewa Road. They looted property belonging to civilians including womens' dresses, mens' clothes, and fans.[900] The Kamajors then set the hotel on fire.[901] Norman had ordered Albert J Nallo to loot and burn MB Sesay's property because he was

considered a junta collaborator for manufacturing Kamajor ronkos which the juntas wore to disguise themselves as Kamajors.[902] This order was given at Base Zero.[903]

v. Other Burning – Bo Town – Bo District – Crimes

6189. para. 464: Albert J Nallo and other Kamajors burned the houses and properties of junta collaborators that they could not find.[904] The house of TF2-058 was burnt by Kamajors.[905] When TF2-056 arrived at the police barracks, he saw four houses that had been burned by the Kamajors.[906]

6190. para. 465: On 15 February 1998, Kamajors under command of TF2-017 raided and destroyed two pharmacies situated at Tinkonko Road and Bojon Street. The Kamajors broke the padlocks looted all the medicine from these pharmacies. The Kamajors looted these pharmacies because there was a need for medicine at Base Zero; they were implementing a direct order from Norman to loot pharmacies.[907]

vi. Other Looting – Bo Town – Bo District – Crimes

6191. para. 466: On 15 February 1998, Kamajors looted TF2-156's property including clothes, shoes, utensils, other household property and his business, which was worth 800,000 leones.[908]

6192. para. 467: Two days after the arrival of the Kamajors in Bo, the Kamajors went into people's houses and looted their property. The property of TF2-030 was looted and her landlady's shop was broken into by the Kamajors.[909] When Bobor Tucker arrived in Bo on Monday, 16 February 1998, he saw Kamajors all over Bo Town looting shops.[910]

vii. Looting ofTF2-056's House – Bo Town – Bo District – Crimes

6193. para. 483: Sometime after the arrival of ECOMOG in Bo, Kamajors came to TF2-056's house and frightened him. The Kamajors took TF2-056's television, freezer, water filter, and some other items.[943] They accused TF2-056 of being a junta soldier and said they were taking the items because they had belonged to the junta.[944] TF2-056 was not a junta; the items taken by the Kamajors were his personal property.[945]

viii. Looting by Kamajors at TF2-067's House – Bo Town – Bo District – Crimes

6194. para. 485: A group of Kamajors came to TF2-067's house and took items which belonged to people that lived with him. The Kamajors took a freezer, a tape recorder, a radio and a video. They tried to take a double bed but it was too large for them to carry.[948]

6195. para. 486: The actions of these Kamajors were reported to ECOMOG who came immediately to the house. The Kamajors ran away. ECOMOG told the inhabitants of the house to make a list of looted property taken by the Kamajors.[949]

6196. para. 487: After ECOMOG left, the Kamajors returned to TF2-067's house and retrieved items they left behind.[950]

6197. para. 488: TF2-067 observed Kamajors breaking into people's shops and houses to loot property.[951]

(iii) Bonthe District – Crimes

a. 15 February 1998 – Looting – Bonthe District – Crimes

6198. para. 540: On February 15 1998, Kamajor commander Lamina Gbokambama and his men looted household items and equipment from the Bonthe Technical College, the Bonthe Holiday Complex, the government building, the police station, the state prison, the district office, the elections office, the Ministry of Works and the Fisheries Department, the Post Office, and the telecommunications department.[1048] After they finished looting, Lamina Gbokambama announced that he was now the Chief of Bonthe.[1049] At the Fisheries Department Building, Father Garrick pleaded with a young Kamajor called Commander Rambo Conteh to have his Kamajors leave things intact. Rambo answered that they only wanted to take the fuel and then they would leave.[1050]

b. February 16, 1998 - Looting in Bonthe – Crimes

6199. para. 543: On 16 February 1998, a house in Bonthe was looted and vandalized by commander Julius Squire of Bendu Cha and his troops. These Kamajors took 17,900,000 leones from TF2-116's house.[1055] Commander Julius Squire directed his men to transport the looted items to his house a few yards away on Nathan street.[1056]

6200. para. 544: On the same day the Kamajors looted materials and drugs from the government hospital and the household materials from the doctor's quarters.[1057]

6201. para. 550: District Commander Mori Jusu said that no one else would be killed but that the civilians had to pay 100,000 leones for each of the 14 people at the meeting. Father Garrick paid the sum and guaranteed that the rest would be paid.[1068]

c. Mosandi, Molakaika, Bembay, Bolloh around 15 September 1997 – Bonthe District – Crimes

6202. para. 560: On the same day, the Kamajors burnt 27 houses in Bembay, a village of about 30 houses. Six of the houses belonged to Lahai Koroma. Sei Mani, who sent the Kamajors, came and apologized to TF2-071 for burning the houses. The Kamajors then left for Mobayeh Village.[1099]

(iv) Kenema District – Crimes

a. Looting of TF2-033' s House – Kenema Town – Kenema District – Crimes

6203. para. 594: Armed Kamajors came to TF2-033's house in the police barracks and threatened his life.[1190] The Kamajors grabbed his property and said they would return to collect the things that they had grabbed.[1191]

b. Looting in Kenema – Kenema District – Crimes

6204. para. 600: In February 1998, Kamajors looted the property of Mr. Samai from his house on the outskirts of Kenema.[1205]

6205. para. 601: One day in late February 1998,[1206] armed Kamajors arrived at TF2-144's house on Kahunla Street in Kenema. TF2-144 and his family were told to vacate their house, as the Kamajors had come from Kailahun and planned to worship there. Through CO Foday, TF2-144 managed to secure the intervention of Kamoh Brima and the Kamajors left.[1207] Five days later, a different group of Kamajors entered TF2-144's house and started removing his belongings, including a mattress in which TF2-144 stored his money. TF2-144 offered to pay the Kamajors to bring back the mattress, but they refused and threatened to kill him if he didn't leave.[1208] The Kamajors left with TF2-144's property.[1209]

(v) Talia/Base Zero – Crimes

a. Capture of TF -109 and Looting – Talia/Base Zero – Crimes

6206. para. 621: TF2-109 was captured by Kamajors along with other women and three men in her village of Mattru Jong and was taken to Talia. A Kamajor named Komoh Bonnie told TF2-109 that they were taking her to Talia to save her from the rebels. The Kamajors also took their property, including furniture, household items, and clothing. TF2-109 was held in Talia for three days.[1266] During that time she met TF2-108.[1267]

b. Arrival of a Truck in Talia – Talia/Base Zero – Crimes

6207. para. 635: A truck carrying cocoa and coffee arrived in Talia. It was unloaded and the contents were given to the Director of War, Fofana and the High Priest, Kondewa. The truck was detained in Talia. [l302]

(vi) Moyamba District – Crimes

a. Sembehun and Surroundings – Moyamba District – Crimes

i. Arrival of Kamajors and Setting up of Checkpoints – Sembehun and Surroundings – Moyamba District – Crimes

6208. para. 641: In November 1997, Kamajors came to Sembehun, Bagruwa Chiefdom, Moyamba District[1329] and took control of security there.[1330] They wore Kamajor attire and were armed with guns.[1331] These Kamajors took control of the exit and entry checkpoints that had been manned by local Kamajors.[1332] The newly arrived Kamajors waited at the checkpoints and pounced on villagers returning from their farms and looted food and other properties from the villagers. [1333] The Kamajors also went to the surrounding villages and looted food and other goods.[1334] The newly arrived Kamajors were based with the head of the local Kamajors, a Ground Commander named Teacher Edward Challe.[1335]

6209. para. 642: On the evening the Kamajors arrived, Mr. Nbada Fofana was harassed at the Sembehun entry check point by the visiting Kamajors.[1336] He was stopped, forced our of his Mercedes Benz car and stripped of his money and his clothes. Nbada Fofana's car was taken from him by the Kamajors.[1337] Nbada Fofana managed to get the local Kamajors to return the vehicle to him, but when he attempted to leave Sembehun, the Kamajors at the exit checkpoint refused to

allow him to leave. They said, "[nlo, you can't get this vehicle out of this place." Nbada Fofana went to TF2- 073 and they decided to drive the vehicle to Shenge. They drove the vehicle 36 miles to Shenge and left the car there in the hands of the Shenge Kamajors.[1338]

6210. para. 643: The same evening, Mrs. Gorvie was stopped by Kamajors at the same checkpoint. Although she was sick, Mrs. Gorvie was forced out of her car and left on the ground.[1339] Her car was taken from her.[1340]

ii. Looting in the Villages Surrounding Sembehun - Moyamba District – Crimes

6211. para. 644: The day after the Kamajors arrived in Sembehun, they went to the surrounding villages and looted livestock, food and clothing.[1341]

iii. Threatening of the Witness TF2-073 's Children and Pillage - Sembehun and Surroundings – Moyamba District – Crimes

6212. para. 645: The second day after the Kamajors arrival, six Kamajors came to TF2-073's house in the evening. The Kamajors led TF2-073 out to the veranda at gunpoint and surrounded him.[1342] They said that they were Kondewa's Kamajors and that they had come from Talia, Tihun, Gbangbatoke and other surrounding villages. Three of them introduced themselves as Steven Sowa, Moses Mbalacolor and Mohamed Sankoh. Mohamed Sankoh said he was Deputy Director of War under Norman.[1343] The Kamajors wanted to inspect TF2-073's garage for arms and ammunition but he did not have the keys. The Kamajors then went to his garage anyway and saw TF2-073's Mercedes Benz car through a hole in the garage wall. The Kamajors told TF2-073 that they wanted to run a few errands with the car.[1344] The Kamajors sent for six more Kamajors to reinforce their group.[1345] They then broke into TF2-073's house, beat his children with gun butts and ransacked the house.

iv. Looting and Murder in Yakarji - Sembehun and Surroundings – Moyamba District – Crimes

6213. para. 649: On the morning of the third day after the Kamajors arrived in Sembehun, they travelled two miles to a village called Yakarji.[1355] In Yakarji the Kamajors looted a Mazda van which had been in the care of TF2-073's brother-in-law.[1356] The Kamajors beat TF2-073's brother-in-law severely and forced him to show them where the van was located.[1357] They looted

the vehicle and brought it back to their base in Sembehun. TF2-073's brother-in-law died from the beatings a few weeks after this event.[1358]

b. Looting in Shenge. Kagboro Chiefdom – Moyamba District – Crimes

6214. para. 650: The same morning the Kamajors went to Shenge,[1359] 36 miles from Sembehun, in the three cars they looted.[1360] They returned from Shenge in the evening with goods, livestock, food, and a drum of petrol.[1361]

c. CDF Control of Rokonta and Surrounding Areas – Moyamba District – Crimes

i. Looting by Kamajors and CDF Meeting on 23 December 1997 – Moyabma District - Crimes

6215. para. 652: On 23 December 1997, nearly 20 CDF militants1364 came to Rokonta and attacked the house of TF2-166' s father under the guise of looking for him. 1365 They took all of her father's property.[1366] TF2-166 reported the incident to the Honourable Minister Alex Koroma, who called a CDF meeting in Waterloo Town.[1367] At a meeting in the last week of December 1997, which was chaired by Alex Koroma and Paramount Chief Charles Caulker, Kamajor Obai told TF2-166: "You [.. .] tell your father that we suspect that he's a junta or he's a collaborator, and we must make sure that we kill him.."[1368] Paramount Chief Caulker then added: "The Pa, if it is true that he is a junta or a collaborator, we'll make sure that these people see him again."[1369]

d. Bradford – Moyamba District – Crimes

i. Pillage in Bradford on 19 March 1998 (Second Arrival) – Bradford – Moyamba District – Crimes

6216. para. 657: During the night of 19 March 1998, Kamajors came to Bradford and raided the entire town.[1396] The Kamajors were armed with guns, machetes, axes and knives.[1397] They entered civilian homes and forcefully looted clothing and food.[1398] The Kamajors entered TF2-16 7' s house and looted 63 bags of husk rice.[1399]

ii. Third Arrival at Bradford on 23 March 1998 – Moyamba District – Crimes

6217. para. 659: TF2-167's son Ibrahim was shot in the head by Kamajors while he was trying to escape. TF2-167 found Ibrahim alive and although his son survived, Ibrahim no longer behaves normally all the time. During this attack, Kamajors looted from TF2-167.[1403]

(b) Legal Conclusions

(i) Applicable law - War crimes / Violations of Common Article 3

6218. See above: Chapter 1 – CDF – Trial Judgment – Legal conclusions – Applicable law - War crimes / Violations of Common Article 3 – paras. 122 – 137 [1115].

(ii) War crimes / Violations of Common Article 3 - Findings on general requirements

6219. See above: Chapter 1 – RUF – Trial Judgment – Legal conclusions – War crimes / Violations of Common Article 3 – Findings on general requirements – paras. 695 – 697 [1131].

(iii) Applicable law – Pillage

6220. para. 157: The Chamber notes that the Indictment under Count 5 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 Count relates to the Accused's alleged responsibility for the unlawful taking and destruction by burning of civilian owned property between about 1 November 1997 and 1 April 1998 at a series of locations in Kenema District, Bo District, Moyamba District and Bonthe District.

6221. para. 158: 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.[201] The Chamber notes that the ICTR and SCSL Statutes include the crime of pillage, while the ICTY Statute lists the crime of plunder.[202]

6222. para. 159: The Chamber is satisfied that Article 3(0 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.[203]

6223. para. 160: 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 organized seizure of property undertaken within the framework of a systematic economic exploitation of occupied territory".[204] In light of the foregoing, the Chamber is of the view 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.[205]

6224. para. 161: In addition, under international law, pillage does not require the appropriation to be extensive or to involve a large economic value.[206] 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.[207]

6225. para. 162: The seriousness of the violation must be ascertained on a case by case basis, taking into consideration the specific circumstances in each instance.[208] Thus, the Chamber concurs with the ICTY Trial Chamber in Naletilic and Martinovic that 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. In the latter case, the gravity of the crime stems from the reiteration of the acts and from their overall impact.[209]

6226. para. 163: 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.[210]

6227. para. 164: The Chamber has already noted that the offence of pillage is provided for in Article 4(2) of Additional Protocol II.

6228. para. 165: The Chamber finds that the elements of pillage are as follows:

(i) The Accused unlawfully appropriated the property;[211]

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

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

6229. para. 166: Although Count 5 of the Indictment is entitled: "Looting and burning," the offence charged under this count is pillage, a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(t) of the Statute. The acts of burning, as charged in some paragraphs in Count 5 of the Indictment, will not be considered for the purposes of the offence of pillage as charged under Count 5. According to the definition of pillage as stated above, an essential element of pillage is the unlawful appropriation of property. Black's Law Dictionary defines appropriation as "the exercise of control over property; a taking or possession."[212] In the act oflooting, the offender unlawfully appropriates the property. Destruction

of property by burning, however, does not, by itself, necessarily involve any unlawful appropriation. Thus, while both looting and burning deprive the owner of their property, the two actions are distinct since the latter crime may be committed without appropriation per se. As a result, the Chamber is of the view that the destruction by burning of property does not constitute pillage. 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 5.

(iv) Tongo Field – Pillage

6230. para. 729: The Chamber recognizes that other criminal acts alleged in the Indictment were in fact committed in the towns of Tongo Field. However, the Chamber finds that such acts were not included in Norman's order. Therefore, the Chamber finds that it has not been established beyond reasonable doubt that Fofana aided and abetted in the perpetration of all the other criminal acts, such as infliction of mental harm or suffering and looting, which we found were committed by the Kamajors in the towns of Tongo Field during the second and third attacks.

(v) Bo District – Pillage

a. Responsibility of Fofana – Bo District - Pillage

6231. para. 838: The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for the unlawful taking of civilian-owned property between about 1 November 1997 and 1 April 1998.[1561] These crimes are alleged to have occurred at various locations in Bo District, including the towns of Bo and the surrounding areas.[1562]

6232. para. 839: As set out above in Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 5, Pillage:

a. On 15 February 1998, OC Bundu was forced to go to his house by Kamajors under the leadership of Nallo, Agbamu Murray, and John Ngombeh. The Kamajors took ammunition which they found in OC Bundu's house;

b. On 15 February 1998, Kamajors under control of TF2-017 looted MB Sesay's hotel on Sewa Road;

c. On 15 February 1998, Kamajors under control of TF2-017 looted medicine from two pharmacies in Bo;

d. On 16 February 1998, on the order of Kamajor leaders including Agbamu Murray, TF2-001 was searched; the Kamajors took his watch and 15,000 leones;

6233. para. 840: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i) through (ii) and concludes that all of the perpetrators were Kamajors under the effective control of Fofana. The Chamber reiterates that the Kamajors entered Bo on 15 February 1998. Acts (i) through (iv) described above occurred on the day the Kamajors entered Bo or the following day. The Chamber recalls its finding that OC Bundu and TF2-001 were targeted by the Kamajors because of their status as police officers, a group the Kamajors considered to have collaborated with Juntas; similarly, the Chamber finds that MB Sesay and TF2-058 were targeted because they were considered collaborators. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 835 was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. the Chamber is also satisfied that none of the victims were persons taking an active part in the hostilities at the time the acts described above occurred, and furthermore, that the perpetrator knew that the victims were not taking an active part in the hostilities.

6234. para. 841: In light of the findings set out above, the Chamber is satisfied that the general requirements of war crimes and the specific elements of pillage as a war crime have been established with respect to the looting of ammunition from OC Bundu's house, the looting of various objects at MB Sesay's hotel; the looting of medicine from two pharmacies; and the looting of TF2-001's watch and money.

6235. para. 846: On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Fofana is individually criminally responsible as a superior, pursuant to Article 6(3) for the crimes committed in Bo District as found under Counts 2, 4, 5, and 7.

b. Responbility of Kondewa – Bo District - Pillage

6236. para. 855: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Bo District during the time frame charged in the indictment.

(vi) Bonthe District – Pillage

a. Responsibility of Fofana – Bonthe District - Pillage

6237. para. 863: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Bonthe District during the time frame charged in the indictment.

b. Responsibility of Kondewa – Bonthe District - Pillage

6238. para. 866: On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Bonthe District during the time frame charged in the Indictment.

6239. para. 895: The Prosecution alleges that Kondewa is individually criminally responsible, pursuant to Article 6(3), for the unlawful taking of civilian-owned property between about 1 November 1997 and 1 April 1998.[1567] These crimes are alleged to have occurred at various locations in Bo District, including the towns of Talia (Base Zero), Bonthe Town, Mobayeh and the surrounding areas.[1568]

6240. para. 896: As set out above in Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 5, Pillage:

a. On 15 February 1998, Lamina Gbokambama and his men looted household items and equipment from a number of locations in Bonthe Town;

b. On 16 February 1998, Julius Squire and his troops looted a house in Bonthe and took 17,900,000 leones from TF2-116's house;

c. In early March 1998, a group of Kamajors including Baigeh took 140,000 leones from TF2-086 and her business partner Jitta on the road between Sebongie and Bonthe.

6241. para. 897: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i) through (iii) and concludes that all of the perpetrators were Kamajors under the effective control of Kondewa. The Chamber reiterates that the Kamajors

entered Bonthe on 15 February 1998. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 896(i)-(iii) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 896, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time the incidents, furthermore, that the perpetrator knew that the victims were not taking an active part in the hostilities.

6242. para. 898: In light of the findings set out above, the Chamber is satisfied that the general requirements of war crimes have been established and the specific elements of pillage as a war crime have been established with respect to each incident described in paragraph 896 (ii)-(iii).

6243. para. 903: On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Kondewa is individually criminally responsible as a superior, pursuant to Article 6(3), for the crimes committed by the Kamajors in Bonthe Town and the surrounding areas as found under Counts 2,4,5, and 7 above.

(vii) Kenema District – Pillage

a. Responsibilty of Fofana – Kenema District - Pillage

6244. para. 911: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Kenema District during the time frame charged in the indictment.

b. Responsibility of Kondewa – Kenema District - Pillage

6245. para. 918: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Kenema District during the time frame charged in the indictment.

(viii) Talia/Base Zero – Pillage

6246. para. 921: As set out above in the Factual Findings, the Chamber found that the following criminal acts have been committed in Talia / Base Zero, which the Chamber will consider for the

purposes of making its legal findings on the individual criminal responsibility pursuant to Article 6(0 and 6(3) of Fofana and Kondewa in this area:

> …
>
> (ii) TF2-109 was captured by Kamajors along with other women and three men in her village of Mattru Jong and was taken to Talia by Kamajor Kamoh Bonnie. She was held in Talia for three days. The Kamajors also looted her property in Mattru, including furniture, household items and clothing.
>
> …
>
> (xii) A truck carrying cocoa and coffee arrived in T alia. It was unloaded and the contents were given to the Director of War, Fofana and the High Priest, Kondewa. The truck was detained in Talia.

a. Responsibilty of Fofana – Talia/Base Zero - Pillage

6247. para. 929: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing, (including through Joint criminal enterprise) or otherwise aiding and abetting in the planning preparation or execution of any of the criminal acts which the Chamber found were committed in Talia/Base Zero during the time frame charged.

6248. para. 930: Likewise, the Chamber concludes that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(3) as a superior for any of the criminal acts which the Chamber found were committed in Talia/Base Zero during the time frame charged.

b. Responsibility of Kondewa – Talia/Base Zero - Pillage

6249. para. 932: In relation to the incidents described under paragraph 921 (ii) and (vii) above the Chamber finds that the presence of Kondewa at Base Zero when these incidents took place is not in itself sufficient to establish beyond reasonable doubt that Kondewa had any involvement in the commission of these criminal acts under any of the modes of liability charged in the Indictment. On the basis of the evidence adduced it cannot be established beyond reasonale doubt that there existed a superior-subordinate relationship between Kondewa as High Priest and the said Bonnie who was said to be a "Kondewa's priest".[1573]

6250. para. 933: In relation to the incident described under paragraph 921 (xii) the Chamber finds that the fact that a truck was brought to Talia and the contents of it was given to Kondewa is not sufficient to establish beyond reasonable doubt that either the truck might have been looted or that Fofana knew or had reasons to know that the truck might have been looted.

(ix) Moyamba District – Pillage

a. Responsibility of Fofana – Moyamba District - Pillage

6251. para. 948: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Moyamba District during the time frame charged in the Indictment.

b. Responsibility of Kondewa – Moyamba District - Pillage

6252. para. 951: The Chamber reiterates its earlier finding that although Kondewa had a *de jure* status as a High Priest in the CDF, and as such possessed command over all the Kamajors in the country, this was limited to Kamajors belief in mystical powers which Kondewa allegedly possessed. This evidence is inconclusive to establish beyond reasonable doubt that Kondewa had an effective control over the Kamajors in the sense that he had the material ability to prevent or punish them for their criminal acts in Moyamba District. The only incident in the Factual findings made by the Chamber in Moyamba District and which could be attributable to Kondewa for Count 5, Pillage is set out below as follows:

a. In November 1997, Kamajors under the control of Kondewa took TF2-073's mercedes benz from his home in Sembehun. The Kamajors said that they were Kondewa's Kamajors and that they had come from Talia, Tihun, Gbangbatoke, and other surrounding villages. Three of them introduced themselves as Steven Sowa, Moses Mbalacolor, and Mohamed Sankoh. Mohamed Sankoh said he was deputy Director of war under Norman. The car was eventually given to Kondewa, who kept the car and used it without permission;

b. on the same occasion, these Kamajors also took a generator, car tires, and other gadgets from TF2-073.

6253. para. 952: The Chamber has examined the facts surrounding each incident set out in both points above and is satisfied that, having regard to all evidence adduced, each incidence of pillage is sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. The

Chamber further finds, given the circumstances surrounding the occurrence of pillage as set out above, that the victims were persons not taking a direct part in the hostilities at the time of the commission of the crimes. The Chamber is additionally satisfied that the perpetrator knew of that the victims were not taking an active part in the hostilities.

6254. para. 953: In light of the above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of pillage have been met with respect to each incident described in paragraph 951.

6255. para. 954: This incident demonstrates that the looting was done by Kamajors who operated under the direct orders of Kondewa. Kondewa's knowledge that his subordinates committed crimes of pillage can be established on the basis that the looted car was then given to him to be driven around. The Chamber finds that Kondewa not only failed to exercise his duties to punish his subordinates for looting but chose to support their actions by using the looted vehicle himself.

6256. para. 955: On the basis of the foregoing, the Chamber finds that it has been established beyond a reasonable doubt that Kondewa is individually criminally responsible as a superior, pursuant to Article 6(3) for pillage as charged under Count 5 of the Indictment and as found by the Chamber above.

3. Appellate Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-A, Judgment, 28 May 2008

(a) Factual Findings

6257. Not applicable.

(i) Bonthe District - Pillage

a. Responsibility of Kondewa – Bonthe District – Pillage

6258. para. 155: The Trial Chamber found that the Kamajors committed the following crimes during the attack on Bonthe on 15 February 1998:

> (i) violence to life, health and physical or mental well-being of persons a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, namely: murder and cruel treatment, punishable under Article 3.a. of the Statute, charged in Counts 2 and 4, respectively;

(ii) violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, namely:

(a) pillage, punishable under Article 3.f. of the Statute;

(b) collective punishments, punishable under Article 3.b. of the Statute, charged in Counts 5 and 7 respectively.[315]

The Trial Chamber found Kondewa responsible for these crimes as a superior pursuant to Article 6(3) of the Statute.[316] However, he was not found responsible pursuant to Article 6(1).[317]

6259. para. 171: Kondewa alleges that the Trial Chamber erred in both law and fact in finding that he was responsible as a superior pursuant to Article 6(3) for the crimes committed in Bonthe District. It is evident, however, from the submissions that he does not challenge the Trial Chamber's articulation of the legal requirements for the establishment of superior responsibility under Article 6(3) of the Statute. Kondewa, therefore, does not allege an error of law, but is instead concerned with the way in which the Trial Chamber applied the law to the particular facts of his case. The Appeals Chamber is of the view that this submission, in essence, questions the inferences drawn from facts found by the Trial Chamber and is therefore factual in nature. Kondewa must therefore satisfy the standard of review for alleged errors of fact.

6260. para. 172: Kondewa's arguments concern the Trial Chamber's application of the effective control test in determining a superior-subordinate relationship between him and the perpetrators of certain criminal acts during the attack on Bonthe. Even though Kondewa disputes the totality of the Trial Chamber's findings regarding his role as a superior, he does not proffer any argument in support of other aspects of his ground of appeal. Kondewa's arguments are specifically limited to the finding of the existence of a superior-subordinate relationship. Although Kondewa challenges the finding that he had both the legal and material ability to prevent the commission of criminal acts by his subordinate Morie Jusu Kamara and other subordinates and to punish them for those crimes, the Trial Chamber's finding that he knew or had reason to know that certain crimes were being committed or that he failed to prevent their commission or to punish the alleged perpetrators was not challenged as such.

6261. para. 173: In order for the Appeals Chamber to assess a party's arguments on appeal, the party must set out its grounds of appeal clearly, logically and exhaustively and must support allegations of error with precise references to the trial judgment or other material that supports his appeal. The Appeals Chamber will not consider submissions which are obscure, contradictory, vague or suffer from formal or other deficiencies. The Appeals Chamber will, therefore, only consider the Trial Chamber's application of the effective control test, and determine whether

based on the findings of fact, a reasonable trier of fact could have concluded that a superior subordinate relationship existed between Kondewa and these Kamajors.

6262. para. 175: As has been noted, the position taken by the Prosecution is that there is no distinction between the legal standards required for proof of a superior-subordinate relationship in the case of "civilian" as opposed to "military" superior. The Appeals Chamber holds that the test for establishing the existence of a superior-subordinate relationship is effective control for both military and civilian superiors.

6263. para. 176: The Appeals Chamber will now determine whether it was reasonable for the Trial Chamber to conclude that Kondewa exercised the requisite degree of "effective control" over his alleged subordinates.

6264. para. 178: In finding that a superior-subordinate relationship existed between Kondewa and the Kamajor commanders responsible for the Bonthe attack, the Trial Chamber relied on what it describes as his *de jure* status as High Priest of Kamajors in Sierra Leone and particularly so in Bonthe District. Kondewa submits that because the Trial Chamber found elsewhere in the Judgment that the command he had over the Kamajors by virtue of his position as High Priest did not amount to a relationship of effective control, it was "unclear how the Trial Chamber determined that [his] status as High Priest gave him any higher degree of authority in Bonthe." The Appeals Chamber notes that the Trial Chamber indeed found that Kondewa's status as High Priest did not amount to effective control over the Kamajors.

6265. para. 179: The Appeals Chamber notes, however, that the Trial Chamber did not base its findings on the existence of a superior-subordinate relationship for Bonthe District on Kondewa's *de jure* position as High Priest alone. In addition to Kondewa's *de jure* status, the Trial Chamber relied on his *de facto* status as a superior to his alleged subordinates, as disclosed by evidence of his actual exercise of effective control over Kamajors who committed crimes in Bonthe District. Although his position as High Priest was one of several factors considered by the Trial Chamber in determining the existence of a superior-subordinate relationship, the Appeals Chamber is of the view that this is not a material factor in view of the overwhelming evidence of his actual exercise of effective control. Such include evidence of the relationship with his alleged subordinates in Bonthe, including an incident occurring in August 1997, events occurring during the 15 February 1998 attack on Bonthe, and a reaction to a letter sent from the Attorney-General to Kamajors in Bonthe in March 1998.

6266. para. 181: The Appeals Chamber concurs that effective control must be established at the time of commission of the alleged crimes. The Appeals Chamber is of the view, however, that even though an accused cannot be convicted for criminal acts falling outside the period of the Indictment, evidence of matters occurring outside the timeframe of the Indictment may be taken into account where relevant and probative of the accused's responsibility as a superior. The evidence was relied upon by the Trial Chamber to establish that at a time before the commission of the crimes, Kondewa had effective control and that he had authority and power to issue oral and written directives to the Kamajors in the area. He had the power to order investigations for misconduct, and to hold court hearings and to threaten the imposition of sanctions of "a terrible death" on the Kamajors if they lied to him. The evidence also establishes Kondewa's pre-existing relationship with Squire.

6267. para. 182: Taken together with the events of February and March 1998, the evidence shows that a reasonable trier of fact could conclude that this effective control continued until at least 15 February 1998.

6268. para. 186: The Trial Chamber's findings on the existence of a superior-subordinate relationship in each location was based on the totality of the evidence in the case with regard to such location. In the case of Bonthe, Kondewa's position as High Priest, which gave him a certain status, was just one of several factors considered by the Trial Chamber. The Trial Chamber also found that Kondewa had authority and power to issue oral and written directives; that he could order investigations for misconduct and hold court hearings; and that he had the legal and material ability to issue orders to Kamara. Furthermore, Kondewa himself acknowledged his authority and control over Bonthe by stating publicly that he refused "to give any areas under his control to a military government but to the democratically elected Government of President Ahmad Tejan Kabbah.

6269. para. 187: The Appeals Chamber finds that it was open to a reasonable trier of fact, based on all the evidence adduced, to conclude that Kondewa's *de facto* status as superior resulted in the exercise of effective control over the Kamajors who committed crimes in Bonthe. The fact that the Trial Chamber found that Kondewa did not exercise the same degree of control over Kamajors in other locations does not render the Trial Chamber's findings in relation to Bonthe inconsistent or illogical.

6270. para. 188: The Appeals Chamber therefore finds that Kondewa has failed to show that no reasonable trier of fact could have reached the conclusion that a superior-subordinate relationship existed between him and his alleged subordinates in Bonthe District.

6271. para. 189: For the foregoing reasons, the Appeals Chamber, Justice King dissenting, dismisses Kondewa's First Ground of Appeal.

(ii) Moyamba District – Pillage

a. Responsibility of Kondewa – Moyamba District – Pillage

i. Introduction and Trial Chamber's finding of facts

6272. para. 205: Kondewa alleges an error in law and in fact by the majority of the Trial Chamber, Justice Thompson dissenting, in finding that the Prosecution has proved beyond reasonable doubt that he was individually criminally responsible as a superior pursuant to Article 6(3) for pillage, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II punishable under Article 3.f. of the Statute (Count 5), in Moyamba District.[398] Similar to his First Ground of Appeal, Kondewa in essence challenges the Trial Chamber's application of the "effective control" test to establish that a superior-subordinate relationship existed between him and his alleged subordinates.

6273. para. 206: The Trial Chamber found that even though evidence of Kondewa's de jure status as High Priest was inconclusive to establish beyond reasonable doubt that he had effective control over Kamajors in Moyamba District, he was nevertheless responsible as a superior for one particular incident of pillage, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II punishable under Article 3.f. of the Statute, committed in Moyamba District.[399] The incident involved the looting of a Mercedes Benz car, a generator, car tires and other gadgets by Kondewa's alleged subordinates ("Moyamba looting incident").[400]

6274. para. 207: The Trial Chamber found that:

> [i]n November 1997, Kamajors under the control of Kondewa took TF2-073's Mercedes Benz from his home in Sembehun. The Kamajors said that they were Kondewa's Kamajors and that they had come from Talia, Tihun, Gbangbatoke and other surrounding villages. Three of them introduced themselves as Steven Sowa, Moses Mbalacolor and Mohamed Sankoh. Mohamed Sankoh said he was Deputy Director of War under Norman. The car was eventually given to Kondewa, who kept the car and used it without permission.
>
> On the same occasion these Kamajors also took a generator, car tires and other gadgets from TF2-073."[401]

6275. para. 208: The Trial Chamber found that both the general requirements of war crimes and the specific elements of pillage, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II punishable under Article 3.f. of the Statute, had been met, and that the incident demonstrated that the looting was done by Kamajors who operated under the direct orders of Kondewa.[402] Furthermore, Kondewa's knowledge that his subordinates committed this crime was established on the basis that the looted car was then given to him to drive around.[403] The Trial Chamber further found that Kondewa not only failed in the exercise of his duties to punish his subordinates, but chose instead to support their actions by using the looted vehicle himself.[404]

ii. Discussion

6276. para. 212: The issue raised in this ground is whether, based on the evidence as a whole, a reasonable tribunal of fact could conclude that a superior-subordinate relationship existed between Kondewa and his alleged subordinates. In reaching its findings on the superior responsibility of Kondewa in respect of this incident, the Trial Chamber relied on the following evidence:

> "(i) that at the time the crime was committed, the Kamajors said they were "Kondewa's Kamajors";
>
> (ii) that they also said they had come from villages including Talia and Tihun both of which are in Bonthe District;
>
> (iii) that the vehicle was taken to Talia and given to Norman then to Kondewa; and
>
> (iv) that Kondewa was subsequently seen driving the car around in Bo."[411]

6277. para. 213: Based on this evidence the Trial Chamber concluded that this particular crime in Moyamba District was carried out by Kamajors operating under the direct orders of Kondewa.[412]

6278. para. 214: It is evident that apart from Kondewa's *de jure* status as High Priest of all the Kamajors in the country, a status which the Trial Chamber found did not by itself give Kondewa effective control over the Kamajors, the only other evidence relied on by the Trial Chamber consisted of statements made by the alleged perpetrators and the use of the vehicle by Kondewa after it had first been given to Norman. The Appeals Chamber finds that the fact that the Kamajors in question identified themselves as "Kondewa's Kamajors" is insufficient to establish the existence of a superior-subordinate relationship beyond reasonable doubt, the statement having been made in the absence of Kondewa. Furthermore, the fact that they also stated that they had come from Talia and Tihun, among other villages, was insufficient. The Trial Chamber, in its findings on the responsibility of Kondewa in Bonthe District, found that apart from the Kamajors

who carried out the 15 February 1998 attack on Bonthe, there was no evidence on which it could conclude beyond reasonable doubt that "Kondewa did exercise the same degree of control over other Kamajor commanders and fighters who operated in the surrounding areas of Bonthe Town, prior to the attack or subsequently."

6279. para. 215: There was thus, insufficient evidence linking Kondewa to these particular Kamajors that could establish beyond reasonable doubt that he had a superior-subordinate relationship with them. The Appeal Chamber finds, therefore, that on the evidence it was not open to a reasonable tribunal of fact to conclude that Kondewa was individually criminally responsible as a superior for this particular act of pillage, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.f. of the Statute in Moyamba District.

iii. Dispositon

6280. para. 216: For the reasons set out above, the Appeals Chamber grants Kondewa's Third Ground of Appeal and reverses the verdict of guilt on Count 5 and substitutes a verdict of not guilty.

(iii) Burning as Pillage

6281. para. 389: The Appeals Chamber notes that the relevant question in this ground of appeal is whether the crime of pillage, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.f. of the Statute[355] can, as a matter of law, include acts of burning. For the purpose of this discussion, the Appeals Chamber considers the acts of burning relevant to this case to be acts of destruction not justified by military necessity. Therefore, the question here is whether the prohibition against pillage in common Article 3 and Additional Protocol II and as reflected in customary international law can include a prohibition against destruction not justified by military necessity.

6282. para. 390: The prohibition against pillage and the prohibition against destruction not justified by military necessity are long-standing rules in international humanitarian law. Both prohibitions exist in customary international law applicable to non-international armed conflict at the times relevant to this case.[766] However, they have been more substantially elaborated upon in

[355] *See* CDF Indictment, para. 27.

the conventional international law applicable to international armed conflict and occupied territories, specifically.

6283. para. 391: An analysis of conventional international law and State practice indicates that the prohibition against pillage and the prohibition against destruction not justified by military necessity have been maintained as separate prohibitions. For example, the Lieber Code of 1863 qualifies the prohibition against "destruction of property" as conduct "not commanded by the authorized officer" whereas the prohibition against "pillage and sacking" is absolute.[767] The distinction is more pronounced in the contemporaneous Project of an International Declaration concerning the Laws and Customs of War, Brussels, 27 August 1874, which provided for protections against pillage and destruction or seizure in separate articles.[768] Similarly, Article 32 of the Laws of War on Land, Oxford, 9 September 1880, separately forbids combatants "(a) To pillage, even towns taken by assault; [and] (b) To destroy public or private property, if this destruction is not demanded by an imperative necessity of war . . . ."

6284. para. 392: The 1907 Hague Regulations[769] and 1949 Geneva Conventions similarly provide separate prohibitions against pillage and destruction not justified by military necessity. Article 28 of the Hague Regulations of 1907 prohibits "pillage of a town or place, even when taken by assault" and Article 47 provides that "pillage is formally prohibited." Article 23(g) forbids a State "[t]o destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war."[770]

6285. para. 393: Geneva Convention IV provides that "[p]illage is prohibited" in Article 33, paragraph 2 and that "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" are grave breaches in Article 147.[771] Geneva Convention IV, Article 53 states:

> "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations."

6286. para. 394: Additional Protocol II expressly prohibits pillage whereas there are no provisions explicitly prohibiting destruction not justified by military necessity or unlawful attack on civilian property.

6287. para. 395: Article 13, paragraph 1, of Additional Protocol II states that the civilian population and individual civilians enjoy general protection against the dangers arising from military operations. The ICRC Commentary on Article 13 states that securing general protection

of the civilian population in conformity with this Article is "based on the general principles relating to the protection of the civilian population which apply irrespective of whether the conflict is an international or an internal one."[772] In particular, the principles of distinction and proportionality indicate that attacks against dwellings, schools and other buildings occupied by civilians are prohibited unless the buildings have become legitimate military objectives.[773]

6288. para. 396: Although the prohibition against pillage and the prohibition against destruction of property not justified by military necessity are distinct in the principal conventional international law instruments, an examination of relevant ICRC Commentaries on the Geneva Conventions and the additional protocols to the Geneva Conventions suggests that the prohibitions are related. According to the ICRC Commentary, the prohibition against pillage in Article 4(2)(g) of the Additional Protocol II:

> "is based on Article 33, paragraph 2 of □Geneva Convention IV□. It covers both organized pillage and pillage resulting from isolated acts of indiscipline. It 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."[774]

6289. para. 397: The ICRC Commentary on Article 33, paragraph 2 of Geneva Convention IV states:

> "The purpose of this Convention is to protect human beings, but it also contains certain provisions concerning property, designed to spare people the suffering resulting from the destruction of their real and personal property (houses, deeds, bonds, etc., furniture, clothing, provisions, tools, etc.).
>
> This prohibition is an old principle of international law, already stated in the Hague Regulations in two provisions: Article 28, which says: 'The pillage of a town or place, even when taken by assault, is prohibited', and Article 47, which reads: 'Pillage is formally forbidden'. The Geneva Convention of 1949 omitted the Word 'formally' in order not to risk reducing, through a comparison of the texts, the scope of other provisions which embody prohibitions, and which, while they contain no adverb, are nevertheless just as absolute in character. This prohibition is general in scope. It concerns not only pillage through individual acts without the consent of the military authorities, but also organized pillage, the effects of which are recounted in the histories of former wars, when the booty allocated to each soldier was considered as part of his pay. Paragraph 2 of Article 33 is extremely concise and clear; it leaves no loophole. The High Contracting Parties prohibit the ordering as well as the authorization of pillage. They pledge themselves furthermore to prevent or, if it has commenced, to stop individual pillage. Consequently, they must take all the necessary legislative steps. The prohibition of pillage is applicable to the territory of a Party to the conflict as well as to occupied territories. It guarantees all types of property, whether they belong to private persons or to communities or the State. On the other hand, it leaves intact the right of requisition or seizure."[775]

6290. para. 398: Thus, this commentary notably suggests that the Geneva Convention IV is "designed to spare people the suffering resulting from the destruction of their real and personal property"[776] and appears to relate the prohibition against pillage to that objective.

6291. para. 399: Nonetheless, the absolute prohibition against pillage distinguishes it from the prohibition against destruction or seizure of civilian property, as the latter allows for such conduct in conditions of military necessity. This distinction has the consequence that an express absolute prohibition against pillage logically does not implicitly include the qualified prohibition against destruction of property.

6292. para. 400: The preceding discussion demonstrates that the prohibitions against pillage and wanton destruction have been considered distinct in the conventional law prior to time relevant to this case. The Appeals Chamber notes that the interpretation of pillage at other international courts and State practice also demonstrate that pillage relates specifically to unlawful appropriation and therefore could not include acts of destruction.

6293. para. 401: The ICTY's interpretation and application of the prohibitions against pillage and wanton destruction is consistent with the distinction between the two crimes. Only one case at the ad hoc tribunals listed acts of destruction as pillage,[777] and there it was said obiter dicta and has not been followed in any subsequent cases.[778] The ICTY Appeals Chamber in *Kordić and Čerkez* defined the "crime of plunder" as:

> "all forms of unlawful appropriation of property in armed conflict for which individual criminal responsibility attaches under international criminal law, including those acts traditionally described as 'pillage'."[779]

6294. para. 402: ICTY chambers consider the terms "pillage," "plunder" and "spoliation" to describe the unlawful appropriation of public and private property during armed conflicts,[780] and that "plunder" should be understood as encompassing acts traditionally described as "pillage."[781]

6295. para. 403: The Preparatory Commission for the International Criminal Court defined the elements of the "war crime of pillage" as including the requirement that the "perpetrator appropriated certain property," "for private or personal use,"[782] "without the consent of the owner."[783] International tribunals give consideration to the work done in producing the Rome Statute on the establishment of an international criminal court, and, specifically, the finalized draft text of the elements of crimes completed by the Preparatory Commission for the International Criminal Court in July 2000.[784] Although that document post-dates the acts involved here, it is nonetheless helpful in assessing the state of customary international law. In this regard, it should

be noted that all the States attending the conference, whether signatories of the Rome Statute or not, were eligible to be represented on the Preparatory Commission. From this perspective, the document is a useful indication of the opinio juris of States.

6296. para. 404: The ICRC compendium on Customary International Humanitarian Law, published in 2005, surveyed State practice and concluded that pillage is the "specific application of the general principle of law prohibiting theft" thereby involving the "appropriation" of property "for private or personal use."[785]

6297. para. 405: The Prosecution's argument that Australia, Canada and the United Kingdom consider pillage to include the destruction of property is unavailing. The Prosecution appears to suggest that these three military manuals demonstrate State practice and therefore are indicative of the rule in customary international law. In determining customary international law with reference to State practice, the International Court of Justice in the North Sea Continental Shelf cases stated that the "State practice … [should be] both extensive and virtually uniform in the sense of the provision invoked; and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved."[786] Here, no such uniform practice is indicated by an isolated examination of the military manuals of three States. Notably, the Prosecution provides no submissions regarding the practice of the remaining States.

6298. para. 406: Further, the "practice" evidenced by the military manuals of Australia, Canada and the United Kingdom is not uniform. While Australia's Defence Force Manual appears to consider that "[p]illage is the seizure or destruction of enemy private or public property . . . for private purposes," Australia's Commanders' guide appears to define pillage as "the violent acquisition of property for private purposes."[787] A similar apparent disagreement exists in the Canada's military manuals.[788] Further, the United Kingdom military manual relates pillage to theft.[789] Moreover, the military manuals of Australia, Canada and the United Kingdom each provide separate prohibitions against wanton destruction and pillage, indicating that those States do not consider the prohibition against pillage to encompass the prohibition against destruction.

6299. para. 407: Finally, evidence that the prohibition against pillage does not include the prohibition against destruction or seizure of property can be found in the drafting history of the Statute of the Special Court. Article 3 of the Statute provides jurisdiction over serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, including "pillage." According to the Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, the drafters had recourse to Sierra Leonean law:

> "in cases where a specific situation or an aspect of it was considered to be either unregulated or inadequately regulated under international law. The crimes considered to be relevant for this purpose and included in the Statute are: offences relating to . . . wanton destruction of property, and in particular arson, under the 1861 Malicious Damage Act."[790]

6300. para. 408: If pillage included wanton destruction, there would have been no reason to include the provision of the 1861 Malicious Damage Act.

a. Disposition

6301. para. 409: Taking into consideration the definition of pillage applied by the ICTY and ICTR which logically excludes acts of destruction, the distinction between the prohibitions against pillage and destruction not justified by military necessity, which is preserved throughout applicable conventional international law and the drafting history of the Statute of the Special Court, the Appeals Chamber finds that a necessary element of the crime of pillage is the unlawful appropriation of property. Consequently, burning and other acts of destruction of property not amounting to appropriation as a matter of law, cannot constitute pillage under international criminal law. This Ground of Appeal therefore fails.

CHAPTER 12 - ARTICLE 6.1 LIABILITY

A. CHARLES TAYLOR

1. Indictment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-I, Indictment, 16 March 2006

(a) Individual Criminal Responsibility

(i) The Accused

6302. CHARLES GHANKAY TAYLOR aka DANKPANNAH CHARLES GHANKAY TAYLOR aka GHANKAY TAYLOR aka DANKPANNAH CHARLES GHANKAY MACARTHUR TAYLOR (the ACCUSED) was born on 27 or 28 January 1948 at Arthington in the Republic of Liberia.[356]

6303. From the late 1980's the ACCUSED was the Leader or Head of the National Patriotic Front of Liberia (NPFL), an organized armed group.[357]

6304. From 2 August 1997 until about 11 August 2003, the ACCUSED was the President of the Republic of Liberia.[358]

6305. Paragraphs 1 through 3 are incorporated by reference in CHARGES below.[359]

(ii) Charges

6306. By his acts or omissions in relation to the below described events, the ACCUSED, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below.[360]

6307. The ACCUSED, by his acts or omissions, is 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 Amended Indictment, which crimes the ACCUSED planned, instigated, ordered, committed, or in whose planning, preparation or execution the ACCUSED otherwise aided and abetted, or which crimes amounted to or were involved within a common plan, design or purpose

[356] Taylor Indictment, para. 1.
[357] Taylor Indictment, para. 2.
[358] Taylor Indictment, para. 3.
[359] Taylor Indictment, para. 4.
[360] Taylor Indictment, at p. 2.

in which the ACCUSED participated, or were a reasonably foreseeable consequence of such common plan, design or purpose.[361]

2. Trial Judgement

The Prosecutor v. *Charles Ghankay Taylor*, SCSL-03-01-T, Judgement, 18 May 2012

(a) Findings and Conclusions

(i) Law on Responsibility Pursuant to Article 6.1 of the Statute

a. General - Law on Responsibility Pursuant to Article 6.1 of the Statute

6308. para. 454: Article 6(1) of the Statute provides:

> 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.

b. Committing - Law on Responsibility Pursuant to Article 6.1 of the Statute

6309. para. 456: The Trial Chamber notes that the Prosecution does not allege that the Accused physically or directly committed any charged crime as a principal perpetrator. [1081]

c. Committing through Participation in a Joint Criminal Enterprise - Law on Responsibility Pursuant to Article 6.1 of the Statute

6310. para. 457: The Indictment charges the Accused with the basic ("within") and extended ("foreseeable") forms of JCE.[1082] The following common elements have to be established:

i. A plurality of persons;

ii. The existence of a common plan, design or purpose which amounts to or involves the commission of a crime provided for in the Statute;

iii. Participation of the accused in the common plan, design or purpose.[1083]

6311. para. 458: The principle that an individual may be held responsible based on participation in a joint criminal enterprise is established in customary international law.[1084]

[361] Taylor Indictment, para. 33.

6312. para. 459: The plurality of persons need not be "organised in a military, political or administrative structure"[1085] but it needs to be demonstrated that the plurality of persons acted in concert with each other. While the plurality of persons must be identified, it is not necessary to identify by name each of the persons involved, and depending on the circumstances of the case, it can be sufficient to refer to categories or groups of persons.[1086]

6313. para. 460: With respect to the requirement of the existence of a common purpose, the Appeals Chamber has held 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".[1087] The plan need not have been previously arranged or formulated, but may materialize contemporaneously and be inferred from the facts.[1088]

6314. para. 461: The Accused's participation in the common plan need not involve the commission of a specific crime, but may take the form of assistance in or contribution to the common plan.[1089]

6315. para. 462: The Prosecution submits that the "law may or may not require that the Accused's contribution be significant", referring to ICTY jurisprudence as authority for the position that the contribution need not be significant.[1090] The Defence, on the other hand, submits that the contribution must have "substantially assisted or significantly affected" the enterprise's goals, and that the Accused's participation must be "indispensable for the achievement of the final result".[1091]

6316. para. 463: The Trial Chamber notes, however, that contrary to the parties' submissions, it is established law that it is not required that the Accused's participation in the common plan is necessary or substantial, but he must have made at least a "significant" contribution to the common purpose.[1092]

6317. para. 464: It is also possible for an Accused to withdraw from the joint criminal enterprise after which point, he will not bear responsibility for the acts of the other members of the group.[1093] 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.[1094] 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.[1095]

6318. para. 465: The following mental elements are required for the first form of JCE in order for the Accused to be held liable for crimes falling within the common purpose of the JCE:

i. The Accused intended to commit the crime or underlying offence, and this intent must be shared with the other members of the joint criminal enterprise.[1096]

6319. para. 466: The following mental elements are required for the third form of JCE, in order for the Accused to be held liable for a crime that falls outside of the common purpose of the JCE, but is a natural and foreseeable consequence of the common purpose:

i. The Accused intended to take part in and contribute to the common plan;[1097]

ii. The Accused had sufficient knowledge that the additional crime might be perpetrated by a member of the group, or a person used by a member of the group, and willingly took the risk by continuing to participate in the common plan.[1098]

6320. para. 467: With respect to the third form of JCE, the Defence submits that the Trial Chamber should follow the approach of the Appeals Chamber of the STL and hold that there can be no liability for specific intent crimes such as terrorism under the third form of JCE.[1099] The Prosecution did not address this issue in its submissions.

6321. para. 468: The Trial Chamber notes that the jurisprudence of the ICTY allows for convictions under JCE III for genocide and persecution as a crime against humanity even though those crimes require specific intent.[1100] However, the Appeals Chamber of the STL has diverged from this jurisprudence, on the basis that it results in the legal anomaly that "a person could be convicted as a (co)perpetrator for a *dolus specialis* crime without possessing the requisite *dolus specialis"*.[1101] It held that "the better approach under international criminal law is not to allow convictions under JCE III for special intent crimes like terrorism", [1102] and to instead treat such an offender as an aider and abettor.[1103] The Trial Chamber concurs with the reasoning of the STL Appeals Chamber and accordingly finds that the Accused may not be held liable under the third form of JCE for specific intent crimes such as terrorism.

d. Planning - Law on Responsibility Pursuant to Article 6.1 of the Statute

6322. para. 469: Planning consists of the following physical and mental elements:[1104]

i. The accused, alone or with others, intentionally designed an act or omission constituting the crimes charged;[1105]

ii. With the intent that a crime or underlying offence be committed in the execution of that design, or with the awareness of the substantial likelihood that a crime or underlying offence would be committed in the execution of that design.[1106]

6323. para. 470: While the Prosecution need not prove that the crime or underlying offence with which the accused is charged would not have been perpetrated but for the Accused's plan, the plan must have been a factor "substantially contributing to […] criminal conduct constituting one or more statutory crimes that are later perpetrated".[1107]

e. Instigating- Law on Responsibility Pursuant to Article 6.1 of the Statute

6324. para. 471: Instigating consists of the following physical and mental elements:[1108]

i. The accused, through either an act or an omission, prompted another to act in a particular way,[1109]

ii. With the intent that a crime or underlying offence be committed as a result of such prompting, or with the awareness of the substantial likelihood that a crime or underlying offence would be committed as the result of such prompting.[1110]

6325. para. 472: The Accused's prompting may be implicit, written or otherwise non-verbal,[1111] and does not require that the accused have "effective control" over the perpetrator or perpetrators.[1112] The Accused's prompting may consist of a positive act, but may also be accomplished by omission.[1113]

6326. para. 473: While the Accused's prompting must have been a factor "substantially contributing to the conduct of another person committing the crime", the Prosecution need not prove that the crime or underlying offence would not have been perpetrated but for the prompting of the Accused.[1114]

f. Ordering - Law on Responsibility Pursuant to Article 6.1 of the Statute

6327. para. 474: Ordering consists of the following physical and mental elements:[1115]

i. The Accused intentionally instructed another to carry out an act or engage in an omission,[1116]

ii. With the intent that a crime or underlying offence be committed in the execution of those instructions, or with the awareness of the substantial likelihood that a crime or underlying offence would be committed in the execution of those instructions.[1117]

6328. para. 475: While the Prosecution need not prove that there existed a formal superior-subordinate relationship between the accused and perpetrator,[1118] it must provide "proof of some position of authority on the part of the Accused that would compel another to commit a crime in

following the Accused's order".[1119] Such authority may be informal and of a temporary nature,[1120] and consequently, the order issued by the Accused need not be legally binding upon the physical perpetrator or intermediary perpetrator.

6329. para. 476: The order need not take any particular form.[1121] However, ordering requires a positive act and cannot be committed by omission.[1122] Because the ICTY Appeals Chamber held that the Accused need merely "instruct another person to commit an offence",[1123] it is clear that liability for ordering may ensue where the Accused issues, passes down, or otherwise transmits the order, and that he need not use his position of authority to "convince" the perpetrator to commit the crime or underlying offence.[1124] Furthermore, the Accused need not give the order directly to the physical perpetrator,[1125] and an intermediary lower in the chain of command who passes the order on to the perpetrator may also be held responsible for ordering the underlying offence as long as he has the requisite state of mind.[1126]

6330. para. 477: While the issuance of the order must have been a factor substantially contributing to the physical perpetration of a crime or underlying offence,[1127] the Prosecution need not prove that the crime or underlying offence would not have been perpetrated but for the Accused's order.[1128]

6331. para. 478: The Defence submits that while Trial Chambers in the *AFRC*, *RUF* and *CDF* cases have held that the Accused's position of authority can be inferred or implied, these legal findings are based on a misreading of the cited authorities, which instead provide only that the existence of an order may be proved through circumstantial evidence.[1129] Further, it argues that the Appeals Chamber in the *RUF* case failed to make any distinction between an inference of authority and an inference of an order in finding that "ordering can be established by direct or circumstantial evidence".[1130]

6332. para. 479: The Defence therefore submits that while the existence of an order may be proved through circumstantial evidence, where this is the only reasonable inference, the Prosecution must furnish direct evidence establishing that, at the material time, the Accused held the required position of authority.[1131] It submits that, even if the Trial Chamber finds that circumstantial evidence can establish the Accused's position of authority, it should "in the interests of justice demand independent evidence proving the separate elements of the *actus reus* of ordering".[1132] It submits that the Trial Chamber should not follow recent jurisprudence which "compounds the elements to the extent that the existence of an Accused's position of authority has been derived from evidence that the Accused issued orders".[1133]

6333. para. 480: In Section IV(2), "Considerations Regarding the Evaluation of Evidence", the Trial Chamber holds that it is entitled to rely on circumstantial evidence in cases in which the only reasonable inference to be drawn from such evidence leads to proof of the guilt of the Accused.[1134] Moreover, the Trial Chamber finds that the Appeals Chamber's statement that "ordering can be established by direct or circumstantial evidence" implies that each element of the *actus reus* of ordering can be proved by means of either type of evidence.

6334. para. 481: The Trial Chamber finds accordingly that, as with all other elements of crimes or modes of liability, the authority of the Accused may be proved by either direct or circumstantial evidence. The Trial Chamber further finds that evidence that the Accused has issued orders may be considered as circumstantial evidence that, *inter alia,* establishes that the Accused was in a position of authority.

g. Aiding and abetting - Law on Responsibility Pursuant to Article 6.1 of the Statute

6335. para. 482: Aiding and abetting consists of the following physical elements:[1135]

i. The Accused provided practical assistance, encouragement, or moral support to the perpetration of a crime or underlying offence[1136] and

ii. Such practical assistance, encouragement, or moral support had a substantial effect upon the commission of a crime or underlying offence.[1137]

6336. para. 483: An Accused may aid and abet not only by means of positive action, but also through omission.[1138]

6337. para. 484: The Accused may aid and abet at one or more of the "planning, preparation or execution" stages of the crime or underlying offence.[1139] The lending of practical assistance, encouragement, or moral support may occur before, during, or after the crime or underlying offence occurs.[1140] The *actus reus* of aiding and abetting does not require "specific direction".[1141] No evidence of a plan or agreement between the aider and abettor and the perpetrator is required,[1142] except in cases of *ex post facto* aiding and abetting where "at the time of the planning, preparation or execution of the crime, a prior agreement exists between the principal and the person who subsequently aids and abets the commission of the crime".[1143]

6338. para. 485: Although the practical assistance, encouragement, or moral support provided by the Accused must have a substantial effect upon the commission of the crime or underlying

offence,[1144] the Prosecution need not prove that the crime or underlying offence would not have been perpetrated but for the Accused's contribution.[1145]

6339. para. 486: The mental elements of aiding and abetting require that:

i. The Accused performed an act with the knowledge that such act would assist the commission of a crime or underlying offence, or that he was aware of the substantial likelihood that his acts would assist the commission of underlying offence;[1146] and

ii. The Accused is aware of the essential elements of the crime committed by the principal offender, including the state of mind of the principal offender.[1147]

6340. para. 487: Although the lending of practical assistance, encouragement, or moral support must itself be intentional, the intent to commit the crime or underlying offence is not required.[1148] Instead, the Accused must have knowledge that his acts or omissions assist the perpetrator in the commission of the crime or underlying offence.[1149] Such knowledge may be inferred from the circumstances.[1150] The Accused must be aware, at a minimum, of the essential elements of the substantive crime or underlying offence for which he is charged with responsibility as an aider and abettor.[1151] The requirement that the aider and abettor need merely know of the perpetrator's intent — and need not share it — applies equally to specific-intent crimes or underlying offences such as persecution as a crime against humanity.[1152]

(ii) Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

a. Joint Criminal Enterprise - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

6341. para. 6891: In order to find the Accused guilty of committing the crimes charged in Counts 1 to 11 of the Indictment through participation in a Joint Criminal Enterprise, the Trial Chamber must be satisfied beyond reasonable doubt that the Accused participated in a common plan, design or purpose with others, which amounts to or involves the commissions of the crimes charged. The Accused's participation in the common plan must have made at least a "significant" contribution to the common purpose.[15495] Furthermore, for liability under the first form of JCE the Trial Chamber must be satisfied beyond reasonable doubt that the Accused both intended the commission of the crime and intended to participate in a common plan aimed at its commission. For liability under the third form of JCE the Trial Chamber must be satisfied beyond reasonable doubt that the Accused both intended to take part in and contribute to the common plan and had sufficient knowledge that the additional crime might be perpetrated by a member of the group, or

a person used by a member of the group, and willingly took the risk by continuing to participate in the common plan.[15496]

6342. para. 6892: The Trial Chamber recalls its Decision that "[t]he Prosecution has adequately fulfilled the pleading requirements of the alleged Joint Criminal Enterprise in the Second Amended Indictment, and has provided sufficient detail to put the Accused on notice of the case against him". The Trial Chamber identified the "common purpose" of the alleged Joint Criminal Enterprise (JCE), as "a campaign to terrorize the civilian population of the Republic of Sierra Leone, of which the crimes charged in Counts 2-11 of the Indictment were either an integral part, or a foreseeable consequence thereof".[15497] This decision was upheld by the Appeals Chamber.[15498]

6343. para. 6893: The Trial Chamber notes, however, that the Prosecution's theory of JCE has evolved and shifted over the course of the proceedings. In its Final Trial Brief, the Prosecution alleges that the use of criminal means, a campaign of terror, encompassed the Indictment Crimes, "in order to achieve the ultimate objective of the JCE, to forcibly control the population and territory of Sierra Leone and to pillage its resources, in particular diamonds".[15499] The Prosecution further contends that thereafter the joint actions of the Accused and other participants of the JCE were geared toward those dual objectives.[15500]

6344. para. 6894: The Trial Chamber has found that the Prosecution failed to prove that prior to 1996 the Accused, Foday Sankoh and Kukoi Samba Sanyang (a.k.a. Dr Manneh), participated in any common plan involving the commission of the crimes alleged in the Indictment, nor that the alleged meetings in Libya, Burkina Faso and Voinjama, where the common plan is alleged to have been established, ever took place.[15501] Furthermore, while the Trial Chamber found that the Accused provided significant operational and military support to the RUF during its 1991 invasion of Sierra Leone, the evidence does not indicate that this support was provided pursuant to a common plan within the context of a joint criminal enterprise.

6345. para. 6895: Subsequently, the nature of the relationship between the Accused and the RUF, and later the RUF/AFRC, evolved over time. While the relationship was a mutually beneficial one, the Trial Chamber is of the view that it was the expression of converging and synergistic interests, rather than "a common plan to terrorize the civilian population of Sierra Leone". As these interests evolved, the relationship evolved accordingly.

6346. para. 6896: The Trial Chamber has found that although the Accused supported the creation of the RUF, providing training camps and other forms of support in the early 1990s, and that

Taylor's NPFL forces participated in the invasion of Sierra Leone in March 1991, the Prosecution failed to prove beyond reasonable doubt that Taylor's support for the 1991 invasion of Sierra Leone was undertaken pursuant to "a common purpose to terrorize the civilian population of Sierra Leone". The evidence instead shows that the Accused and the RUF had common enemies, namely, ULIMO, a Liberian insurgency group in Sierra Leone and the Sierra Leone Government forces which supported ULIMO, and it was in the interest of the Accused and the RUF both to join forces against their common enemies.[15502]

6347. para. 6897: The Trial Chamber has also found that the Prosecution failed to prove its allegation that during this period the NPFL trained the RUF recruits in terror tactics in accordance with the JCE.[15503] In fact, Prosecution witnesses testified to the contrary, that training included the Geneva Convention protections for civilians in armed conflict.[15504] Moreover, it is clear that the RUF strongly opposed some of the crimes committed by NPFL soldiers against the Sierra Leonean civilian population leading to Top 20 and Top 40.[15505] For this reason, the Trial Chamber considers that even if there were joint military operations between the NPFL and RUF in the early 1990s, which the evidence indicates there was, the Prosecution failed to establish they were undertaken pursuant to a joint criminal enterprise. Cooperation between the NPFL and RUF was limited in its purpose and it was military, not criminal, in its nature. Moreover, it continued only until Top Final in 1992, at which point, because of the criminal activities of the NPFL troops towards the Sierra Leonean citizens, and due to intensified attacks from ULIMO and the SLA, the cooperation ended with the withdrawal of the NPFL troops from Sierra Leone by the Accused. The Trial Chamber has found that the relationship between Taylor and the RUF significantly waned after Top Final but that the Accused provided low-level support to the RUF as it continued fighting in Sierra Leone, while the Accused was himself fighting in Liberia.[15506]

6348. para. 6898: The Trial Chamber observes that the relationship between the RUF and the Accused resumed a higher level of activity following the election of the Accused as President of Liberia in 1997. At this point, the Accused was in a position to play a significantly expanded role in Sierra Leone, both in terms of political and military support to the RUF. However, in the Trial Chamber's view the Prosecution failed to prove that this support was provided pursuant to "a common plan to terrorize the civilian population of Sierra Leone". Rather, the evidence relating to the support provided indicates that there was a *quid pro quo* in the relations between the RUF and the Accused. The trading of diamonds for arms is the clearest example of this *quid pro quo*, and a number of statements attributed to the Accused indicate the interest he had in providing weapons or facilitating the provision of weapons to the RUF in exchange for diamonds.[15507]

6349. para. 6899: In the Trial Chamber's view, this evidence clearly shows that the Accused and the RUF were military allies and trading partners, but it is an insufficient basis to find beyond reasonable doubt that the Accused was part of any JCE.

6350. para. 6900: The Trial Chamber finds that the Prosecution failed to prove beyond reasonable doubt that the Accused participated in a common plan, design or purpose which amounted to or involved the commission of a crime within the jurisdiction of the Court. For this reason the Trial Chamber finds the Accused not criminally responsible pursuant to Article 6.1 of the Statute for the Indictment crimes by virtue of having participated in a Joint Criminal Enterprise.

b. Aiding and Abetting - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

i. General - Aiding and Abetting - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

6351. para. 6904: In order to find the Accused criminally responsible pursuant to Article 6.1 of the Statute for aiding and abetting the planning, preparation or execution of the crimes charged in Counts 1 to 11 of the Indictment, the Trial Chamber must be satisfied beyond reasonable doubt that the Accused provided practical assistance, encouragement, or moral support which had a substantial effect upon the commission of the crimes *(actus reus)*.[15513] Furthermore, the Trial Chamber must be satisfied beyond reasonable doubt that the Accused knew that his acts or omissions would assist the commission of the crime, or that he was aware of the substantial likelihood that his acts would assist the commission of the crime, and that the Accused was aware of the "essential elements" of the crime committed by the principal offender, including the state of mind of the principal offender (*mens rea*).[15514]

6352. para. 6905: Before turning to the various forms of assistance provided by the Accused to the RUF/AFRC, the Trial Chamber recalls its findings regarding the RUF/AFRC's war strategy. Throughout the Indictment period, the operational strategy of the RUF and AFRC was characterized by a campaign of crimes against the Sierra Leonean civilian population, including murders, rapes, sexual slavery, looting, abductions, forced labour, conscription of child soldiers, amputations and other forms of physical violence and acts of terror.[15515] These crimes were inextricably linked to the strategy and objectives of the military operations themselves.[15516] The RUF/AFRC pursued a policy and strategy of committing crimes against the civilian population

in order to achieve military gains, and also politically in order to attract the attention of the international community and to heighten their negotiating stance with the Sierra Leonean Government. This strategy entailing a campaign of terror against the civilian population is explicitly demonstrated by the overt names of their military campaigns, such as "Operation Pay Yourself", "Operation No Living Thing" and "Operation Spare No Soul". The Trial Chamber therefore considers that any assistance towards these military operations of the RUF and RUF/AFRC constitutes direct assistance to the commission of crimes by these groups.

6353. para. 6906: The Trial Chamber will now consider the various forms of assistance provided by the Accused to the AFRC/RUF and whether his conduct satisfies the *actus reus* and *mens rea* of aiding and abetting the crimes charged in the Indictment.

ii. Findings on the Physical Elements of Aiding and Abetting - Aiding and Abetting - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

iii. Arms and Ammunition - Findings on the Physical Elements of Aiding and Abetting - Aiding and Abetting - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

6354. para. 6910: The Trial Chamber has found that during the Indictment period, the Accused directly or through intermediaries supplied or facilitated the supply of arms and ammunition to the RUF/AFRC. The Accused sent small but regular supplies of arms and ammunition and other supplies to the RUF from late 1997 to 1998 via his subordinates, and substantial amounts of arms and ammunition to the AFRC/RUF from 1998 to 2001.[15522] The Accused facilitated much larger shipments of arms and ammunition from third party states to the AFRC/RUF, including the Magburaka shipment of October 1997 and the Burkina Faso shipment of November/December 1998.[15523]

6355. para. 6911: The Trial Chamber has found that the arms and ammunition provided by the Accused were used by the RUF, AFRC, AFRC/RUF Junta or alliance, and Liberian fighters during various military offensives in which crimes were committed, including the Junta mining operations at Tongo Fields prior to the ECOMOG Intervention, "Operation Pay Yourself" and subsequent offensives in Kono District in 1998, and in the Freetown invasion in January 1999, and attacks on the outskirts of Freetown and the Western Area in late January to early February 1999.[15524] The Trial Chamber has found that arms and ammunition provided by the Accused were used by SAJ Musa and Denis Mingo (a.k.a. Superman) in attacks on Mongor Bendugu and

Kabala shortly after Operation Fitti-Fatta in mid-1998, as well as by the AFRC group led by Alex Tamba Brima (a.k.a. Gullit), Hassan Papa Bangura (a.k.a. Bomb Blast), and Ibrahim Kamara (a.k.a. Bazzy) in their activities in the Koinadugu and Bombali Districts from June to October 1998.[15525] These operations involved widespread or systematic attacks on the civilian population and the commission of crimes, specifically acts of terrorism (Count 1); murder (Counts 2 and 3); rape (Count 4); sexual slavery (Count 5); outrages upon personal dignity (Count 6); cruel treatment (Count 7), other inhumane acts (Count 8); conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities (Count 9); enslavement (Count 10); and pillage (Count 11).

6356. para. 6912: The Trial Chamber finds beyond reasonable doubt that the provision and facilitation of these arms and ammunition by the Accused constituted practical assistance to the commission of crimes by the RUF and RUF/AFRC during the Indictment period. The Trial Chamber will now consider whether this assistance had a substantial effect on the commission of the Indictment crimes.

6357. para. 6913: The Trial Chamber has considered the Defence submission that any assistance provided by sources in Liberia made no substantial contribution to the commission of the crimes pleaded in the Indictment because the RUF and RUF/AFRC's primary sources of military equipment were in fact weapons captured from ECOMOG, from government stores when the groups acted as the Junta government and from arms trading with Guinea and former ULIMO combatants. The Trial Chamber is also mindful that the applicable law for aiding and abetting does not require that the Accused be the only source of assistance in order for his contribution to be substantial.[15526] The Chamber has found that in addition to receiving arms and ammunition from the Accused, the RUF, AFRC/RUF also obtained supplies from the existing stockpiles of the Kabbah Government when they took over power in May 1997, by capturing them from ECOMOG and UN peacekeepers, and through trade with ULIMO, AFL and ECOMOG commanders. However, these sources of materiel were of minor importance in comparison to that supplied or facilitated by the Accused.[15527] The Trial Chamber has found that the additional sources of supply which the RUF/AFRC had could not provide sufficient quantities of materiel to sustain the existence and military operations of the rebels.[15528]

6358. para. 6914: The Trial Chamber has also found that the RUF/AFRC in fact heavily and frequently relied on the materiel supplied and facilitated by the Accused. The depletion of RUF arms and ammunition was a problem which often prompted Bockarie and Sesay to turn to the Accused, and the Magburaka shipment is but one example of this.[15529] The Trial Chamber further

recalls its finding that the materiel supplied by or facilitated by the Accused often contributed to and was causally linked to the capture of more supplies by the RUF and AFRC.[15530] The Trial Chamber has found that although there were instances in which the materiel that the Accused gave to the RUF/AFRC was more limited in quantity,[15531] on a number of occasions the arms and ammunitions which he supplied or facilitated were in fact indispensable for the RUF/AFRC military offensives. The materiel provided or facilitated by the Accused was critical in enabling the operational strategy of the RUF and the AFRC during the Indictment period.[15532]

6359. para. 6915: Accordingly, the Trial Chamber finds that the provision and facilitation of the supply of arms and ammunition to the RUF/AFRC had a substantial effect on the commission of crimes charged in the Indictment.

iv. Military Personnel - Findings on the Physical Elements of Aiding and Abetting - Aiding and Abetting - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

6360. para. 6918: The Trial Chamber has found that the Accused sent a group of approximately 20 ex-NPFL fighters who had been integrated into the Armed Forces of Liberia ("AFL") to Sierra Leone. These 20 fighters fought in Karina and Kamalo in Bombali District in August/September 1998 as part of a group of 200 AFRC/RUF fighters. The 20 fighters were later on incorporated into the Red Lion Battalion, which was comprised of 200 fighters. The Red Lion Battalion formed part of a group of 1,000 AFRC/RUF fighters who participated in the invasion of Freetown and committed crimes during the course of military operations in December 1998/January 1999.[15536]

6361. para. 6919: The Trial Chamber further found that the Accused sent Abu Keita and 150 fighters known as the Scorpion Unit, to serve as a standby force in Sierra Leone, ready to protect Liberia from attacks coming from Guinea. Bockarie integrated the Scorpion Unit into the RUF, a decision approved by Daniel Tamba (a.k.a. Jungle) on behalf of the Accused,[15537] and the reinforcements subsequently participated in the attack on Kono and Freetown, including the attack on Kenema. During this attack, crimes charged in Count 1 to 11 of the Indictment took place.

6362. para. 6920: The Trial Chamber further found that the Accused reorganized, armed and sent former SLA fighters who had retreated to Liberia back to Sierra Leone to fight in the Kono and Freetown operations, and these men participated in the attack on Kono in December 1998.[15538] The Trial Chamber has found that Liberian authorities and RUF/AFRC members

recruited and forced Sierra Leonean refugees residing in Liberia to return to Sierra Leone to fight. However, the evidence did not establish that these civilians participated in attacks in Sierra Leone.

6363. para. 6921: The Trial Chamber finds that the provision of military personnel by the Accused constitutes practical assistance to the commission of crimes by the RUF/AFRC during the Indictment period. The Trial Chamber will now consider whether this assistance was substantial.

6364. para. 6922: The Trial Chamber notes that Abu Keita was a former ULIMO general and therefore a person with high-level military expertise. He was sent by the Accused with approximately 150 fighters, who were tasked with the important mission of defending Liberia in case of an incursion from Guinea.[15539] The Trial Chamber therefore considers that this was a relatively experienced military force, and that its subsequent inclusion within the ranks of the RUF and its deployment in the December 1998 attack on Kenema substantially contributed to the commission of crimes during the Freetown invasion.

6365. para. 6923: The Trial Chamber notes, with regard to the 20 AFL fighters who fought in the Red Lion Battalion that evidence was given to the effect that the Red Lion Battalion was an extremely fierce unit, which boosted the morale of the other RUF soldiers who were glad to fight alongside these soldiers.[15540] A witness explained that their fierceness was because most of the soldiers who were in the Red Lion Battalion "had no relations in Freetown, not like us who had family members in Freetown, so they didn't care".[15541]

6366. para. 6924: The Trial Chamber finds that taken cumulatively, and in addition to the arms and ammunition provided by the Accused, the military personnel provided by the Accused constituted practical assistance which had a substantial effect on the commission of crimes by the RUF and RUF/AFRC.

v. Operational Support - Findings on the Physical Elements of Aiding and Abetting - Aiding and Abetting - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

6367. para. 6927: The Trial Chamber has found that during the pre-Indictment period, NPFL radio operators and equipment were sent to Sierra Leone, and RUF fighters were trained by the NPFL radio operators in radio communications, with the knowledge of the Accused. The RUF continued to benefit into the Indictment period from the enhanced communications capacity that

resulted from this assistance. However, as the acts of the Accused took place prior to the Indictment period, the Trial Chamber has not taken them into account in determining criminal responsibility.

6368. para. 6928: The Trial Chamber has found that the Accused also provided operational support to the RUF/AFRC during the Indictment period. The Accused provided satellite phones to Sam Bockarie and Issa Sesay and thus enhanced their capacity to plan, facilitate or order RUF military operations during which crimes were committed. The Trial Chamber notes that the Accused and Sam Bockarie communicated by a satellite phone in furtherance of the Freetown Invasion and other RUF/AFRC military activities during which crimes were committed.[15552]

6369. para. 6929: The Trial Chamber has found that on different occasions RUF members, including Foday Sankoh, Eddie Kanneh, Memunatu Deen and Dauda Aruna Fornie, used Liberian radio communication equipment in Monrovia to communicate with the RUF in Sierra Leone regarding arms shipments, diamond transactions and military operations.[15553] In addition to the equipment at the RUF Guesthouse, there is evidence that Base 1, the radio station at Benjamin Yeaten's home, was used for communications with Bockarie and later Sesay.[15554] The Trial Chamber notes its findings that these communications happened with the knowledge and approval of the Accused.[15555]

6370. para. 6930: The Trial Chamber has also found that "448 messages" were sent by subordinates of the Accused in Liberia, with his knowledge, to warn the RUF of impending ECOMOG jet attacks on AFRC/RUF forces in Sierra Leone.[15556]

6371. para. 6931: The Trial Chamber finds that the communications support provided by the Accused to the RUF/AFRC constitutes practical assistance to the RUF/AFRC for the crimes committed during the course of their military operations throughout the Indictment period.

6372. para. 6932: The Trial Chamber has found that the Accused provided financial support to the RUF/AFRC. In most instances, these funds were given to individual RUF members for unspecified or personal use. After February 1998, the Accused gave funds to Bockarie of $10,000 to $20,000 at a time, on multiple occasions for the purchase of arms from ULIMO.[15557] The Accused also kept diamonds and money in "safekeeping" for the RUF/AFRC.[15558]

6373. para. 6933: The Trial Chamber found that the Accused also provided a Guesthouse to the RUF in Monrovia, which was used by the RUF to facilitate the transfer of arms and funds from the Accused to the RUF and the delivery of diamonds from the RUF to the Accused.[15559]

6374. para. 6934: The Trial Chamber also found that during the Indictment period, the Accused provided the RUF/AFRC with security escorts, facilitation of access through checkpoints, and much needed assistance with transport of arms and ammunition by road and by air. This facilitation of road and air transportation of materiel, as well as security escorts, played a vital role in the operations of the RUF/AFRC during a period when an international arms embargo was in force.[15560]

6375. para. 6935: The Trial Chamber further found that throughout the Indictment period the Accused provided the RUF and RUF/AFRC with other forms of assistance which supported the well-functioning and continued existence of these groups. The Accused provided safe haven for RUF fighters during their retreat from Zogoda[15561] and medical support in Liberia for treatment of wounded RUF fighters,[15562] as well as provision of goods such as food, clothing, cigarettes, alcohol and other supplies to the RUF. The Accused also sent "herbalists" who marked fighters in Buedu and Kono to "protect" them against bullets and bolster their confidence.[15563] Liberian forces also assisted the RUF/AFRC with the capture and return of deserters to Sierra Leone.[15564]

6376. para. 6936: The Trial Chamber notes that a common feature of all of the aforementioned forms of assistance is that they supported, sustained and enhanced the functioning of the RUF and its capacity to undertake military operations in the course of which crimes were committed. The Trial Chamber recalls its finding that the RUF and RUF/AFRC military campaign was inextricably linked to the commission of the crimes charged in the Indictment. Therefore, the Trial Chamber finds that these forms of operational support, including communications, logistics, and the RUF Guesthouse, which improved coordination and facilitated the trade for and vital flow of arms and ammunition to the RUF/AFRC, constitute practical assistance for the commission of crimes charged in Count 1 to 11 of the Indictment.

6377. para. 6937: Taken cumulatively, and having regard to the military support provided by the Accused to the AFRC/RUF, the Trial Chamber finds that the operational support provided by the Accused to the AFRC/RUF had a substantial effect on the commission of crimes charged in Count 1 to 11 of the Indictment.

vi. Encouragement and Moral Support - Findings on the Physical Elements of Aiding and Abetting - Aiding and Abetting - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

6378. para. 6940: The Trial Chamber has considered the ongoing communication and consultation between the Accused and the RUF/AFRC leadership, and the ongoing advice and encouragement that the Accused provided to the RUF/AFRC.

6379. para. 6941: The Trial Chamber has found that the Accused advised Sankoh to participate in the Abidjan peace talks in 1996 in order to obtain arms and ammunition for the RUF, and that the RUF did obtain arms and ammunition in Abidjan. While pre-Indictment, the Trial Chamber considers this incident to show a pattern of conduct by the Accused that continued into and during the Indictment period.

6380. para. 6942: The Trial Chamber also found that in February 1998 the Accused told Johnny Paul Koroma to capture Kono and, after RUF/AFRC forces carried out two consecutive attacks on Koidu Town, subsequently told Bockarie that the RUF should keep control over this area for the purpose of maintaining the trade of diamonds for arms and ammunition.[15570] The Trial Chamber further found that the Accused advised Bockarie to recapture Kono in mid-June 1998 in order to mine diamonds which would be used to purchase arms and ammunition, following which the RUF carried out Operation Fitti-Fatta.[15571]

6381. para. 6943: The Trial Chamber also found that after the Intervention in 1998, the Accused told Bockarie that the RUF should construct or re-prepare the airfield in Buedu, so that arms and ammunitions can be shipped to RUF/AFRC controlled territory.[15572] The Trial Chamber has also found that in 1998, the Accused advised Sam Bockarie to open an RUF training base in Bunumbu, Kailahun District, known as "Camp Lion".[15573]

6382. para. 6944: The Trial Chamber finds that by giving advice and direction to the RUF and RUF/AFRC on matters concerning or directly affecting their military strategy, the Accused encouraged and morally supported the commission of the crimes charged in the Indictment.

6383. para. 6945: The Trial Chamber notes that the Accused held a position of authority as an elder statesman and as President of Liberia. As such, he was accorded deference by the RUF and RUF/AFRC and, as demonstrated by the evidence, his advice was generally heeded by them. The Trial Chamber is therefore convinced that the approval, support and encouragement which the RUF and RUF/AFRC troops received from the Accused greatly boosted their confidence and morale when conducting military operations.

6384. para. 6946: Taken cumulatively, and considering the other forms of practical assistance which the Accused provided, the Trial Chamber finds beyond reasonable doubt that the Accused substantially contributed to the commission of the crimes charged in Counts 1 to 11 of the Indictment by rendering encouragement and moral support to the RUF and RUF/AFRC.

vii. Findings on the Mental Elements of Aiding and Abetting - Aiding and Abetting - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

6385. para. 6947: The Trial Chamber recalls that as early as August 1997, the Accused knew of the atrocities being committed against civilians in Sierra Leone by the RUF and RUF/AFRC forces and of their propensity to commit crimes. The Accused acknowledged that when he became the President of Liberia, he started receiving daily briefings from his national security advisor which would include press and intelligence reports regarding the situation in Sierra Leone.[15574] In addition to this, as a member of ECOWAS, the Accused was also privy to numerous reports which described the "massive looting of property, murder and rapes"[15575] that were being committed on the territory of Sierra Leone.[15576]

6386. para. 6948: The Trial Chamber further recalls that the Accused testified that at that time there were news reports of a "horrific campaign being waged against the civilian population in Sierra Leone".[15577] In a statement dated July 1998, Taylor "strongly condemned the continuing rebel activities in Sierra Leone, as well as the horrendous atrocities that had been committed there".[15578]

6387. para. 6949: In light of the above, the Trial Chamber finds beyond reasonable doubt that the Accused knew that his support to the RUF/AFRC would provide practical assistance, encouragement or moral support to them in the commission of crimes during the course of their military operations in Sierra Leone. Nevertheless, he provided these groups with practical assistance, encouragement and moral support.

6388. para. 6950: The Trial Chamber also finds that the Accused was aware of the "essential elements" of the crimes he was contributing to, including the state of mind of the perpetrators. The Trial Chamber recalls the numerous contemporary public reports which described in detail and over a large period of time each of the crimes charged in Counts 1 to 11 of the Indictment.[15579] The Trial Chamber also notes that after 1997 there was increased media coverage on the RUF/AFRC terror campaign in Sierra Leone.[15580] Such reports on the crimes taking place in Sierra Leone were at the core of discussions during meetings of the ECOWAS Committee of Five (later Committee of Six), of which the Accused was a member.

6389. para. 6951: In light of the above, the Trial Chamber finds that the Accused was also aware of the "essential elements" of the crimes committed by RUF and RUF/AFRC troops, including the state of mind of the perpetrators.

6390. para. 6952: In conclusion, the Trial Chamber is satisfied beyond reasonable doubt that the Accused possessed the necessary *mens rea* for aiding and abetting in relation to the crimes charged in Counts 1 to 11 of the Indictment.

viii. Finding on the Accused's Criminal Responsibility for Aiding and Abetting the Crimes Charged in the Indictment - Aiding and Abetting - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

6391. para. 6953: For the foregoing reasons, the Trial Chamber finds beyond reasonable doubt that the Accused is criminally responsible pursuant to Article 6(1) of the Statute for aiding and abetting the commission of crimes set forth in Counts 1 through 11 of the Indictment.

c. Planning - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

i. General - Planning - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

6392. para. 6957: In order to find the Accused guilty of planning the crimes charged in Counts 1 to 11 of the Indictment, the Trial Chamber must be satisfied beyond reasonable doubt that the Accused, alone or with others, intentionally planned the criminal conduct constituting the crimes charged. While it is not a requirement that the crimes charged would not have been perpetrated but for the Accused's plan, it is necessary to demonstrate that the plan was a factor which substantially contributed to the commission of these crimes or underlying offences.[15584] Furthermore, the Trial Chamber must be satisfied beyond reasonable doubt that the Accused intended that a crime or underlying offence be committed in the execution of that plan, or that he was aware of the substantial likelihood that a crime or underlying offence would be committed in the execution of that plan.[15585]

ii. Findings on the Physical Elements of Planning - Planning - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

6393. para. 6958: The Trial Chamber recalls its finding that in November 1998, Sam Bockarie met with the Accused in Monrovia, where the two of them designed a plan for the RUF/AFRC forces to carry out a two-pronged attack on Kono and Kenema with the ultimate objective of reaching Freetown, releasing Foday Sankoh from prison and regaining control.[15586] The Accused emphasised to Bockarie that this military operation should be "fearful" in order to pressure the Government into negotiations for the release of Foday Sankoh.[15587] Upon returning to Sierra Leone in December 1998, Bockarie convened a meeting at Waterworks, in Kailahun District, where he conveyed this plan to RUF and AFRC commanders. At the end of the meeting Bockarie contacted the Accused via satellite phone. During the conversation, the Accused told Bockarie to use "all means" to capture Freetown.[15588]

6394. para. 6959: The Trial Chamber recalls its finding that Bockarie had the idea to attack Freetown even before meeting with the Accused in Monrovia in November 1998. This is evident from Bockarie's prior request to the Accused to assist him in obtaining a large amount of arms and ammunition from Burkina Faso.[15589] However, the Trial Chamber notes that the actual plan which established the various military targets and the *modus operandi* of the attack was designed during the November 1998 meeting between Bockarie and the Accused.[15590] The objective to capture Kono prior to moving to Freetown was integrated in the plan upon advice from the Accused and the aim to make the operation "fearful" was articulated.[15591] The Trial Chamber notes that the RUF and AFRC attacks which ensued on 17 December 1998 were directed towards the locations prescribed in the plan made by Bockarie and the Accused.[15592]

6395. para. 6960: The Trial Chamber further recalls that in December 1998 and January 1999, Bockarie was in frequent contact via radio or satellite phone with the Accused, either directly or through Yeaten, to update him on the execution of the plan and the progress of the Kono and Freetown operations.[15593]

6396. para. 6961: In light of the above, the Trial Chamber finds that in November 1998, the Accused, in concert with Bockarie, intentionally designed a plan for the RUF/AFRC Freetown Invasion. The Trial Chamber will now consider whether this plan substantially contributed to the crimes committed by RUF/AFRC fighters.

6397. para. 6962: The plan designed by Bockarie and the Accused led directly to the attacks on Kono and Makeni. In the course of the implementation of this plan, a small contingent of troops

led by Idrissa Kamara (a.k.a. Rambo Red Goat) reached Freetown and Bockarie's forces got to the outskirts of Freetown, where they met up with the forces led by Gullit. During the course of the implementation of this plan, these forces committed crimes charged in the Indictment. These crimes resulted directly from the plan made by Bockarie and the Accused in Monrovia.

6398. para. 6963: The Defence submits that the actual attack on Freetown in January 1999 was planned and executed by a group of AFRC soldiers who acted on their own and had no contact with the RUF.[15594] According to the Defence, this shows that the Accused was not involved in any way with the crimes that took place during this attack.

6399. para. 6964: The Trial Chamber recalls its finding that in June/July 1998, before the plan for the two-pronged attack leading to Freetown was made by Bockarie and the Accused, a group of disgruntled AFRC soldiers led by SAJ Musa, who refused to take orders from Bockarie, devised their own plan to attack Freetown in order to "restore the Sierra Leone Army".[15595] In mid-December 1998, these AFRC fighters started the execution of that plan and, independently of the RUF, moved towards Freetown.

6400. para. 6965: The Trial Chamber found that following the Waterworks meeting Bockarie told SAJ Musa to attack Freetown but SAJ Musa refused and continued on his own advance, pursuant to his separate plan. The Trial Chamber found that following the death of SAJ Musa on 23 December 1998, during an attack in Benguema, Alex Tamba Brima (a.k.a. Gullit) took over the leadership of the troops at Benguema.[15596] Gullit then resumed contact with Bockarie and the two of them coordinated efforts to capture Freetown. The Trial Chamber recalls its finding that Bockarie then assumed effective control over Gullit's actions and SAJ Musa's plan was abandoned for the plan that had been made by Bockarie and the Accused in November 1998.[15597] The troops commanded by Gullit in Freetown were subordinated to and used by Bockarie in furtherance of this plan, and further execution of the plan was carried out with close coordination between Bockarie and Gullit, with Gullit in frequent communication with Bockarie and with Gullit taking orders from Bockarie. In these circumstances the Trial Chamber finds that the plan made by Bockarie and the Accused substantially contributed to the commission of crimes committed by Gullit's forces while Gullit was operating under Bockarie's command.

6401. para. 6966: The Accused, having drawn up the plan with Bockarie, and having followed its implementation closely via daily communication with Bockarie, either directly or through Yeaten, was aware of its continuing evolution.

6402. para. 6967: The Trial Chamber notes that the RUF/AFRC military campaign to recapture Freetown was marked by extreme violence and involved the commission of crimes, specifically acts of terrorism (Count 1); murder (Counts 2 and 3); rape (Count 4); sexual slavery (Count 5); outrages upon personal dignity (Count 6); cruel treatment (Count 7); other inhumane acts (Count 8); conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities (Count 9); enslavement (Count 10); and pillage (Count 11).[15598]

6403. para. 6968: In light of the above, the Trial Chamber is satisfied that the plan, devised by Bockarie and the Accused in Monrovia in November 1998, substantially contributed to the RUF/AFRC military attacks leading to and involving the Freetown Invasion, during which these groups committed the crimes charged in Counts 1 to 11 of the Indictment.

iii. Findings on the Mental Elements of Planning – Planning - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

6404. para. 6969: The Trial Chamber recalls its finding that as President of Liberia and a member of the ECOWAS Committee of Five, the Accused was continuously receiving detailed reports of the atrocities committed by RUF/AFRC troops in Sierra Leone. The Accused was well aware of the crimes committed by the AFRC/RUF forces in the course of their military operations, and that their war strategy was explicitly based on a widespread or systematic campaign of crimes against civilians.[15599] The Accused admitted that by April 1998 he was aware that the RUF was "a group engaged in a campaign of atrocities against the civilian population of Sierra Leone".[15600] The Accused also stated that there were news reports in May 1998 which made him aware that the RUF was engaged in a "horrific campaign […] against the civilian population in Sierra Leone".[15601] The Accused testified that he accepted the information in these reports and condemned the "gross atrocities".[15602] Moreover, by his instruction to make the operation "fearful", which was repeated many times by Bockarie during the course of the Freetown invasion, and by his instruction to use "all means", the Accused demonstrated his awareness of the substantial likelihood that crimes would be committed during the execution of the plan.

6405. para. 6970: In light of the foregoing, the Trial Chamber is satisfied beyond reasonable doubt that the Accused intended that the crimes charged in Counts 1 to 11 of the Indictment be committed or was aware of the substantial likelihood that RUF/AFRC forces would commit such crimes as a result of executing the plan which he and Bockarie designed.

iv. Finding on the Accused's Criminal Responsibility for Planning the Crimes Charged in the Indictment - Planning - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

6406. para. 6971: For the foregoing reasons, the Trial Chamber finds beyond reasonable doubt that the Accused is criminally responsible pursuant to Article 6(1) of the Statute for planning the crimes charged in Counts 1 to 11 of the Indictment, committed by members of the RUF/AFRC and Liberian fighters in the attacks on Kono and Makeni, in the invasion of Freetown and during the retreat from Freetown, between December 1998 and February 1999.

d. Instigating - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

6407. para. 6972: The Trial Chamber, having already found that the Accused is criminally responsible for aiding and abetting the commission of the crimes in Counts 1-11 of the Indictment, does not find that the Accused also instigated those crimes.

e. Ordering - Legal Findings on Responsibility Pursuant to Article 6.1 of the Statute

6408. para. 6973: The Trial Chamber has found that while the Accused held a position of authority amongst the RUF and RUF/AFRC, the instructions and guidance which he gave to the RUF and RUF/AFRC were generally of an advisory nature and at times were in fact not followed by the RUF/AFRC leadership. For these reasons, the Trial Chamber finds that the Accused cannot be held responsible for ordering the commission of crimes.

3. Appellate Judgment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-A, Judgment, 26 September 2013

(a) Findings and Conclusions

(i) The RUF/AFRC's Operational Strategy

6409. para. 253: The Trial Chamber found that the RUF/AFRC's operational strategy was characterised by a campaign of crimes against the Sierra Leonean population, including the crimes charged in all 11 Counts of the Indictment,[578] which were inextricably linked to the strategy of the military operations themselves. This strategy entailed a campaign of terror against civilians as a primary *modus operandi*, to achieve military gains at any civilian cost and political gains in order

to attract the attention of the international community and improve the RUF/AFRC's negotiating stance with the Sierra Leonean government (the "Operational Strategy").[579]

6410. para. 254: In assessing Taylor's alleged criminal liability, the Trial Chamber found that Taylor, by his acts and conduct, was "critical in enabling" the RUF/AFRC's Operational Strategy, "supported, sustained and enhanced" the functioning of the RUF/AFRC and its capacity to implement its Operational Strategy, planned an attack of terror as the *modus operandi* of the attack on Freetown and had a substantial effect on the crimes committed by the RUF/AFRC.[580] It further found that Taylor knew of the RUF/AFRC's Operational Strategy, knew that his acts and conduct assisted the commission of crimes in the implementation of that Operational Strategy and knew the essential elements of the crimes in which he was participating.[581]

6411. para. 257: Under this Court's jurisprudence, the Trial Chamber was not legally required to make findings on the RUF/AFRC's Operational Strategy in order to establish the crimes that were committed and Taylor's criminal responsibility.[598] However, an organisation's policy, plan or strategy may, of course, be relevant in determining criminal liability for crimes under the Statute.[599] The Appeals Chamber considers that the Trial Chamber used the terms "operational" and "strategy" according to their plain meaning: "operational" relates to operations or activities, in this case the activities of the RUF/AFRC, while a "strategy" is a plan or policy to achieve an aim, in this case the RUF/AFRC's strategy to achieve its military and political goals.

6412. para. 258: In reaching its finding on the RUF/AFRC's Operational Strategy, the Trial Chamber explicitly considered the pattern of crimes against civilians that were committed,[600] the involvement of leaders and commanders in ordering, directing or organising the commission of crimes[601] and the purpose or ends of the crimes.[602] The Defence does not challenge this approach, and similarly addresses its submissions to the pattern of crimes and the involvement of the RUF/AFRC leadership. The Appeals Chamber considers that the Trial Chamber's approach was appropriate.

6413. para. 259: In reviewing the Trial Chamber's finding, the Appeals Chamber will consider whether the Trial Chamber's findings reasonably demonstrate: first, a consistent pattern of crimes against civilians, as opposed to the opportunistic and sporadic commission of crimes; second, the RUF/AFRC leadership's involvement in organising, directing and perpetrating crimes; and third, that the commission of crimes was directed to achieve the RUF/AFRC's political and military goals. As the Trial Chamber found that the primary - although not exclusive – criminal *modus operandi* of the RUF/AFRC's Operational Strategy was the use of terror against the civilian population, the Appeals Chamber will particularly review the Trial Chamber's findings in that

light. Finally, the Appeals Chamber will consider whether these factors are demonstrated throughout the Indictment Period, as the Defence submits that any Operational Strategy was not continuous.

a. Enslavement, Sexual Slavery, Sexual Violence and Child Soldiers - The RUF/AFRC's Operational Strategy

6414. para. 260: The Trial Chamber found that the commission of crimes charged in all Counts of the Indictment, including rapes, sexual slavery, abductions, forced labour and conscription of child soldiers, was part of the RUF/AFRC's Operational Strategy.[603] It made numerous findings linking the RUF/AFRC's Operational Strategy to crimes committed to support and sustain the RUF/AFRC's activities. It found that the RUF/AFRC established a criminal system of abducting and controlling civilians in the forms of sexual slavery, forced marriage, forced mining, forced farming, domestic labour, forced recruitment and other forced labour.[604] It further found that these crimes against civilians formed part of a continuous campaign directed against civilians in communities that the RUF/AFRC controlled,[605] and that civilians continued to be intentionally targeted as sources of labour and fighters.[606] Likewise, as a specific subset of such crimes against civilians, the Trial Chamber found a consistent, institutionalised pattern of the RUF/AFRC abducting children, conscripting them into the RUF/AFRC and using them to actively participate in hostilities.[607] The Trial Chamber concluded that the commission of these crimes was part of the RUF/AFRC's Operational Strategy.[608]

6415. para. 261: The Trial Chamber found that throughout the Indictment Period and in the areas they controlled, the RUF/AFRC enslaved large numbers of civilians.[609] Civilians were captured, controlled and forced to work in diamond mines in territories under the RUF/AFRC's control, including Kenema District from August 1997 until February 1998 and Kono District from January 1998 until the end of the Indictment Period.[610] The RUF/AFRC also forced captured civilians to perform a variety of other labour and tasks, including farming, fishing, food-finding, carrying loads, undergoing military training and domestic duties.[611] Such work was undertaken either entirely without substantive pay, or civilians were given wholly insufficient compensation in the form of meagre food items.[612] Throughout the Freetown Invasion, from the initial movement towards Benguema in December 1998 to the RUF/AFRC's eventual retreat from Freetown in January/February 1999, civilians were captured and forced to labour, including carrying weapons, materiel, food and looted goods for the RUF/AFRC forces.[613]

6416. para. 262: Physical violence against enslaved civilians was endemic. Civilians who refused to work faced beatings, detention or the RUF/AFRC would appropriate their goods.[614] Civilians forced to mine had to deliver diamonds they found to members of the RUF/AFRC and any attempt by a civilian to keep a mined diamond was met with violence.[615] Civilians who attempted to escape from the camps or committed other perceived breaches of the mining rules were beaten or killed by armed guards.[616] The conditions in which civilians worked at the mines cumulatively created an atmosphere of terror.[617] "Civilians died" on the training base due to the harshness of the military training they were forced to undergo.[618]

6417. para. 263: The use of forced civilian labour and attendant physical violence was well-organised, and RUF/AFRC commanders directed and participated in these crimes.[619] The pattern of mistreatment showed that crimes formed part of a continuous campaign directed against civilians in communities that the RUF/AFRC controlled.[620] The RUF/AFRC leadership, notably Sam Bockarie[621] and Issa Sesay,[622] created and directly participated in an organised system of forced farming in Kailahun District between 1996 and 2000, where civilians were forced to farm, to fish and were subjected to physical violence from RUF/AFRC forces.[623] When labour was requested by RUF/AFRC commanders, chiefdom and deputy chiefdom commanders were enlisted to bring civilians to farms to work without pay or benefit.[624] Mining activities were structured and regulated, with civilians captured, abducted and then taken to mining sites, while mining activities were overseen by RUF/AFRC mining commanders.[625] In 1998, Bockarie forced at least 200 civilians to labour, day and night without pay, to build an airfield in Buedu.[626] From February 1998 until the end of that year, at the direction of the RUF/AFRC leadership, an unknown number of civilians, including children, were abducted and forced to undergo military training at Bunumbu Training Camp (Camp Lion).[627] The same occurred at Yengema Training Base from about December 1998 until disarmament in 2000.[628]

6418. para. 264: The Trial Chamber found that throughout the Indictment Period and in the areas they controlled, the RUF/AFRC committed sexual violence against women and girls[629] and forced them into sexual slavery.[630] Women were also forced to perform domestic labour for the rebels, and were deprived of all rights.[631] The crime of sexual slavery was committed throughout Kailahun District;[632] women captured during rebel attacks on towns or villages were forced to be the "wives" of rebels,[633] and girls as young as 7-15 years old were used as sex slaves.[634] Between 1 February 1998 and 31 December 1998 in Koidu Town and RUF/AFRC camps, the RUF/AFRC abducted an unknown number of women and girls, and forcefully detained and raped them.[635] Throughout Kono District, an unknown number of women were abducted, held in captivity and forced to have sexual intercourse with their rebel captors.[636] Women and girls were also captured

and subjected to sexual violence in Freetown and the Western Area during the Freetown Invasion.[637]

6419. para. 265: Victims of sexual violence suffered from sexually transmitted diseases, exhibited signs of post-traumatic stress disorder, and were often socially isolated, stigmatised and rejected by their families.[638] Refugees from Kono and Kailahun Districts all described witnessing public rape.[639] Not only were victims publicly undressed and violated, but some were subjected to perverse methods of sexual violence.[640] This sexual violence was deliberately aimed at destroying the traditional family nucleus, thus undermining the cultural values and relationships which held society together.[641] Victims of sexual slavery were further humiliated and degraded,[642] and the widespread and systematic use of women as sex slaves instilled fear and a sense of insecurity among the civilian population.[643] The public nature of these crimes of sexual violence was a deliberate tactic to "send a message" to the enemy and to instil fear and terror among civilians.[644] The RUF/AFRC committed a campaign of sexual violence and sexual slavery against the women of Sierra Leone in order to spread terror among the civilian population.[645]

6420. para. 266: The RUF/AFRC leadership not only endorsed and perpetrated sexual violence and slavery, but also set up an organised system for the commission of these crimes.[646] The RUF/AFRC leadership promoted sexual violence and slavery by promulgating "Operation Pay Yourself,"[647] where fighters were encouraged to take anything they wanted from the civilians, including wives, who were perceived as chattel.[648] Many captured young women lived with RUF/AFRC commanders, in conjugal servitude, and commanders perpetrated rapes.[649] There was a recognised system of ownership and hierarchy among captured women in the rebel forces, demonstrated by the fact that commanders' "wives" were accorded "special" treatment.[650] RUF/AFRC commanders also screened civilians captured by fighters,[651] after which women and girls were allowed to be taken by fighters, who then said they had "married" the women.[652]

6421. para. 267: The Trial Chamber found that throughout the Indictment Period and in the areas they controlled, the RUF/AFRC abducted and forcibly conscripted children under the age of 15 in Tonkolili, Kailahun, Kono, Bombali, and Port Loko Districts, as well as in Freetown and the Western Area, and used them to participate in hostilities.[653] Children were trained at Masingbi Road, Superman Ground and Yengema in Kono District, Rosos in Bombali District, Port Loko and Bunumbu in Kailahun District.[654]

6422. para. 268: Children were of importance to the RUF/AFRC as they carried out orders quickly and followed their bosses' way.[655] The RUF/AFRC gave children narcotics in order to make them fearless and to make them carry out orders without hesitation, and the children were

likely to commit violent acts while under the influence of such substances.[656] Cocaine was sometimes administered by opening a cut on a child's body, putting cocaine in it and then covering it up with a plaster.[657] Some children developed drug addiction from the use of narcotics.[658] Children were used to guard mining sites and to collect diamonds produced by civilians working in the mines.[659] They were also used as personal bodyguards and domestic labour by the RUF/AFRC commanders.[660] The leadership sent these children to fight on the front lines, and they were used by RUF/AFRC commanders to commit crimes, particularly acts of terror, against the civilian population.[661]

6423. para. 269: Children were also victims of physical violence. Following their abduction, many children were forced to undergo military training in order for them to fight with the armed groups, or defend themselves in case of an attack.[662] Recruits who tried to escape were publicly marked with the letters "RUF" by instructors during formation so that the other recruits would see and be afraid.[663] If the children and other civilians refused to undergo the military training the rebels would kill them.[664] The practice of physically disciplining recruits was well known to the RUF/AFRC High Command and instructions to beat, kill or mark recruits were passed from high command and carried out.[665] The training was generally comprised of instructions on the use of weaponry, at times practiced with live ammunition, how to attack a town, fight and kill, how to guard, how to set an ambush, and how to burn houses.[666] Children sometimes died during the course of military training, and the RUF/AFRC leadership was made aware of this.[667]

6424. para. 270: The RUF/AFRC leadership instituted an organised system for the abduction, conscription, training and use of child soldiers, and further engaged in the abduction, military training, and use of children.[668] There was a consistent pattern of abducting children and forcing them into Small Boys Units ("SBU") and Small Girls Units ("SGU"), which were made up of children generally in the range of 5 to 17 years.[669] The existence of specific combat units designated for children demonstrates the institutionalised nature of conscription and use of children by the RUF/AFRC.[670]

6425. para. 271: The Appeals Chamber has carefully reviewed those findings and concludes that the Trial Chamber reasonably found that the crimes of enslavement, sexual violence and conscription and use of child soldiers, and the attending crimes of physical violence and acts of terror, were committed pursuant to the RUF/AFRC's Operational Strategy. First, the Trial Chamber's findings demonstrate a consistent pattern of crimes against civilians, which were all committed in a widespread and systematic manner against the civilian population in territories under the RUF/AFRC's control, and the RUF/AFRC consistently used physical violence to

maintain ownership over civilians and control over child soldiers. Second, the Trial Chamber found that the RUF/AFRC leadership organised, ordered, directed and perpetrated these crimes against civilians. Third, these crimes were committed against the civilian population to achieve the RUF/AFRC's military and political goals, specifically in order to support and sustain the RUF/AFRC and enhance its military capacity and operations.[671] Enslaved civilians were forced to perform tasks such as farming, food finding and domestic chores, and forced to support the RUF/AFRC's military operations by mining for diamonds, which were later exchanged for arms and ammunition,[672] by undergoing military training and by carrying loads for the fighters during military operations. Women and girls were sexually enslaved and subjected to sexual violence for the gratification of RUF/AFRC commanders and soldiers, to undermine social structures and to spread terror. Child soldiers were used to enhance the RUF/AFRC's military capacity and functions, participating in hostilities, guarding diamond mines and carrying out orders to commit crimes against civilians.

6426. para. 272: Consistent with the Trial Chamber's finding that the primary *modus operandi* of the RUF/AFRC's Operational Strategy was the use of terror against the civilian population, rapes and sexual slavery were committed in public as a deliberate tactic with the primary purpose of spreading terror among the civilian population.[673] While the Trial Chamber did not consider that the primary purpose of enslavement and conscripting and enlisting child soldiers was to terrorise the civilian population,[674] child soldiers were used to terrorise free and enslaved civilians.[675]

6427. para. 273: Finally, the Appeals Chamber concludes that the Trial Chamber's findings demonstrate a consistent and continuous pattern of crimes throughout the Indictment Period directed against civilians in communities that the RUF/AFRC controlled. Throughout the Indictment Period, the RUF/AFRC leadership used forced farming for its sustenance, forced labour for its logistics, children for its soldiers and sexual violence and slavery for its morale. To obtain the weapons it needed, the RUF/AFRC leadership enslaved civilians to mine for diamonds, used children to guard them and terror to dominate them. These crimes, committed systematically on a widespread scale in the territories it controlled, gave the RUF/AFRC leadership the means to undertake its further military operations. When the RUF/AFRC seized and maintained new territory, the same consistent pattern of crimes was repeated. The pattern of crimes only ended when the RUF/AFRC disarmed and hostilities ceased.

b. Other Crimes during the Indictment Period - The RUF/AFRC's Operational Strategy

6428. para. 274: In assessing the widespread and systematic nature of the attacks against the civilian population of Sierra Leone during the Indictment Period, the Trial Chamber noted that the Indictment Period spans more than five years, and that over that period, "there were many changes in the alliances between the warring factions, the membership and leadership structure of such factions, and their position in the conflict."[676] Accordingly, the Trial Chamber noted that because "the conflict evolved over time," it considered each phase of the conflict in turn, to which the Appeals Chamber now turns.[677]

6429. para. 275: The Trial Chamber found as background that the RUF began to deliberately use terror as a primary *modus operandi* of their political and military strategy[678] during "Operation Stop Election," launched on Election Day in March 1996,[679] when RUF forces attacked areas including Bo, Kenema, Magburaka, Matotoka and Masingbi.[680] Foday Sankoh[681] and the RUF leadership wanted to stop the election,[682] and to achieve this goal, Sankoh ordered RUF forces to commit murder and physical violence against civilians in order to instil terror in the population so that they would not vote and the elections would fail.[683] The RUF committed numerous atrocities against civilians, including carving "RUF" on the chests of civilians and the amputation of the fingers and/or hands of those who attempted to vote[684] in compliance with Sankoh's instruction to shoot and kill or to amputate the hands or fingers of any civilian believed to have participated in the elections.[685] In Kenema Town, under the command of Morris Kallon and Issa Sesay, RUF soldiers cut off the hands of civilians, and fired on those found in the street.[686] In Kenema National Hospital, RUF soldiers cut off civilians' fingers and sent them with a message to the Government soldiers that the RUF did not want an election.[687] In Magburaka, RUF commanders captured civilians, amputated their hands and carved "RUF" on their chests with razor blades.[688] RUF forces amputated civilians who had ink on their thumbs from polling day.[689]

i. Beginning of Indictment Period (30 November 1996) to Intervention (February 1998) - Other Crimes during the Indictment Period - The RUF/AFRC's Operational Strategy

6430. para. 276: On 25 May 1997, a group of SLA soldiers overthrew the government of President Kabbah in a coup d'état.[690] On 28 May 1997, the group announced that they had formed the AFRC and taken over power in Sierra Leone.[691] Within days of the coup, Johnny Paul Koroma became the leader and chairman of the AFRC.[692] The coup was widely condemned by the

international community.[693] Shortly after the AFRC seized power, Johnny Paul Koroma invited Foday Sankoh and the RUF[694] to join the AFRC in Government,[695] and the RUF accepted the invitation.[696] In June 1997, the RUF issued a public apology for the crimes they had committed in Sierra Leone, including killings and rapes.[697]

6431. para. 277: The Trial Chamber found that during the Junta Period, from 25 May 1997 to about 14 February 1998, there were large numbers of civilian victims, and attacks were widespread and occurred in the areas that were under control of RUF/AFRC forces.[698] The pattern of crimes by the RUF/AFRC which was directed against civilians persisted and intensified during this period.[699] The Junta Period was characterised by a shift in the dynamics of the conflict as the RUF/AFRC, former adversaries, were now in a position of power in Sierra Leone.[700] The campaigns of the Junta government were aimed at the preservation of governmental authority,[701] and the number of civilians subjected to severe mistreatment increased as the conflict spread throughout the territory of Sierra Leone.[702] Civilians were the victims of killings, physical violence, rape, sexual slavery, torture and arbitrary detention perpetrated by RUF/AFRC fighters.[703] The violence and mistreatment of civilians by the RUF/AFRC was directed at perceived political opponents, journalists, students and human rights activists, but these attacks were not limited to such selected civilians and any perceived collaborator was targeted by the Junta.[704]

6432. para. 278: Under the leadership of RUF/AFRC commanders, most notably Sam Bockarie, many civilians were murdered in Kenema District.[705] As ECOMOG advanced towards Kenema, Bockarie said that if the situation went out of control prisoners would not be spared.[706] Civilians were killed in revenge or reprisal for perceived support of the Junta's enemies.[707] Civilians were also killed to underline RUF/AFRC authority and minimise resistance.[708] Afterwards, the RUF/AFRC displayed the bodies in public.[709] The RUF/AFRC openly killed civilian miners in the Tongo Fields area in order to ensure the servitude of other miners.[710] These killings in Kenema District were all committed in order to instil terror in the civilian population.[711] The RUF/AFRC specifically targeted the civilian population with the purpose of terrorising the population in order to minimise any resistance or opposition to the regime.[712]

ii. Intervention (February 1998) to Freetown Invasion (December 1998) - Other Crimes during the Indictment Period - The RUF/AFRC's Operational Strategy

6433. para. 279: On 5 February 1998, ECOMOG commenced a major offensive against the RUF/AFRC, commonly known as the Intervention.[713] The RUF/AFRC was unable to halt

ECOMOG's offensive, and by 14 February 1998, ECOMOG had succeeded in expelling the Junta regime from Freetown.[714] Sam Bockarie's RUF/AFRC forces retreated from Kenema to Kailahun Town and then to Buedu,[715] while the RUF/AFRC fighters who had been based in Freetown retreated to Masiaka under the leadership of Johnny Paul Koroma.[716] The RUF/AFRC was forced to leave the bulk of its supplies in Freetown and retreat with little more than the weapons and ammunition the soldiers were able to carry.[717] After the retreat from Freetown, JPK's forces captured Koidu Town in Kono District[718] in late February/early March 1998.[719] On 10 March 1998, the Kabbah Government was restored to power in Sierra Leone.[720] By mid-March 1998, ECOMOG, acting in concert with the CDF, extended its control to Bo, Kenema and Zimmi in the south of the country; Lunsar, Makeni and Kabala in the north; and Daru in the east.[721] A few weeks later, in April 1998, ECOMOG and the CDF regained control of Koidu Town and RUF/AFRC forces retreated to other locations in Kono District.[722]

6434. para. 280: The Trial Chamber found that following the Intervention, from February 1998 to December 1998, violence against civilians by the RUF/AFRC was frequent in RUF/AFRC-held territory and intensified in the north and east of Sierra Leone as the RUF/AFRC attacked those areas.[723] Several thousand civilians were killed or mutilated, hundreds more were abducted, and other crimes, such as rape, the burning of houses, killings and looting, continued.[724] Mass internal displacement also occurred during this period.[725] Many acts of terror and crimes were committed against the civilians in Kono District,[726] including killings, amputations and mutilations and burnings,[727] as well as against the civilians in Kailahun District.[728]

6435. para. 281: Between February and December 1998, the RUF/AFRC launched several operations, such as "Operation No Living Thing", "Operation Spare No Soul" and "Operation Pay Yourself", during which the fighters killed, mutilated, raped, looted and abducted civilians throughout Sierra Leone in compliance with explicit orders issued by the RUF/AFRC leadership.[729] Throughout this period RUF/AFRC commanders continued to give explicit orders for the fighters to kill civilians, burn their settlements and take their property.[730]

6436. para. 282: Sam Bockarie sent messages to all RUF/AFRC bases to make Kono District "fearful."[731] To make an area "fearful," the fighters would destroy life and property by killings, amputations, burning of houses, destruction of bridges and setting up road blocks.[732] The purpose was to make sure the local civilian population and the RUF/AFRC's enemies would be afraid.[733] Johnny Paul Koroma told the RUF/AFRC fighters to capture the able-bodied civilians in Kono and to execute the rest.[734] While in Koidu, JPK reiterated his orders to burn down any civilian homes so as to discourage civilians returning to live there, and to kill any civilian that attempted to

return to the area, accusing them of being Kamajor supporters.[735] Issa Sesay endorsed Johnny Paul Koroma's orders, stating that civilians were very dangerous to the Junta forces, and the only way to ensure that the civilians did not stay in Kono was to burn down their houses and execute them.[736] In Kailahun District, Bockarie issued orders to senior RUF/AFRC commanders to defend Kailahun District against their perceived enemies, and then ordered the massacre of civilians who he suspected of being Kamajors or Kamajor supporters.[737] These orders demonstrated a clear intention to direct attacks against and terrorise the civilian population.[738]

6437. para. 283: In Kono District, fighters acting in accordance with orders given by their commanders deliberately targeted civilians in order to prevent them from staying in or returning to Koidu Town and in order to maintain the diamond-rich Kono District as a strong Junta base from which the RUF/AFRC fighters would finance and mount further attacks upon their enemies.[739] Civilian houses were burned down with the primary purpose of terrorising the civilian population by demonstrating the repercussions of collaborating with the enemies of the RUF/AFRC.[740] On arrival in Kono District around early March 1998, RUF/AFRC forces captured Sewafe and burnt down all civilian houses on the orders of Johnny Paul Koroma, who called Sewafe "a Kamajor stronghold."[741] In Kailahun Town, 60 to 65 civilians suspected of being Kamajors or Kamajor supporters were murdered on Sam Bockarie's orders as reprisal killings.[742] The campaign of reprisal against the civilian population was underlined by the deliberate tricking of civilians into showing their support for ECOMOG, followed by mass executions by RUF/AFRC forces.[743]

6438. para. 284: The RUF/AFRC also displayed the corpses of the civilians in order to frighten away civilians and prevent them from remaining in town.[744] In Bumpe between March and June 1998, RUF/AFRC forces acting under the orders of commanders including Kallay, Bomb Blast, Superman, Sam Bockarie, Morris Kallon, CO Rocky and others committed murders, the burning down of homes and mass amputations, and then displayed human heads on sticks at various checkpoints in order to instil terror in the civilian population.[745] During an attack on Koidu Buma, in May/June 1998, and with the approval of Commanders Bomb Blast, Bazzy and Superman, RUF Rambo killed 15 civilians and displayed their corpses in the street to create fear so no civilian would come to that area.[746] The amputations and mutilations practised by the RUF/AFRC were notorious, and served as a permanent, visible and grotesque reminder to all civilians of the consequences of resisting the RUF/AFRC, or of supporting Kabbah or ECOMOG.[747]

iii. Freetown Invasion (December 1998 to February 1999) - Other Crimes during the Indictment Period - The RUF/AFRC's Operational Strategy

6439. para. 285: Throughout 1998, the RUF/AFRC struggled to combat ECOMOG forces and was repeatedly thwarted in its attempts to capture and hold areas in Kono District.[748] Disputes and divisions arose among the RUF/AFRC forces, with troops under the commands of SAJ Musa,[749] Gullit[750] and Superman[751] departing for the north of Sierra Leone and disputing Sam Bockarie's overall command of the RUF/AFRC.[752]

6440. para. 286: In October 1998, Sankoh was sentenced to death for treason by the High Court of Sierra Leone.[753] The announcement that Sankoh had been sentenced to death, and that 24 AFRC soldiers had been executed, provoked a rallying cry from the RUF/AFRC commanders, especially Sam Bockarie, who wanted to go to Freetown to free Sankoh.[754] Bockarie then went to Monrovia, where he met with Taylor and designed a plan for RUF/AFRC forces to carry out the Bockarie/Taylor Plan, a two-pronged attack on Kono and Kenema with the ultimate objective of reaching Freetown.[755] Upon Bockarie's return to Sierra Leone from Monrovia, he convened a meeting at Waterworks where he outlined the plan to his commanders,[756] armed them with ammunition and assigned them to two brigades for the two-pronged attack on Kono and Kenema.[757]

6441. para. 287: In the last days of 1998 and into January 1999, rebels went on the offensive in several areas of Sierra Leone, including Makeni, Lunsar and Port Loko, where civilians were killed, property looted and homes destroyed during these attacks.[758] Issa Sesay captured Kono in mid- December, with ECOMOG forces sustaining heavy casualties during their retreat.[759] RUF/AFRC troops captured Masingbi, Magburaka and Makeni by 23 December 1998, while unsuccessful attacks were mounted on the Segbwema-Daru axis towards Kenema.[760] Following the capture of Makeni, RUF/AFRC forces moved towards Freetown, attacking Lunsar, Port Loko, Masiaka and Waterloo.[761] At the same time, in mid-December 1998 the group led by SAJ Musa and Gullit independently commenced its advance on Freetown and by the end of December 1998 had reached Benguema on the outskirts of Freetown.[762] Following SAJ Musa's death on 23 December 1998, Gullit assumed command and resumed contact with Sam Bockarie, and his forces continued their advance towards Freetown, attacking Hastings on 3 January 1999.[763] On 6 January 1999 Gullit's forces commenced their attack on Freetown[764] and captured the State House.[765] Gullit's fighters were joined by a small contingent of troops sent by Bockarie under the leadership of Rambo Red Goat.[766]

6442. para. 288: As Gullit was facing increasing pressure from ECOMOG only days after entering Freetown, Sam Bockarie ordered him to make the area "fearful"[767] and use terror tactics against the civilian population.[768] Bockarie gave Gullit direct instructions to cause mayhem, to destroy government buildings and amputate the limbs of civilians, in order to raise alarm in the international community.[769] Bockarie told the forces that if they made Freetown "fearful", the international body would intervene and ECOMOG would stop, and that maybe they would start calling for peace talks.[770] Bockarie also emphasised that Freetown had to be "fearful" in order to improve their negotiating position in relation to any future peace talks and the release of Sankoh.[771]

6443. para. 289: In compliance with Bockarie's instructions,[772] Gullit then ordered and incited RUF/AFRC rebels to wage a campaign of terror against the civilian population of Freetown.[773] Gullit issued orders to the fighters to burn as many buildings and capture as many civilians as possible along the way in order to force the Government to recognise them.[774] The "fearful" order was passed by the top commanders to the fighters,[775] and Gullit's forces carried out indiscriminate killings, mass abductions, raping of civilians, and burning and destruction of civilian and public property in Freetown.[776] There was widespread rape and sexual abuse of girls and women,[777] including rapes by commanders.[778] Women were captured during the Freetown retreat and used as domestic and sexual slaves.[779] A message was sent back to Bockarie informing him that the men had gone on a rampage and that they were killing people, wounding civilians and that the area had become "fearful."[780]

6444. para. 290: The rebels held central Freetown for four days, until a counter-attack by ECOMOG forces weakened their position.[781] While Gullit's forces managed a controlled retreat from Freetown, making Freetown "fearful" as they retreated, RUF/AFRC reinforcements sent by Sam Bockarie arrived in Waterloo.[782] The RUF/AFRC then made collaborative efforts to re-attack Freetown.[783] On 24 February 1999, ECOMOG forces finally succeeded in expelling the rebels from Waterloo.[784]

6445. para. 291: The Trial Chamber found that during the Freetown Invasion, rebels killed thousands of civilians and thousands more were abducted, burnt, beaten, mutilated, raped and/or sexually abused throughout Freetown and its surroundings, including the State House area, Kissy, Upgun, Calaba Town, Allen Town, and in the nearby towns of Hastings, Wellington, Waterloo and Benguema.[785]

6446. para. 292: Sam Bockarie, Gullit and other RUF/AFRC commanders ordered the widespread and systematic commission of acts of terror against the civilian population of

Freetown and its surrounds to achieve their political and military goals. The acts of terror committed against the civilian population were used to: punish the civilian population of Freetown for perceived collaboration with ECOMOG and the Kamajors;[786] undermine confidence in the legitimate Government of Sierra Leone;[787] minimise resistance and dissent;[788] force the Government of President Kabbah to negotiate with the RUF/AFRC;[789] and generally destroy Freetown as the capital of Sierra Leone so that it and the country would be ungovernable.[790]

iv. Post-Freetown Invasion (March 1999) to End of Indictment Period (18 January 2002) - Other Crimes during the Indictment Period - The RUF/AFRC's Operational Strategy

6447. para. 293: On 7 July 1999, the Lomé Peace Accord was signed by President Kabbah and Foday Sankoh.[791] The Government of Sierra Leone and the RUF/AFRC agreed to the immediate release of Sankoh, the transformation of the RUF into a political party that would become part of the Government of Sierra Leone and amnesty for all warring factions, including RUF members.[792] Sankoh received a formal position within the Sierra Leonean Government as Chairman of the Commission for the Management of Strategic Resources, National Reconstruction and Development, a position with the status of Vice-President of Sierra Leone.[793] This position gave Sankoh control over the natural resources, including diamonds, of Sierra Leone.[794]

6448. para. 294: The Lomé Peace Accord did not end hostilities in Sierra Leone,[795] and the disarmament process took time to eventuate.[796] On 10 November 2000, a peace agreement known as the "Abuja I Peace Agreement‖ was signed.[797] With the exception of skirmishes with the CDF in Kono District, the ceasefire generally held.[798] A ceasefire review conference was held in Abuja in May 2001, in what became known as the ―Abuja II Peace Agreement.[799] From mid-2001, significant progress was made in the disarmament process.[800] By the end of 2001, disarmament was complete and hostilities had ceased in all areas of Sierra Leone, with the exception of Kono District.[801] On or about 18 January 2002, President Kabbah announced the end of hostilities in Sierra Leone, signalling the end of the war.[802]

6449. para. 295: The Trial Chamber found that until the end of the Indictment Period,[803] attacks by the RUF/AFRC against the civilian population continued, affecting large numbers of civilians throughout the north and east of Sierra Leone.[804] Through July 1999, there was violence against civilians in areas northeast of Freetown, including Masiaka, Port Loko, the Occra Hills and other locations in Port Loko District such as Songo, Mangarama, Masumana, Matteh, Melikeru and Tomaju. The civilian population was subjected to killings, mutilations, abductions, sexual abuse,

large-scale property destruction and the contamination of fresh water sources.[805] In August 1999, the villages of Landomah, Bonkoleke, Roists, Tenkabereh and Wonfinfer in Port Loko District were looted and civilians displaced.[806] From September until the end of the year, attacks upon civilians increased, particularly along the Lungi-Port Loko axis where summary executions, instances of physical violence, looting, mutilations, sexual abuse, abductions and harassment were reported.[807] In May 2000, approximately 40 civilians had the letters "RUF" carved into their bodies in Kabala.[808]

6450. para. 296: The RUF/AFRC continued to enslave civilians and force them to farm and fish form commanders up until 2000.[809] Civilians were abducted and forced to undergo military training at Yengema Training Base until 2000.[810] Forced mining continued until the end of the Indictment Period.[811] Civilians continued to be abducted in Makeni and Kambia Districts, and a large number of civilians continued to be captured and brought to mining sites in Kono District.[812] Between December 1999 and mid-2001, civilians were killed around Koidu Town for refusing to mine.[813] Captured civilians continued to be used as sexual slaves.[814] The RUF/AFRC continued to abduct, train and use child soldiers after the signing of the Lomé Peace Accord.[815] Children continued to be used to guard mining sites.[816] In Makeni in May 2001, RUF/AFRC forces took an unknown number of children from a child care centre and conscripted them.[817]

v. Conclusion - Other Crimes during the Indictment Period - The RUF/AFRC's Operational Strategy

6451. para. 297: First, the Appeals Chamber concludes that the Trial Chamber reasonably found a consistent pattern of crimes against civilians in each of the periods reviewed above. In each period, the RUF/AFRC directed a widespread and systematic attack against the civilian population of Sierra Leone[818] through the commission of crimes including killings, enslavement, physical violence, rape, sexual slavery, and looting[819] against large numbers of civilian victims.[820] Each and all of these crimes were horrific and shocked the conscience of mankind.

6452. para. 298: Second, in the Appeals Chamber's view, the Trial Chamber's findings fully support the conclusion that in each period, this pattern of crimes against civilians was organised, ordered, directed and committed by the RUF/AFRC leadership. The Trial Chamber's findings document in detail the personal and direct involvement of the RUF/AFRC leadership in the commission of crimes against civilians, including: Sam Bockarie's personal attacks against civilians in Kenema; the repeated instructions by Bockarie, JPK, Issa Sesay, Gullit and others to kill, mutilate, rape, burn and make areas "fearful"; the organised and systematic abduction and

enslavement of men, women and children; and the direct involvement of many commanders in many crimes.

6453. para. 299: Third, the Appeals Chamber concludes that in each period, the Trial Chamber's findings demonstrate that crimes against civilians were directed to the achievement of the RUF/AFRC's political and military goals. The Appeals Chamber notes that crimes against civilians continued to be used to achieve political and military goals even as those goals changed during the course of the conflict. Crimes of enslavement, sexual violence and conscription and use of child soldiers, as well as attending physical violence and acts of terror, were committed throughout the Indictment Period to support and sustain the RUF/AFRC and enhance its military capacity and operations. During the Junta Period, faced with a need to maintain its new-found authority, the RUF/AFRC committed crimes against civilians to minimise dissent and resistance and punish any support for President Kabbah, the CDF or ECOMOG. Following the Intervention and their defeat by ECOMOG, struggling to regroup and regain lost territory, the RUF/AFRC committed crimes against civilians to sustain itself, clear and hold territory, control the population, eradicate support for its opponents and attract the attention of the international community. During the Freetown Invasion, the RUF/AFRC devastated Freetown to secure the release of Sankoh and force the Government to the negotiating table. After the Freetown Invasion and Lomé Peace Accord, having achieved Sankoh's freedom and a place in government through the commission of crimes against civilians, the RUF/AFRC committed further crimes against civilians to maintain itself as a fighting force and to ensure the continued supply of diamonds.

6454. para. 300: The Appeals Chamber is further satisfied that the Trial Chamber's findings show that the RUF/AFRC used acts of terror as its primary *modus operandi* throughout the Indictment Period. The RUF/AFRC pursued a strategy to achieve its goals through extreme fear by making Sierra Leone "fearful." The primary purpose was to spread terror, but it was not aimless terror. Barbaric, brutal violence was purposefully unleashed against civilians because it made them afraid – afraid that there would only be more unspeakable violence if they continued to resist in any way, continued to stay in their communities or dared to return to their homes. It also made governments and the international community afraid – afraid that unless the RUF/AFRC's demands were met, thousands more killings, mutilations, abductions and rapes of innocent civilians would follow. The conflict in Sierra Leone was bloody because the RUF/AFRC leadership deliberately made it bloody.

6455. para. 301: Having reviewed each of the periods discussed above individually, and satisfied itself regarding the Trial Chamber's finding of a consistent pattern of crimes organised, directed

and committed by the RUF/AFRC leadership to achieve their political and military goals, the Appeals Chamber affirms that the RUF/AFRC's Operational Strategy was continuous throughout the Indictment Period.

6456. para. 302: In light of the above, the Appeals Chamber affirms the Trial Chamber's finding that the RUF/AFRC's Operational Strategy was to achieve its political and military goals through a campaign of crimes against the Sierra Leonean civilian population, using terror as its primary *modus operandi*. Ground 17 is accordingly dismissed in present parts.

(ii) Taylor's Acts, Conduct and Mental State

6457. para. 303: The Appeals Chamber has reviewed the Trial Chamber's assessment of the evidence and affirmed the findings in the Judgment.[821] It has further affirmed the Trial Chamber's finding that the RUF/AFRC leadership pursued an Operational Strategy to commit the crimes charged in Counts 1-11 of the Indictment.[822]

6458. para. 304: The following is a summary of the Trial Chamber's affirmed findings regarding Taylor's acts, conduct and mental state.

a. Beginning of Indictment Period (30 November 1996) to Intervention (February 1998) – Taylor's Acts, Conduct and Mental State

6459. para. 305: The Trial Chamber found that by the beginning of the Indictment Period, Taylor knew of the RUF and of the crimes it had previously committed.[823] In March 1991, Taylor stated publicly on the radio that "Sierra Leone would taste the bitterness of war"[824] because it was supporting ECOMOG operations in Liberia.[825] Taylor knew that in 1991 and 1992, during the early war of Sierra Leone, RUF soldiers, under the command of Taylor's NPFL officers, abducted civilians including children, forcing them to fight within the NPFL/RUF forces against the Sierra Leonean forces and ULIMO.[826] Taylor further knew[827] that in 1994, the RUF attacked the international mining company Sierra Rutile, in Bonthe District,[828] looted the facility and captured hostages,[829] in order to gain the international community's attention.[830] Taylor advised Foday Sankoh, leader of the RUF, on the use of the money and the hostages,[831] telling Sankoh to buy ammunitions, food and drugs with the money that had been looted, and to use the money and the hostages to establish diplomatic relations with other countries.[832] Finally, Taylor knew[833] that in early 1996, disgruntled by the decision to hold elections before a peace agreement was signed,[834] Sankoh ordered "Operation Stop Election,"[835] during which RUF forces attacked areas including Bo, Kenema, Magburaka, Matotoka and Msingbi[836] on Election Day.[837] They "committed

numerous atrocities against civilians, including carving 'RUF' on the chests of civilians and the amputation of the fingers and/or hands of those who attempted to vote."[838]

6460. para. 306: During the Junta Period, the RUF/AFRC deliberately used terror against the Sierra Leonean population as a primary modus operandi of their Operational Strategy.[839] The crimes committed by the RUF/AFRC Junta were significantly reported by international organisations as early as May 1997.[840] The UN Department of Humanitarian Affairs on 4/5 June 1997 reported killings of civilians, amputations and looting in Sierra Leone.[841] In a meeting held on 26 June 1997 in Conakry, the Foreign Ministers of ECOWAS reviewed the situation in Sierra Leone and "deplored the bloodletting and other human losses that occurred during the coup d'état of 25 May 1997. They warned the illegal regime against all acts of atrocities against Sierra Leonean citizens, foreign nationals living in Sierra Leone and personnel of ECOMOG.[842] In a Statement dated 11 July 1997, the President of the UN Security Council expressed concern with the situation in Sierra Leone and "the atrocities committed against Sierra Leone's citizens."[843] On 6 August 1997, the President of the UN Security Council reiterated the Security Council's concerns over "the deteriorating humanitarian situation in Sierra Leone, and at the continued looting and commandeering of relief supplies of international agencies.… The Council condemns the continuing violence and threats of violence by the junta towards the civilian population, foreign nationals and personnel of the ECOWAS monitoring group, and calls for an end to such acts of violence."[844] The violence in Sierra Leone was thus in the public domain.

6461. para. 307: Taylor knew of the RUF/AFRC's Operational Strategy and intent to commit crimes, as well as the ongoing crimes committed by the Junta, as early as August 1997 following his election as President of Liberia.[845] His national security adviser provided him with daily briefings, including press and intelligence reports regarding the situation in Sierra Leone.[846] As President of Liberia, Taylor was a member of the ECOWAS Committee of Five[847] on the situation in Sierra Leone and would have received and read ECOWAS reports on Sierra Leone.[848] Reports on the crimes taking place in Sierra Leone were "at the core" of discussions by the ECOWAS Committee of Five.[849] Following meetings held on 26 and 27 August 1997, the ECOWAS Chiefs of States condemned the violent overthrow of the legitimate government of Sierra Leone and described it as "a very bloody coup, followed by massive looting and vandalisation of public and private properties and the opening of the prisons by the junta.[850] The fifth meeting of the Foreign Ministers of the ECOWAS Committee of Five on 10 to 11 October 1997 noted the gross violations of human rights committed by the Junta regime.[851] On 23 October 1997, the Committee of Five met in Conakry and agreed to a peace plan for Sierra Leone, calling for the cessation of hostilities and the reinstatement of President Kabbah by 22 April 1998.[852]

6462. para. 308: On 29 August 1997, ECOWAS decided to place a total embargo on all supplies of petroleum products, arms and equipment to Sierra Leone.[853] On 8 October 1997, the UN Security Council determined that the situation in Sierra Leone constituted a threat to international peace and security in the region and decided to impose an embargo on Sierra Leone.[854] As these embargos demonstrate, the Junta was perceived by the international community as a threat to peace, and it was recognised that any military support could facilitate the commission of crimes by the RUF/AFRC.[855] Following his election, at the same time that ECOWAS and the UN were condemning the activities of the RUF/AFRC, Taylor's support for the RUF/AFRC reached a higher level of activity, as "at this point, [Taylor] was in a position to play a significantly expanded role in Sierra Leone, both in terms of political and military support."[856]

6463. para. 309: At the same time, Taylor accepted and supported the Junta, and told the RUF/AFRC that he would encourage ECOWAS members to do so as well.[857] He also encouraged Johnny Paul Koroma, as head of the AFRC, and Sam Bockarie, as leader of the RUF in Sankoh's absence, to work together.[858] Taylor held a position of authority as an elder statesman, and as President of Liberia, he was accorded deference by the RUF/AFRC and his advice was generally heeded by them.[859] Following his arrest in March 1997, Foday Sankoh instructed Sam Bockarie to take instructions from Taylor.[860] "[T]he role that Sankoh envisioned for [Taylor] while he was in detention was that [Taylor] would guide Bockarie, and that Bockarie should look to his guidance, not that [Taylor] should take over Sankoh's role as the leader of the RUF with effective control over its actions." Taylor gave instructions to Bockarie with his inherent authority by virtue of his position, and Bockarie was deferential to Taylor, generally following his instructions.[861]

6464. para. 310: There was a general and complete embargo placed by the UN Security Council on all deliveries of weapons and military equipment to Liberia from November 1992 that remained in place throughout the Indictment Period.[862] Notwithstanding the arms embargo on Liberia, "Taylor was able to obtain arms and had the capacity to supply arms and ammunition to the rebel groups in Sierra Leone, and had the capacity to facilitate larger arms shipments through third countries."[863] While ECOMOG forces were stationed at the Liberia/Sierra Leone border, tasked with establishing a buffer zone in an attempt at implementing successive peace agreements in Liberia,[864] their presence was not sufficient to prevent the cross-border movement of arms and ammunition.[865] Taylor utilised intermediaries[866] including Yeaten,[867] Tamba,[868] Ibrahim Bah,[869] Marzah[870] and Weah[871] to conduct the supply of diamonds mined by enslaved civilians from the RUF/AFRC leadership to himself, and the supply of arms and ammunition from him to the RUF/AFRC leadership.[872] These individuals also passed along advice and instructions from Taylor to the RUF/AFRC leadership.[873]

6465. para. 311: During the Junta Period, diamonds mined in Kono and Tongo Fields were delivered from the RUF/AFRC[874] to Taylor[875] by Daniel Tamba in exchange for arms and ammunition.[876] The RUF/AFRC were mining at different sites in Kono and in Tongo, where they forced civilians to mine under slave-like conditions and committed acts of violence against civilians to guarantee their servitude and control the mining activities.[877] Tamba acted as a liaison between the RUF/AFRC leadership and Taylor by bringing arms and ammunition to Sierra Leone in exchange for the diamonds that he delivered to Taylor.[878] Following the Intervention,[879] from February 1998 to July 1999, diamonds were delivered to Taylor by Sam Bockarie directly,[880] as well as indirectly through intermediaries including Eddie Kanneh[881] and Tamba,[882] in order to get arms and ammunition from him.[883] Taylor had responsibility for the movement of diamonds through Liberia.[884]

6466. para. 312: While the Junta regime obtained a significant amount of materiel from the existing military stores in Freetown,[885] at some point in or after August 1997, it had depleted the available sources of supplies in Freetown or was not obtaining from them satisfactory amounts of materiel.[886] In the face of the arms embargo imposed on Sierra Leone, the RUF/AFRC needed to obtain more supplies in order to sustain its activities. Taylor sent Ibrahim Bah on his behalf to Freetown to meet with Sam Bockarie and Johnny Paul Koroma to make arrangements for the procurement of arms and ammunition.[887] The RUF/AFRC Supreme Council agreed to pay 90 carats of diamonds and $USD 90,000 for the shipment,[888] which was delivered by plane to Magburaka in Sierra Leone sometime between September and December 1997.[889] RUF/AFRC members were present for the delivery, and the material was then distributed to locations including JPK's residence, Cockerill Military Headquarters, Makeni, Magburaka and Kenema.[890]

6467. para. 313: This shipment comprised a large quantity of arms and ammunition.8[9]1 The delivery was "huge, including 200 AK-47 rifles, two 75 calibre machine guns, rocket propelled grenades and 80 boxes of AK-47 ammunition,"[892] and "there was a 'large quantity' of ammunition comprising AK rounds, G3 rounds, mortar bombs, RPG bombs and stinger missile bombs…."[893] The materiel from this shipment was used by the RUF/AFRC forces in the Junta mining operations at Tongo Fields prior to the Intervention, in fighting ECOMOG and SLPP forces in Freetown before, during and after the Intervention, in "Operation Pay Yourself" and subsequent offensives on Kono, as well as in the commission of crimes during those operations.[894]

6468. para. 314: Taylor also sent ammunition to Sam Bockarie in Sierra Leone via Daniel Tamba,[895] and made available the vehicles in which the materiel was transported.[896] Bockarie stored this materiel sent by Taylor in Kenema, and it was used in the course of RUF/AFRC

activities in Kenema District, which included the commission of crimes in that area.[897] Taylor received diamonds mined in Kono and Tongo Fields by the RUF/AFRC as payment for the arms provided by Tamba.[898]

6469. para. 315: The needs of the RUF/AFRC during the Junta Period were not fulfilled in any significant proportion by materiel obtained from other sources.[899] The existing military stores in Freetown captured by the RUF/AFRC following the 25 May 1997 coup were not sufficient to sustain the RUF/AFRC forces beyond August 1997.[900] Trade between the RUF/AFRC and ULIMO was minor at the time[901] and only involved a relatively small quantity, insufficient to sustain operations.[902] Issa Sesay testified that "trade on the border with Guinea was irregular and not dependable"[903] and that it "resulted only in small amounts of ammunition."[904]

b. Intervention (February 1998) to Freetown Invasion (December 1998) – Taylor's Acts, Conduct and Mental State

6470. para. 316: The period following the Intervention was marked by the widespread and systematic commission of acts of terror against the civilian population of Sierra Leone by RUF/AFRC forces.[905] From February 1998 to December 1998, human rights abuses intensified, leaving thousands of civilians killed or mutilated by RUF/AFRC fighters, hundreds of civilians were abducted and raped and the burning of houses and looting continued.[906]

6471. para. 317: Media coverage of the RUF/AFRC's crimes and terror campaign against the Sierra Leonean population increased.[907] It was a matter of public knowledge that RUF/AFRC forces were committing unlawful killings, sexual violence, physical violence, conscription and use of child soldiers, abduction and forced labour, looting and terrorism.[908] Systematic and widespread rebel attacks against the civilian population were reported by the UN throughout 1998.[909] Amnesty International reported:

> During 1998, the scale of atrocities against civilians in Sierra Leone has reached unprecedented levels. Several thousand unarmed civilians, including many women and children, have been deliberately and arbitrarily killed and mutilated by forces of the Armed Forces Revolutionary Council (AFRC) and the armed opposition Revolutionary Front (RUF) since February 1998. …[T]he scale of human rights abuses committed by AFRC and RUF forces in the north and east of the country has escalated and taken on grotesque forms. From April 1998 reports emerged of civilians suffering mutilations such as crude amputations of their feet, hands, arms, lips or ears. Women and girls have been systematically raped. Hundreds of civilians, in particular children and young men and women, have been abducted by rebel forces.[910]

> AFRC and RUF forces in the east and north of Sierra Leone are deliberately and arbitrarily killing and torturing unarmed civilians. A deliberate and systematic campaign of killing, rape and mutilation, - called by the AFRC and RUF "*Operation No Living Thing*" – has emerged since April 1998.[911]

6472. para. 318: In June 1998, the UN Security Council reiterated its condemnation for the continued resistance to the authority of the legitimate Government of Sierra Leone and urged all rebels to put an end to the atrocities, cease their resistance and lay down their arms.[912] At a joint meeting between President Taylor and President Kabbah held on 2 July 1998, the two Heads of State "strongly condemned the continued rebel activities in Sierra Leone as well as the horrendous atrocities committed there."[913] At his trial, Taylor testified that if "someone was providing support to the AFRC/RUF [by April 1998] … they would be supporting a group engaged in a campaign of atrocities against the civilian population of Sierra Leone."[914] He further testified that in May 1998 there were news reports of a "horrific campaign being waged against the civilian population in Sierra Leone,"[915] and that by August 1998, the RUF/AFRC's crimes were notorious.[916] The Trial Chamber accepted his testimony, and further accepted that Taylor knew that crimes were committed in Sierra Leone while Sam Bockarie was in charge of the rebels including looting in February 1998 and that the Sierra Leonean population was terrorised in May 1998.[917]

6473. para. 319: Control over the diamond mines in Kono and Kenema Districts was crucial for the war effort of the RUF/AFRC.[918] After the RUF/AFRC lost control of mines in Kono and Kenema following the Intervention, Taylor consistently advised the RUF/AFRC leadership to seize and maintain control of the diamondiferous area of Kono in order to ensure the continuation of the trade of diamonds in exchange for arms and ammunition.[919] When the RUF/AFRC forces were pulling out of Kono during the Intervention, Benjamin Yeaten's radio station in Monrovia intervened to ask why the forces were withdrawing.[920] After the retreat from Freetown, Taylor instructed Johnny Paul Koroma to capture Kono, and after a first failed attempt, Taylor gave JPK instructions for a second attack, which led to the ultimate recapture of Koidu Town in Kono District by the RUF/AFRC[921] in late February/early March 1998.[922] After Sam Bockarie assumed control of the RUF/AFRC forces,[923] in February 1998 he travelled to Monrovia to meet Taylor.[924] Taylor told Bockarie to be sure to maintain control of Kono for the purpose of trading diamonds with him for arms and ammunition.[925] Following the RUF/AFRC's defeat in Kono in April 1998,[926] Taylor advised Bockarie to recapture Kono so that the diamonds there would be used to purchase arms and ammunition.[927] He also provided ammunition to the RUF/AFRC to be used in the recapture of Kono.[928] Taylor and Bockarie discussed plans for the Fitti-Fatta attack, and Taylor sent "herbalists" who marked the fighters to bolster their confidence in preparation for the attack.[929]

6474. para. 320: Throughout 1998, the RUF/AFRC relied frequently and heavily on arms and ammunition provided by Taylor to carry out its operations and maintain territories, which involved the commission of crimes against the civilian population.[930] The Magburaka Shipment was relied on in "Operation Pay Yourself" and subsequent offensives until 24 June 1998, and was used to commit crimes during those operations.[931] Additional materiel provided by Taylor was used in: operations in Kono District in early 1998, and the commission of crimes during those operations;[932] Operation Fitti-Fatta in Kono in mid-1998;[933] operations in Koinadugu and Bombali Districts from June to October 1998, which included the commission of crimes;[934] and attacks on Mongor Bendugu and Kabala, shortly after Operation Fitti-Fatta in mid-1998, which included the commission of crimes.[935] In all these operations the RUF/AFRC was heavily reliant on the supplies of materiel provided by Taylor.[936]

6475. para. 321: From February 1998, Sam Bockarie would send radio requests through to Liberia when he was short of materiel.[937] Bockarie made a series of trips to Liberia in 1998 during which he obtained a sizeable amount of materiel from Taylor.[938] Taylor also sent small supplies of arms and ammunitions to the RUF/AFRC in Buedu, through, inter alia, Tamba, Weah and Marzah.[939] He further sent Varmuyan Sherif to open a corridor for the exchange of arms and ammunition between the RUF/AFRC and ULIMO,[940] and provided financial support to the RUF/AFRC to facilitate the purchases of arms and ammunition from ex-ULIMO combatants.[941]

6476. para. 322: In turn, diamonds were delivered to Taylor by Sam Bockarie directly, as well as indirectly through intermediaries, including Eddie Kanneh and Daniel Tamba from February 1998 to July 1999, for the purpose of obtaining arms and ammunition from Taylor.[942]

6477. para. 323: Taylor provided the vehicles in which the materiel was transported to Sierra Leone and security escorts who facilitated the crossing of border checkpoints into or from Liberia.[943] The sustained and significant facilitation of road and air transportation of materiel, as well as security escorts, played a vital role in the operations of the RUF/AFRC during a period when an international arms embargo was in force.[944] In addition, Taylor's NPFL communications system was used to report the movements of Eddie Kanneh between Liberia and Sierra Leone with diamonds, and information on diamond mining in Sierra Leone.[945] Taylor also advised Sam Bockarie that the RUF/AFRC should construct or re-prepare the airfield in Buedu, so that arms and ammunitions could be shipped to RUF/AFRC-controlled territory.[946]

6478. para. 324: Other sources of materiel were of minor importance in comparison to that supplied or facilitated by Taylor.[947] The RUF/AFRC did not obtain further materiel after the Magburaka Shipment in late 1997, and was not able to capture a significant amount of supplies in

the retreat from Freetown.[948] The needs of the RUF/AFRC during 1998 were not fulfilled in any significant proportion by materiel obtained from ULIMO, Guinea or other private sources.[949] Moreover, Taylor played a key role in facilitating the trade with ULIMO, and thus this trade was not an "alternative" source of arms and ammunition.[950] While the groups led by Gullit, Superman and SAJ Musa later captured materiel during attacks carried out during the latter half of 1998,[951] they relied on materiel provided by Taylor to carry out these attacks and capture the additional materiel.[952]

6479. para. 325: Immediately after the Intervention, Taylor met Sam Bockarie in Monrovia and said that he would help the RUF/AFRC and provide support.[953] On Taylor's advice, Bockarie opened Camp Lion, an RUF/AFRC training camp, at Bunumbu in 1998,[954] where crimes were committed,[955] including the training of children under the age of 15 years.[956] Taylor sent former SLA soldiers to Camp Lion to be re-trained soon after the Intervention.[957]

6480. para. 326: Taylor also provided the RUF/AFRC leadership with sustained and significant communications support.[958] He provided Sam Bockarie with a satellite phone to enhance his communications capability.[959] He also provided his communications network to facilitate communications regarding arms shipments, diamond transactions and military operations.[960] For example, on one of Bockarie's first trips to Monrovia after the Intervention, radio operator Dauda Aruna Fornie, who accompanied Bockarie on this trip, kept Bockarie appraised of events in Sierra Leone by using Base 1, a radio station at Benjamin Yeaten's home in Monrovia.[961] "448 messages" were sent by Taylor's subordinates in Liberia, with Taylor's knowledge, alerting the RUF/AFRC when ECOMOG jets left Monrovia to attack RUF/AFRC forces in Sierra Leone.[962] The radio station in Buedu would then pass on the message to all RUF/AFRC stations on the frontlines so that the RUF/AFRC forces could take cover.[963]

c. Freetown Invasion (December 1998 to February 1999) – Taylor's Acts, Conduct and Mental State

6481. para. 327: In early November 1998, Sam Bockarie requested arms and ammunition from Taylor to support a major attack.[964] Bockarie and an RUF/AFRC delegation then went to Monrovia to secure the arms and ammunition, as well as advice, needed for the attack.[965] Bockarie met with Taylor in Monrovia, where they designed a plan for the RUF/AFRC forces to carry out a two-pronged attack on Kono and Kenema with the ultimate objective of reaching Freetown (the "Bockarie/Taylor Plan").[966] Taylor instructed Bockarie to make the operation "fearful" in order to force the Government into negotiation and free Sankoh from prison.[967] He also emphasised to

Bockarie the need to first capture Kono due to its diamond wealth.[968] Taylor was further instrumental in procuring a large quantity of arms and ammunition, which was "unprecedented in its volume," for the RUF/AFRC to use in the attack on Freetown.[969] Taylor was paid for the shipment with diamonds. He sent Musa Cissé, his Chief of Protocol with the delegation to Burkina Faso, and directed the distribution of the shipment. He kept some of it for his own purposes.[970] Upon his return and following discussions with his commanders, Bockarie briefed Taylor using the satellite phone that Taylor had provided him.[971] During this call, Taylor told Bockarie to "use all means" to get to Freetown.[972] Subsequently, Bockarie named the operation "Operation No Living Thing," implying that anything that stood in their way should be eliminated.[973]

6482. para. 328: Taylor further assisted the operation by providing military personnel. He sent 20 former NPFL soldiers from Liberia to Sierra Leone to join the RUF/AFRC forces. The NPFL soldiers were incorporated into a formation known as the Red Lion Battalion and participated in the Freetown Invasion.[974] Taylor also reorganised, armed and sent a group of at least four former SLA soldiers who had fled to Liberia back to Sierra Leone to support the attack on Freetown.[975] In addition, Taylor sent Abu Keita[976] and 150 men to Sierra Leone, where they were later incorporated into Sam Bockarie's command with Taylor's approval.[977] Keita participated in the attack on Kenema, and participated in the commission of crimes during this attack.[978]

6483. para. 329: In mid-December 1998, armed with the materiel from the Burkina Faso Shipment,[979] RUF/AFRC forces under the command of Issa Sesay successfully commenced their attack on Kono District in accordance with the Bockarie/Taylor Plan.[980] ECOMOG forces sustained heavy casualties during their retreat from Kono, and the RUF/AFRC was able to capture a significant quantity of arms, ammunition and other supplies from ECOMOG.[981] RUF/AFRC forces continued moving west towards Freetown as planned, capturing Masingbi, Magburaka and Makeni by 24 December 1998[982] and then attacking Lunsar, Port Loko, Masiaka and Waterloo.[983] At the same time, in mid-December 1998, SAJ Musa's group independently commenced its advance on Freetown, and by the end of December 1998 had reached Benguema on the outskirts of Freetown.[984] Following the capture of Benguema, SAJ Musa was killed on 23 December 1998 and Gullit took over as commander.[985]

6484. para. 330: Gullit then contacted Sam Bockarie.[986] Bockarie took the opportunity presented by SAJ Musa's death and the concomitant resumption of cooperation to attempt a coordinated effort to capture Freetown as he and Taylor had planned.[987] After communicating with Gullit, Bockarie ordered his troops to advance towards Freetown, with the aim of joining forces with Gullit in Freetown, and Bockarie, Gullit, Issa Sesay and the RUF/AFRC commanders coordinated

in order to achieve that aim.[988] Bockarie instructed Issa Sesay to reinforce the troops in Freetown,[989] and Issa Sesay then sent RUF/AFRC forces under the command of Rambo Red Goat into Freetown, where they were able to join up with Gullit's forces.[990] Throughout the attack on Freetown, Gullit maintained frequent and daily contact with Bockarie to discuss the ongoing military situation.[991] Bockarie gave instructions to Gullit regarding strategy and tactics,[992] and Gullit complied.[993]

6485. para. 331: On 6 January 1999, the attack on Freetown itself began.[994] After the capture of the State House, Gullit contacted Sam Bockarie to inform him of the capture of the city and to ask for reinforcements.[995] Gullit's forces held central Freetown for four days, until a counter-attack by ECOMOG forces weakened their position.[996] As Gullit's forces were facing increasing pressure from ECOMOG, Bockarie, in accordance with Taylor's instructions to "make the operation fearful,‖ ordered Gullit to use terror tactics against the civilian population on the retreat from Freetown.[997] When Gullit's forces withdrew from Freetown, Bockarie instructed his forces on the outskirts of the city to ensure a secure line of retreat for the withdrawing troops.[998] The RUF/AFRC then made collaborative efforts to re-attack Freetown.[999]

6486. para. 332: Throughout the Freetown Invasion, Taylor and Sam Bockarie communicated by satellite phone in furtherance of the attack,[1000] enhancing Bockarie's capacity to plan, facilitate and order RUF/AFRC military operations during which crimes were committed.[1001] Bockarie was in frequent and even daily contact via radio or satellite phone with Taylor in December 1998 and January 1999, either directly or through Benjamin Yeaten.[1002] In these communications Taylor and Yeaten gave advice to Bockarie and received updates in relation to the progress of the operations in Kono and Freetown in the implementation of the Bockarie/Taylor Plan.[1003] Taylor passed along instructions to Bockarie, directing him to send prisoners released from Pademba Road Prison to RUF/AFRC controlled areas.[1004] Yeaten also travelled to Sierra Leone to meet with Bockarie in Buedu,[1005] and Bockarie frequently consulted Yeaten on operational and military decisions.[1006] Taylor also provided communications support during the Freetown Invasion, as his subordinates transmitted "448 messages" to the RUF/AFRC radio station in Buedu, which then transmitted the message to the fighters in the capital, allowing the troops to change their location and avoid attacks by ECOMOG airplanes.[1007] While Gullit's forces occupied State House, they were under air attack by ECOMOG and would receive a "448 message" from Buedu about every two hours.[1008]

6487. para. 333: During the Freetown Invasion and in response to Bockarie's request, Taylor supplied additional ammunition to the RUF/AFRC via Dauda Aruna Fornie.[1009] This materiel,

together with materiel from the Burkina Faso Shipment and the materiel captured from ECOMOG in Kono, was used by the RUF/AFRC in the Freetown Invasion and the commission of crimes in Kono, Makeni, Freetown and the Western Area.[1010] The Trial Chamber found, based on Issa Sesay's testimony, that without the Burkina Faso Shipment, the RUF/AFRC would not have launched the initial operations on Kono, and without taking Kono, the RUF/AFRC would not have had the materiel necessary to attack other areas.[1011] The Burkina Faso Shipment was thus causally critical to the capture of the ECOMOG materiel in the operations in Kono.[1012] The RUF/AFRC had no other significant sources of materiel at this time.[1013]

6488. para. 334: The RUF/AFRC military campaign to capture Freetown was marked by extreme violence and involved the commission of crimes charged in Counts 1-11 of the Indictment.[1014] Thousands of civilians were killed during the attack on Freetown and the subsequent retreat through Kissy, Upgun, Calaba Town, Allen Town, Hastings, Wellington, Waterloo and Benguema.[1015] The crimes committed during the Freetown Invasion were widely reported by international media and international organisations.[1016]

d. Post-Freetown Invasion (March 1999) to End of Indictment Period (18 January 2002) – Taylor's Acts, Conduct and Mental State

6489. para. 335: In March 1999, Taylor supplied Sam Bockarie with a large shipment of materiel,[1017] which was part of a shipment of "tons of weapons and ammunition originating in Ukraine [that] were shipped to Burkina Faso from where most, but not necessarily all, were transferred in six flights in a BAC-111 aircraft owned by Leonid Minin [to Monrovia, Liberia]."[1018] In June 1999, the UN Secretary-General reported a resurgence in rebel atrocities against civilians, including executions, mutilations, amputations, abductions, sexual abuse and the large-scale destruction of property.[1019]

6490. para. 336: On 7 July 1999, the Lomé Peace Accord was signed by President Kabbah and Foday Sankoh.[1020] Taylor received praise from world leaders for his involvement in the peace negotiations. However, while he was involved in the peace negotiations, he was at the same time assisting the RUF/AFRC with further preparations for war.[1021] Taylor was privately engaged in arms transactions at the same time that he was publicly promoting peace.[1022]

6491. para. 337: The Lomé Peace Accord did not represent the end of hostilities in the territory of Sierra Leone and the disarmament process took time to eventuate.[1023] From 1999 until the end of the Indictment Period, the RUF/AFRC continued to commit crimes against civilians.[1024] Contemporary public reports documented the continuing crimes committed by the RUF/AFRC,[1025]

and Taylor continued to directly and intimately participate in ECOWAS peace efforts to address the situation in Sierra Leone.[1026]

6492. para. 338: By April 1999, RUF/AFRC forces, under the command of Taylor's Liberian subordinate Benjamin Yeaten,[1027] were fighting alongside Liberian troops against the Liberian rebel group LURD.[1028] The RUF/AFRC sent a radio operator to Liberia who worked directly with Yeaten, in order to coordinate communications between Yeaten and the RUF/AFRC forces.[1029] In December 1999, Sam Bockarie, who strongly opposed RUF disarmament and defied orders from Sankoh to disarm,[1030] resigned from the RUF and was summoned by Taylor to leave Sierra Leone. He complied with Taylor's instructions.[1031] In May 2000, the RUF captured between 400 and 500 UNAMSIL peacekeepers in the area between Lunsar and Makeni in Sierra Leone.[1032] Shortly after this, on 8 May 2000, Foday Sankoh was arrested by the Government of Sierra Leone and incarcerated in Freetown, and Issa Sesay was then appointed as interim leader of the RUF.[1033] Taylor was asked by ECOWAS to become involved in negotiations for the release of the peacekeepers,[1034] since he "had and was seen to have a great deal of influence" over Issa Sesay and the RUF/AFRC, and he exerted this influence to effect the release of the UN peacekeepers.[1035]

6493. para. 339: From mid-2000 fighting between the Government of Sierra Leone and the RUF ceased almost entirely, and the RUF began to take their commitment to disarm more seriously.[1036] At this time Issa Sesay was enthusiastic about carrying out disarmament.[1037] However, from July 2000 Taylor began advising Issa Sesay not to disarm.[1038] At a meeting in Monrovia while participating in ECOWAS efforts to promote peace in Sierra Leone, Taylor told Issa Sesay to say he would disarm but then "not do it in reality," saying one thing to Sesay in front of the ECOWAS Heads of State and another to him in private.[1039] Taylor urged Issa Sesay not to listen to the Sierra Leonean Government and promised the RUF his continuing assistance, for which he gave Issa Sesay $USD 15,000.[1040] Again in mid-2001, Taylor asked Issa Sesay whether it would be safe for the RUF to disarm and advised Issa Sesay not to disarm at all.[1041] Taylor advised Sesay to not disarm in part so that RUF/AFRC fighters could participate in combat operations in Guinea and Liberia against Taylor's enemies.[1042] As he had with Sam Bockarie, in 2000 and 2001 Taylor instructed Issa Sesay to send RUF forces to fight in Liberia and Guinea against LURD forces and their allies, and Issa Sesay complied.[1043] While fighting LURD and Guinean forces in Liberia and Guinea, the RUF forces were fighting under the command of Benjamin Yeaten alongside Liberian troops.[1044] The RUF and Taylor had an interest in fighting and repelling a common enemy that was cutting the supply line between Liberia and Sierra Leone.[1045]

6494. para. 340: While participating in ECOWAS efforts to promote peace in Sierra Leone, Taylor continued to provide arms and ammunition to the RUF in exchange for diamonds. Sam Bockarie travelled to Monrovia as part of the Lomé delegation and returned to Sierra Leone in or around late September to October 1999 with a helicopter of materiel supplied by Taylor.[1046] Taylor sent small supplies of arms and ammunitions to the RUF/AFRC until December 1999, through, inter alia, Daniel Tamba, Sampson Weah and Joseph Marzah.[1047] In May 2000, Issa Sesay travelled to Liberia and obtained arms and ammunitions from Taylor.[1048] He also made at least two trips to Liberia in the second half of 2000 and in early 2001 during which he obtained small quantities of arms and ammunition supplied by Taylor.[1049] In 2000, Albert Saidu brought back two vehicles of ammunition and medicine from Benjamin Yeaten in response to a request from Issa Sesay.[1050] Between 2000 and 2001, TF1-567 was frequently involved in the transportation of materiel provided by Taylor to the RUF.[1051] Taylor also continued to provide small quantities of arms and ammunition to the RUF in 2000 and 2001 via, inter alia, Marzah, Tamba, Weah, Menkarzon, Duoh and Varmoh.[1052] Taylor also made available the vehicles in which the materiel was transported and the security personnel that escorted Sam Bockarie and Issa Sesay when they picked up materiel from Monrovia and took diamonds to Taylor.[1053] Where necessary, these security escorts also facilitated the crossing of border checkpoints into or from Liberia.[1054] In addition, from at least 1999, Taylor used Liberian Government helicopters for the purposes of delivering arms and/or ammunition to the RUF/AFRC,[1055] and he sent helicopters to transport Sam Bockarie and Issa Sesay to Liberia on their trips to obtain materiel.[1056]

6495. para. 341: From February 1999 to January 2002 the RUF/AFRC would turn to Taylor for assistance whenever it needed materiel,[1057] and the alternative sources of materiel available were of minor importance in comparison to that supplied or facilitated by Taylor.[1058] During this period, the RUF/AFRC continued to commit crimes, even though it was not necessarily engaged in military operations.[1059] The materiel sent by Taylor to the RUF/AFRC in 1999 to 2001 was used in fighting in Sierra Leone, against Kamajors throughout 1999 and against ECOMOG and the "West Side Boys"[1060] in March to April 1999, and was part of the overall supply of materiel used by the RUF/AFRC in the commission of crimes.[1061] In the course of military engagements with Kamajors the RUF/AFRC was able to capture materiel,[1062] but not a significant amount.[1063]

6496. para. 342: Taylor also assisted the RUF/AFRC by providing it with a Guesthouse in Monrovia, equipped with a long-range radio and telephone, RUF radio operators, SSS security supervised by Benjamin Yeaten, cooks and a caretaker.[1064] Although the Guesthouse was used by RUF/AFRC members partly for matters relevant to the peace process or for diplomatic purposes, it was also used to facilitate the transfer of arms, ammunition and funds directly from Taylor to the

RUF/AFRC, and the delivery of diamonds from the RUF/AFRC directly to Taylor, thus providing a base for the RUF/AFRC in Monrovia.[1065] After Issa Sesay assumed interim command of the RUF, Taylor also provided him with a satellite phone so that they could be in communication.[1066] This satellite phone facilitated Issa Sesay's communications capability, and enhanced Sesay's capacity to further RUF/AFRC's military operations during which crimes were committed.[1067]

6497. para. 343: During 1999 until his departure from Sierra Leone, Sam Bockarie made a number of trips to Monrovia to deliver diamonds to Taylor, and Eddie Kanneh and Daniel Tamba also delivered diamonds to Taylor from the RUF/AFRC.[1068] After Foday Sankoh's release and appointment as Chairman of the Commission for the Management of Strategic Resources, National Reconstruction and Development, the exchange of diamonds for arms and ammunition between Sankoh and Taylor continued until Sankoh was arrested in May 2000.[1069] During Issa Sesay's leadership of the RUF, from June 2000 until the end of hostilities in 2002, Issa Sesay delivered diamonds to Taylor,[1070] and Eddie Kanneh[1071] delivered diamonds to Taylor on Issa Sesay's behalf.[1072] Diamonds were delivered both in exchange for supplies and/or arms and ammunition and for "safekeeping" until Sankoh's release.[1073] In addition, Taylor facilitated a relationship between Issa Sesay and a diamond dealer known as Alpha Bravo in 2001 for the purpose of diamond transactions.[1074] Taylor also provided fuel and mining equipment to the RUF/AFRC,[1075] and he sent two men to visit and assess the mining operations.[1076] In 2001 Taylor gave Issa Sesay $USD 50,000 related to the diamond trade, and in 2002 Issa Sesay sent Mike Lamin and then a second delegation to retrieve a further $USD 50,000 Taylor held for the RUF/AFRC related to the diamond trade.[1077]

(iii) The Law of Individual Criminal Liability

6498. para. 344: In Grounds 11, 16, 19, 21 and 34, the Defence submits that the Trial Chamber erred in law in its articulation and/or application of the elements of individual criminal liability, specifically as to the elements of aiding and abetting liability and planning liability.

6499. para. 345: In this section of the Judgment, the Appeals Chamber addresses four challenges to the law articulated and applied by the Trial Chamber for aiding and abetting and planning liability.

6500. para. 346: First, the Appeals Chamber examines the Defence claim that the Trial Chamber erred as a matter of law in its articulation and application of the *actus reus* elements for aiding and abetting, by finding that Taylor's acts and conduct had a substantial effect on the commission of the crimes, rather than assisted the crimes "as such".[1078] The Defence further asserts that the law

articulated and applied by the Trial Chamber violates the principle of personal culpability by: (i) criminalising any contribution made to a party to an armed conflict;[1079] (ii) failing to distinguish between "neutral" and "intrinsically criminal" assistance;[1080] and (iii) improperly characterising the RUF/AFRC as a criminal organisation.[1081]

6501. para. 347: Second, the Appeals Chamber considers the Defence contention that the Trial Chamber erred as a matter of law in its articulation and application of the mens rea elements for aiding and abetting, by applying a "knowledge" standard rather than a "purpose" standard in its assessment of Taylor's mental state regarding the consequence of his acts and conduct.[1082]

6502. para. 348: Third, for the reasons set out below,[1083] the Appeals Chamber considers whether the Trial Chamber erred as a matter of law when it held that "specific direction" was not an element of the *actus reus* for aiding and abetting liability.

6503. para. 349: Fourth, the Appeals Chamber addresses the Defence submission that the Trial Chamber erred as a matter of law in its articulation and application of the *actus reus* for planning by failing to require and find that Taylor planned particular "concrete crimes".[1084]

6504. para. 350: As with all issues of law, the Appeals Chamber looks first to the constitutive documents of the Special Court: the Agreement between the Government of Sierra Leone and the United Nations, the treaty which established the Court and which incorporates the Statute annexed thereto.[1085] The Appeals Chamber has held that the object and purpose of the Statute is that "all those who have engaged in serious violations of international humanitarian law, whatever the manner in which they may have perpetrated, or participated in the perpetration of those violations, must be brought to justice"[1086] and thereby end "the prevailing situation of impunity."[1087] The Parties to the Agreement recognised that the serious violations of international humanitarian law that took place in Sierra Leone during the conflict victimised the civilian population.[1088] In furtherance of its object and purpose, the Agreement expressly mandated the Special Court to bring to justice those who bear the greatest responsibility for the serious violations of international humanitarian law committed against the people of Sierra Leone.[1089] In his report on the establishment of the Special Court, the Secretary-General of the United Nations noted:

> The prohibition on attacks against civilians is based on the most fundamental distinction drawn in international humanitarian law between the civilian and the military and the absolute prohibition on directing attacks against the former. Its customary international law nature is, therefore, firmly established.[1090]

The prohibition and criminalisation of attacks against civilians is one of the essential principles of international humanitarian law,[1091] and this principle is firmly established in the Statute.

6505. para. 351: In furtherance of the express mandate of the Court, interpreted in light of the object and purpose of the Statute, Article 6(1) establishes personal culpability for participation in the commission of crimes against humanity, violations of Article 3 common to the Geneva Conventions and Additional Protocol II, and other serious violations of international humanitarian law.[1092] Article 6(1) of the Statute provides:

> 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.

The Article establishes five ways in which individual criminal liability, consistent with the principle of personal culpability, attaches for participation in the commission of international crimes during each and every phase of the crime. Article 6(1) therefore imposes individual criminal responsibility "for acts or transactions in which a person has been personally engaged or in some other way *participated* in one or more of the five ways stated in the Article:"[1093] in the commission of a crime prohibited by the Statute.[1094]

6506. para. 352: Article 6(1) of the Statute does not expressly establish the actus reus and mens rea elements of any of the five forms of criminal participation. In accordance with Rule 72bis, the "principles and rules of international customary law" are applicable laws that the Appeals Chamber has resort to in applying Article 6(1) of the Statute and giving effect to the object and purpose of the Statute.[1095] The Appeals Chamber identifies the *actus reus* and *mens rea* elements for the forms of individual criminal liability set out in Article 6(1) by ascertaining customary international law applicable at the time the crimes were committed.[1096] In this regard, it examines its own jurisprudence, the post-Second World War jurisprudence and the other authorities of international law set out in Rule 72*bis*. In addition, the Chamber looks to the jurisprudence of the ICTY and ICTR, where persuasive, for guidance.[1097]

(iv) Aiding and Abetting – *Actus Reus*

6507. para. 353: The Trial Chamber articulated the *actus reus* (objective/material/physical) elements of aiding and abetting liability as follows:

> i. The Accused provided practical assistance, encouragement, or moral support to the perpetration of a crime or underlying offence and
>
> ii. Such practical assistance, encouragement, or moral support had a substantial effect upon the commission of a crime or underlying offence.

The Trial Chamber further explained:

> An Accused may aid and abet not only by means of positive action, but also through omission.
>
> The Accused may aid and abet at one or more of the ―planning, preparation or execution‖ stages of the crime or underlying offence. The lending of practical assistance, encouragement, or moral support may occur, before, during, or after the crime or underlying offence occurs. The actus reus of aiding and abetting does not require specific direction. …
>
> Although the practical assistance, encouragement, or moral support provided by the Accused must have a substantial effect upon the commission of the crime or underlying offence, the Prosecution need not prove that the crime or underlying offence would not have been perpetrated but for the Accused's contribution.[1098]

6508. para. 354: In Grounds 21 and 34, the Defence alleges that the Trial Chamber erred in law in articulating and applying the *actus reus* elements of aiding and abetting liability. It presents two principal lines of argument in support. First, it argues that the Trial Chamber failed to require that Taylor's assistance was to "the crime as such", by which it means that the Trial Chamber was required to find that Taylor provided assistance to the person who committed the *actus reus* of the crime, and that the assistance was used in the commission of the crime.[1099] Second, it argues that the law articulated by the Trial Chamber violates principles of personal culpability, as it criminalises any assistance provided to a party to an armed conflict,[1100] fails to take into account the facially "neutral" character of assistance[1101] and improperly imposes individual criminal liability for membership in a criminal organisation.[1102]

6509. para. 355: In the Notice of Appeal, Ground 34 states that "[t]he Trial Chamber erred in law and fact in failing to require a showing that the assistance was to the crimes as such, and that it was substantial."[1103] However, in the Appeal Brief, no arguments are provided in support of this Ground of Appeal, and the Defence submits that "[n]o separate arguments are presented in respect of Ground 34, as those arguments are sufficiently expressed in the other Grounds concerning *actus reus*," presumably referring to Grounds 21-32.[1104] The Prosecution requests that the Appeals Chamber summarily dismiss Ground 34 for failure to comply with the Practice Direction on Structure of Grounds of Appeal.[1105]

6510. para. 356: The Appeals Chamber accepts the Prosecution submission that Ground 34 does not comply with the Practice Direction on Structure of Grounds of Appeal. The Appeals Chamber further notes that in Grounds 21-32, the Defence does not present a complete and coherent submission clearly setting out the alleged error of law referred to in Ground 34. Nonetheless, the Appeals Chamber requested the Parties to address in their oral submissions the Defence's complaint that the Trial Chamber erred by failing to require a showing that Taylor assisted the

commission of the crimes "as such."[1106] The Appeals Chamber is satisfied that the Parties were able to provide their views on this issue in their written and oral submissions. Further, as the Appeals Chamber considers that the issue raised by the Defence in Ground 34 concerns an important issue of law, the Appeals Chamber does not consider it appropriate to summarily dismiss Ground 34 and/or the incomplete submissions made in Grounds 21-32. Accordingly, in the exercise of its discretion, the Appeals Chamber will consider under the heading of Grounds 21 and 34 the submissions disparately made in Grounds 21- 32 and during the oral hearing.

a. The *Actus Reus* Elements – Aiding and Abetting - *Actus Reus*

6511. para. 362: The Appeals Chamber recalls its prior holding that the actus reus of aiding and abetting liability under Article 6(1) of the Statute and customary international law is that an accused's acts and conduct[1128] of assistance, encouragement and/or moral support had a substantial effect on the commission of each charged crime for which he is to be held responsible.[1129] The Trial Chamber properly articulated the actus reus elements of aiding and abetting liability in light of the Appeals Chamber's previous holdings.[1130]

6512. para. 363: The Defence position is that a substantial effect on the commission of the crimes is insufficient as a matter of law to establish the *actus reus* of aiding and abetting liability. The Defence submits that there is an additional *actus reus* element, namely it must also be proved that the aider and abettor provided assistance to the physical actor, and that the assistance was used in the commission of a specific crime by the physical actor. Indeed, it avers that when assessing the *actus reus* of aiding and abetting liability, the focus of the inquiry must be on the relationship between the physical actor and the accused, that is whether the alleged aider and abettor provides the physical actor of each specific crime with assistance that the physical actor used in the commission of each specific crime.[1131]

6513. para. 364: The Trial Chamber held that the *actus reus* is established where the accused provided assistance, encouragement or moral support at one or more of the "planning, preparation or execution" stages of the crime and thereby had a substantial effect on the commission of the crime.[1132] It accordingly considered whether it was proved that Taylor, by his acts of assistance, encouragement and moral support, had a substantial effect on the commission of each of the crimes with which he was charged.[1133]

6514. para. 365: As the issue presented concerns the elements of aiding and abetting liability under Article 6(1) of the Statute, the Appeals Chamber must look to the Statute and customary international law.

6515. para. 366: Interpreting the Statute in accordance with its plain meaning in context, in light of its object and purpose, the Appeals Chamber finds that Article 6(1) establishes individual criminal liability in terms of the accused's relationship to the crime, not to the physical actor. The five forms of criminal participation in Article 6(1) – including commission – are set forth independently and defined in relation to the crime. As the plain language of Article 6(1) provides, those who plan, instigate, order, commit or otherwise aid and abet the crime are equally liable for the crime on the basis of their own acts. While the Defence submits that the inquiry is whether the aider and abettor assisted the particular physical actor who committed the crime, Article 6(1) does not refer to or in any way describe personal culpability for "planning, instigating, ordering, committing or otherwise aiding and abetting" in relation to another person, whether the "principal", "perpetrator" or "physical actor". In contrast, Article 6(3) clearly establishes individual liability deriving from the criminal acts of another person, the subordinate, under certain circumstances.[1134] The differences between these statutory provisions, which effectively place Article 6(1) in context, confirm the plain language of Article 6(1).

6516. para. 367: In addition, Article 6(1) establishes individual criminal liability for those who otherwise aid and abet in the "planning, preparation or execution of a crime." In accordance with its plain language, aiding and abetting liability may thus be established where the accused participates in any or all stages of the crime. This is consistent with the object and purpose of Article 6(1), as it ensures personal culpability for all those who plan, instigate, order, commit or otherwise aid and abet crimes, whatever the particular manner and stage in which they participate in the crime. The Defence submission that an aider and abettor's assistance must be used by the physical actor in the commission of the specific crime is thus contrary to the Statute. The plain language of Article 6(1) and the object and purpose of the Statute ensure accountability for those who participate in the commission of crimes, in whatever manner and at whatever stage.[1135]

6517. para. 368: The Appeals Chamber has also reviewed customary international law as recognised in the jurisprudence of this Court and other international tribunals. The Appeals Chamber does not accept the Defence submission that the principle to be derived from the jurisprudence is that an aider and abettor must provide assistance to the physical actor and that the assistance must be used in the commission of the specific crime. To the contrary, the Appeals Chamber has held that in respect of the *actus reus* of aiding and abetting liability, the essential question is whether the acts and conduct of an accused can be said to have had a substantial effect on the commission of the crime charged.[1136] This applies equally to personal culpability for ordering,[1137] planning[1138] and instigating[1139] the commission of crimes. Accordingly, the principle articulated by this and other Appeals Chambers is that the *actus reus* of aiding and abetting

liability is established by assistance, encouragement or moral support that has a substantial effect on the crimes, not the particular manner in which such assistance is provided. This principle is in recognition of the variety of fact patterns which confront triers of fact.

6518. para. 369: Aiding and abetting liability has attached to those who have provided assistance, encouragement or moral support to a variety of different crimes in a variety of contexts. Confirmed convictions for aiding and abetting liability have been entered for: the rape of a single victim;[1140] attacks on peacekeepers;[1141] detention, ill-treatment and forcible transfer throughout a municipality;[1142] killings, torture, destruction of homes and religious institutions and persecution in a region;[1143] persecution throughout a State;[1144] a genocide.[1145] The acts and conduct of those convicted had a substantial effect on the commission of crimes in an infinite variety of ways. An accused's acts and conduct can have a substantial effect by providing weapons and ammunition, vehicles and fuel or personnel,[1146] or by standing guard, transporting perpetrators to the crime site, establishing roadblocks, escorting victims to crime sites or falsely encouraging victims to seek refuge at an execution site.[1147] Such variety also includes providing financial support to an organisation committing crimes, expelling tenants, dismissing employees, denying victims refuge or identifying a victim as a member of the targeted group.[1148] Senior officials' acts and conduct can have a substantial effect on the commission of crimes by signing decrees, attending meetings and issuing reports, allowing troops to be used to assist and commit crimes, demanding slave labour to satisfy the needs of industries, issuing directives and drafting laws, endorsing official decisions to disarm victim groups, working together with the police, army and paramilitaries to maintain a system of unlawful arrests and detention, or deliberately not providing adequate medical care to detention facilities.[1149] In other cases, the acts or conduct of accused persons found to have had a substantial effect on crimes include making a speech to a crowd of listeners encouraging them to commit crimes, implementing a media campaign to arouse hatred against a group or being an approving spectator at the scene of a crime,[1150] or by burying bodies, cremating bodies or conserving looted property.[1151] The acts and conduct of an accountant, architect or dentist in their respective professional roles can have a substantial effect on the commission of crimes,[1152] as can those of prosecutors, judges[1153] and religious officials.[1154]

6519. para. 370: In submitting that certain specific cases[1155] support the proposition that the aider and abettor must provide assistance to the physical actor and that this assistance must be used in the commission of the crime, the Defence has mistaken issues of fact for issues of law.[1156] The findings in the cases on which the Defence relies demonstrate the manner in which those accused had a substantial effect on the commission of the crimes; they support the proposition that the *actus reus* of aiding and abetting liability is only established where another accused assisted the

crimes in that same manner. For example, the Appeals Chamber has held that "acts of aiding and abetting can be made at a time and place removed from the actual crime" if the acts have a substantial effect on the commission of the crime.[1157] This Appeals Chamber also held that, for those alleged to have encouraged or provided moral support to the commission of the crime by being an "approving spectator" at the scene of the crime, "[i]t may be that, in practice, the aider and abettor will be superior to, or have control over, the principal perpetrator; however, this is not a condition required by law."[1158] The Appeals Chamber agrees with the ICTY Appeals Chambers that "a defendant may be convicted for having aided and abetted a crime even if the principal perpetrators have not been tried or identified,"[1159] and that "it is not required as an element of aiding and abetting liability that the principal perpetrators know of the aider and abettor's existence or of his assistance to them."[1160] The Appeals Chamber further agrees that for aiding and abetting liability, "it is not necessary as a matter of law to establish whether [the accused] had any power to control those who committed the offences."[1161] As the Appeals Chamber, as well as the ICTY and ICTR Appeals Chambers, have consistently emphasised, whether an accused's acts and conduct had a substantial effect on the commission of the crime "is to be assessed on a case-by-case basis in light of the evidence as a whole."[1162] The manner in which an accused may aid and abet crimes can vary, and the trier of fact must consider the specific facts of the case to determine whether an accused's acts and conduct assisted, encouraged or provided moral support to and had a substantial effect on the commission of the crimes. The Defence submission that the Trial Chamber erred in law by failing to make "any specific findings as to the perpetrator of whom [Taylor] was allegedly an aider and abettor"[1163] is contrary to these consistent holdings, and must accordingly be rejected.

6520. para. 371: A thorough review of the caselaw, which is now examined, demonstrates that applying customary international law to the specific facts of individual cases, this Court and other international tribunals have consistently required, when considering a variety of fact patterns, that an accused's acts and conduct had a substantial effect on the commission of the crimes for which he is to be held individually criminally liable. International tribunals have never required that, as a matter of law, an aider and abettor must provide assistance to the crime in a particular manner, such as providing assistance to the physical actor that is then used in the commission of the crime. The Appeals Chamber recalls that as illustration of the Trial Chamber's alleged error of law, the Defence highlighted the Trial Chamber's conclusions that Taylor's assistance supported, sustained and enhanced the RUF/AFRC's capacity to undertake its Operational Strategy,[1164] and that his assistance was critical in enabling the RUF/AFRC's Operational Strategy.[1165] The Appeals Chamber notes that based on similar findings, the Chambers and Tribunals in the cases discussed

below found that the *actus reus* of aiding and abetting liability was established. In addition, these cases involve convictions for a range of crimes and criminal activity, including specific crimes, such as murders, as well as acts of persecution and genocide.

6521. para. 372: In *Brima et al*., this Chamber found that one of the accused, Kanu, was responsible for aiding and abetting a system of sexual slavery and forced labour.[1166] The Chamber held that his acts and conduct satisfied the *actus reus* of aiding and abetting because he supported and sustained the organised commission of crimes and thereby provided practical assistance to the crimes.[1167] The Appeals Chamber did not require that Kanu provided assistance in a particular manner.

6522. para. 373: In the *Brđanin* case, the ICTY Trial Chamber found that the Bosnian Serb leadership adopted a Strategic Plan to gain control over territories,[1168] and that the crimes committed by Bosnian Serb forces during the indictment period "occurred as a direct result of the over-arching Strategic Plan."[1169] It convicted Brđanin[1170] for aiding and abetting the crimes committed in context of the armed attacks by the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods,[1171] including killings, torture, destruction of homes and religious buildings, appropriation of property and humiliation and degradation. It found that as President of the ARK Crisis Staff, Brđanin issued "governmental" decisions that non-Serbs should disarm,[1172] which made non-Serb civilians more vulnerable and less able to defend themselves from attacks by Bosnian Serb forces implementing the Strategic Plan[1173] and also provided a pretext for attacks.[1174] The Trial Chamber concluded that the decisions for non-Serbs to disarm had a substantial effect on the crimes committed in the course of such attacks.[1175] It further concluded that Brđanin aided and abetted crimes of persecution committed on a widespread and systematic scale, finding that he "aided and abetted the maintenance of a system in which Bosnian Muslims and Bosnian Croats were unable to seek legal redress" for their illegal detention and the appropriation of their property[1176] and "actively aided and abetted the setting up of impediments for Bosnian Muslims and Bosnian Croats to move around freely."[1177] The ICTY Appeals Chamber affirmed the convictions and the Trial Chamber's findings that Brđanin's acts and conduct had a substantial effect on the commission of the crimes for which he was convicted.[1178]

6523. para. 374: Brđanin was convicted of aiding and abetting crimes because he supported and enabled attacks by Bosnian Serb forces in the implementation of the Strategic Plan. By issuing governmental decisions impacting the victim population of the crimes, Brđanin had a substantial effect on the commission of the crimes, establishing the *actus reus* of aiding and abetting liability. The ICTY Trial Chamber did not find that each victim of these crimes disarmed as a result of

Brđanin's acts or that Brđanin's acts played a direct role in each crime.[1179] Rather, it considered the cumulative effect of his acts on the ability of the Bosnian Serb forces to commit the crimes, and he was held liable for having an indirect, but substantial effect on the crimes.[1180] This is further underscored by the findings that Brđanin "aid[ed] and abet[ed] the maintenance of a system" of persecution and thereby supported and sustained the functioning of the organised commission of crimes.[1181]

6524. para. 375: While the Defence cites the ICTY case of *Blagojević and Jokić*, this case is in fact contrary to the Defence position.[1182] The Trial Chamber found Blagojević liable for aiding and abetting crimes where he "permitted the use of personnel or resources to facilitate the commission of these crimes."[1183] The personnel attributable to Blagojević did not perpetrate the crimes themselves. Blagojević's acts and conduct assisted and had a substantial effect on the crimes because the personnel attributable to him participated in guarding and detaining the eventual victims.[1184] The ICTY Appeals Chamber's reasoning in *Krstić*, where it convicted the accused of aiding and abetting crimes of genocide, is also instructive in this respect:

> As has been found above, it was reasonable for the Trial Chamber to conclude that, at least from 15 July 1995, Radislav Krstić had knowledge of the genocidal intent of some of the Members of the VRS Main Staff. Radislav Krstić was aware that *the Main Staff had insufficient resources of its own to carry out the executions* and that, without the use of Drina Corps resources, *the Main Staff would not have been able to implement its genocidal plan*. Krstić knew that by allowing Drina Corps resources to be used he was making a substantial contribution to the execution of the Bosnian Muslim prisoners. Although the evidence suggests that Radislav Krstić was not a supporter of that plan, as Commander of the Drina Corps he permitted the Main Staff to call upon Drina Corps resources and to employ those resources.[1185]

The acts and conduct of Krstić and Blagojević were found to have assisted and had a substantial effect on the crimes for which they were convicted because they supported and enhanced the capacity of the VRS Main Staff – with whom they did not share a common purpose[1186] – to carry out its plan to commit crimes against the civilian population of Srebrenica. The Chambers in both *Blagojević and Jokić* and *Krstić* thus found that the *actus reus* of aiding and abetting liability was established where the accused's acts and conduct had a substantial effect on the commission of the crimes, and did not require that the accused provided assistance in a particular manner, such as t the physical actor who then uses the assistance in the commission of the specific crime.

6525. para. 376: In *Simić et al*., the ICTY Appeals Chamber convicted Simić of aiding and abetting persecution in respect of unlawful arrests and the detention of non-Serb civilians.[1187] The Trial Chamber found that Simić worked together with the police, paramilitaries and JNA to

maintain a system of crimes in the form of unlawful arrests and detention of non-Serb civilians.[1188] On appeal, Simić argued that ―accepting the Trial Chamber's findings as they stand, they do not disclose any sufficient basis of evidence for (*sic*) linking him with the acts in any way."[1189] The ICTY Appeals Chamber rejected this submission, concluding that the findings that there was a system of arrests and detention and that Simić had strong influence demonstrate "that he lent positive assistance to [the crimes]"[1190] and further "lent substantial assistance to the perpetration of these underlying acts of persecutions."[1191] The *actus reus* of aiding and abetting liability was thus established because Simić participated in, supported and sustained "the system of arrests and detention", and thereby his acts and conduct had a substantial effect on those crimes.[1192]

6526. para. 377: The post-Second World War caselaw is also instructive on the application of the principle that the *actus reus* of aiding and abetting liability is established by assistance that has a substantial effect on the crimes, not the particular manner in which such assistance is provided. As these courts were confronted with the organised commission of crimes on a large-scale, this caselaw is replete with examples demonstrating the variety of ways in which persons can be found to have culpably assisted the commission of crimes.[1193]

6527. para. 378: In *Becker, Weber and 18 Others*, tried before the French Permanent Military Tribunal, the accused, present in France, were convicted as accomplices of killings that took place in Germany in which they had no direct role.[1194] In Roechling, the French Superior Military Government Court found:

> Hermann Roechling and the other accused members of the Directorate of the Voelklingen works are not accused of having ordered this horrible treatment, but of having permitted it; and indeed supported it, and in addition, of not having done their utmost to put an end
>
> to these abuses. In adopting this attitude they permitted the continued existence and further development of this inhuman situation and thus, particularly through this tolerance, participated in the maltreatment within the meaning of Law No. 10.[1195]

In *Ministries*, Tribunal IV found:

> Nor are we impressed with [Berger's] defense that these recruits were used for exterior guard duty only, and therefore were not responsible for the atrocities committed within the camps. …If we are to assume that his statements were true, nevertheless he is not thereby relieved of responsibility. …The defendant furnished the exterior guards and if, as we find to be the fact, these camps were of the character just described and the defendant knew of it, which we also find to be the fact, he participated in the crime. *The fact, if it be a fact, that neither he nor the guards participated in shootings, beatings, starvations, and other maltreatment can only be considered, if at all, in mitigation of the offense*.[1196]

In *Flick*, Tribunal IV found:

> An organization which on a large scale is responsible for such crimes can be nothing else than criminal. *One who knowingly by his influence and money contributes to the support thereof must, under settled legal principles, be deemed to be, if not a principal, certainly an accessory to such crimes*.[1197]

> It remains clear from the evidence that [the accused] gave to Himmler, the Reich Leader SS, a blank check. *His criminal organization was maintained and we have no doubt that some of this money went to its maintenance. It seems to be immaterial whether it was spent on salaries or for lethal gas*. So we are compelled to find from the evidence that both defendants are guilty on count four.[1198]

6528. para. 379: As Tribunal III held in the *Justice* Case:

> The material facts which must be proved in [this] case are (1) the fact of the great pattern or plan of racial persecution and extermination; and (2) specific conduct of the individual defendant in furtherance of the plan. *This is but an application of general concepts of criminal law*. The person who persuades another to commit murder, the person who furnishes the lethal weapon for the purpose of its commission, and the person who pulls the trigger are all principals or accessories to the crime.[1199]

In the *Justice* Case, the accused were charged and found guilty for their knowing participation in the organised commission of crimes in the implementation of different policies and programs.[1200] The Tribunal assessed the accused's participation in each of the programs, which was as a matter of fact that demonstrated the culpable effect of their acts or conduct on the relevant crimes.[1201] The Tribunal described their participation as, *inter alia*, aiding, abetting and being connected with plan or enterprises involving the commission of crimes.[1202]

6529. para. 380: As these Judgments, as well as those such as *Farben*,[1203] demonstrate, the post-Second World War tribunals recognised that the essential question when determining whether an accused culpably assisted the commission of the crimes is the effect of the accused's assistance on the commission of the crimes, not the manner in which such assistance was provided.

6530. para. 381: Notwithstanding the jurisprudence discussed above, the Defence submits, in effect, that the manner in which an accused can assist the commission of crimes in order to establish the *actus reus* of aiding and abetting liability must be limited as a matter of law to distinguish aiding and abetting from joint criminal enterprise liability. It submits that "organisational liability" is addressed exclusively through joint criminal enterprise, not aiding and abetting,[1204] and that the Trial Chamber improperly considered the effect of Taylor's acts and conduct in the context of the activities of an organisation, the RUF/AFRC.

6531. para. 382: The Defence reasoning is flawed, as it begins from the premise that aiding and abetting addresses certain factual circumstances and joint criminal enterprise addresses other factual circumstances. However, joint criminal enterprise is distinguished from other forms of criminal participation by its legal elements. Joint criminal enterprise, as a unique form of enterprise or common purpose liability, is particularly characterised by the legal requirement of a common criminal purpose.[1205] This common criminal purpose justifies holding an accused liable not only for his own contribution to the commission of crimes, but also for the contributions of those with whom he shares a common purpose.[1206] The forms of criminal participation expressly provided in Article 6(1) are distinct from joint criminal enterprise in their legal elements and the consequent assignment of criminal liability, as for aiding and abetting an accused is only held liable for his own contributions to the commission of the crimes.[1207]

6532. para. 383: The Appeals Chamber further notes that individual criminal responsibility for aiding and abetting the planning, preparation or execution of a crime, as expressly provided for in Article 6(1), is unquestionably well-established and fundamental in customary international law.[1208] Article 6(1) applies to the crimes provided in Articles 2-4 of the Statute. In this respect, Article 2 of the Statute, crimes against humanity, specifically defines crimes committed either on a large-scale or in an organised manner. The essence of crimes against humanity is a systematic policy of a certain scale and gravity directed against the civilian population,[1209] and in practice, these crimes are often committed by organised groups.[1210] Articles 1 of the Agreement and Statute, respectively, further recognise the multiplicity of actors in the commission of crimes over which this Court has jurisdiction: the Prosecutor has the responsibility to prosecute those who bear the greatest responsibility for serious violations of international humanitarian law in Sierra Leone.[1211] In the view of the Appeals Chamber, aiding and abetting liability, specifically provided for in Article 6(1) of the Statute, was understood by the Parties to the Agreement to appropriately apply to those most responsible for the large-scale and organised commission of crimes against the civilian population of Sierra Leone.

6533. para. 384: This conclusion is confirmed by the jurisprudence. The cases, especially *Brđanin*, *Krstić* and *Blagojević and Jokić*, discussed above have applied aiding and abetting liability to large-scale crimes committed by organised groups of individuals.[1212] The Appeals Chamber also notes that the jurisprudence demonstrates that accused can be found liable for aiding and abetting crimes that other accused are found liable for under joint criminal enterprise. As a matter of law and fact, aiding and abetting convictions can co-exist with findings that a plurality of persons shared a common criminal purpose that embraced the same crimes that an accused aided and abetted.[1213] In cases such as *Krstić*, *Blagojević and Jokić* and *Simić et al*., the accused

were specifically found not to share the common criminal purpose and not to be "members" of the joint criminal enterprise, but were still convicted of aiding and abetting crimes that were committed in furtherance of the joint criminal enterprise. In the *Ministries* Case, the accused were acquitted, on the merits, of common purpose liability for the commission of crimes against humanity and war crimes.[1214] The accused in the *Hostage* Case were also found on the merits not to have participated in a preconceived plan.[1215] In the *Justice* Case, the Tribunal did not find that the accused shared a common purpose with one another or with the originators of the program of racial persecution.[1216] The accused were only convicted for the crimes on which their acts and conduct had a substantial effect, not simply all crimes committed pursuant to the common purpose.[1217] In comparison, common purpose liability was clearly charged and found in other cases.[1218]

6534. para. 385: Where the evidence establishes that the crimes were committed in the implementation of a plan, program, policy or strategy to commit such crimes, the crimes were committed, as a matter of fact, not by the physical actors alone, but by the organised participation and contributions of many persons. In accordance with the Statute and customary international law, triers of fact are required to consider whether, by assisting, encouraging or supporting the planning, preparation or execution of the plan, program, policy or strategy, an accused's acts and conduct thereby had a substantial effect on some or all of the crimes committed in furtherance of the plan, program, policy or strategy. That an accused's acts and conduct had a substantial effect on the commission of the crimes establishes the requisite *actus reus* for aiding and abetting liability, not the manner in which an accused assisted the commission of the crimes. In the Appeals Chamber's view, this was the assessment performed in the cases discussed and by the Trial Chamber here.

b. Alleged Violations of the Principle of Personal Culpability – Aiding and Abetting - *Actus Reus*

6535. para. 386: In Ground 21, the Defence submits that the law as articulated and applied by the Trial Chamber with respect to the *actus reus* of aiding and abetting liability violates the principle of personal culpability.[1219] The Defence puts forward the following three complaints, which will be addressed in turn below: the Trial Chamber's approach (i) criminalised any contribution to a party to an armed conflict;[1220] (ii) failed to distinguish between "neutral" and "intrinsically criminal" assistance;[1221] and (iii) characterised the RUF/AFRC as a criminal organisation.[1222]

6536. para. 387: The Appeals Chamber has previously held that "the foundation of criminal responsibility is the principle of personal culpability: nobody may be held criminally responsible for acts or transactions in which he has not personally engaged or in some other way participated."[1223] The Appeals Chamber understands the Defence submissions as contending that the law as articulated and applied by the Trial Chamber fails to establish personal culpability.[1224]

i. Whether the Trial Chamber's Approach Criminalises Any Contribution to a Party to an Armed Conflict – Alleged Violations of the Principle of Personal Culpability – Aiding and Abetting - *Actus Reus*

6537. para. 390: It is fundamental in international criminal law that an accused may only be punished for his criminal conduct.[1229] As articulated by the Trial Chamber and affirmed above, the *actus reus* of aiding and abetting liability under customary international law requires that an accused's acts and conduct have a substantial effect on the commission of the crimes.[1230] This requirement ensures that there is a sufficient causal link – a criminal link – between the accused and the commission of the crime before an accused's conduct may be adjudged criminal. The jurisprudence is replete with examples of acts that may have had some effect on the commission of the crime, but which were found not to have a sufficient effect on the crime for individual criminal liability to attach.[1231]

6538. para. 391: The Appeals Chamber further observes that the causal link between the accused's acts and conduct and the commission of the crime is to be assessed on a case-by-case basis: this case-by-case assessment ensures both that the culpable are properly held responsible for their acts and that the innocent are not unjustly held liable for the acts of others. Merely providing the means to commit a crime is not sufficient to establish that an accused's conduct was criminal.[1232] Where the crime is an isolated act, the very fungibility of the means may establish that the accused is not sufficiently connected to the commission of the crime. Similarly, on the facts of a case, an accused's contribution to the causal stream leading to the commission of the crime may be insignificant or insubstantial, precluding a finding that his acts and conduct had a substantial effect on the crimes.[1233] In terms of the effect of an accused's acts and conduct on the commission of the crime through his assistance to a group or organisation, there is a readily apparent difference between an isolated crime and a crime committed in furtherance of a widespread and systematic attack on the civilian population. The jurisprudence provides further guidance, but it is the differences between the facts of given cases that are decisive.

6539. para. 392: The Appeals Chamber concludes that the requirement that an accused's acts and conduct must have a substantial effect on the commission of the crimes to be held criminally responsible for those crimes, as articulated by the Trial Chamber, is in accordance with principles of personal culpability. The Appeals Chamber further holds that this requirement is sufficient to ensure distinctions between those who may have had an effect on non-criminal activity and those who had a substantial effect on crimes, when applied to the facts of a given case.

ii. Whether the Trial Chamber's Approach Failed to Distinguish between "Neutral" and "Intrinsically Criminal" Assistance - Alleged Violations of the Principle of Personal Culpability - Aiding and Abetting - *Actus Reus*

6540. para. 395: The law articulated and applied by the Trial Chamber requires that the assistance provided has a substantial effect on the commission of a crime. How any assistance *could be* used is a speculative question: perfectly innocuous items, such as satellite phones, could be used to assist the commission of crimes, while instruments of violence could be used lawfully. The distinction between criminal and non-criminal acts of assistance is not drawn on the basis of the act in the abstract, but on its effect in fact.[1238] Applying the law, the Trial Chamber inquired whether the evidence demonstrated that the assistance and support Taylor provided had a substantial effect on the commission of the crimes. On the facts, the Trial Chamber found that the arms and ammunition, military personnel, operational support and advice and encouragement Taylor provided had a substantial effect on the commission of the crimes.[1239]

iii. Whether the Trial Chamber's Approach Characterised the RUF/AFRC as a Criminal Organisation - Alleged Violations of the Principle of Personal Culpability - Aiding and Abetting - *Actus Reus*

6541. para. 398: "Criminal organization" liability is a term of art in international criminal law. Articles 9 and 10 of the IMT Charter provided that the International Military Tribunal could declare a group or organisation a "criminal organisation," and that individuals could then be brought to trial for the substantive crime of membership in that criminal organisation. Article II(1)(d) of Control Council Law No. 10 established that membership in a criminal organisation was a crime, and Article II(2)(e) further established individual criminal liability for crimes where the accused "was a member of any organization or group connected with the commission of any such crime." However, this is not the law of the Special Court.

6542. para. 399: The Appeals Chamber has examined the Trial Judgment and concludes that the Trial Chamber did not find that the RUF/AFRC was a "criminal organization" or characterise it as such. The Trial Chamber specifically recalled that "war is not *per se* a crime under the Special Court Statute."[1245] It did find that at all times relevant to the Indictment, the Prosecution had proved beyond a reasonable doubt that the RUF/AFRC directed a widespread and systematic attack against the civilian population of Sierra Leone, based on the large number of victims, the geographic scope of the crimes, the pattern of violence and the organisation of violence.[1246] It further found that the RUF/AFRC's Operational Strategy involved a campaign of crimes against the civilian population of Sierra Leone, using terror as the primary modus operandi, in order to achieve the RUF/AFRC's political and military goals at any civilian cost.[1247] The Appeals Chamber has affirmed these findings.[1248]

6543. para. 400: Personal culpability requires that an accused can only be held liable for his own conduct and only when the *actus reus* and *mens rea* elements of participation in the commission of the crimes are proved beyond a reasonable doubt. The Appeals Chamber holds without hesitation that the convictions entered by the Trial Chamber are fully in accordance with those strict requirements.

iv. Conclusion - Alleged Violations of the Principle of Personal Culpability - Aiding and Abetting - *Actus Reus*

6544. para. 401: Having considered the Statute and customary international law, the Appeals Chamber finds that the *actus reus* of aiding and abetting liability is established by assistance that has a substantial effect on the crime, not by the particular manner in which such assistance is provided. The Appeals Chamber does not accept the Defence submission that the Trial Chamber was required to find that Taylor provided assistance to the physical actor who committed the *actus reus* of each specific underlying crime or that such assistance was used by the physical actor in the commission of each specific crime. The Appeals Chamber accordingly affirms its prior holding that the *actus reus* of aiding and abetting liability under Article 6(1) of the Statute and customary international law is that an accused's acts and conduct of assistance, encouragement and/or moral support had a substantial effect on the commission of each crime charged for which he is to be held responsible.

6545. para. 402: The Appeals Chamber concludes that the law articulated and applied by the Trial Chamber is in accordance with the principle of personal culpability.

(v) Aiding and Abetting – *Mens Rea*

6546. para. 403: The Trial Chamber articulated the *mens rea* (mental) elements of aiding and abetting liability as follows:

> i. The Accused performed an act with the knowledge that such act would assist the commission of a crime or underlying offence, or that he was aware of the substantial likelihood that his acts would assist the commission of underlying offence; and
>
> ii. The Accused is aware of the essential elements of the crime committed by the principal offender, including the state of mind of the principal offender.[1249]

The Trial Chamber further explained that:

> Although the lending of practical assistance, encouragement, or moral support must itself be intentional, the intent to commit the crime or underlying offence is not required. Instead, the Accused must have knowledge that his acts or omissions assist the perpetrator in the commission of the crime or underlying offence. Such knowledge may be inferred from the circumstances. The Accused must be aware, at a minimum, of the essential elements of the substantive crime or underlying offence for which he is charged with responsibility as an aider and abettor. The requirement that the aider and abettor need merely know of the perpetrator's intent — and need not share it — applies equally to specific-intent crimes or underlying offences such as persecution as a crime against humanity.[1250]

6547. para. 404: The two elements articulated by the Trial Chamber relate to, first, an accused's mental state regarding the consequence of his acts or conduct (―knowledge, or awareness of the substantial likelihood, that such act or conduct would assist the commission of a crime‖) and, second, an accused's mental state regarding the factual circumstances of the underlying crime ("aware of the essential elements of the crime").

6548. para. 405: In Grounds 16, 19 and 21, the Defence alleges that the Trial Chamber erred in law in articulating the *mens rea* elements of aiding and abetting liability. It presents two principal lines of argument in support. First, it argues that the Trial Chamber erred in law by adopting and applying a "knowledge" standard for an accused's mental state regarding the consequence of his acts or conduct, as a component of *mens rea*. Second, it argues that the law articulated by the Trial Chamber violates the principle of personal culpability.

6549. para. 406: Ground 18 states as follows: "The Trial Chamber erred in law and in fact in inferring that assistance provided to the RUF or AFRC, with an awareness of crimes that were committed in the past by some RUF or AFRC soldiers, constituted aiding and abetting of any and all subsequent crimes committed by a soldier affiliated, or in alliance, with the RUF or

AFRC."[1251] In its Appeal Brief, the Defence did not present separate arguments in relation to Ground 18, submitting that "those arguments are sufficiently expressed in the other Grounds concerning mens rea. The ground of appeal is nevertheless maintained on the basis of those arguments."[1252] The Ground does not comply with the Practice Direction on the Structure of Grounds of Appeal, and further, it is vague and does not identify specifically the challenged finding. The Appeals Chamber is satisfied that the submissions referred to are fully presented and argued in the Defence's other Grounds, and that Ground 18 does not supplement those submissions in any way. Ground 18 is accordingly summarily dismissed.

a. Mental State Regarding Consequence - Aiding and Abetting - *Mens Rea*

6550. para. 413: The Defence argues that the caselaw of the Special Court and the ICTY jurisprudence relied upon by the Trial Chamber in applying a "knowledge" standard to an accused's mental state regarding the consequence of his acts or conduct is manifestly incorrect and that Article 25(3) of the Rome Statute was not addressed in that caselaw.[1279] It further states that the Appeals Chamber has never been directly confronted with a challenge to its articulation of the mens rea elements of aiding and abetting, and that the issue now raised is "therefore a matter of first impression for this Court."[1280]

6551. para. 414: The Appeals Chamber does not accept that the mens rea of aiding and abetting liability is a matter of first impression for this Court.[1281] The Appeals Chamber, guided by the caselaw of the ICTY[1282] and ICTR[1283] Appeals Chambers, has consistently held that for aiding and abetting liability under Article 6(1) of the Statute and customary international law, the requisite standard for an accused's mental state regarding the consequence of his acts or conduct is as follows:

> the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator.[1284]

6552. para. 415: In broad terms, *mens rea* (subjective element) describes an accused's mental state at the time he performs the *actus reus* (objective element). While *mens rea* properly covers different elements,[1285] the only issue presented here concerns an accused's mental state regarding the consequence of his acts or conduct.[1286] In this case, the Trial Chamber found that Taylor provided assistance, encouragement and moral support to the RUF/AFRC knowing that his acts and conduct would assist the commission of the crimes, that is, that he knew the consequence of his acts and conduct would be to have an effect on the commission of the crimes.[1287] The Defence

contests this finding, arguing that the Trial Chamber was required to find that Taylor willed, desired or had the conscious object that his acts and conduct would assist the commission of the crime,[1288] that is, that he willed or had the conscious object that the consequence of his acts and conduct would be to have an effect on the commission of the crime. The specific question raised by the Defence here, then, is whether, in accordance with Article 6(1) of the Statute and customary international law, an accused can be held criminally liable if he volitionally (or willingly) performs the *actus reus* of aiding and abetting liability (providing assistance, encouragement or moral support) knowing (or being aware of the substantial likelihood) that his acts or conduct will have an effect on the commission of the crimes.[1289]

6553. para. 416: The Appeals Chamber will now address the Defence's contention that volitionally or willingly performing the *actus reus* of aiding and abetting liability with "knowledge" of the consequence of one's acts or conduct is not a culpable mental state for aiding and abetting liability under customary international law.

i. "Knowledge" – Post-Second World War Jurisprudence - Mental State Regarding Consequence - Aiding and Abetting - *Mens Rea*

6554. para. 417: Like other international criminal tribunals[1290] as well as domestic courts[1291] ascertaining international law, this Appeals Chamber looks to the caselaw of post-Second World War tribunals as indicative of customary international law.

6555. para. 418: Article 6 of the Charter of the International Military Tribunal (IMT) established individual criminal liability for "[l]eaders, organizers, instigators, and accomplices participating in the formulation or execution of a Common Plan or Conspiracy to commit [the crimes]."[1292] The IMT found:

> Hitler could not make aggressive war by himself. He had to have the co-operation of statesmen, military leaders, diplomats, and business men. When they, with knowledge of his aims, gave him their co-operation, they made themselves parties to the plan he had initiated. They are not to be deemed innocent because Hitler made use of them, if they knew what they were doing.[1293]

The IMT held accused personally liable for their knowing participation in the crimes. Von Schirach was found guilty in that "while he did not originate the policy of deporting Jews from Vienna, [he] participated in this deportation after he had become Gauleiter of Vienna. He knew that the best the Jews could hope for was a miserable existence in the ghettos of the East. Bulletins describing the Jewish extermination were in his office."[1294] Seyss-Inquart was held responsible for being "a knowing and voluntary participant in War Crimes and Crimes against Humanity which were

committed in the occupation of the Netherlands."[1295] In relation to Speer, the IMT found that "[t]he system of blocked industries played only a small part in the over-all slave labour program, *although Speer urged its cooperation with the slave labour program, knowing the way in which it was actually being administered*. In an official sense, he was its principal beneficiary and he constantly urged its extension."[1296] Other convictions relied on similar findings.[1297]

6556. para. 419: Control Council Law No. 10,[1298] the legal basis for further prosecution of crimes against peace, crimes against humanity and war crimes, established individual criminal liability in Article II(2).[1299] Applying that law,[1300] the Nuremberg Military Tribunals[1301] (NMTs) consistently held that an accused's knowledge that he was participating in the commission of the crime – that is, an accused's knowledge of the consequence of his acts or conduct – established the *mens rea* for personal liability. The NMTs did not require that an accused directly intended that the consequence of his acts or conduct were to contribute to the commission of the crimes.[1302]

6557. para. 420: Tribunal III held in the *Justice* Case:

> the essential elements to prove a defendant guilty under the indictment in this case are that a defendant had knowledge of an offense charged in the indictment and established by the evidence, and that he was connected with the commission of that offense.[1303]

Applying this holding, the Tribunal entered convictions where it was satisfied that an accused had knowledge of the crime and of his participation in its commission.[1304] It found Rothaug guilty because he "was the knowing and willing instrument in that program of persecution and extermination."[1305] Klemm was convicted because, among other facts, he "knew of abuses in concentration camps. He knew of the practice of severe interrogations. He knew of the persecution and oppression of the Jews and Poles and gypsies. He must be assumed to have known, from the evidence, the general basis of Nacht und Nebel procedure under the Department of Justice."[1306] The Tribunal convicted Joel because he was "chargeable with knowledge that the Night and Fog program from its inception to its final conclusion constituted a violation of the laws and customs of war."[1307] The United Nations War Crimes Commission (UNWCC) Commentary to the Justice Case noted:

> The question of knowledge was treated by the Tribunal as one of the highest importance, and repeated reference was made in the Judgment to the fact that various accused had knowledge, or must be assumed to have had knowledge, of the use made of the German legal system by Hitler and his associates, of the Nacht und Nebel plan and of the schemes for racial persecution.[1308]

6558. para. 421: Tribunal IV convicted Flick, a businessman who became a member of Himmler's Circle of Friends and contributed money to Himmler, for being an accessory to crimes against humanity and war crimes perpetrated by the SS.[1309] In assessing his *mens rea*, the Tribunal considered decisive the fact that Flick supported Himmler at a time when the criminal activities of the SS were common knowledge.[1310] The Tribunal held:

> One who knowingly by his influence and money contributes to the support thereof must, under settled legal principles, be deemed to be, if not a principal, certainly an accessory to such crimes.[1311]

6559. para. 422: Tribunal VI held in the *Farben* Case:

> no individual defendant may be held guilty of the war crimes, or any aspect thereof, charged under count two, unless the competent proof establishes beyond reasonable doubt that he knowingly participated in an act of plunder or spoliation….[1312]

The defendants in that case were charged with war crimes and crimes against humanity through participation in the plunder of public and private property in countries and territories which came under the belligerent occupation of Germany.[1313] The Tribunal held that "[r]esponsibility does not automatically attach to an act proved to be criminal merely by virtue of a defendant's membership in the Vorstand. …[T]he evidence must establish action of the character we have indicated, with knowledge of the essential elements of the crime."[1314] In respect of Schmitz, chairman of the Vorstand and the chief financial officer of Farben, the Tribunal found:

> The information coming to his attention in this manner was sufficient to apprise him of the pressure tactics being employed to force the French to consent to Farben's majority participation in the French dyestuffs industry. He was in a position to influence policy and effectively to alter the course of events. *We, therefore, find that Schmitz bore a responsibility for, and knew of, Farben's program to take part in the spoliation of the French dyestuffs industry and, with this knowledge, expressly and impliedly authorized and approved it*. Schmitz must be held Guilty on this aspect of count two of the indictment.[1315]

6560. para. 423: The Ministries Case, involving senior government and business officials, is particularly instructive. Tribunal IV found the requisite *mens rea* where an accused had knowledge that his acts had an effect on the crimes and thus he knowingly participated in the commission of crimes. Under Count Five, charging crimes against humanity, the Tribunal found that Keppler "knew the [agency's] functions and he knew what part it played in the general scheme of resettlement. If the [agency] had an important part in a crime cognizable by this Tribunal, he bears a part in the criminal responsibility thereto."[1316] Likewise, Kehrl was found guilty because "he was thoroughly aware of what the [agency] was expected to do, what its

policies were, and what it in fact did."[1317] While Puhl, a *Reichsbank* senior official, "had no part in the actual extermination of Jews and other concentration camp inmates,"[1318] he was found guilty because he "knew that what was to be received and disposed of was stolen property and loot taken from the inmates of concentration camps,"[1319] although "[i]t is to be said in his favor that he neither originated the matter and that it was probably repugnant to him."[1320] Stuckart[1321] and Schellenberg,[1322] among others, were likewise convicted of crimes against humanity because they had knowledge of the criminal consequence of their acts. Similarly, Koerner[1323] and Pleiger[1324] were found guilty of the crime of slave labour charged in Count Seven because they had knowledge of their participation in the crime. Rasche was convicted on Count Six for participating in the spoliation and plunder in Czechoslovakia, and in relation to his *mens rea* the Tribunal found:

> The fact remains that it is credible evidence of the extent of the Dresdner Bank participation in the Aryanization program during the period mentioned. …There can be little question but that defendant, as active head of the Vorstand of the BEB, was conversant with such an extensive activity of such bank.[1325]

6561. para. 424: The Tribunal in the *Ministries* Case was further clear that it did not require as a matter of law that an accused must have willed or desired the consequence of his acts or conduct, and that an accused's knowledge of the criminal consequence was sufficient to establish the *mens rea* for personal culpability. Von Weizsaecker and Woermann, senior officials in the Foreign Ministry, were convicted for crimes against humanity under Count Five. The Tribunal found that even though they neither willed nor desired the commission of the crimes, their knowledge that they were participating in the crimes was sufficient to establish the requisite *mens rea*:

> The mass deportation of Jews to the East which resulted in the extermination of many millions of them found its expression in the celebrated Wannsee conference of 20 January 1942. The Foreign Office played an important part in these negotiations and in the actions thereafter taken to implement and assist the program. *Von Weizsaecker or Woermann neither originated it, gave it enthusiastic support, nor in their hearts approved of it. The question is whether they knew of the program and whether in any substantial manner they aided, abetted, or implemented it.*[1326]

It is valuable to further quote at length the Tribunal's findings regarding Schwerin von Krosigk's guilt for crimes against humanity under Count Five:

> The evidence clearly shows that he was not a member of Hitler's inner circle, that he was not one of his confidants, and that he came in touch with him but seldom before the war, and even less often afterward. During the course of the years he suffered many conflicts of conscience and was fully aware that measures to which he put his name and programs in which he played a part were contrary and abhorrent to what he believed and knew to be right. It is difficult to understand

> what motives or what weaknesses impelled or permitted him to remain and play a part, in many respects an important one, in the Hitler regime. It is one of the human tragedies which are so often found in life.[1327] …
>
> *It is clear, however, that notwithstanding the conflicts of conscience which he suffered, and of them we have no doubt, he actively and consciously participated in the crimes charged in count five*. Neither the desire to be of service nor the desire to help individuals nor the demands of patriotism constitute a justification or an excuse for that which the evidence clearly establishes he did, although they may be considered in mitigation of punishment. We find the defendant Schwerin von Krosigk guilty under count five in the particulars set forth.[1328]

6562. para. 425: In the *Pohl* Case, Tribunal II found the requisite *mens rea* where an accused had knowledge of his participation in the commission of the crimes.[1329] In assessing the responsibility of Max Kiefer, an architect in charge of planning and constructing concentration camps,[1330] the Tribunal concluded that "the very nature of such installations and their continued maintenance constituted knowledge of the purposes for which they were to be used."[1331] Tribunal II in the *Einsatzgruppen* Case found that an accused's knowledge of the crimes and his participation therein established the mens rea for culpability. The Tribunal held that Klingelhoefer's role as an interpreter did "not exonerate him from guilt because *in locating, evaluating and turning over lists of Communist party functionaries to the executive department of his organization he was aware that the people listed would be executed when found*. In this function, therefore, he served as a accessory to the crime."[1332]

6563. para. 426: Like the NMTs, British tribunals found that knowledge of the crimes and the accused's participation therein established personal responsibility. The three accused in *Zyklon B* were charged with knowingly supplying poison gas used for the extermination of allied nationals interned in concentration camps.[1333] The Judge Advocate emphasised the Prosecution's contention that the accused must have known that the large deliveries of Zyklon B could not have been made for the purpose of disinfecting buildings.[1334] In the *Rhode* Case, the Judge Advocate explained that:

> if he was taking part with the other man with the knowledge that that other man was going to put the killing into effect then he was just as guilty as the person who fired the shot or delivered the blow.[1335]

6564. para. 427: In *Roechling*, the French Superior Military Government Court, applying C.C. Law No. 10, convicted Ernest Roechling for war crimes of spoliation because "[h]e was fully aware of the significance of his own role" in the commission of the crimes.[1336] In the *Holstein* case[1337] and *Wagner* case[1338] before French military tribunals applying French military and

domestic law, the accused were found guilty as accomplices under Article 60 of the French Criminal Code:

> any person who has supplied the arms, tools or any other means that have been used in the commission of the crime or offence, knowing that they would be so used; or who has *wittingly aided or assisted the author or authors of the crime or offence in any acts preparatory to, or facilitating its perpetration, or in its execution*....[1339]

United States military tribunals in the Far East also found *mens rea* established by an accused's knowledge of his participation in the crime.[1340]

ii. "Knowledge" – The 1996 ILC Draft Code - Mental State Regarding Consequence - Aiding and Abetting - *Mens Rea*

6565. para. 428: The Appeals Chamber accepts that the International Law Commission's[1341] 1996 Draft Code of Crimes against the Peace and Security of Mankind is generally regarded as an authoritative international legal instrument that, although non-binding, may "(i) constitute evidence of customary law, or (ii) shed light on customary rules which are of uncertain contents or are in the process of formation, or, at the very least, (iii) be indicative of the legal views of eminently qualified publicists representing the major legal systems of the world."[1342] Article 2(3)(d) of the 1996 Draft Code provides:

> 3. An individual shall be responsible for a crime set out in article 17, 18, 19 or 20 if that individual:
>
> (d) knowingly aids, abets or otherwise assists, directly and substantially,[1343] in the commission of such a crime, including providing the means for its commission.

The Commentary states that "[t]he accomplice must knowingly provide assistance to the perpetrator of the crime. Thus, an individual who provides some type of assistance to another individual without knowing that this assistance will facilitate the commission of a crime would not be held accountable under subparagraph (d)."[1344]

iii. "Knowledge" – Domestic jurisdictions - Mental State Regarding Consequence - Aiding and Abetting - *Mens Rea*

6566. para. 429: Domestic law, even if consistent and continuous in all States, is not necessarily indicative of customary international law. This is particularly true in defining legal elements and determining forms of criminal participation in domestic jurisdictions, which may base their

concepts of criminality on differing values and principles. Therefore, the reliance by the Defence on examples of domestic jurisdictions requiring or applying a "purpose" standard to an accused's mental state regarding the consequence of his acts or conduct[1345] is misplaced.

6567. para. 430: Nor is such practice consistent among all States. The Appeals Chamber equally identifies a number of States that explicitly provide that an accused's knowledge of the consequence of his acts or conduct is culpable *mens rea* for aiding and abetting liability. In South Africa "[a]n accomplice is someone who knowingly associates himself or herself with the commission of the crime by the perpetrator and furthers the commission of the crime."[1346] Article 121-7 of the French Penal Code establishes individual criminal liability for "the person who knowingly, by aiding and abetting, facilitates its preparation or commission."[1347] Under the United States Military Regulations, the elements of aiding and abetting are defined as:

> (A) The accused committed an act that aided or abetted another person or entity in the commission of a substantive offense triable by military commission;
>
> (B) Such other person or entity committed or attempted to commit the substantive offense; and
>
> (C) The accused intended to or knew that the act would aid or abet such other person or entity in the commission of the substantive offense or an associated criminal purpose or enterprise.[1348]

iv. "Knowledge" – The Jurisprudence of International Criminal Tribunals - Mental State Regarding Consequence - Aiding and Abetting - *Mens Rea*

6568. para. 431: In its review of the relevant jurisprudence, the Appeals Chamber has found the reasoning and holdings of the following ICTY Trial Chambers persuasive and consistent with its conclusions. While the Defence challenges the analysis performed by the ICTY Trial Chamber in *Furundžija*, these Trial Chambers independently assessed customary international law as established in the post-Second World War jurisprudence and their holdings are unchallenged by the Defence.

6569. para. 432: Having reviewed post-Second World War cases,[1349] the *Tadić* Trial Chamber concluded that the Nuremberg war crimes trials showed a clear pattern in requiring what it termed "intent", by which, in this Chamber's view, it meant knowledge, not direct intent, as its description makes clear: "there is a requirement of intent, which involves awareness of the act of participation coupled with a conscious decision to participate by planning, instigating, ordering, committing, or otherwise aiding and abetting in the commission of a crime."[1350] The *Tadić* Trial

Chamber thus established that "aiding and abetting includes all acts of assistance by words or acts that lend encouragement or support, as long as the requisite intent is present,"[1351] and concluded that

> the accused will be found criminally culpable for any conduct where it is determined that he *knowingly* participated in the commission of an offence that violates international humanitarian law and his participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the incident. He will also be responsible for all that naturally results from the commission of the act in question.[1352]

6570. para. 433: The *Čelebići* Trial Chamber adopted the *Tadić* formulation as sound,[1353] holding that under Article 7(1) of the ICTY Statute:

> [t]he corresponding intent, or *mens rea*, is indicated by the requirement that the act of participation be performed with knowledge that it will assist the principal in the commission of the criminal act. Thus, there must be "awareness of the act of participation coupled with a conscious decision to participate by planning, instigating, ordering, committing, or otherwise aiding and abetting in the commission of a crime."[1354]

6571. para. 434: The Trial Chamber in *Aleksovski* also approvingly relied on the *Tadić* Trial Chamber's articulation when analyzing individual criminal responsibility under Article 7(1) of the ICTY Statute for "having contributed to the perpetration of the crime without, however, having … committed the unlawful act."[1355] As to the accused's mental state regarding the consequence of his acts or conduct, the Trial Chamber held:

> The accused must also have participated in the illegal act in full knowledge of what he was doing. This intent was defined by Trial Chamber II as "awareness of the act of participation coupled with a conscious decision to participate."[1356]

v. Article 25(3) of the Rome Statute 1357 - Mental State Regarding Consequence - Aiding and Abetting - *Mens Rea*

6572. para. 435: The Appeals Chamber holds that Article 6(1) of the Special Court Statute has no direct equivalent in the Rome Statute.[1358] The Appeals Chamber is also of the view that Article 25(3) does not represent or purport to represent a complete statement of personal culpability under customary international law.[1359] Accordingly, the Appeals Chamber finds that the Rome Statute has no bearing on the *mens rea* elements of aiding and abetting liability under customary international law applicable during the Indictment Period.[1360]

vi. Conclusion - Mental State Regarding Consequence - Aiding and Abetting - *Mens Rea*

6573. para. 436: The Appeals Chamber's review of the post-Second World War jurisprudence demonstrates that under customary international law, an accused's knowledge of the consequence of his acts or conduct – that is, an accused's "knowing participation" in the crimes – is a culpable *mens rea* standard for individual criminal liability. Similarly, the post-Second World War jurisprudence was found in early ICTY Judgments other than *Furundžija*[1361] to establish that under customary international law, "awareness of the act of participation coupled with a conscious decision to participate" in the commission of a crime entails individual criminal responsibility.[1362] The 1996 ILC Draft Code supports this conclusion, and Article 25(3)(c) of the Rome Statute is not evidence of state practice to the contrary. Whether this standard is termed "knowledge", "general intent", "*dol special*", "*dolo diretto*" or "*dolus directus* in the second degree", the concept is the same.

6574. para. 437: In light of the foregoing, the Appeals Chamber reaffirms that knowledge is a culpable *mens rea* standard for aiding and abetting liability under Article 6(1) of the Statute and customary international law.

vii. "Awareness of the Substantial Likelihood" – Mental State Regarding Consequence – Aiding and Abetting - *Mens Rea*

6575. para. 438: This Appeals Chamber and the Special Court Trial Chambers have consistently held that "awareness of the substantial likelihood"[1363] is a culpable mental state for aiding and abetting under customary international law.[1364] The Defence has not provided cogent reasons to depart from this jurisprudence, which is consistent with the principle that awareness and acceptance of the substantially likely consequence of one's acts and conduct constitutes culpability.[1365] In finding Taylor criminally responsible for aiding and abetting, the Trial Chamber found beyond a reasonable doubt that Taylor knew that his acts assisted the commission of the crimes.[1366] Accordingly, the Appeals Chamber concludes that the Defence has not shown an error that would occasion a miscarriage of justice and finds it unnecessary to further consider the Defence submissions.

viii. Knowledge of a "Substantial" Effect - Mental State Regarding Consequence - Aiding and Abetting - *Mens Rea*

6576. para. 439: The Defence argues that the Trial Chamber erred in not requiring proof that Taylor knew that the effect his acts would have on the commission of the crimes would be "substantial".[1367] The consistent jurisprudence of this Court does not require such proof. Whether an accused's acts and conduct have a "substantial" effect on the commission of the crime is an ultimate issue to be decided by the trier of fact in light of the law and the facts established. It is not a requisite element of the accused's *mens rea* because as a general principle of criminal law, it is the task of judges, not an accused, to determine the correct legal characterisation of an accused's conduct (*iura novit curia*).[1368] In light of these considerations, the Defence submission is dismissed.

ix. Conclusion - Mental State Regarding Consequence - Aiding and Abetting - *Mens Rea*

6577. para. 440: The Appeals Chamber finds no error in the Trial Chamber's articulation of the law.

b. Alleged Violation of the Principle of Personal Culpability - Aiding and Abetting - *Mens Rea*

6578. para. 445: There is, of course, always a possibility that serious violations of international humanitarian law will occur in an armed conflict. Mere awareness of this possibility does not, however, suffice for the imposition of criminal responsibility.[1377] The crux of the Defence submission is that in an armed conflict, the commission of crimes is not simply a probability, but a virtual certainty.[1378] Whether, in the abstract, the commission of crimes in armed conflicts is possible, probable or certain is not relevant to and does not establish individual criminal liability under the law. The Defence submission fails to address the *mens rea* requirements as established in the law. The law requires that an accused must be aware, *inter alia*, of the consequence of his conduct, the essential elements of the crime, the concrete factual circumstances and the criminal intent, and it requires concrete knowledge or awareness on the part of the accused, not just an abstract awareness that crimes will be committed in the course of any armed conflict.[1379] The specifics of this awareness will depend on the factual circumstances of each particular case. The Trial Chamber did not rely on abstract awareness, either in its articulation or its application of the law. It applied the law in keeping with the specific facts that it found.[1380] As its reasoning and

conclusions demonstrate, the Trial Chamber found that Taylor knew of the RUF/AFRC's Operational Strategy, knew of its intent to commit crimes and was aware of the essential elements of the crimes in light of specific and concrete information of which Taylor was aware.[1381] The Defence fails to show any error. The Appeals Chamber concludes that the *mens rea* standard articulated by the Trial Chamber is in accordance with principles of personal culpability.

c. "Purpose" - Aiding and Abetting - *Mens Rea*

6579. para. 446: For the reasons previously stated, the Appeals Chamber concludes that, contrary to the Defence submission, the mens rea standard for aiding and abetting liability under customary international law is not limited to "direct intent" or "purpose".[1382] Having considered the issue in detail in the course of assessing the Defence submissions, the Appeals Chamber makes the following observations.

6580. para. 447: The Defence submits that it is well-known that the "purpose" standard as used in Article 25(3)(c) of the Rome Statute is taken from the United States Model Penal Code.[1383] Even if this were to be accepted, the dangers of transplanting municipal law from its complete domestic framework are apparent in this situation. The Model Penal Code reflects a particular construction of the *actus reus* and *mens rea* elements for aiding and abetting liability. Under the Model Penal Code, the *actus reus* for personal culpability is established through any act of facilitating the crime; there is no requirement that the act must "substantially" assist the crime, as under customary international law.[1384] The drafters of the Model Penal Code specifically considered but ultimately did not adopt such a requirement, favouring the use of the "purpose" standard alone to distinguish culpable and innocent conduct.[1385] Finally, many jurisdictions utilizing the Model Penal Code have created "criminal facilitation" offenses to address the gap created by the Model Penal Code's limitation of aiding and abetting liability to those who act with "purpose".[1386] In light of these considerations, and particularly as customary international law requires that an accused's acts and conduct of assistance, encouragement or moral support have a substantial effect on the commission of the crime, the liability schemes under the United States Model Penal Code and customary international law are fundamentally distinct.

6581. para. 448: This conclusion is strengthened by the overlap between customary international law and the decisions of Courts applying a "purpose" standard. The Defence highlights the decisions in *R. v. Lam Kit*, *R. v. Leung Tak-yin* and *R. v. Clarkson*, arguing that these suggest State practice in support of the "purpose" standard articulated in Article 25(3)(c) of the Rome Statute.[1387] These decisions concern the culpability of bystanders to the crime, and all apply a

"purpose" standard in order to distinguish between culpable and innocent bystanders. Customary international law draws the same distinction between innocent and culpable presence at the scene of the crime, but by directing the attention of the trier of fact to the substantiality of the contribution and the accused's awareness of the circumstances and consequence of his "approving" presence.[1388]

6582. para. 449: Further, while the Defence submits that the "purpose" standard is distinct from the "knowledge" standard in this Court's jurisprudence, it cites the Canadian Criminal Code in support,[1389] which in fact does not support that proposition. Under Section 21(1)(b) of the Canadian Criminal Code, a party to the offence includes any person who "does or omits to do anything for the purpose of aiding any person to commit" the offence. The Canadian Supreme Court in *R. v. Briscoe* held:

> The *mens rea* requirement reflected in the word "purpose" under s. 21(1)(b) has two components: intent and knowledge. For the intent component, it was settled in R. v. Hibbert, [1995] 2 S.C.R. 973, that "purpose" in s. 21(1)(b) should be understood as essentially synonymous with "intention". The Crown must prove that the accused intended to assist the principal in the commission of the offence. The Court emphasized that "purpose" should not be interpreted as incorporating the notion of "desire" into the fault requirement for party liability. It is therefore not required that the accused desired that the offence be successfully committed (Hibbert, at para. 35). The Court held, at para. 32, that the perverse consequences … would flow from a "purpose equals desire" interpretation of s. 21(1)(b)….[1390]

This definition of "purpose", provided by the Supreme Court of Canada interpreting its Criminal Code, comports with the knowledge standard as defined in this Court's jurisprudence and discussed above.

6583. para. 450: The Appeals Chamber notes that much of the Defence's discussion in this case about Article 25(3)(c) has proceeded on unsupported assumptions. The Defence case was that aiding and abetting liability as established in this Court's and the ad hoc Tribunals' jurisprudence is not in accordance with customary international law and the principle of personal culpability. On that basis it argued that the Appeals Chamber should reject the established caselaw and find that the *mens rea* standard for aiding and abetting liability is direct intent. However, the Appeals Chamber has found that these submissions are without foundation.

6584. para. 451: The final responsibility to interpret the Rome Statute rests with the ICC Appeals Chamber. As noted, in this Appeals Chamber's view, the individual criminal liability scheme under Article 25(3) of the Rome Statute differs in significant measure from Article 6(1) of the Special Court Statute. Interpreting its own constitutive documents and considering the plain

language in context, and in light of the object and purpose of the Rome Statute, the ICC Appeals Chamber may conclude that "purpose" as used in Article 25(3)(c) has the same meaning as "purpose" under Section 21(1)(b) of the Canadian Criminal Code, ensuring that Article 25(3)(c) liability is aligned with Article 30 of the Rome Statute. It may conclude that "perverse consequences" would follow from importing the United States Model Penal Code's definition of "purpose" into the liability scheme in the Rome Statute, such as requiring a higher *mens rea* standard for Article 25(3)(c) than for Article 25(3)(a), (b) and (d). It may adopt the position put forward by the Defence here. Until it has made its views known, speculative exercises do not assist in the identification of the law, and established customary international law, as consistently articulated and applied in the jurisprudence of international criminal tribunals from the Second World War to today, must bear more weight than suppositions as to what Article 25(3)(c) does or does not mean.

(vi) Alleged Contrary State Practice

6585. para. 456: The "examples" offered by the Defence remain at the level of mere assertion, and the "law" on which the Defence relies does not bear any resemblance to the law as actually articulated and applied by the Trial Chamber. It is not within the jurisdiction of this Court to determine the obligations of States and characterise State action as "criminal". This Chamber leaves those bodies and tribunals which properly have authority over States to interpret the law on state responsibility.[1400]

6586. para. 457: States have consistently and repeatedly undertaken obligations to prevent and punish individuals for serious violations of international humanitarian law through treaties that have ripened into customary law establishing individual criminal liability for such violations. Customary international law is clear as to the *actus reus* and *mens rea* elements of aiding and abetting liability for such crimes. Although existing customary international law can be modified if the combination of *opinio juris* and state practice show a continuing and consistent adherence to the new custom by the international community, the Defence has failed to identify any examples of such *opinio juris* and state practice, much less a continuing and consistent adherence.

6587. para. 458: The examples offered concern activities by persons in official positions that are alleged to violate international criminal law. Article 6(2) of the Statute makes it clear that the official position of an accused or the fact that an accused acted pursuant to orders of a Government shall not relieve him of criminal responsibility. The doctrine of "act of State" is no defence under international criminal law, and individuals are bound to abide by the law regardless

of possible authorisation by a State. As the IMT long ago held, "individuals have international duties which transcend the national obligations of obedience imposed by the individual State."[1401]

6588. para. 459: Further, the examples offered do not indicate the attitudes of States. They are not evidence of a State's claim that it has the right to engage in conduct found to be criminal by an impartial tribunal applying customary international law. No statement by a State that it has the right to assist the commission of widespread and systematic crimes against a civilian population has ever been offered.

6589. para. 460: Finally, the submission is that the examples represent state practice, yet only a few are offered. As the ICTY Appeals Chamber held, "[n]o matter how powerful or influential a country is, its practice does not automatically become customary international law."[1402] This is even more true where fundamental principles such as the prohibitions on participation in the commission of serious violations of international law and attacks on civilians are at stake.

6590. para. 461: The Appeals Chamber accepts the Prosecution's submission that some States have expressly indicated in their domestic legislation that they do not consider it lawful to assist those engaged in serious violations of international humanitarian law.[1403] The "Leahy Law" in the United States prohibits funding to governments and foreign military units if they are "engaged in a consistent pattern of gross violations of internationally recognised human rights" or have "committed a gross violation of human rights, unless all necessary corrective steps have been taken."[1404] The European Union Common Position on Exports of Military Technology and Equipment provides that Member States shall "deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law."[1405] These are concrete indications of States''attitudes contrary to the Defence's assertions.

6591. para. 462: Similarly, the Appeals Chamber also notes the recent adoption by the United Nations General Assembly of the Arms Trade Treaty.[1406] This treaty has not yet entered into force nor been widely ratified, but its adoption and provisions do not support the claimed *opinio juris* and state practice modifying existing customary law. Article 6(3) provides:

> A State Party shall not authorize any transfer of conventional arms covered under Article 2(1) or of items covered under Article 3 or Article 4, if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.

Contrary to the Defence claim that there is significant State practice that is contrary to existing customary international law, the Appeals Chamber notes that there are indications of developing attitudes among some States that the international community has an obligation to ensure that civilian populations are protected from genocide, war crimes, ethnic cleansing and crimes against humanity.[1407]

6592. para. 463: In the Appeals Chamber's view, international tribunals, in prosecuting those responsible for serious violations of international humanitarian law, act as the instruments of States. States have created international tribunals to prosecute war crimes, crimes against humanity and genocide. This Court is a demonstrable example, created by the Government of Sierra Leone and the United Nations to prosecute serious violations of international humanitarian law in the territory of Sierra Leone. Similarly, the ICTY and ICTR were created by the United Nations Security Council to prosecute such violations in the territories of the former Yugoslavia and Rwanda, respectively. In discharging their mandates, international tribunals carry out the will of the community of States and indeed humanity as a whole.

6593. para. 464: States have further mandated international criminal tribunals to perform their mandates impartially and apply customary international law as it stands. States, acting as "legislator", provide international courts with Statutes, and mandate judges, as impartial adjudicators, to apply those Statutes and customary international law to the cases before them. Performing this role, the Appeals Chamber has duly identified customary international law as it is mandated to do. The issue having been raised that contrary state practice exists, the Appeals Chamber has considered the submissions and found no evidence of state practice indicating a change in customary international law from the existing parameters of personal culpability for aiding and abetting the commission of serious violations of international humanitarian law. The Appeals Chamber is accordingly obliged to apply existing customary international law. As Judge Shahabuddeen aptly noted, "[t]he danger of legislating arises not only where a court essays to make law where there is none, but also where it fails to apply such law as exists; the failure may well be regarded as amounting to judicial legislation directed to repealing the existing law."[1408]

6594. para. 465: As the Special Court Agreement is a treaty to which the Statute is annexed and incorporated, the Parties are at any time free to amend Article 6 of the Statute to expressly define aiding and abetting liability in a different way than under customary international law or to redefine individual criminal liability on account of policy considerations. The United Nations and the Government of Sierra Leone have not done so. This Chamber declines to usurp that role.

(vii) Specific Direction

6595. para. 466: The Trial Chamber, in articulating the *actus reus* elements of aiding and abetting liability, held that "[t]he *actus reus* of aiding and abetting does not require 'specific direction.'"[1409]

6596. para. 471: The Defence did not argue on appeal that the Trial Chamber erred in concluding that "[t]he *actus reus* of aiding and abetting does not require 'specific direction,'"[1420] although it made a number of submissions regarding the notion in Ground 16 (alleged error in *mens rea* standard).[1421] After the pronouncement of the ICTY Appeals Chamber's Judgment in *Perišić*, which followed completion of the pre-appeal proceedings in this case, the Defence sought leave to amend its Notice of Appeal to add that complaint.[1422] The Prosecution also sought leave to file further submissions on the *Perišić* Appeal Judgment,[1423] but for reasons conveyed to both Parties, those motions were denied.[1424] Nonetheless, as the Appeals Chamber noted in its orders denying the motions, it is aware of and considers current relevant jurisprudence.[1425]

6597. para. 472: In applying the Statute and customary international law, the Appeals Chamber is guided by the decisions of the ICTY and ICTR Appeals Chamber.[1426] The Chamber looks as well to the decisions of the Appeals Chamber of the ECCC and STL and other sources of authority.[1427] The Appeals Chamber, however, is the final arbiter of the law for this Court, and the decisions of other courts are only persuasive, not binding, authority. The Appeals Chamber recognises and respects that the ICTY Appeals Chamber is the final arbiter of the law for that Court.

6598. para. 473: There is nothing in the Statute to indicate that "specific direction" is an element of the *actus reus* of aiding and abetting liability.[1428] In the *Perišić* Appeal Judgment, the ICTY Appeals Chamber held that "specific direction" must be proved beyond a reasonable doubt in order to establish the *actus reus* of aiding and abetting liability.[1429] The issue raised in respect of "specific direction" then is whether it is an element of the *actus reus* of aiding and abetting liability under customary international law prevailing during the Indictment Period in this case.

6599. para. 474: The Appeals Chamber has independently reviewed the post-Second World War jurisprudence, and is satisfied that those cases did not require an *actus reus* element of "specific direction" in addition to proof that the accused's acts and conduct had a substantial effect on the commission of the crimes.[1430] Similarly, the Appeals Chamber has examined the ILC Draft Code of Crimes[1431] and state practice,[1432] and is satisfied that they do not require such an element.

6600. para. 475: For the reasons discussed above, the Appeals Chamber concludes that the *actus reus* of aiding and abetting liability under Article 6(1) of the Statute and customary international

law is that an accused's acts and conduct of assistance, encouragement and/or moral support had a substantial effect on the commission of each charged crime for which he is to be held responsible.[1433] This requirement ensures that there is a sufficient causal, a "culpable",[1434] link between the accused and the commission of the crime before an accused's acts and conduct may be adjudged criminal.[1435] The principle articulated by this and other Appeals Chambers is that the *actus reus* of aiding and abetting liability is established by assistance that has a substantial effect on the crimes, not the particular manner in which such assistance is provided.[1436] As the Appeals Chamber, as well as the ICTY and ICTR Appeals Chambers, have consistently emphasised, whether the accused's acts and conduct had a substantial effect on the commission of the crime "is to be assessed on a case-by-case basis in light of the evidence as a whole."[1437]

6601. para. 476: The *Perišić* Appeals Chamber did not assert that "specific direction" is an element under customary international law.[1438] Its analysis was limited to its prior holdings and the holdings of the ICTR Appeals Chamber, which is the same body.[1439] Rather than determining whether "specific direction" is an element under customary international law, the *Perišić* Appeals Chamber specifically and only inquired whether the ICTY Appeals Chamber had previously departed from its prior holding that "specific direction" is an element of the *actus reus* of aiding and abetting liability.[1440] In the absence of any discussion of customary international law, it is presumed that the ICTY Appeals Chamber in *Perišić* was only identifying and applying internally binding precedent.

6602. para. 477: In holding that the ICTY Appeals Chamber had not departed from its prior precedent, the *Perišić* Appeals Chamber stated that "[h]ad the Appeals Chamber [in *Blagojević and Jokić*, *Mrkšić and Sljivančanin* and *Lukić and Lukić*] found cogent reasons to depart from its relevant precedent, and intended to do so, it would have performed a clear, detailed analysis of the issue, discussing both past jurisprudence and the authorities supporting an alternative approach."[1441] In examining this reasoning in terms of its persuasive value, however, this Appeals Chamber notes that the ICTY Appeals Chamber's jurisprudence does not contain a clear, detailed analysis of the authorities supporting the conclusion that "specific direction" is an element of the *actus reus* of aiding and abetting liability under customary international law.[1442]

6603. para. 478: The ultimate precedent identified by the *Perišić* Appeals Chamber was the *Tadić* Appeal Judgment.[1443] That Judgment did not, however, canvas customary international law regarding the elements for aiding and abetting liability, and its discussion of aiding and abetting was limited to explaining the differences between aiding and abetting liability and joint criminal enterprise liability.[1444] The Appeals Chamber is further not persuaded by the *Perišić* Appeal

Chamber's analysis of the ICTY Appeals Chamber's jurisprudence on "specific direction".[1445] The *Mrkšić and Sljivančanin* Appeals Chamber held that "the Appeals Chamber has confirmed that "'specific direction' is not an essential ingredient of the *actus reus* of aiding and abetting."[1446] The *Lukić and Lukić* Appeals Chamber then held that there were no cogent reasons to deviate from the holding of the *Mrkšić and Sljivančanin* Appeal Judgement that specific direction is not essential to the *actus reus* of aiding and abetting liability.[1447]

6604. para. 479: The Appeals Chamber is further not persuaded by the *Perišić* Appeals Chamber's holding that "no conviction for aiding and abetting may be entered if the element of specific direction is not established beyond reasonable doubt, either explicitly or implicitly."[1448] That a finding necessary to a conviction and one that must be proved beyond a reasonable doubt can be "implicit"[1449] or "self-evident",[1450] would appear to be inconsistent with the standard of proof beyond a reasonable doubt[1451] and the presumption of innocence.[1452]

6605. para. 480: Although the *Perišić* Appeal Judgment introduces novel elements in its articulation of "specific direction", which may perhaps be developed in time, this Appeals Chamber is not persuaded that there is good reason to depart from settled principles of law at this time.[1453] As the Appeals Chamber has concluded, the requirement that the accused's acts and conduct have a substantial effect on the commission of the crime ensures that there is a sufficient causal link between the accused and the commission of the crime.[1454] The Appeals Chamber has further concluded that this requirement is sufficient to ensure that the innocent are not unjustly held liable for the acts of others.[1455] Accordingly, the Appeals Chamber does not agree with the *Perišić* Appeals Chamber's treatment of the accused's physical proximity to the crime as a decisive consideration distinguishing between culpable and innocent conduct.[1456] This Appeals Chamber has previously held, consistent with the holdings of all other appellate chambers, that "acts of aiding and abetting can be made at a time and place removed from the actual crime."[1457] Whether the accused is geographically close to the scene of the crime may be relevant depending on the facts of the case, particularly where that presence is alleged to have contributed to the commission of the crime,[1458] but it is not a legal requirement. While an accused may be physically distant from the commission of the crime, he may in fact be in proximity to and interact with those ordering and directing the commission of crimes.

a. Conclusion

6606. para. 481: The Appeals Chamber is not persuaded that there are cogent reasons to depart from its holding that the *actus reus* of aiding and abetting liability under Article 6(1) of the Statute

and customary international law is that the accused's acts and conduct of assistance, encouragement and/or moral support had a substantial effect on the commission of each charged crime for which he is to be held responsible. Accordingly, the Appeals Chamber concludes that "specific direction" is not an element of the *actus reus* of aiding and abetting liability under Article 6(1) of the Statute or customary international law.

(viii) Conclusion on the Law of Aiding and Abetting

6607. para. 482: Having considered the Statute and customary international law, the Appeals Chamber finds that the *actus reus* of aiding and abetting liability is established by assistance that has a substantial effect on the crime, not by the particular manner in which such assistance is provided. The Appeals Chamber rejects the Defence submission that the Trial Chamber was required to find that Taylor provided assistance to the specific physical actor who committed the *actus reus* of each underlying crime. The Appeals Chamber accordingly affirms its prior holding that the *actus reus* of aiding and abetting liability under Article 6(1) of the Statute and customary international law is that an accused's acts and conduct of assistance, encouragement and/or moral support had a substantial effect on the commission of the crimes charged for which he is to be held responsible.

6608. para. 483: The Appeals Chamber's review of the post-Second World War jurisprudence and subsequent caselaw demonstrates that under customary international law, an accused's knowledge of the consequence of his acts or conduct – that is, an accused's "knowing participation" in the crimes – is a culpable *mens rea* standard for individual criminal liability. In light of the foregoing, the Appeals Chamber reaffirms that knowledge is a culpable *mens rea* standard for aiding and abetting liability under Article 6(1) of the Statute and customary international law.

6609. para. 484: Although existing customary international law can be modified if the combination of *opinion juris* and state practice show a continuing and consistent adherence to the new custom by the international community, the Defence has failed to identify any examples of such *opinio juris* and state practice, much less a continuing and consistent adherence. The issue having been raised that contrary state practice exists, the Appeals Chamber has considered the submissions and found no evidence of state practice indicating a change in customary international law from the existing parameters of personal culpability for aiding and abetting the commission of serious violations of international humanitarian law.

6610. para. 485: The Appeals Chamber further concludes that the law articulated and applied by the Trial Chamber is in accordance with the principle of personal culpability.

6611. para. 486: Finally, the Appeals Chamber concludes that "specific direction" is not an element of the *actus reus* of aiding and abetting liability under Article 6(1) of the Statute or customary international law. Although the *Perišić* Appeal Judgment introduces novel elements in its articulation of "specific direction", which may perhaps be developed in time, this Appeals Chamber is not persuaded that there are cogent reasons to depart from its holding regarding the *actus reus* and *mens rea* of aiding and abetting liability under Article 6(1) of the Statute and customary international law.

(ix) Aiding and Abetting Liability - Concurring Opinion

6612. Concuring Opinion – Justice Fisher, Justice Winter joining, para. 709: I fully agree with the Appeals Chamber's reasoning and conclusion as to the law of aiding and abetting liability. However, I consider it necessary to further address two of the Defense's arguments in support of its position that the elements of aiding and abetting liability under customary international law as interpreted and applied in this case, are impermissibly broad.

6613. Concuring Opinion – Justice Fisher, Justice Winter joining, para. 710: The Appeals Chamber, in affirming the Trial Chamber, has unanimously concluded that under customary international law, substantially assisting the commission of crimes knowing the consequence of one's acts incurs individual criminal liability for those crimes. I am firmly of the view that this law is in accordance with accepted principles of criminal law[2063] and that the customary status of this law is not in doubt.

6614. Concuring Opinion – Justice Fisher, Justice Winter joining, para. 711: The Defense argues that the application of the law of aiding and abetting as interpreted by the Trial Chamber is overbroad in the context of crimes committed in armed conflicts, and poses the question, "how do we define the limits where there is nothing whatsoever intrinsic in the nature of assistance which tells us what is aiding and abetting," and warns that "the *actus reus* [of aiding and abetting liability] can actually be quite easily fulfilled quite unconsciously by the alleged aider and abetter."[2064] The Appeals Chamber seriously considered this question and responds in its holding that the law of individual criminal responsibility does not criminalise just *any* act of assistance to a party to an armed conflict, nor does it criminalise *all* acts or conduct that may result in assistance to the commission of a crime. Stated simply, the law does not impose strict liability.

6615. Concuring Opinion – Justice Fisher, Justice Winter joining, para. 712: The law on aiding and abetting criminalises knowing participation in the commission of a crime where an accused's willing act or conduct had a substantial effect on the crime. I would add, by way of further explanation, that the customary elements for aiding and abetting liability contain express limitations to protect the innocent, regardless of the context in which the crimes are committed: the accused's acts or conduct must have a *substantial effect* on the crime; the accused must commit the acts with the *knowledge* that the acts will assist in the commission of the crime OR with *awareness* of the *substantial likelihood* that they will; and the accused must be *aware* of the *essential elements* of the crime which his or her acts or conduct assist. Every case is fact specific, and in all cases the accused may challenge the factual predicates of the essential elements, raise affirmative defenses recognized by law, and argue mitigating circumstances.

6616. Concuring Opinion – Justice Fisher, Justice Winter joining, para. 713: It is true of course that an accused may provide assistance to both lawful and unlawful activities. However, no system of criminal law excuses unlawful conduct because the accused also engages in lawful conduct. The law presumes that all of an accused's conduct is lawful – the Prosecution must prove beyond reasonable doubt that some of the accused's conduct was unlawful. If the Prosecution proves beyond a reasonable doubt that: (i) a crime was committed; and (ii) the accused *knowingly assisted* the commission of the crime, or was *aware* that there was a *substantial likelihood* that his acts would assist in the commission of the crime; and (iii) his acts or conduct had *a substantial effect* on the commission of the crime; and (iv) the accused had an *awareness* of the essential elements of the underlying crime his acts or conduct assisted; *then* criminal liability for aiding and abetting that crime is established. If any of these four elements is not proved beyond a reasonable doubt, then the accused will not be found guilty of aiding and abetting a crime.

6617. Concuring Opinion – Justice Fisher, Justice Winter joining, para. 714: It is likewise true that liability for aiding and abetting is not restricted to those who want the crimes to be committed. Criminal law legitimately punishes those who know what they are doing and proceed to act regardless of whether they desire or are merely indifferent to the pain and suffering to which they contribute.

6618. Concuring Opinion – Justice Fisher, Justice Winter joining, para. 715: The essential elements of aiding and abetting liability as properly applied in this case establish the boundaries which protect against over-criminalization. As with all forms of criminal participation, it is up to the Trial Chamber to test the facts it finds against the essential elements, mindful of the limitations, the burden of proof, and the presumption of innocence. This is the routine task of

judges, and there is nothing different in the way judges interpret and apply the elements of aiding and abetting from the way they interpret and apply the elements of any other mode of liability or substantive crime. The Appeals Chamber unanimously determined that the Trial Chamber committed no error in performing this task in the present case.

6619. Concuring Opinion – Justice Fisher, Justice Winter joining, para. 716: I comment on the Defense's additional argument in support of its overbreadth contention because I consider it very troublesome. The Defense argues that the essential elements of aiding and abetting as applied and relied on by the Trial Chamber are insufficient and require additional or different elements or analysis because the concept of aiding and abetting is "so broad that it would in fact encompass actions that are today carried out by a great many States in relation to their assistance to rebel groups or to governments that are well known to be engaging in crimes of varying degrees of frequency…."[2065] Such assistance, the Defense argues, "is going on in many other countries that are supported in some cases by the very sponsors of this Court."[2066] By this argument, the Defense purposely confuses customary law-making with international law-breaking.

6620. Concurring Opinion – Justice Fisher, Justice Winter joining, para. 717: Furthermore, suggesting that the Judges of this Court would be open to the argument that we should change the law or fashion our decisions in the interests of officials of States that provide support for this or any international criminal court is an affront to international criminal law and the judges who serve it. The Defense has interjected a political and highly inappropriate conceit into these proceedings, which has no place in courts of law and which has found no place in the Judgment of this Court. The Judges of this Court, like our colleagues in our sister Tribunals, are sworn to act independently "without fear or favour, affection or ill-will" and to serve "honestly, faithfully, impartially and conscientiously."[2067] To suggest otherwise wrongfully casts a cloud on the integrity of judges in international criminal courts generally and the rule of law which we are sworn to uphold, and encourages unfounded speculation and loss of confidence in the decisionmaking process as well as in the decisions themselves. I wish to make clear that this line of argument is absolutely repudiated.[2068]

6621. Concurring Opinion – Justice Fisher, Justice Winter joining, para. 718: Judges do not decide hypothetical cases. They look to the individual case before them and apply the law as they are convinced it exists to the facts that have been reasonably found. Reasonable minds may differ on the law. I am convinced that the customary law on the elements of aiding and abetting are as stated by the Trial Chamber and that application of the law to the facts in this particular case was properly and fairly calculated. As with all areas of the law, international criminal law is founded

on fact and experience. "[I]t cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics."[2069] Judicial decisions require the exercise of human judgment. Like the presumption of innocence, the presumption that judges are acting *independently* in the exercise of their *best* judgment in *the case before them* is fundamental to the rule of law. Judges privileged to sit on international criminal courts regard the duty underlying both of these presumptions as inviolable.

6622. Concurring Opinion – Justice Fisher, Justice Winter joining, para. 719: At the Special Court, the law is transparent, public and faithful to the principle that one is only held accountable for his or her own acts. The Prosecutor independently investigates and brings indictments against those suspected of criminal violations, without regard to status or official position, holding all equally accountable before the law. The accused is guaranteed the confidential assistance of professional and independent counsel, who are bound to serve their client's interest in accordance with their ethical responsibilities as officers of the court. The Statute and Rules ensure the accused's right to a fair and public trial, so that the public may see the evidence laid against the accused and his defense against the charges during transparent adversarial proceedings. Finally, an independent and impartial judiciary, having ensured the fairness of the proceedings and applying the presumption of innocence and the standard of proof beyond a reasonable doubt, deliberates in secret and announces its reasoned judgment in public. That judgment is subject to appeal and reviewed by five other independent judges. These are the essential safeguards for the rights of the accused and the interests of justice.

6623. Concurring Opinion – Justice Fisher, Justice Winter joining, para. 720: If the presumption of innocence outweighs the evidence of personal culpability, courts of law will acquit the accused. The rule of law requires respect for such decisions, even by those who disagree with them. In this case, the confirmed findings overwhelmingly establish that Mr. Taylor, over a five year period, individually, and knowingly, and secretly, and substantially assisted the perpetration of horrific crimes against countless civilians in return for diamonds and power, while publicly pretending that he was working for peace. In the unanimous, independent judgment of the three Trial Judges that composed the Trial Chamber and the five Appellate Justices that compose the Appeals Chamber,[2070] the presumption of innocence has been overcome beyond a reasonable doubt both as to the substantive crimes charged in the Indictment and Mr. Taylor's participation in those crimes.

6624. Concurring Opinion – Justice Fisher, Justice Winter joining, para. 721: Justice Winter joins in this Concurring Opinion.

(x) Planning – *Actus Reus*

6625. para. 487: The Trial Chamber articulated the *actus reus* (objective) and *mens rea* (mental) elements of planning liability as follows:

> i. The accused, alone or with others, intentionally designed an act or omission constituting the crimes charged;
>
> ii. With the intent that a crime or underlying offence be committed in the execution of that design, or with the awareness of the substantial likelihood that a crime or underlying offence would be committed in the execution of that design.

The Trial Chamber further explained:

> While the Prosecution need not prove that the crime or underlying offence with which the accused is charged would not have been perpetrated but for the Accused's plan, the plan must have been a factor ―substantially contributing to criminal conduct constituting one or more statutory crimes that are later perpetrated.[1459]

6626. para. 491: The Appeals Chamber, in several cases, has upheld planning convictions for enslavement committed over more than one year and involving a large number of victims,[1467] the use of child soldiers committed in Kailahun, Kenema, Kono and Bombali Districts between 1997 and September 2000,[1468] a system of sexual slavery in Bombali District and the Western Area[1469] and the conscription and use of child soldiers in the Western Area.[1470] In none of those cases was it required that an accused be found to have planned a "particular" or "concrete" crime.

6627. para. 492: The Appeals Chamber has previously indicated that it does not consider as persuasive authority the *Brđanin* Trial Judgment's holding that planning is distinguished from other forms of criminal participation by a requirement of "specificity". In *Brima et al*., the Trial Chamber rejected that holding as an overly "narrow construction of the responsibility for planning," and held that the requirement of a substantial contribution or effect was sufficient to establish the culpable link between the accused and the crimes.[1471] The Trial Chamber's articulation of the law was affirmed on appeal.[1472] Similarly, in *Sesay et al*., the Appeals Chamber distinguished the *Brđanin* Trial Judgment on the facts, and noted that it was not determinative to Sesay's planning liability.[1473] In addition, the ICTY Appeals Chamber subsequently rejected the *Brđanin* Trial Chamber's holding in *Kordić and Čerkez*.[1474] As the Defence clearly raises the issue now, this Appeals Chamber clarifies that it does not accept the *Brđanin* Trial Judgment's holding.

6628. para. 493: The Appeals Chamber notes that in *Boškoski and Tarčulovski*, the appellant made similar submissions as those presented here.[1475] The ICTY Appeals Chamber rejected them,

holding that where the accused planned conduct that had the predominant purpose to indiscriminately attack civilians, the accused planned conduct which constituted crimes.[1476] The ICTY Appeals Chamber further held that "the legitimate character of an operation does not exclude an accused's criminal responsibility for planning, instigating and ordering crimes committed in the course of this operation" if the goal is to be achieved by the commission of crimes.[1477] The Appeals Chamber agrees.

6629. para. 494: The Appeals Chamber agrees with the Trial Chamber's articulation of the law[1478] and holds that the *actus reus* of planning liability is that an accused participated in designing an act or omission[1479] and thereby had a substantial effect on the commission of the crime.[1480] The Appeals Chamber further holds that in order to incur planning liability, an accused need not design the conduct alone,[1481] and the accused need not be the originator of the design or plan.[1482] The Appeals Chamber reaffirms that whether the accused's acts "amount to a substantial contribution to the crime for the purposes of planning liability is to be assessed on a case-by-case basis in light of the evidence as a whole."[1483] The Appeals Chamber further holds that the *mens rea* of planning liability is that the accused intended, knew or was aware of the substantial likelihood that a crime will be committed in the execution of that plan.[1484]

(xi) Taylor's Criminal Liability

6630. para. 497: The Trial Chamber convicted Taylor for aiding and abetting the crimes charged in Counts 1-11 of the Indictment, and found proved beyond a reasonable doubt, that were committed between 30 November 1996 and 18 January 2002 in the Districts of Bombali, Kailahun, Kenema, Kono, Port Loko and Freetown and the Western Area.[1485] It also convicted Taylor for planning the commission of crimes charged in Counts 1-11 of the Indictment, and found proved beyond a reasonable doubt, that were committed in the attacks on Kono and Makeni in December 1998 and in the invasion of and retreat from Freetown, between December 1998 and February 1999, in the Districts of Bombali, Kailahun, Kono, Port Loko and Freetown and the Western Area.[1486]

6631. para. 498: The Appeals Chamber has affirmed the Trial Chamber's conclusion that certain crimes were defectively pleaded in the Indictment.[1487] It has affirmed the Trial Chamber's factual and legal findings that the crimes properly charged in Counts 1-11 of the Indictment were committed.[1488] The Appeals Chamber has affirmed the Trial Chamber's factual findings regarding Taylor's acts and conduct during the Indictment Period.[1489] It has also affirmed the Trial Chamber's factual findings regarding the RUF/AFRC's Operational Strategy.[1490] Finally, the

Appeals Chamber has concluded that the Trial Chamber properly articulated and applied the *mens rea* and *actus reus* elements of aiding and abetting and planning liability.[1491]

6632. para. 499: The Parties' remaining challenges to Taylor's individual criminal liability for the crimes charged in Counts 1-11 of the Indictment concern the Trial Chamber's application of the law to the facts found, that is, its ultimate conclusions that the *actus reus* and *mens rea* elements of individual criminal liability under Article 6(1) were proved beyond a reasonable doubt and its findings on cumulative convictions. In this section of the Judgment, the Appeals Chamber accordingly considers: (i) the Defence's challenges to the Trial Chamber's conclusion that Taylor is guilty of aiding and abetting the crimes charged in Counts 1-11 of the Indictment; (ii) the Defence's challenges to the Trial Chamber's conclusion that Taylor is guilty of planning the crimes charged for which he was convicted; (iii) the Defence submission that Taylor's convictions for the crimes of rape (Count 4) and sexual slavery (Count 5) are impermissibly cumulative; and (iv) the Prosecution submission that the Trial Chamber erred in failing to convict Taylor of instigating and/or ordering the crimes charged.

a. Aiding and Abetting Liability - Taylor's Criminal Liability

6633. para. 500: The remaining Defence submissions in relation to Taylor's conviction for aiding and abetting the crimes charged in Counts 1-11 of the Indictment challenge the Trial Chamber's ultimate conclusions that the *actus reus* and *mens rea* elements of aiding and abetting liability were proved beyond a reasonable doubt. The Defence advances two arguments. First, in Grounds 22-32, it submits that the Trial Chamber erred in concluding that the *actus reus* of aiding and abetting liability was proved beyond a reasonable doubt. Second, in Grounds 17 and 19, it challenges the Trial Chamber's conclusion that Taylor possessed the requisite *mens rea* for aiding and abetting liability.

i. *Actus Reus* - Taylor's Criminal Liability – Aiding and Abetting Liability

6634. para. 501: Having set out the applicable law on individual criminal liability,[1492] the evidence and its findings regarding the commission of the crimes charged in Counts 1-11 of the Indictment,[1493] the evidence and its findings regarding the *chapeau* requirements under Articles 2-4 of the Statute,[1494] the evidence and its findings regarding Taylor's acts and conduct during the Indictment Period,[1495] the evidence and its findings regarding the Leadership and Command Structure of the RUF/AFRC,[1496] its findings regarding the RUF/AFRC's Operational Strategy[1497]

and the evidence and its findings regarding Taylor's knowledge,[1498] the Trial Chamber applied the law of individual criminal liability to the facts found, in the final section of the Trial Judgment, entitled "Legal Findings on Responsibility".[1499]

6635. para. 502: The Trial Chamber found beyond a reasonable doubt that Taylor's acts and conduct[1500] had a substantial effect on all the crimes charged in Counts 1-11 of the Indictment which it found proved beyond a reasonable doubt, and that the *actus reus* of aiding and abetting liability was thus established.[1501] In keeping with its approach throughout the Trial Judgment to separately address the four forms of assistance, encouragement and moral support that the Prosecution alleged Taylor provided to the RUF/AFRC, the Trial Chamber found that Taylor's acts and conduct had a substantial effect on the commission of the crimes charged in respect of each of four categories: (i) arms and ammunition; (ii) military personnel; (iii) operational support; and (iv) advice and encouragement.[1502]

6636. para. 507: The Appeals Chamber notes that the Trial Chamber properly directed itself as to the *actus reus* of aiding and abetting liability at the outset of its analysis.[1518] The Trial Chamber reasoned its analysis as to whether the *actus reus* was proved in terms of four components:[1519] (i) its findings on the commission of the crimes charged and the relationship between the crimes charged and the RUF/AFRC's Operational Strategy;[1520] (ii) its findings on Taylor's acts and conduct during the Indictment Period;[1521] (iii) whether Taylor's acts and conduct constituted assistance, encouragement and moral support to the RUF/AFRC in the commission of the crimes;[1522] and (iv) whether the effect of Taylor's acts and conduct on the commission of the crimes charged was substantial.[1523]

6637. para. 508: The Appeals Chamber notes that the RUF/AFRC's Operational Strategy was central to the Trial Chamber's analysis of the facts and application of the law of aiding and abetting to Taylor's acts and conduct and the crimes charged in the Indictment. The Trial Chamber found that the crimes charged were proved beyond a reasonable doubt.[1524] It also found that the RUF/AFRC directed a widespread and systematic attack against the civilian population of Sierra Leone at all times relevant to the Indictment.[1525] It further found that the crimes charged in the Indictment and the widespread and systematic attacks against the civilian population were committed in furtherance of the RUF/AFRC's Operational Strategy. That strategy was characterised by a campaign of crimes against the Sierra Leonean population and was inextricably linked to the strategy of the military operations themselves. It entailed a campaign of terror against civilians as a primary modus operandi to achieve military and political goals. The Appeals Chamber has affirmed these findings, and recalls that in accordance with the Statute and

customary international law, it is proper for a trier of fact to consider whether, by aiding and abetting the planning, preparation or execution of a strategy to commit crimes, an accused's acts and conduct thereby had a substantial effect on some or all of the crimes committed in furtherance of that strategy and charged in the Indictment.[1526]

6638. para. 509: The Trial Chamber's findings regarding the RUF/AFRC's Operational Strategy provide relevant context to the commission of the crimes charged, establishing that they were committed by the RUF/AFRC during widespread and systematic attacks against the civilian population in the implementation of the RUF/AFRC's Operational Strategy. In assessing whether Taylor's acts and conduct had a substantial effect on the commission of those crimes, the Trial Chamber found that there was a direct relationship between the crimes charged in the Indictment and the RUF/AFRC's Operational Strategy.[1527]

6639. para. 510: In determining Taylor's liability for the crimes, the Trial Chamber assessed cumulatively Taylor's acts and conduct, undertaken personally and through his agents, during the Indictment Period.[1528] The Appeals Chamber recalls that a trier of fact is called upon to determine whether the accused"s acts and conduct, not each individual act, had a substantial effect on the commission of the crimes charged.[1529]

6640. para. 511: Having considered the crimes charged in the Indictment and Taylor's acts and conduct in their factual context, the Trial Chamber assessed whether Taylor's acts and conduct constituted assistance, encouragement and moral support to the commission of the crimes by the RUF/AFRC.[1530] It found that Taylor's acts and conduct assisted, encouraged and morally supported the RUF/AFRC's Operational Strategy and had an effect on the commission of the crimes in the implementation of that Operational Strategy.[1531]

6641. para. 512: Finally, the Trial Chamber assessed whether Taylor's acts and conduct had a substantial effect on the commission of the crimes. It reasoned that Taylor's acts and conduct had a substantial effect on the commission of the crimes because they: (i) enabled the RUF/AFRC's Operational Strategy;[1532] (ii) supported, sustained and enhanced the RUF/AFRC's capacity to implement its Operational Strategy;[1533] and (iii) encouraged and morally supported the RUF/AFRC's military operations and attacks against the civilian population in furtherance of its Operational Strategy.[1534] The Appeals Chamber will now consider the Defence's challenges to the Trial Chamber's conclusion that Taylor's acts and conduct had a substantial effect on the commission of the crimes charged in the Indictment.

6642. Enabling the RUF/AFRC's Operational Strategy – *Actus Reus* - Taylor's Criminal Liability - Aiding and Abetting Liability para. 513: The Defence submits that where the quantity of materiel Taylor provided in specific shipments was small or could not be determined, no reasonable trier of fact could have found that the provision of arms and ammunition was used in and had a substantial effect on the commission of the crimes.[1535] The Appeals Chamber considers that this submission does not address the totality of the Trial Chamber's findings, which demonstrate that throughout the Indictment Period, Taylor supplied or facilitated the supply of a substantial quantity of arms and ammunition to the RUF/AFRC.[1536]

6643. para. 514: In addition to considering the effect of Taylor's acts and conduct in quantitative terms, the Trial Chamber also considered the effect of his acts and conduct in qualitative terms, in light of the specific factual circumstances and the consequences established by the evidence.[1537] It found that Sam Bockarie and Issa Sesay would regularly turn to Taylor when the RUF/AFRC had exhausted its supply of arms and ammunition.[1538] The Trial Chamber highlighted in this regard the Magburaka Shipment as one example, which came at a time when the Junta government had depleted its existing sources of supply and was faced with an international arms embargo, and after Bockarie and Koroma had requested material support from Taylor.[1539] Similarly, it found that shipments provided by Taylor were indispensable for the RUF/AFRC military offensives and attacks against the civilian population in the implementation of its Operational Strategy.[1540] It pointed to the Burkina Faso Shipment as a clear example, since it was unprecedented in volume and was critical in the RUF/AFRC's attack on Freetown.[1541] Taylor thus often satisfied a need or request for materiel at a particular time, and the RUF/AFRC heavily and frequently relied on materiel provided by Taylor to implement its Operational Strategy, carry out its widespread and systematic attacks against the civilian population and maintain territories.[1542] Conversely, the Trial Chamber found that the sources of supply besides Taylor were insignificant and could not sustain the RUF/AFRC's operations.[1543]

6644. para. 515: The Defence further contends that the Trial Chamber erred in considering that materiel provided by Taylor formed part of an "amalgamate of fungible resources" or part of the overall supply of materiel in 1999-2001 used by the RUF/AFRC in the commission of crimes, arguing that the Trial Chamber could not rely on such findings to conclude that Taylor's acts and conduct had a substantial effect on the commission of the crimes.[1544]

6645. para. 516: The Appeals Chamber opines that these findings demonstrate that the Trial Chamber fully evaluated the whole of the evidence in determining whether Taylor's acts and conduct had a substantial effect on the commission of the crimes. In concluding that materiel

provided by Taylor formed part of an amalgamate of fungible resources in the specific context of the RUF/AFRC's attempts to recapture Freetown and commission of crimes in late January/February 1999,[1545] the Trial Chamber was addressing the Defence submission at trial that the capture of the ECOMOG materiel intervened in the causal link between the Burkina Faso Shipment provided by Taylor and the commission of the crimes after the retreat from Freetown.[1546] The Trial Chamber found that the Burkina Faso Shipment, supplied by Taylor, was "causally critical" to the capture of the ECOMOG materiel.[1547] It found that there was thus a causal link between Taylor's acts and conduct and the crimes, whether the specific materiel used in each specific crime was from the Burkina Faso Shipment or the captured ECOMOG materiel.[1548] Similarly, in finding that materiel provided by Taylor formed part of the overall supply of materiel in 1999-2001 used by the RUF/AFRC in the commission of crimes,[1549] the Trial Chamber properly recognised that the RUF/AFRC had additional sources of materiel, some attributable to Taylor and others not, at that time. The Appeals Chamber agrees with the Trial Chamber that as a matter of law, an accused need not be the only source of assistance in order for his acts and conduct to have a substantial effect on the commission of the crimes,[1550] and notes that the Trial Chamber took into consideration other sources of assistance in assessing whether Taylor's acts and conduct had a substantial effect on the commission of the crimes.[1551]

6646. para. 517: Whether an accused's acts and conduct have a substantial effect on the crimes is to be assessed on a case-by-case basis in light of the evidence as a whole.[1552] The Appeals Chamber affirms the Trial Chamber's qualitative and quantitative assessment in light of the whole of its findings, the specific factual circumstances and the consequences established by the evidence. In the Appeals Chamber's view, the Trial Chamber's findings demonstrate that Taylor provided materiel to the RUF/AFRC regularly throughout the Indictment Period, in comparison with the irregular and sporadic supplies from other sources, and that his provision of arms and ammunition to the RUF/AFRC was dynamic, responsive and timely, often satisfying a need or request for materiel at a particular time. Those findings further demonstrate that Taylor provided substantial quantities of materiel to the RUF/AFRC over the course of the Indictment Period, compared to minor and insufficient quantities from other sources. They illustrate that the RUF/AFRC, faced with an arms embargo, had a finite supply of materiel to support its operations, and that of that supply, the arms and ammunition provided by Taylor were critical in enabling the RUF/AFRC's Operational Strategy, in the implementation of which the crimes charged were committed.

ii. Enhancing the Capacity of the RUF/AFRC - *Actus Reus* - Taylor's Criminal Liability - Aiding and Abetting Liability

6647. para. 518: The Defence submits that the Trial Chamber erred in reasoning that the operational support and military personnel Taylor provided to the RUF/AFRC supported, enhanced and/or sustained the RUF/AFRC's capacity to undertake its Operational Strategy, submitting that the provision of this support cannot reasonably be found to have had a substantial effect on crimes.[1553] The Defence submissions rely on its contention that the Trial Chamber erred as a matter of law in not requiring that Taylor's acts of assistance, encouragement and moral support were to the physical actor and were used in the commission of the specific crime. As the Appeals Chamber has rejected that submission,[1554] the Defence argument here also fails.

6648. para. 519: The Appeals Chamber notes in this regard that while arms and ammunition may in some circumstances be the means to commit crimes, in other circumstances such materiel may have an effect on the commission of crimes in a different manner. The Trial Chamber recognised that Taylor provided the RUF/AFRC with arms and ammunition in 1999 for the purpose of "keeping security", defending itself from the Kamajors and Sierra Leonean Government forces.[1555] It explicitly recalled that the RUF/AFRC during this period continued to commit crimes in territories under its control, namely the use of child soldiers, sexual slavery and enslavement.[1556] In this factual context, assisting the RUF/AFRC to defend its position could reasonably be found to have supported and sustained the RUF/AFRC's Operational Strategy and thus have had an effect on the commission of crimes in the implementation of that Operational Strategy.

6649. para. 520: The Appeals Chamber notes that the Trial Chamber's findings demonstrate that the operational support Taylor provided was extensive, sustained and impacted key RUF/AFRC operations critical to its functioning and its capacity to implement its Operational Strategy. The communications and logistics support Taylor provided was sustained and significant.[1557] It enhanced the capability of the RUF/AFRC leadership to plan, facilitate or order RUF/AFRC military operations during which crimes were committed,[1558] enabled the RUF/AFRC to coordinate regarding arms shipments and diamond transactions critical to its logistics[1559] and assisted the RUF/AFRC to evade attacks by ECOMOG forces.[1560] Similarly, the RUF Guesthouse enhanced the RUF/AFRC's capacity to obtain arms and ammunition from Taylor in exchange for diamonds,[1561] which was critical in enabling the RUF/AFRC's Operational Strategy.[1562] The RUF/AFRC's diamond mining activities involved the systematic commission of crimes.[1563] The logistical support Taylor provided – the provision of security escorts, the facilitation of access

through checkpoints, and the much needed assistance with transport of arms and ammunition by road and by air – supported and sustained the provision of arms and ammunition by Taylor to the RUF/AFRC, and "played a vital role in the operations of the RUF/AFRC during a period when an international arms embargo was in force."[1564] With respect to the military personnel provided by Taylor, the 170 soldiers participated in RUF/AFRC military offensives during which crimes charged were committed,[1565] boosted the morale of other RUF/AFRC troops[1566] and provided the RUF/AFRC with high-level military expertise.[1567]

6650. para. 521: The Appeals Chamber finds that the Trial Chamber properly assessed the effect that the sustained operational support and military personnel Taylor provided to the RUF/AFRC had on the RUF/AFRC's Operational Strategy and the commission of the crimes charged, in light of the whole of its findings, the specific factual circumstances and the consequences established by the evidence. The Defence submissions regarding other forms of operational support,[1568] which were relatively minor,[1569] are summarily dismissed for failure to identify an error that would occasion a miscarriage of justice.[1570]

iii. Encouragement and Moral Support - Actus Reus - Taylor's Criminal Liability - Aiding and Abetting Liability

6651. para. 522: The Defence challenges the Trial Chamber's assessment that Taylor encouraged and morally supported the commission of the crimes, arguing that Taylor's acts and conduct did not alter the behaviour of the RUF/AFRC and that the RUF/AFRC would still have launched attacks and committed crimes without Taylor's advice.[1571] This submission fails to demonstrate an error, as it is well-settled that a "substantial effect" is not a "but for" cause or a "condition precedent."[1572] Moreover, the Appeals Chamber does not consider that "substantial effect" in any respect is properly assessed by resort to hypotheticals as to what would or would not have happened in an alternate world, which cannot be demonstrated by evidence.

6652. para. 523: In assessing whether Taylor's acts and conduct had a substantial effect on the commission of the crimes, the Trial Chamber considered its findings that during the Indictment Period, Taylor provided ongoing advice and encouragement to the RUF/AFRC, and that there was ongoing communication and consultation between Taylor and the RUF/AFRC leadership.[1573] It found that Taylor in fact provided advice, and that the RUF/AFRC leadership heeded his advice on a number of instances.[1574] Following the Intervention, Taylor repeatedly advised them to attack, capture and maintain control over Kono District, a diamondiferous area.[1575] They acted in accordance with this advice by repeatedly attacking Kono in 1998, during which they directed

widespread and systematic attacks against the civilian population and committed crimes charged in the Indictment.[1576] On certain occasions Taylor demonstrably altered the RUF/AFRC's behaviour, including delaying disarmament.[1577] At times the RUF/AFRC leadership followed instructions from Taylor that directly served Taylor's, rather than their, interests.[1578]

6653. para. 524: The Trial Chamber's findings and reasoning also demonstrate the specific factual circumstances and the consequences established by the evidence relevant to the effect of Taylor's acts and conduct of encouragement and moral support in qualitative terms. Taylor held a position of authority as an elder statesman and as President of Liberia, and was accorded deference by the RUF/AFRC.[1579] The RUF/AFRC referred to him as "Pa", "father", "Papay", "godfather", "Chief", or "commander in chief" (CIC), which clearly indicated the respect the RUF/AFRC had for Taylor.[1580] Taylor advised the RUF/AFRC where and how to best implement its Operational Strategy to achieve its goals, including the capture of Kono so that it could obtain more materiel to launch more offensives[1581] and making the attack on Freetown "fearful" so that the RUF/AFRC could force the government into negotiations and achieve its goal of freeing Foday Sankoh.[1582] During the Junta Period, Taylor encouraged the RUF and AFRC to work together,[1583] and immediately after the Intervention, Taylor met Sam Bockarie in Monrovia and said that he would help and provide support.[1584] During the disarmament process following the Lomé Peace Accord, Taylor privately advised Issa Sesay not to disarm and to resist disarmament in Sierra Leone.[1585] In July 2000, Taylor urged Issa Sesay to agree to disarm but not to do it in reality, saying one thing to Sesay in front of the ECOWAS Heads of State and another to him in private.[1586]

6654. para. 525: The Appeals Chamber does not accept the Defence submission that in order to find that Taylor's acts and conduct had a substantial effect on the commission of the crimes, the Trial Chamber was required to find that Taylor's acts and conduct altered the behaviour of the RUF/AFRC and exclude the possibility that the RUF/AFRC would still have launched attacks and committed crimes without Taylor's advice. The Appeals Chamber affirms the Trial Chamber's qualitative and quantitative assessment in light of the whole of its findings, the specific factual circumstances and the consequences established by the evidence.

6655. para. 526: In light of the foregoing, the Appeals Chamber affirms the Trial Chamber's conclusion that Taylor's acts and conduct of assistance, encouragement and moral support had a substantial effect on each and all of the crimes for which he was convicted.

iv. *Mens Rea* - Taylor's Criminal Liability - Aiding and Abetting Liability

6656. para. 527: The Trial Chamber found that Taylor knew his support to the RUF/AFRC would provide practical assistance, encouragement or moral support to them in the commission of crimes and that he nevertheless provided such support.[1587] It also found that Taylor was aware of the "essential elements" of the crimes committed by the RUF/AFRC, including the state of mind of the perpetrators.[1588] Accordingly, the Trial Chamber found beyond a reasonable doubt that Taylor had the requisite *mens rea* for aiding and abetting liability in respect of the crimes charged in Counts 1- 11 of the Indictment.[1589] In reaching this conclusion, the Trial Chamber relied on the findings described in more detail in the Section of this Judgment entitled "Taylor's Acts, Conduct and Mental State".[1590]

6657. para. 533: The Appeals Chamber recalls that under Article 6(1) of the Statute and customary international law, the *mens rea* required for aiding and abetting liability is that an accused directly intended, knew or was aware of the substantial likelihood that his acts and conduct would assist the commission of the crime. The accused must also be aware of the essential elements of the crime, including the state of mind of the principal offender.[1609]

6658. para. 534: The Appeals Chamber does not accept the Defence contention that the Trial Chamber made different findings as to Taylor's knowledge in August 1997 and after April 1998.[1610] The Trial Chamber separately discussed Taylor's knowledge in August 1997 and his knowledge after April 1998 because Taylor, in his testimony, distinguished his knowledge at these particular points in time. Taylor admitted that he knew of the crimes committed by the RUF/AFRC by April 1998,[1611] but denied that he knew of those crimes earlier, in August 1997.[1612] The Trial Chamber's findings are thus appropriately addressed to Taylor's knowledge as of August 1997.[1613] Further, the Trial Chamber explicitly found that Taylor knew of the RUF/AFRC's Operational Strategy and intent to commit crimes "from the clear and consistent information he received after his election."[1614] Finally, the Trial Chamber's ultimate conclusion, with explicit reference to the above findings,[1615] was that at all relevant times Taylor "knew that his support to the RUF/AFRC would provide practical assistance, encouragement or moral support to them in the commission of crimes."[1616]

6659. para. 535: As the Trial Chamber found that the RUF/AFRC had an Operational Strategy to systematically commit crimes against the civilian population of Sierra Leone throughout the Indictment Period and that Taylor knew of that Operational Strategy at all relevant times, the Defence contention that before April 1998, Taylor was only aware of a "possibility that assistance

might be used in possible crimes" is unsustainable.[1617] In the Appeals Chamber's view, this equally applies to the period following April 1998.

6660. para. 536: On appeal, it is not sufficient for a party to put forward an "alternative" interpretation of the evidence and invite the Appeals Chamber to consider *de novo* whether such an alternative interpretation is a reasonable one.[1618] The Defence submission that Taylor supported the RUF/AFRC in order to prevent the commission of future crimes by ensuring that the RUF/AFRC was not defeated on the battlefield[1619] is an assertion unsupported by any evidence and is dismissed. Moreover, the findings made and supported by the Trial Chamber regarding exchanges between Taylor and Sam Bockarie, including Taylor's instruction that the attack on Freetown be made "fearful" for the purpose of pressuring the Sierra Leonean government into negotiations for the release of Foday Sankoh,[1620] exclude the "alternative" interpretation put forward by the Defence.[1621]

6661. para. 537: Situations may change and develop over time, and the trier of fact must always determine the accused's *mens rea* at the relevant time.[1622] The Trial Chamber found, however, that the RUF/AFRC's Operational Strategy did not change in fact.[1623] It further found that Taylor had knowledge of this Operational Strategy at all relevant times.[1624] Taylor continued to directly and intimately participate in ECOWAS peace efforts to address the situation in Sierra Leone.[1625] The Trial Chamber specifically considered the Defence's contention at trial that Taylor's involvement with the RUF/AFRC was solely for the purposes of peace,[1626] but found that Taylor "was engaged in arms transactions at the same time that he was involved in the peace negotiations in Lomé, publicly promoting peace at the Lomé negotiations, while privately providing arms and ammunition to the RUF."[1627] In addition, it found that after the signing of the Lomé Peace Accord, when the RUF/AFRC leadership was inclined to disarmament and the peace process Taylor encouraged the RUF/AFRC leadership not to disarm and continued to supply them with weapons.[1628]

6662. para. 538: The Trial Chamber had before it significant evidence establishing public knowledge of the crimes committed by the RUF/AFRC, and Taylor's knowledge of those crimes in particular. The Trial Chamber carefully assessed Taylor's testimony as to his knowledge, including his admission that by April 1998 anyone providing support to the RUF/AFRC "would be supporting a group engaged in a campaign of atrocities against the civilian population."[1629] The Trial Chamber recognised that Taylor's admission related to a particular time,[1630] and it specifically considered Taylor's denial that he knew that the RUF/AFRC was committing crimes in Sierra Leone before that time.[1631] It found that, based on the information available to Taylor

from his daily security briefings, his direct participation in the ECOWAS Committee of Five, his prior knowledge of the RUF's criminal activities and the international community's reaction to the situation in Sierra Leone, the only reasonable inference was that as early as August 1997 Taylor had the same knowledge of the Operational Strategy as he admitted to having in April 1998.[1632]

6663. para. 539: The Appeals Chamber finds that the Trial Chamber properly evaluated the evidence of Taylor's knowledge, including his testimony, his public role as President of Liberia and member of the ECOWAS Committee of Five, his relationship with the RUF/AFRC, the reports of ECOWAS and the UN and public reports by the media and non-governmental organisations. The Appeals Chamber further finds that the Trial Chamber carefully assessed this evidence in respect of Taylor's knowledge at the relevant times[1633] and the evolution of Taylor's relationship and involvement with the RUF/AFRC, and carefully considered the Parties' submissions at trial.

6664. para. 540: The Appeals Chamber accordingly affirms the Trial Chamber's finding that while Taylor was physically remote from the crimes, the only reasonable conclusion based on the totality of the evidence was that he knew of the RUF/AFRC's Operational Strategy. The Appeals Chamber further affirms the Trial Chamber's conclusion that Taylor knew that his support to the RUF/AFRC would assist the commission of crimes in the implementation of the RUF/AFRC's Operational Strategy. The Trial Chamber also reasonably found that, in addition to knowing of the RUF/AFRC's intent to commit crimes, Taylor was aware of the specific range of crimes being committed during the implementation of the RUF/AFRC's Operational Strategy and was aware of the essential elements of the crimes. In light of the foregoing, the Appeals Chamber agrees with the Trial Chamber's conclusion that Taylor possessed the requisite *mens rea* for aiding and abetting liability.[1634]

b. Planning Liability – Taylor's Criminal Liability

6665. para. 542: The Appeals Chamber has affirmed the Trial Chamber's factual findings regarding Taylor's participation in designing the Bockarie/Taylor Plan.[1635] The Appeals Chamber has also concluded that the Trial Chamber properly articulated and applied the *actus reus* and *mens rea* elements of planning liability.[1636]

6666. para. 543: The Defence's remaining challenges to Taylor's conviction for planning crimes address the Trial Chamber's application of the law to the facts found and its ultimate conclusions that the *actus reus* and *mens rea* elements of planning liability were proved beyond a reasonable doubt. First, in Grounds 10, 11, 12 and 13, it challenges the Trial Chamber's conclusion that the

actus reus of planning liability was proved beyond a reasonable doubt. Second, in Grounds 14 and 15, it challenges the Trial Chamber's conclusion that Taylor possessed the requisite *mens rea* for planning the crimes under the 11 Counts for which he was convicted. Third, in Ground 11, the Defence challenges Taylor's convictions for crimes committed in Kono and Makeni during the Freetown Invasion.[1637]

i. *Actus reus* – Planning Liability – Taylor's Criminal Liability

6667. para. 544: The Trial Chamber found beyond a reasonable doubt that Taylor intentionally designed the Bockarie/Taylor Plan for an attack on Freetown and thereby had a substantial effect on the crimes committed during and after the Freetown Invasion between December 1998 and February 1999.[1638] In reaching this conclusion, the Trial Chamber relied on the findings described in more detail earlier in this Judgment.[1639]

6668. para. 545: The Trial Chamber concluded that Taylor and Bockarie intentionally designed a plan for an RUF/AFRC attack on Freetown, the Bockarie/Taylor Plan. This Plan had the "objective of reaching Freetown, releasing Foday Sankoh from prison and regaining power."[1640] It was to be implemented in a "fearful" manner in order to pressure the government of Sierra Leone into negotiations for the release of Sankoh, and "all means" were to be used to get to Freetown.[1641] SAJ Musa had a separate plan to attack Freetown.[1642] His goal was to reinstate the army,[1643] and the Trial Chamber noted that according to Prosecution witness Alimamy Bobson Sesay, as accepted by the Defence, SAJ Musa "ordered his forces to proceed to Freetown without killing, looting or burning, indicating that he did not have a campaign of terror in mind."[1644]

6669. para. 546: The forces under SAJ Musa's command started their attack on Freetown independently of the Bockarie/Taylor Plan.[1645] However, following SAJ Musa's death on 23 December 1998,[1646] Alex Tamba Brima (a.k.a. Gullit) took over leadership of the troops, at Benguema outside of Freetown.[1647] Gullit was willing to work together with Sam Bockarie[1648] and he resumed contact with Bockarie.[1649] The troops commanded by Gullit in Freetown were subordinated to and used by Bockarie in furtherance of the Bockarie/Taylor Plan.[1650] Further execution of the Plan was carried out with close coordination between Bockarie and Gullit,[1651] with Gullit in frequent communication with Bockarie[1652] and taking orders from Bockarie.[1653] Bockarie was in frequent and daily contact via radio or satellite phone with Taylor in December 1998 and January 1999 during the Freetown Invasion, either directly or through Benjamin Yeaten.[1654] The Trial Chamber concluded that in these circumstances, the Bockarie/Taylor Plan had a substantial effect on the crimes committed during and after the Freetown Invasion.[1655]

6670. para. 550: The Appeals Chamber recalls that the *actus reus* of planning liability is that the accused participated in designing an act or omission and thereby had a substantial effect on the commission of the crime.[1672] In order to incur planning liability, the accused need not design the conduct alone, and the accused need not be the originator of the design or plan.[1673] Whether the accused's acts "amount to a substantial contribution to the crime for the purposes of planning liability is to be assessed on a case-by-case basis in light of the evidence as a whole."[1674]

6671. para. 551: The Trial Chamber found that the Bockarie/Taylor Plan was a plan for the commission of crimes against the civilian population, namely a campaign of crimes and acts of terror, in accordance with Taylor's "make fearful" and "use all means" instructions, and the RUF/AFRC's Operational Strategy.[1675] The Appeals Chamber affirms this finding.

6672. para. 552: The Trial Chamber convicted Taylor for the crimes under all eleven Counts of the Indictment in the invasion of and retreat from Freetown, between December 1998 and February 1999.[1676] The Appeals Chamber agrees with the Defence that the critical issue to Taylor's conviction for planning the crimes committed in Freetown and the Western Area is whether Sam Bockarie was in fact in control of a concerted and coordinated effort, with Gullit as his subordinate, to implement the Bockarie/Taylor Plan in Freetown.[1677] This issue concerns the relationship between the Bockarie/Taylor Plan and the commission of the crimes and whether this Plan had a substantial effect on the crimes. Accordingly, whether and when Gullit was incorporated into the Bockarie/Taylor Plan and used by Bockarie to implement the Plan is of critical importance.[1678] However, the Defence misconstrues the Trial Chamber's factual use of the term "effective control", that is, actual control, for the element of superior responsibility under Article 6(3) of the Statute, where that term is used as a term of art. The Defence has merely attempted to build a legal argument out of what is a question of fact.[1679]

6673. para. 553: The Defence challenges to the Trial Chamber's finding that Gullit was incorporated into the Bockarie/Taylor Plan and that Sam Bockarie assumed control over Gullit following the resumption of contact on or around 23 December 1998 rely on its assertion that Gullit did not comply with orders from Bockarie at that time.[1680] In finding that Gullit was incorporated into the Bockarie/Taylor Plan and that Bockarie exercised control over Gullit, the Trial Chamber, in addition to relying on orders issued and complied with, also relied on the close coordination and frequent communications between Bockarie and Gullit.[1681]

6674. para. 554: Many witnesses testified regarding the resumption of contact between Sam Bockarie and Gullit following SAJ Musa's death, and their close coordination of the Freetown Invasion.[1682] The Trial Chamber considered the evidence of Perry Kamara and Alimamy Bobson

Sesay to be of particular value as to what occurred during the operation since they were the only two witnesses that participated in the attack on Freetown itself.[1683] Witnesses stationed with Bockarie and commanders in other areas of Sierra Leone also testified regarding the resumption of communications between Bockarie and Gullit after the death of SAJ Musa.[1684] The witnesses agreed that communications were regular throughout the Freetown Invasion and concerned the progress of the operation.[1685] The evidence also indicated that aside from Bockarie, Gullit was in communication with Bockarie's commanders, including Boston Flomo (a.k.a. Rambo), Superman and Issa Sesay.[1686]

6675. para. 555: The Trial Chamber considered the Defence submission that Gullit had initially defied Sam Bockarie's instructions to wait for reinforcements and only called Bockarie from Freetown because his troops were in trouble.[1687] However, it noted that:

> The evidence of Bobson Sesay and Kamara converge on the two most important aspects: first, both witnesses stated that it was Gullit who initiated the contact with Bockarie— Bobson Sesay testified that this was to seek reinforcements, while Kamara testified that it was to seek advice; second, neither suggested, as the Defence sought to argue, that by moving forward to Freetown without Bockarie's reinforcements, Gullit was rejecting either Bockarie's authority or his offer of assistance. On their evidence, Gullit was receptive to the idea of reinforcements, but military exigencies dictated a more immediate advance into Freetown.[1688]
>
> The evidence of Dauda Aruna Fornie and Isaac Mongor's evidence on examination-in-chief also support the idea that Gullit did not wait for Bockarie's reinforcements due to those reinforcements being unduly delayed, rather than as a refusal of Bockarie's support. Dauda Aruna Fornie also confirmed that Gullit requested reinforcements from Bockarie before the commencement of the 6 January attack.[1689]

Based on this evidence the Trial Chamber found that "by advancing to Freetown from Waterloo and Benguema without Bockarie's reinforcements, Gullit was not rejecting either Bockarie's authority or his offer of assistance."[1690]

6676. para. 556: The Trial Chamber also considered the Defence contention that coordination between Sam Bockarie and Gullit broke down after Gullit initiated the attack on Freetown.[1691] However, it found that the evidence indicated otherwise, as the radio room in Buedu and the troops in Freetown communicated frequently during the assault on Freetown concerning strategic matters,[1692] and Bockarie assisted the commanders in Freetown by transmitting "448 messages," which had originally been sent by Taylor's subordinates in Monrovia, to the fighters in the capital.[1693] Moreover, it considered the Defence contention that Gullit and Bockarie were merely coordinating their efforts to fight a common enemy, but found that this premise failed to capture the level of coordination that took place between Bockarie and Gullit and the level of control that

Bockarie exercised over Gullit.[1694] The Trial Chamber further considered Gullit's compliance with Bockarie's orders.

6677. para. 557: The Appeals Chamber accepts the Trial Chamber's findings that Gullit complied with specific orders from Sam Bockarie in the implementation of the Bockarie/Taylor Plan, including Bockarie's repeated orders to use terror tactics against the civilian population of Freetown.[1695] The Appeals Chamber accepts that there was extensive evidence on the record regarding the communications and coordination between Bockarie and Gullit that commenced following SAJ Musa's death, and agrees with the Trial Chamber's conclusion that Gullit was incorporated into the Bockarie/Taylor Plan following his initial contact with Sam Bockarie after SAJ Musa's death. The Appeals Chamber further accepts that that there was extensive evidence on the record regarding the orders given by Bockarie to Gullit and Gullit's compliance with these orders, and affirms the Trial Chamber's finding that Bockarie exercised control over Gullit. Notably, Gullit implemented Bockarie's repeated orders, in accordance with Taylor's instructions, to make Freetown "fearful" and use terror tactics against the civilian population of Freetown.[1696]

6678. para. 558: While the Defence further contends that the Trial Chamber could not conclude that Gullit "abandoned" SAJ Musa's plan for the Bockarie/Taylor Plan,[1697] the Trial Chamber distinguished these two plans and reasonably found that SAJ Musa's plan ended with his death.[1698] It noted that it was uncontested by the Defence that SAJ Musa's plan was to take control of Freetown and to do so without using terror or committing crimes against the civilian population.[1699] The Bockarie/Taylor Plan was to be implemented in a "fearful" manner through the commission of crimes and the use of terror tactics in order to achieve its objectives.[1700] Moreover, the Trial Chamber found that SAJ Musa had the objective of reaching Freetown in order to reinstate the army,[1701] while the objective of the Bockarie/Taylor Plan was "to improve the RUF's negotiating position in relation to any future peace talks and the release of Foday Sankoh."[1702] Accordingly, in the Appeals Chamber's view, the Trial Chamber reasonably found that the Bockarie/Taylor Plan was implemented in Freetown.[1703] Furthermore, while the Defence contends that Taylor was held criminally liable on the basis of an evolved plan,[1704] at no point did the Trial Chamber refer to a different, expanded or evolved plan being implemented in Freetown, and it held Taylor criminally liable for the implementation of the Bockarie/Taylor Plan according to its original design.[1705]

6679. para. 559: As to the Defence contention that Taylor was held liable on the basis of updates that he received regarding the Plan's implementation, the Appeals Chamber is of the view that the Trial Chamber considered those updates as evidence that Sam Bockarie was using Gullit to

implement the Bockarie/Taylor Plan, and not as the basis for Taylor's planning conviction. As previously noted, the critical issue to Taylor's conviction for planning the crimes in Freetown is whether Bockarie exercised control over Gullit,[1706] not the updates Taylor received.

6680. para. 560: Finally, the Appeals Chamber has rejected the Defence contention that a finding of substantial effect is precluded by the fact that RUF/AFRC troops would have committed crimes in any event.[1707] The Trial Chamber relied on substantial evidence that Gullit ordered massive atrocities and acts of terror in Freetown in accordance with Sam Bockarie's explicit and repeated orders to do so, which was in accordance with Taylor's instruction to Bockarie to make Freetown "fearful".[1708]

6681. para. 561: In light of the above, the Appeals Chamber affirms the Trial Chamber's conclusion that Taylor participated in designing an act or omission and thereby had a substantial effect on the commission of the crimes, thus establishing the *actus reus* of planning liability.

ii. *Mens Rea* – Planning Liability – Taylor's Criminal Liability

6682. para. 562: The Trial Chamber concluded that, in designing the Bockarie/Taylor Plan, Taylor intended that the crimes charged in Counts 1-11 of the Indictment "be committed" or was aware of the substantial likelihood that RUF/AFRC forces would commit such crimes in executing the Bockarie/Taylor Plan.[1709] The Trial Chamber found that Taylor knew of the RUF/AFRC's Operational Strategy and intent to commit crimes.[1710] It further found that by his instruction to make the attack "fearful," which was repeated many times by Sam Bockarie during the course of the Freetown Invasion, and by his instruction to use "all means," Taylor demonstrated his awareness of the substantial likelihood that crimes would be committed during the execution of the Bockarie/Taylor Plan.[1711] In reaching this conclusion, the Trial Chamber relied on the findings described in more detail in the Section of this Judgment entitled "Taylor's Acts, Conduct and Mental State."[1712]

6683. para. 564: The Appeals Chamber recalls that the *mens rea* of planning liability is that the accused directly intended, knew or was aware of the substantial likelihood that his acts of planning would have an effect on the commission of the crimes.[1715] An accused may be properly found to have intended certain crimes and been aware of the substantial likelihood that others would be committed.[1716]

6684. para. 565: The Defence submissions do not address the evidence relied on by the Trial Chamber or its extensive reasoning regarding Taylor's knowledge.[1717] The Appeals Chamber

concludes that the Trial Chamber was reasonable in finding that Taylor knew of the RUF/AFRC's Operational Strategy and intent to commit crimes,[1718] and that the RUF/AFRC was committing all crimes charged in the Indictment.[1719] The Appeals Chamber further concludes that the Trial Chamber was reasonable in finding that by his "make fearful" and "use all means" instructions, Taylor demonstrated his intention that the crimes charged in Counts 1-11 and part of the RUF/AFRC's Operational Strategy would be committed during the execution of the Plan.[1720]

6685. para. 566: In light of the foregoing the Appeals Chamber affirms the Trial Chamber's finding that Taylor possessed the requisite *mens rea* for planning liability.

iii. Taylor's Liability for Planning the Crimes Committed in Kono and Makeni – Planning Liability – Taylor's Criminal Liablity

6686. para. 567: The Trial Chamber convicted Taylor for planning crimes committed under all counts of the Indictment in Kono District and under Count 9 of the Indictment in Bombali District, where Makeni is located.[1721]

6687. para. 569: The Trial Chamber found that in accordance with the Bockarie/Taylor Plan, the RUF/AFRC forces in December 1998 launched military offensives on Kono and Makeni in order to reach Freetown.[1727] The assault on Koidu Town, in Kono District, was launched on 17 December 1998, and the troops moved towards the west after the successful capture of the city.[1728] On 24 December 1998, the RUF/AFRC began its assault on Makeni.[1729]

6688. para. 570: The Defence contended at trial that during the Freetown Invasion no crimes were committed in the attacks on Kono District and Makeni (Bombali District).[1730] The Trial Chamber addressed this contention in its Judgment and found that "[d]uring the course of the implementation of [the Bockarie/Taylor Plan], these forces committed crimes charged in the Indictment."[1731] It specifically recalled its findings that the crimes of enslavement (Count 10) and conscription and use of child soldiers (Count 9) were committed in these locations,[1732] and entered convictions under all Counts in the Indictment for Kono District and Count 9 for Bombali District.[1733]

6689. para. 571: The fair trial requirements of the Statute include the right of the accused to a reasoned opinion by the Trial Chamber under Article 18 of the Statute and Rule 88(C) of the Rules.[1734] The reasoned opinion requirement relates to a Trial Chamber's Judgment rather than to each and every submission made at trial.[1735] As a general rule, a Trial Chamber is required to make findings only on those facts which are essential to the determination of guilt in relation to a

particular Count.[1736] Having reviewed the trial record, the Appeals Chamber finds that the Trial Chamber only specified crimes committed under Counts 9 and 10 of the Indictment,[1737] and failed to specify or discuss the crimes charged in the Indictment under Counts 1-8 and 11 that it concluded were committed in Kono District during the implementation of the Bockarie/Taylor Plan.

6690. para. 572: The Trial Chamber provided no reasons for entering planning convictions in the Disposition for crimes committed under Counts 1-8 and 11 in Kono District between December 1998 and February 1999, and the Appeals Chamber finds that to that extent, the Disposition for the planning conviction should be modified to exclude Kono District under those Counts.[1738]

6691. para. 573: However, the Trial Chamber did reference its specific findings and provided a reasoned opinion for Taylor's planning convictions under Count 9 for crimes in Makeni and Counts 9 and 10 for crimes in Kono District. The Defence contends that the crimes found to have been committed at these locations were not connected to the Bockarie/Taylor Plan, but the Appeals Chamber rejects the Defence submissions and affirms the Trial Chamber's findings.[1739]

6692. para. 574: In light of the foregoing, the Appeals Chamber grants Defence Ground 11 in part and to that extent, the Disposition for the planning conviction should be modified to exclude Kono District under the relevant Counts. The remaining parts of Defence Ground 11 and the entirety of Defence Grounds 10 and 12-15 are dismissed. The Appeals Chamber will consider any implications of its findings on the sentence.

c. Cumulative Convictions – Taylor's Criminal Liability

6693. para. 575: The Trial Chamber found that it was legally permissible to enter cumulative convictions for the crimes of rape (Count 4) and sexual slavery (Count 5).[1740] It concluded that although both crimes are forms of sexual violence, each crime contains a distinct element not required by the other: first, rape requires non-consensual sexual penetration, while sexual slavery can be committed through a range of sexual acts; and second, sexual slavery requires proof that the perpetrator exercised control or ownership over the victim, while rape does not.[1741]

6694. para. 577: In *Sesay et al.*, the Appeals Chamber held that cumulative convictions are permissible if the statutory provisions concerned contain materially distinct elements; an element of a crime is materially distinct if it requires proof of a fact not required by the other.[1746] The Appeals Chamber agrees with the Trial Chamber that, for the reasons it stated, the offences of rape and sexual slavery each require proof of an element not required by the other.[1747]

d. Alleged Liability for Ordering and Instigating Crimes – Taylor's Criminal Liability

6695. para. 582: With respect to instigation as a form of criminal participation, the Trial Chamber concluded:

> The Trial Chamber, having already found that the Accused is criminally responsible for aiding and abetting the commission of the crimes in Counts 1-11 of the Indictment, does not find that the Accused also instigated those crimes.[1751]

6696. para. 583: With respect to ordering as a form of criminal participation, the Trial Chamber concluded:

> The Trial Chamber has found that while the Accused held a position of authority amongst the RUF and RUF/AFRC, the instructions and guidance which he gave to the RUF and RUF/AFRC were generally of an advisory nature and at times were in fact not followed by the RUF/AFRC leadership. For these reasons, the Trial Chamber finds that the Accused cannot be held responsible for ordering the commission of crimes.[1752]

6697. para. 589: The Appeals Chamber recalls that the *actus reus* of ordering liability is that an accused ordered an act or omission that has a substantial effect on the commission of the crimes, while the *actus reus* of instigating liability is that an accused prompted another person to act in a particular way that has a substantial effect on the commission of the crimes.[1775] For both ordering and instigating liability, the *mens rea* is established if an accused acted with direct intent, knowledge or awareness of a substantial likelihood that his acts and conduct would have an effect on the commission of the crime.[1776] The Trial Chamber properly articulated the elements of these forms of liability.[1777]

6698. para. 590: The Appeals Chamber notes that even if Prosecution Grounds 1 and 2 were accepted, this would have no impact on the existing convictions and Taylor would not be convicted of more crimes than he already has been. Furthermore, the Prosecution submissions rely entirely on the Trial Chamber's findings regarding Taylor's conduct, which the Trial Chamber adjudged culpable. The Appeals Chamber has affirmed the Trial Chamber's findings regarding Taylor's culpable conduct and the convictions entered for that conduct.[1778] The Prosecution does not point to any additional conduct that the Trial Chamber did not find culpable and take into account in its Disposition and Sentence. In this regard, the Trial Chamber extensively considered Taylor's authority and leadership role with respect to both his culpable conduct for aiding and abetting and planning[1779] and the appropriate sentence.[1780] The issue presented solely concerns the descriptive characterisation, not gravity, of Taylor's criminal liability for the crimes for which he

stands convicted. In *Brima et al.*, the Appeals Chamber held regarding a Prosecution appeal that "no useful purpose will be served by the Appeals Chamber now entering convictions … having regard to the adequate global sentence imposed on each [accused]."[1781]

6699. para. 591: Upholding an accused's fair trial rights, the trier of fact must determine whether the Prosecution has proved an accused's guilt beyond a reasonable doubt for the crimes charged in the Indictment. If the trier of fact concludes that an accused's guilt has been proved, it must determine an appropriate sentence in light of the totality of the convicted person's culpable conduct.[1782] In the Appeals Chamber's view, these are the trier of fact's essential obligations, which in turn inform the Appeals Chamber in its review of the Trial Chamber's Judgment and Sentence.[1783] The Appeals Chamber further holds that in determining matters of guilt and punishment, the trier of fact and the Appeals Chamber itself must be guided by the interest of justice[1784] and the rights of the accused,[1785] and avoid formulaic analysis[1786] that is not faithful to the whole of the circumstances and the facts of individual cases.[1787]

6700. para. 592: Even if, as the Prosecution submits, the Trial Chamber's findings satisfy the elements of ordering and instigating liability, this is because the elements of these forms of participation overlap with the elements of aiding and abetting and planning liability on the particular facts of this case. All four forms of criminal participation require the same culpable link between the accused's acts and the crime – substantial effect – and Taylor's acts and conduct had a substantial effect on the crimes, including his communicative acts, which ordering and instigating liability involve.[1788] Similarly, the Trial Chamber's finding that Taylor acted with knowledge of the criminal consequences of his acts and conduct[1789] is culpable *mens rea* for all four forms of liability.[1790]

6701. para. 593: However, in the Appeals Chamber's view ordering and instigating are inadequate characterisations of Taylor's culpable acts and conduct, as those forms of participation in fact fail to fully describe the Trial Chamber's findings. In addition to Taylor's communications with the RUF/AFRC leadership, the Trial Chamber found that Taylor provided arms and ammunition, operational support and military personnel to the RUF/AFRC that were critical in enabling the RUF/AFRC's Operational Strategy.[1791] Similarly, the Trial Chamber found that Taylor and Sam Bockarie planned an attack on Freetown and thereby had a substantial effect on the crimes committed during and after the Freetown Invasion. Both of them identified the targets, goals and *modus operandi* of the campaign.[1792] Finally, the Prosecution submissions regarding the *actus reus* of ordering and instigating liability exclude many of the Trial Chamber's findings regarding the sustained encouragement and moral support Taylor provided the RUF/AFRC

leadership, including his encouragement to the RUF and AFRC to work together[1793] and his advice to Issa Sesay not to disarm.[1794]

6702. para. 594: The Appeals Chamber accordingly finds that aiding and abetting liability fully captures Taylor's numerous "interventions"[1795] over a sustained period of five years,[1796] the variety of assistance he provided to the RUF/AFRC leadership in the implementation of its Operational Strategy[1797] and the cumulative impact of his culpable acts and conduct[1798] on the "tremendous suffering caused by the commission of the crimes" for which he is guilty.[1799] Planning liability likewise fully captures Taylor's additional culpable acts and conduct for the crimes committed during the Freetown Invasion.[1800] These descriptions of Taylor's culpable acts and conduct fully reflect the Trial Chamber's findings on Taylor's authority and leadership role.[1801]

6703. para. 595: In light of the foregoing, the Appeals Chamber concludes that the Prosecution has failed to demonstrate an error occasioning a miscarriage of justice, and dismisses Prosecution Grounds 1 and 2 in their entirety.

B. RUF

1. Indictment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-2004-15-PT, Indictment, 13 May 2004

(a) Individual Criminal Responsibility

(i) The Accused

6704. Paragraphs 1 through 18 are incorporated by reference.[362]

6705. At all times relevant to this Indictment, **ISSA HASSAN SESAY** was a senior officer and commander in the RUF, Junta and AFRC/RUF forces.[363]

6706. 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

[362] RUF Indictment, para. 19.

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.[364]

6707. 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.[365]

6708. 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.[366]

6709. At all times relevant to this Indictment, **MORRIS KALLON** was a senior officer and commander in the RUF, Junta and AFRC/RUF forces.[367]

6710. 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.[368]

6711. During the Junta regime, **MORRIS KALLON** was a member of the Junta governing body.[369]

6712. 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.[370]

6713. About June 2001, **MORRIS KALLON** became RUF Battle Field Commander, subordinate only to the leader of the RUF, FODAY SAYBANA SANKOH, ISSAHASSAN SESA

[363] RUF Indictment, para. 20.
[364] RUF Indictment, para. 21.
[365] RUF Indictment, para. 22.
[366] RUF Indictment, para. 23.
[367] RUF Indictment, para. 24.
[368] RUF Indictment, para. 25.
[369] RUF Indictment, para. 26.
[370] RUF Indictment, para. 27.

Y, to whom FODA Y SA YBANA SANKOH had given direct control over all RUF operations, and to the leader of the AFRC, JOHNNY PAUL KOROMA.[371]

6714. At all times relevant to this Indictment, **AUGUSTINE GBAO** was a senior officer and commander in the RUF and AFRCIRUF forces.[372]

6715. **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.[373]

6716. 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.[374]

6717. 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.[375]

6718. 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 ofthe RUF, FODAY SAYBANA SANKOH, and the leader of the AFRC, JOHNNY PAUL KOROMA.[376]

6719. In their respective positions referred to above, **ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO,** individually, or in concert with each other, JOHNNY

[371] RUF Indictment, para. 28.
[372] RUF Indictment, para. 29.
[373] RUF Indictment, para. 30.
[374] RUF Indictment, para. 31.
[375] RUF Indictment, para. 32.
[376] RUF Indictment, para. 33.

PAUL KOROMA aka JPK, FODA Y SA YBANA SANKOH, SAM BOCKARIE aka MOSQUITO aka MASKITA, ALEX T AMBA 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.[377]

6720. 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.**[378]

6721. The RUF, including **ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO,** and the AFRC, including ALEX T AMBA 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.[379]

6722. 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.[380]

6723. **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

[377] RUF Indictment, para. 34.
[378] RUF Indictment, para. 35.
[379] RUF Indictment, para. 36.
[380] RUF Indictment, para. 37.

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.[381]

(ii) Charges

6724. Paragraphs 19 through 39 are incorporated by reference.[382]

2. Trial Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-T, Judgement, 2 March 2009

(a) Findings and Conclusions

(i) Law on the Modes of Liability charged under Article 6.1.

6725. para. 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]

6726. para. 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

[381] RUF Indictment, para. 38.
[382] RUF Indictment, para. 40.

> 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. […]

6727. para. 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 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]

6728. para. 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]

6729. para. 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]

6730. para. 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.

6731. para. 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).

a. Committing - Law on the Modes of Liability charged under Article 6.1.

6732. para. 248: The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with committing the crimes referred to in the Indictment.[443]

6733. para. 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]

6734. para. 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.

b. Committing through participation in JCE - Law on the Modes of Liability charged under Article 6.1.

6735. para. 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]

6736. para. 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 Court has jurisdiction is impliedly included in that Article.[447]

6737. para. 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.

6738. para. 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 illtreatment. An example is extermination or concentration camps, in which the prisoners are killed or mistreated pursuant to the joint criminal enterprise.
>
> 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 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]

6739. para. 255: This Chamber therefore considers that the three categories of joint criminal enterprise are now settled law under customary international law.

6740. para. 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]

6741. para. 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]

6742. para. 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]

6743. para. 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]

6744. para. 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]

6745. para. 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]

6746. para. 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 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]

6747. para. 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]

6748. para. 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.

6749. para. 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]

6750. para. 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 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]

6751. Separate Concurring Opinion – Justice B.Thompson – para. 18 (p.702): 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.

6752. Separate Concurring Opinion – Justice B.Thompson – para. 19 (p.702): 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.

6753. Separate Concurring Opinion – Justice B.Thompson – para. 20 (p.702): 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]

6754. Separate Concurring Opinion – Justice B.Thompson – para. 21 (p.703): 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.

6755. Separate Concurring Opinion – Justice B.Thompson – para. 22 (p.703): 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]

6756. Separate Concurring Opinion – Justice B.Thompson – para. 23 (p.703-704): 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 character of some of its conceptual elements but also the degree of fluctuation of its doctrinal contours.[11]

c. Planning - Law on the Modes of Liability charged under Article 6.1.

6757. para. 267: The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with planning the crimes referred to in the Indictment.[471]

6758. para. 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.

6759. para. 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]

d. Instigating - Law on the Modes of Liability charged under Article 6.1.

6760. para. 270: The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with instigating the crimes referred to in the Indictment.[477]

6761. para. 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.

e. Ordering - Law on the Modes of Liability charged under Article 6.1.

6762. para. 272: The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with ordering the crimes referred to in the Indictment.[483]

6763. para. 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 position to commit an offence.[485] It is the Chamber's opinion that no *formal* superiorsubordinate 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]

6764. para. 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]

f. Aiding and Abetting - Law on the Modes of Liability charged under Article 6.1.

6765. para. 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]

6766. para. 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, providing that the basic elements of aiding and abetting as set out below are satisfied.[492]

6767. para. 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]

6768. para. 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.

6769. para. 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" 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]

6770. para. 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]

(ii) Pleading

6771. para. 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]

6772. para. 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 provide such particulars, it should put an accused on notice of the acts of others for which he is alleged to be responsible.[604]

6773. Separate Concurring Opinion – Justice B.Thompson – para. 9 (p.699-700): 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 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.

a. JCE – Pleading

6774. para. 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]

(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]

6775. para. 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]

6776. para. 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 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.

6777. para. 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]

6778. para. 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.

6779. para. 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 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.

6780. para. 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.

6781. para. 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.

6782. para. 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 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.

6783. para. 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.

6784. para. 362: Having regard to the previous analysis in paragraph 353, the Chamber is of the opinion 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.

6785. para. 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]

6786. para. 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]

6787. para. 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 any, includes Sesay, Kallon, Gbao, Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu.

6788. para. 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.

6789. para. 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]

6790. para. 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.

6791. para. 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 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.

6792. para. 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.

6793. para. 371: Paragraphs 36 to 38 of the Indictment set out the common purpose of the joint criminal enterprise.[707]

6794. para. 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]

6795. para. 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]

6796. para. 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.

6797. para. 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.

6798. para. 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]

6799. para. 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]

6800. para. 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 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]

6801. para. 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]

6802. para. 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 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]

6803. para. 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.

6804. para. 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 properly pleaded all three categories of joint criminal enterprise, with the second category being alleged as a sub-set of the first.[732]

6805. para. 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]

6806. para. 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.

6807. para. 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 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]

6808. para. 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.

6809. para. 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 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]

6810. para. 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]

6811. para. 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.

6812. para. 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 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]

6813. para. 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]

6814. para. 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]

6815. para. 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 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.

6816. para. 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.

6817. Separate Concurring Opinion – Justice B.Thompson – para. 13 (p.701): 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.

6818. Separate Concurring Opinion – Justice B.Thompson – para. 14 (p.701): 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.

6819. Separate Concurring Opinion – Justice B.Thompson – para. 15 (p.701): 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.

6820. Separate Concurring Opinion – Justice B.Thompson – para. 16 (p.701): 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.

b. Personal commission – Pleading

6821. para. 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]

6822. para. 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]

6823. para. 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]

6824. para. 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 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.

6825. para. 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]

c. Other modes of liability under 6.1 – Pleading

6826. para. 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]

6827. para. 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.

6828. para. 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]

6829. para. 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.

6830. para. 405: We find that the facts underpinning the charges and the mens rea for each offence are 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.

(iii) Pleading – Dissents

a. JCE – Pleading – Dissents

6831. Justice Boutet – para. 5 (p. 689-690): 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 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.

6832. Justice Boutet – para. 6 (p. 690): 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.

6833. Justice Boutet – para. 16 (p. 693): 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.

6834. Justice Boutet – para. 17 (p. 693-694): 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.

6835. Justice Boutet – para. 18 (p.694): 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.

(iv) Bo District

a. Crimes committed – Bo District

6836. para. 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:

1. Unlawful Killings (Counts 1 and 3 to 5) (…)
2. Pillage (Count 14) (…)
3. Acts of Terrorism (Count 1) (…)

b. Responsibility of the Accused – Bo District

i. Personal commission – Bo District

6837. para. 1976: The Chamber finds that Sesay, Kallon and Gbao did not personally commit any of the crimes in Bo District.

ii. Commission through JCE - Existence of a common plan – Bo District

6838. para. 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-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]

6839. para. 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]

6840. para. 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.

6841. para. 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 civilian population and enemy forces.[3707] The AFRC/RUF forces cooperated on armed operations in which crimes against civilians were committed.[3708]

6842. para. 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.

6843. para. 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.

6844. para. 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 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.

6845. para. 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.

6846. para. 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.

iii. Plurality of persons – Commission through JCE – Bo District

6847. para. 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]

6848. para. 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]

6849. para. 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.

6850. para. 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]

6851. para. 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.

6852. para. 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]

6853. para. 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 rankand-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.

iv. Sesay - Participation in the Common Plan – Commission through JCE – Bo District

6854. para. 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]

6855. para. 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 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.

6856. para. 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]

6857. para. 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.

6858. para. 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]

6859. para. 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.

6860. para. 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]

6861. para. 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]

6862. para. 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.

6863. para. 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.

v. Kallon – Participation in the Common Plan – Commission through JCE – Bo District

6864. para. 2003: The Chamber finds that Kallon also participated and significantly contributed to the JCE in a number of ways.

6865. para. 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.

6866. para. 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 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]

6867. para. 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.

6868. para. 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.

6869. para. 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.

vi. Gbao – Participation in the Common Plan – Commission through JCE – Bo District

6870. para. 2009: The Chamber, Justice Boutet dissenting,[3745] finds that Gbao participated and significantly contributed to the joint criminal enterprise in a number of ways.

6871. para. 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.

6872. para. 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.

6873. para. 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.

6874. para. 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 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.

6875. para. 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.

6876. para. 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 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]

6877. para. 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.

6878. para. 2017: The Prosecution in these proceedings tendered in evidence, the manuals and documents containing the said ideology in its various components.

6879. para. 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.

6880. para. 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.

6881. para. 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".

6882. para. 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.

6883. para. 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.

6884. para. 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; 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]

6885. para. 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.

6886. para. 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.

6887. para. 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.

6888. para. 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.

6889. para. 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.

6890. para. 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.

6891. para. 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.

6892. para. 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.

6893. para. 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.

6894. para. 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.

6895. para. 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.

6896. para. 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 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]

6897. para. 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.

6898. para. 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] 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.

6899. para. 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.

6900. para. 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.

6901. para. 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.

6902. para. 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 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.

6903. para. 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.

6904. para. 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.

6905. para. 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.

6906. para. 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 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.

6907. para. 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.

6908. para. 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.

6909. para. 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.

6910. para. 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.

6911. Dissent – Justice Boutet, para. 1, p. 688: 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.

6912. Dissent – Justice Boutet, para. 2, p. 688: 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]

6913. Dissent – Justice Boutet, para. 3, p. 688-689: 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 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

6914. 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.

6915. Dissent – Justice Boutet, para. 4, p. 689: 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.

6916. Dissent – Justice Boutet, para. 5, p. 689-690: 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 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.

6917. Dissent – Justice Boutet, para. 6, p.690: 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.

6918. Dissent – Justice Boutet, para. 7, p. 690: 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.

6919. Dissent – Justice Boutet, para. 8, p. 690-691: 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 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.

6920. Dissent – Justice Boutet, para. 9, p .691: 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.

6921. Dissent – Justice Boutet, para. 10, p. 691: 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.

6922. Dissent – Justice Boutet, para. 11, p. 692: 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]

6923. Dissent – Justice Boutet, para. 12, p. 692: 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.

6924. Dissent – Justice Boutet, para. 13, p. 692: 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.

6925. Dissent – Justice Boutet, para. 14, p. 693: 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.

6926. Dissent – Justice Boutet, para. 15, p .693: 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.

6927. Dissent – Justice Boutet, para. 16, p. 693: 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.

6928. Dissent – Justice Boutet, para. 17, p. 693-694: 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.

6929. Dissent – Justice Boutet, para. 18, p. 694: 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.

(v) Kenema District

a. Crimes commited – Kenema District

6930. para. 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:

1. Unlawful Killings (Counts 1 to 5) (…)
2. Physical Violence (Counts 1 to 2 and 11) (…)
3. Enslavement (Counts 1 and 13) (…)

b. Personal commission – Kenema District

i. Sesay – Personal commission – Kenema District

6931. para. 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.

ii. Kallon and Gbao – Personal commission – Kenema District

6932. para. 2053: The Prosecution has not proven beyond reasonable doubt that Kallon or Gbao personally committed any of the crimes in Kenema District.

c. Commission through JCE – Kenema District

i. Existence of a common plan and Plurality of persons – Commission through JCE – Kenema District

6933. para. 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.

ii. Sesay and Kallon – Participation in the Common Plan – Commission through JCE – Kenema District

6934. para. 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 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]

6935. para.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.

iii. Gbao – Participation in the Common Plan – Commission through JCE – Kenema District

6936. para. 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.

6937. para. 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) 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.

6938. para. 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.

6939. para. 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.

6940. para. 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.

6941. Dissent – Justice Boutet, para. 1, p. 688: 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.

6942. Dissent – Justice Boutet, para. 2, p. 688: 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]

6943. Dissent – Justice Boutet, para. 3, p. 688-689: 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 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.

6944. Dissent – Justice Boutet, para. 4, p. 689: 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.

6945. Dissent – Justice Boutet, para. 5, p. 689-690: 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 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.

6946. Dissent – Justice Boutet, para. 6, p. 690: 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.

6947. Dissent – Justice Boutet, para. 7, p. 690: 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.

6948. Dissent – Justice Boutet, para. 8, p. 690-691: 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 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.

6949. Dissent – Justice Boutet, para. 9, p. 691: 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.

6950. Dissent – Justice Boutet, para. 10, p. 691: 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.

6951. Dissent – Justice Boutet, para. 11, p. 692: 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]

6952. Dissent – Justice Boutet, para. 12, p. 692: 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.

6953. Dissent – Justice Boutet, para. 13, p. 692: 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.

6954. Dissent – Justice Boutet, para. 14, p. 693: 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.

6955. Dissent – Justice Boutet, para. 15, p. 693: 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.

6956. Dissent – Justice Boutet, para. 16, p. 693: 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.

6957. Dissent – Justice Boutet, para.17, p.693-694: 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.

6958. Dissent – Justice Boutet, para. 18, p. 694: 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.

(vi) Kono District

a. Crimes committed – Kono District

6959. para. 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.

6960. para. 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:

1. Unlawful Killings (Counts 1 to 5) (…)
2. Sexual Violence (Counts 1 and 6 to 9) (…)
3. Physical Violence (Counts 1 to 2 and 10 to 11) (…)
4. Enslavement (Count 13) (…)
5. Pillage (Count 14) (…)
6. Acts of Terrorism and Collective Punishments (Counts 1 to 2) (…)

6961. para. 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:

1. Unlawful Killings (Counts 1 and 4 to 5) (…)
2. Sexual Violence (Counts 1 and 6 to 9) (…)
3. Physical Violence (Counts 1 and 10 to 11) (…)
4. Enslavement (Count 13) (…)

b. Personal commission – Kono District

6962. para. 2066: The Prosecution has failed to prove beyond reasonable doubt that Sesay, Kallon or Gbao personally committed any of the crimes in Kono District.

c. Commission through JCE – Kono District

i. Continuation of the Common Plan – Existence of a common plan – Commission through JCE – Kono District

6963. para. 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]

6964. para. 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.

6965. para. 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 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.

6966. para. 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.

6967. para. 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.

6968. para. 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.

6969. Dissent – Justice Boutet, para. 8, p. 690-691: 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 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.

ii. Rift between the AFRC and RUF in April 1998 – Existence of a common plan – Commission through JCE – Kono District

6970. para. 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]

6971. para. 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.

6972. para. 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.

6973. para. 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.

iii. Plurality of persons – Existence of a common plan – Commission through JCE – Kono District

6974. para. 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]

6975. para. 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.

6976. para. 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 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.

6977. para. 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.

6978. para. 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)

6979. Dissent – Justice Boutet, para. 1, p. 688: 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.

6980. Dissent – Justice Boutet, para. 2, p. 688: 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]

6981. Dissent – Justice Boutet, para. 3, p. 688-689: 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 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.

6982. Dissent – Justice Boutet, para. 4, p. 689: 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.

6983. Dissent – Justice Boutet, para. 5, p. 689-690: 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 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.

6984. Dissent – Justice Boutet, para. 6, p. 690: 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.

6985. Dissent – Justice Boutet, para. 7, p. 690: 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.

6986. Dissent – Justice Boutet, para. 8, p. 690-691: 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 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.

6987. Dissent – Justice Boutet, para. 9, p. 691: 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.

6988. Dissent – Justice Boutet, para. 10, p. 691: 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.

6989. Dissent – Justice Boutet, para. 11, p. 692: 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]

6990. Dissent – Justice Boutet, para. 12, p. 692: 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.

6991. Dissent – Justice Boutet, para. 13, p. 692: 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.

6992. Dissent – Justice Boutet, para. 14, p. 693: 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.

6993. Dissent – Justice Boutet, para. 15, p. 693: 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.

6994. Dissent – Justice Boutet, para. 16, p. 693: 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.

6995. Dissent – Justice Boutet, para. 17, p. 693-694: 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.

6996. Dissent – Justice Boutet, para. 18, p. 694: 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.

iv. Sesay – Participation in the Common Plan – Existence of a common plan – Commission through JCE – Kono District

6997. para. 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 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.

6998. para. 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.

6999. para. 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.

7000. para. 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. Sesay also had knowledge of joint AFRC/RUF activities in the District through his bodyguards who were present in the area.

7001. para. 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.

7002. para. 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]

7003. para. 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.

7004. para. 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 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.

7005. para. 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.

7006. para. 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.

7007. para. 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.

v. Kallon – Participation in the Common Plan – Existence of a common plan – Commission through JCE – Kono District

7008. para. 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.

7009. para. 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.

7010. para. 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.

7011. para. 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]

7012. para. 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.

7013. para. 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]

7014. para. 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.

7015. para. 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.

7016. para. 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.

7017. para. 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 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.

7018. para. 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

vi. Gbao – Participation in the Common Plan – Existence of a common plan – Commission through JCE – Kono District

7019. para. 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.

7020. para. 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.

7021. para. 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.

7022. para. 2107: Given his important role and oversight functions, we infer that Gbao knew that nonconsensual 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.

7023. para. 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.

7024. para. 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.

7025. para. 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.

7026. Dissent – Justice Boutet, para. 1, p. 688: 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.

7027. Dissent – Justice Boutet, para. 2, p. 688: 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]

7028. Dissent – Justice Boutet, para. 3, p. 688-689: 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 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.

7029. Dissent – Justice Boutet, para. 4, p. 689: 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.

7030. Dissent – Justice Boutet, para. 5, p. 689-690: 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 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.

7031. Dissent – Justice Boutet, para. 6, p. 690: 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.

7032. Dissent – Justice Boutet, para. 7, p. 690: 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.

7033. Dissent – Justice Boutet, para.8, p. 690-691: 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 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.

7034. Dissent – Justice Boutet, para. 9, p. 691: 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.

7035. Dissent – Justice Boutet, para. 10, p. 691: 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.

7036. Dissent – Justice Boutet, para. 11, p. 692: 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]

7037. Dissent – Justice Boutet, para. 12, p. 692: 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.

7038. Dissent – Justice Boutet, para. 13, p. 692: 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.

7039. Dissent – Justice Boutet, para. 14, p. 693: 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.

7040. Dissent – Justice Boutet, para. 15, p. 693: 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.

7041. Dissent – Justice Boutet, para. 16, p. 693: 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.

7042. Dissent – Justice Boutet, para. 17, p. 693-694: 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.

7043. Dissent – Justice Boutet, para. 18, p. 694: 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.

d. Ordering, Planning, Instigating or Aiding and Abetting – Kono District

i. Sesay – Ordering, Planning, Instigating or Aiding and Abetting – Kono District

7044. para. 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.

7045. para. 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.

7046. para. 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.

7047. para. 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.

7048. para. 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.

7049. para.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.

ii. Kallon – Ordering, Planning, Instigating or Aiding and Abetting – Kono District

7050. para. 2117: The Chamber recalls that Waiyoh, a female Nigerian civilian, was killed on the orders of RUF Commander Rocky in May 1998.

7051. para. 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.

7052. para. 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.

7053. para. 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.

iii. Gbao – Ordering, Planning, Instigating or Aiding and Abetting – Kono District

7054. para. 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 by RUF fighters in Kono District after the dissolution of the AFRC/RUF joint criminal enterprise at the end of April 1998.

(vii) Kailahun District

a. Crimes committed – Kailahun District

7055. para. 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:

1. Unlawful Killings (Counts 1 to 5) (…)
2. Sexual Violence (Counts 1 and 7 to 9) (…)
3. Enslavement (Count 13) (…)

b. Personal commission – Kailahun District

7056. para. 2157: The Chamber finds that Sesay, Kallon and Gbao did not personally commit any of the crimes in Kailahun District.

c. Commission through JCE – Kailahun District

i. Existence of a common plan and Plurality of persons – Commission through JCE – Kailahun District

7057. para. 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.

7058. para. 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.

7059. para. 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.

7060. Dissent – Justice Boutet, para. 1, p. 688: 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.

7061. Dissent – Justice Boutet, para. 2, p. 688: 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]

7062. Dissent – Justice Boutet, para. 3, p. 688-689: 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 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.

7063. Dissent – Justice Boutet, para. 4, p. 689: 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.

7064. Dissent – Justice Boutet, para. 5, p. 689-690: 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 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.

7065. Dissent – Justice Boutet, para. 6, p. 690: 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.

7066. Dissent – Justice Boutet, para. 7, p. 690: 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.

7067. Dissent – Justice Boutet, para.8, p.690-691: 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 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.

7068. Dissent – Justice Boutet, para. 9, p. 691: 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.

7069. Dissent – Justice Boutet, para. 10, p. 691: 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.

7070. Dissent – Justice Boutet, para. 11, p. 692: 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]

7071. Dissent – Justice Boutet, para. 12, p. 692: 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.

7072. Dissent – Justice Boutet, para. 13, p. 692: 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.

7073. Dissent – Justice Boutet, para. 14, p. 693: 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.

7074. Dissent – Justice Boutet, para. 15, p. 693: 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.

7075. Dissent – Justice Boutet, para. 16, p. 693: 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.

7076. Dissent – Justice Boutet, para. 17, p. 693-694: 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.

7077. Dissent – Justice Boutet, para. 18, p. 694: 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.

ii. Sesay and Kallon – Participation in the Common plan – Commission through JCE – Kailahun District

7078. para. 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.

7079. para. 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.

7080. para. 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.

iii. Gbao – Participation in the Common plan – Commission through JCE – Kailahun District

7081. para.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]

7082. para.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.

7083. para.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.

7084. para. 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.

7085. para. 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.

7086. para. 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.

7087. para. 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.

7088. para. 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]

7089. para. 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.

7090. para. 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.

7091. Dissent – Justice Boutet, para. 1, p. 688: 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.

7092. Dissent – Justice Boutet, para. 2, p. 688: 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]

7093. Dissent – Justice Boutet, para. 3, p. 688-689: 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 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.

7094. Dissent – Justice Boutet, para. 4, p. 689: 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.

7095. Dissent – Justice Boutet, para. 5, p. 689-690: 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 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.

7096. Dissent – Justice Boutet, para. 6, p. 690: 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.

7097. Dissent – Justice Boutet, para. 7, p. 690: 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.

7098. Dissent – Justice Boutet, para. 8, p. 690-691: 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 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.

7099. Dissent – Justice Boutet, para. 9, p. 691: 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.

7100. Dissent – Justice Boutet, para. 10, p. 691: 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.

7101. Dissent – Justice Boutet, para. 11, p. 692: 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]

7102. Dissent – Justice Boutet, para. 12, p. 692: 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.

7103. Dissent – Justice Boutet, para. 13, p. 692: 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.

7104. Dissent – Justice Boutet, para. 14, p. 693: 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.

7105. Dissent – Justice Boutet, para. 15, p. 693: 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.

7106. Dissent – Justice Boutet, para. 16, p. 693: 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.

7107. Dissent – Justice Boutet, para. 17, p. 693-694: 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.

7108. Dissent – Justice Boutet, para. 18, p. 694: 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.

(viii) Koinadugu District

7109. para. 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.

7110. para. 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]

7111. para. 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.

7112. para. 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.

7113. para. 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.

(ix) Bombali District

7114. para. 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 (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.

7115. para. 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]

7116. para. 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.

(x) Freetown and Western Area

a. Crimes committed – Freetown and Western Area District

7117. para. 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]

b. Personal commission – Freetown and Western Area

7118. para. 2183: The Chamber finds that the three Accused did not personally commit any of the crimes in Freetown and the Western Area.

c. Commission through JCE – Freetown and Western Area

7119. para. 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.

i. The RUF plan – Comission through JCE – Freetown and Western Area

7120. para. 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.

7121. para. 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.

ii. The AFRC Plan – Comission through JCE – Freetown and Western Area

7122. para. 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 "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.

7123. para. 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.

7124. para. 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]

7125. para. 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.

iii. The AFRC Advance on Freetown – Comission through JCE – Freetown and Western Area

7126. para. 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 capabilities.[3873] Bockarie advised Gullit to await RUF reinforcements in Benguema before moving on to Freetown.[3874]

7127. para. 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.

7128. para. 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.

7129. para. 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.

7130. para. 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.

7131. para. 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.

7132. para. 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.

iv. Attack on the Freetown and capture of State House – Comission through JCE – Freetown and Western Area

7133. para. 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]

7134. para. 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.

7135. para. 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.

7136. para. 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.

v. Retreat from Freetown to Waterloo – Comission through JCE – Freetown and Western Area

7137. para. 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]

7138. para. 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 AFRC fighters, led by Gullit, Bazzy and Five-Five, then withdrew to Waterloo, all the while committing crimes on a massive scale.

7139. para. 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]

7140. para. 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.

7141. para. 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.

vi. The meeting of RUF and AFRC troops in Waterloo – Comission through JCE – Freetown and Western Area

7142. para. 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]

7143. para. 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]

7144. para. 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.

7145. para. 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.

7146. para. 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 counterattack. 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]

vii. Finding – Comission through JCE – Freetown and Western Area

7147. para. 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.

d. Ordering, Planning, Instigating or Aiding and Abetting – Freetown and Western Area

i. Sesay – Ordering, Planning, Instigating or Aiding and Abetting – Freetown and Western Area

7148. para. 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.

7149. para. 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.

7150. para. 2125: 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.

ii. Kallon and Gbao – Ordering, Planning, Instigating or Aiding and Abetting – Freetown and Western Area

7151. para. 2126: 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.

(xi) Port Loko District

7152. para. 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.

7153. para. 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.

(xii) Conscription, Enlistment and Use of Child soldiers

a. Crimes committed

7154. para. 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.

b. Responsibility of the Accused – Conscription, Enlistment and Use of Child soldiers

i. Personal commission – Responsibility of the Accused – Conscription, Enlistment and Use of Child soldiers

7155. para. 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.

7156. para. 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.

ii. Sesay – Planning – Responsibility of the Accused – Conscription, Enlistment and Use of Child soldiers

7157. para. 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 Bombali Districts was conducted on a large scale and in an organised fashion.[3903]

7158. para. 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 organized 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]

7159. para. 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.

7160. para. 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.

7161. para. 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.

7162. para. 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.

7163. para. 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.

7164. para. 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.

iii. Kallon – Planning – Responsibility of the Accused – Conscription, Enlistment and Use of Child soldiers

7165. para. 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.

7166. para. 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.

7167. para. 2233: We further find, given the imperative of using children within the RUF organization and Kallon's participation as a senior Commander, that he intended that this crime be committed.

7168. para. 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.

iv. Gbao – Planning – Responsibility of the Accused – Conscription, Enlistment and Use of Child soldiers

7169. para. 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.

7170. para. 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.

(xiii) Attacks on UNAMSIL personnel

a. Crimes committed

7171. para. 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);

(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).

b. Responsibilty of the Accused - Attacks on UNAMSIL personnel

i. Sesay - Responsibilty of the Accused - Attacks on UNAMSIL personnel

7172. Regarding Sesay's responsibility for Attacks on UNAMSIL, see: RUF Trial Judgment, paras. 2239, 2240, 2241.

ii. Kallon - Responsibilty of the Accused - Attacks on UNAMSIL personnel

7173. Regarding Kallon's responsibility for Attacks on UNAMSIL, see: RUF Trial Judgment, paras. 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260.

iii. Gbao – Responsibility of the Accused – Attacks on UNAMSIL personnel

7174. Regarding Gbao's responsibility for Attacks on UNAMSIL, see: RUF Trial Judgment, paras. 2261, 2262, 2263, 2264, 2265, 2266.

3. Appellate Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-A, Judgment, 26 October 2009

(a) Findings and Conclusions

(i) Pleading liability

a. Personal commission – Pleading liability

7175. para. 125: The Appeals Chamber only considers Kallon's submissions to the extent they challenge his conviction for personally committing the attack on the UNAMSIL peacekeeper Salaheudin at the Makump DDR camp on 1 May 2000 since this was his only conviction pursuant to this mode of liability.[237]

7176. para. 126: In relation to this allegation, the Trial Chamber considered that a witness statement disclosed on 26 May 2003 indicated that the witness would testify to the "direct participation of Kallon in physically assaulting a peacekeeper."[238] Notably, Kallon does not challenge this interpretation of the disclosure. In part, Kallon asserts that the Trial Chamber could not find cure based on the "mere service of statements";[239] however this assertion, even if it were correct, does not accurately describe the Trial Chamber's findings, which expressly stated that "[t]he Chamber is satisfied that the *Prosecution's Motion* constituted sufficient notice to the Defence of the material elements."[240] In the referenced motion the Prosecution petitioned the Chamber to add two witnesses for the purpose of testifying about Kallon's involvement in the

attack on and abduction of peacekeepers.[241] The Trial Chamber's cautious approach, evidenced by the fact that it only found cure of defects in limited instances, and only examined witness statements for notice they might provide is consistent with the approaches followed at the ICTY and ICTR.[242] The Appeals Chamber has also previously recognised that it is possible for an accused to gain sufficient notice of a material fact through the disclosure of witness statements and testimony.[243]

7177. para. 139: When alleging forms of liability pursuant to Article 6(1) other than personal commission, international criminal tribunals have required the Prosecution "to identify the 'particular acts' or 'the particular course of conduct' on the part of the accused which forms the basis for the charges in question."[274] Where possible, the Prosecution should specify "the *form* of participation, such as 'planning' *or* 'instigating' *or* 'ordering' etc."[275] Thus, it is required that the Indictment expressly alleges that Kallon incur liability for "planning" the crime under Count 12, and that the Indictment specify the material facts of his conduct relied upon to establish that liability.

b. JCE - Pleading liability

7178. para. 99: The Special Court's jurisprudence and that of the other international criminal tribunals establishes that the following four elements must be present in an indictment charging an accused with JCE liability: (i) the nature or purpose of the JCE; (ii) the time at which or the period over which the enterprise is said to have existed; (iii) the identity of those engaged in the enterprise, so far as their identity is known, but at least by reference to their category or as a group; and (iv) the nature of the participation by the accused in that enterprise.[191] The Trial Chamber's statement of the law with respect to pleading requirements is consistent with the Appeals Chamber's jurisprudence and the case law of other international tribunals, and is not contested on appeal.[192]

7179. para. 100: In relation to the pleading of the common purpose, the Trial Chamber found that the Indictment, the Prosecution Supplemental Pre-Trial Brief, the Opening Statement, the Rule 98 Skeleton Response and the Prosecution Final Trial Brief "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."[193]

7180. para. 101: Following the *Brima et al.* Trial Judgment, the Prosecution filed a Notice Concerning JCE, which stated in part:

> The Accused and others agreed upon and participated in a joint criminal enterprise to carry out a campaign of terror and collective punishments, as charged in the Corrected Amended Consolidated Indictment, in order to pillage the resources in Sierra Leone, particularly diamonds, and to control forcibly the population and territory of Sierra Leone.
>
> The crimes charged in Counts 1 through 14 of the Corrected Amended Consolidated Indictment were within the joint criminal enterprise. The Accused and the other participants intended the commission of the charged crimes.
>
> Alternatively, from 30 November 1996 through about 18 January 2002, the following crimes were within the joint criminal enterprise: collective punishments, acts of terrorism, the conscription or enlistment or use in active hostilities of children under the age of 15 years, enslavement and pillage. The crimes charged in Counts 3 through 11 of this indictment were the foreseeable consequences of the crimes agreed upon in the joint criminal enterprise.[194]

7181. para. 102: According to the Trial Chamber, the Prosecution Notice Concerning JCE "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."[195] In the Trial Judgment, the Trial Chamber found that the "formulation of the common purpose in the [Prosecution Notice Concerning JCE] differs from that originally pleaded in the Indictment."[196] At trial, only Gbao filed a motion seeking leave to challenge the form of the Indictment in light of the *Brima et al.* Trial Judgment and the Prosecution Notice Concerning JCE.[197] In its decision on Gbao's motion, the Trial Chamber considered "that in all the circumstances it would be more appropriate for the Trial Chamber to address any objections to the form of the Indictment at the end of the case rather than during the course of the trial."[198]

7182. para. 103: In the Trial Judgment, the Trial Chamber held that the Prosecution Notice Concerning JCE "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."[199] The Trial Chamber considered this amounted to a unilateral attempt to alter a material fact in the Indictment contrary to the procedure allowed under the Rules, and stated that it would not consider the filing for the purposes of adjudicating the common purpose of the JCE.[200] The Trial Chamber concluded:

> 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. 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.[201]

7183. para. 104: On appeal, Sesay submits that the shifting notice provided by the Prosecution Notice Concerning JCE prejudiced his defence because whereas originally "Counts 3-14 were within the criminal purpose or were a foreseeable consequence of it," the Prosecution Notice Concerning JCE "changed the agreement alleged and limited the crimes to those contained within counts 1, 2, 12, 13 and 14. [Thus, the] crimes charged in Counts 3 through 11 were newly alleged to be the foreseeable consequences" of the agreed crimes of the JCE, and "it was no longer being alleged that [Sesay] intended the crimes in Counts 3-11."[202]

7184. para. 105: In other words, Sesay's position is that, although the Trial Chamber in its judgment chose to rely on the Indictment instead of on the Prosecution Notice Concerning JCE, the fact that it did not inform Sesay of this choice until it rendered the Trial Judgment prejudiced Sesay because, in the period between the Prosecution Notice Concerning JCE and the Trial Judgment, he relied on the pleading of JCE in the Prosecution Notice Concerning JCE. The questions before the Appeals Chamber are, therefore, whether Sesay succeeds in showing a discrepancy between the Prosecution Notice Concerning JCE and the Indictment, and whether this discrepancy in notice, if found, prejudiced him to the extent that his trial was rendered unfair.

7185. para. 106: Contrary to Sesay's submissions, the Prosecution Notice Concerning JCE expressly stated that "[t]he crimes charged in Counts 1 through 14 of the [Indictment] were within the joint criminal enterprise" and that Sesay "intended the commission of the charged crimes."[203] The Appeals Chamber has previously ruled that the "purpose of the enterprise" comprises both the objective of the JCE and the means contemplated to achieve that objective.[204] Notice to the accused does not require the objective and the means to be separately pleaded in the indictment as long as the alleged criminality of the enterprise is made clear.[205] Regardless of whether a crime is the objective or the means, it is within the JCE. Here, the crimes charged in Counts 1 through 14 were consistently alleged to be within the JCE, and therefore the alleged criminality of the enterprise was clear.

7186. para. 107: Paragraph 37 of the Indictment stated in part:

> 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.

7187. para. 108: Paragraph 7 of the Prosecution Notice Concerning JCE stated:

> The crimes charged in Counts 1 through 14 of the Corrected Amended Consolidated Indictment were within the joint criminal enterprise. The Accused and the other participants intended the commission of the charged crimes.

7188. para. 109: The Prosecution Notice Concerning JCE also stated in the alternative that the crimes charged under Counts 1, 2, 12, 13 and 14 were within the JCE and the crimes charged in Counts 3-11 were foreseeable consequences.[206] Accordingly, the Prosecution Notice Concerning JCE maintained notice to the accused that the crimes charged under Counts 3-11 were *either* within the JCE *or* a foreseeable consequence of the crimes that were within the JCE. This notice reflects the formulation of the JCE as provided in paragraph 37 of the Indictment, quoted above. The Appeals Chamber has previously endorsed the finding that pleading the basic and extended forms of JCE in the alternative is a well-established practice in the international criminal tribunals.[207]

7189. para. 110: The Appeals Chamber, therefore, finds that Sesay has failed to establish any prejudice that could have resulted from the Trial Chamber's disregard of the Prosecution Notice Concerning JCE and its reliance on the pleading of the common purpose in the Indictment. Having come to this conclusion, the Appeals Chamber dismisses the remainder of Sesay's submissions.

7190. para. 116: Kallon's arguments are two-fold: first, that the Trial Chamber erred in law in finding the "divisibility" of the JCE as alleged; and second, that the Trial Chamber erred in considering the pleading of his leadership roles as sufficient notice of his participation in the JCE.

7191. para. 117: Concerning the divisibility of the JCE, the Trial Chamber found that "the identities of all participants and the continuing existence of the joint criminal enterprise over the entire time period alleged in the Indictment" do not need to be proven beyond reasonable doubt by the Prosecution because they are not elements of the *actus reus* of the JCE and therefore they "are not material facts upon which the conviction of the Accused would rest."[221] In effect, the Trial Chamber found that where JCE liability can be found in the evidence, and the members of the JCE and temporal scope are within the material facts that are pleaded, then the accused has not suffered material prejudice. The Trial Chamber's approach is consistent with case law that demonstrates that even if some of the material facts pleaded in an indictment are not established beyond reasonable doubt, a Trial Chamber may nonetheless enter a conviction provided that, having

applied the law to those material facts it accepted beyond reasonable doubt, all the elements of the crime charged and of the mode of responsibility are established by those facts.[222] As a general matter, such an approach would not result in prejudice to the accused because he is on notice of all of the material facts that result in his conviction. Kallon, in fact, does not show what prejudice resulted, or could have resulted, from the Trial Chamber's findings on the divisibility of the pleading of JCE. His submission is therefore rejected.

7192. para. 118: Concerning the pleading of Kallon's participation in the JCE, the Appeals Chamber notes that Kallon does not allege which of his acts found by the Trial Chamber to constitute participation in the JCE should have been pleaded in the Indictment, nor does he allege that he lacked notice that the Prosecution would rely upon the proof of those acts to establish his liability pursuant to a JCE. He, therefore, fails to argue how the alleged error invalidates the decision. It would appear that he only challenges the pleading of his role in the RUF as part of his participation in the JCE. As the Trial Chamber observed, the Indictment pleads Kallon's positions in the RUF and in the joint AFRC/RUF forces at paragraphs 19 to 33, and in paragraph 34 it states that "in [his] respective positions referred to above" Kallon "exercised authority, command and control over all RUF, Junta and AFRC/RUF forces." The Indictment, therefore, provided sufficient notice that Kallon exercised authority while in command positions in the RUF and AFRC/RUF forces. The fact that the Indictment did not expressly state that he did so in furtherance of the alleged JCE does not evince a defect, since the material facts regarding his participation now at issue were nonetheless pleaded. The Appeals Chamber has already ruled on the permissibility of alleging the same acts for liability under both Article 6(3) and, command responsibility, and Article 6(1), JCE.[223]

7193. para. 178: An indictment alleging JCE liability must plead, *inter alia*, the nature of the participation by the accused in that enterprise.[360] The relevant question in this sub-ground of appeal is whether the Indictment may be considered as having put Gbao on notice of the case he had to meet in regard to his role in the implementation and instruction of the RUF ideology and whether he was in a position to prepare adequately for trial.[361] This question in turn relies on a determination of whether the Trial Chamber found that Gbao's role as an ideology instructor constituted his participation in the JCE, and whether, as such, it was a material fact which had to be pleaded in the Indictment.

7194. para. 179: The Prosecution conceded at the Appeal Hearing that it was not its case that Gbao contributed to the JCE as an ideology instructor, and that this allegation was therefore not contained in the Indictment,[362] and the Prosecution did not attempt to cure such defect.[363] Whether

this omission rendered the Indictment defective turns on whether the ideology and Gbao's role in its implementation were material facts with respect to Gbao's participation in the JCE. The Trial Chamber's findings demonstrate that they were. In effect, it found that the ideology defined the "RUF movement":

> [the] 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.[364]

7195. para. 180: Further, it determined that although Gbao did not "directly participate in any of the crimes" committed in Bo, Kenema, and Kono,[365] Gbao nonetheless participated in the JCE through his connection to the RUF ideology:

> 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.[366]

The Trial Chamber therefore found it necessary to assess the significance of the RUF ideology to the RUF, and Gbao's role in implementing the ideology in order to find that Gbao participated in the JCE. The Trial Chamber devoted six pages of its discussion on Gbao's participation in the JCE to a detailed discussion of the RUF ideology and its impact on the conflict in general and the crimes charged in particular.[367] It concluded that "without the ideology there would have been no joint criminal enterprise" and "the revolution was the ideology in action."[368]

7196. para. 181: The ICTR Appeals Chamber has found that, before holding that an alleged fact is not material or that differences between the wording of the indictment and the evidence adduced are minor, a trial chamber should generally ensure that such a finding is not prejudicial to the accused.[369] An example of such prejudice would be vagueness capable of misleading the accused as to the nature of the criminal conduct with which he is charged.[370] In this case, no notice was provided to Gbao that he participated in the JCE by instructing others in the ideology or causing its implementation. Yet, these facts were found to be *necessary* to the determination of Gbao's participation in the JCE. The Appeals Chamber, therefore, considers that Gbao was denied notice of the material fact of his role in implementing and instructing the RUF ideology.

7197. para. 182: The Appeals Chamber, therefore, disallows the findings of Gbao's significant contribution to the JCE through his role as an ideology expert and instructor.

7198. para. 492: The Appeals Chamber holds that so long as Gbao agreed to the Common Criminal Purpose and was, therefore, a member of the JCE as the Trial Chamber found,[1256] he is responsible for all crimes that he either intended, or were naturally foreseeable would be committed by members of the JCE or persons under their control. This is consistent with the pleading of the crimes in the Indictment (which must be read in its entirety) and which pleaded each of the crimes in Counts 1 to 14 as either within the JCE or as a reasonably foreseeable consequence of the JCE.[1257]

7199. Separate opinion – Justice Ayoola, para. 11 (p. 498): The offences committed were charged in the Counts. Each of the Counts was preceded by what can be regarded as particulars of the offence grouped by Districts according to location of the events. However, the structure of the Indictment should not be construed as indicating that there were as many joint enterprises as there were Districts or as there were locations of the crimes. Presumably, the form of the Indictment was intended to be a response to and improve on the specificity requirement. Nonetheless, the Trial Chamber approached the case in its consideration of the criminal responsibility of the respective accused in respect of each of the Districts where the events took place, on the footing that the "Prosecution alleges that the Accused are criminally responsible pursuant to Article 6(1) of the Statute, or alternatively Article 6(3) of the Statute, for the crimes committed [in the mentioned District] between 1 June 1997 and 30 June 1997."[15]

7200. Separate opinion – Justice Ayoola, para. 12 (p.498): I opine that the assessment by the Trial Chamber of the criminal responsibility of each of the Accused persons in relation to the events in the Districts cannot determine the limits of his criminal responsibility as a member of the JCE; nor does the assessment of the extent of the participation of a member of the JCE by reference to the location or locations in which the JCE was executed, necessarily, determine such member's overall criminal responsibility for the offence charged in each of the Counts in respect of which a single verdict of 'guilty' or 'not guilty' is expected to be and has been pronounced.

c. Planning – Pleading liability

7201. para. 139: When alleging forms of liability pursuant to Article 6(1) other than personal commission, international criminal tribunals have required the Prosecution "to identify the 'particular acts' or 'the particular course of conduct' on the part of the accused which forms the basis for the charges in question."[274] Where possible, the Prosecution should specify "the *form* of

participation, such as 'planning' *or* 'instigating' *or* 'ordering' etc."[275] Thus, it is required that the Indictment expressly alleges that Kallon incur liability for "planning" the crime under Count 12, and that the Indictment specify the material facts of his conduct relied upon to establish that liability.

7202. para. 140: Paragraph 38 of the Indictment states that "Morris Kallon ..., by [his] acts or omissions, [is] 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 [he] *planned*." By operation of paragraph 40 of the Indictment, this allegation is incorporated into each of the Counts, including Count 12. The Indictment, therefore, expressly alleges that Kallon planned the crime under Count 12.

7203. para. 141: Kallon objects that the Indictment nonetheless provides no specific details regarding his role.[276] The Trial Chamber relied upon the following particular acts to find that Kallon planned the offence under Count 12:

(i) 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;

(ii) he was the senior RUF Commander on 3 May 2000 at Moria near Makeni where child soldiers were used in the ambush of UNAMSIL forces;

(iii) he brought a group of children to Bunumbu for training in 1998; and [277]

(iv) he issued orders that "young boys" should be trained to become soldiers and handle weapons at Bunumbu on or about 9 June 1998.[278]

7204. para. 142: The Appeals Chamber must determine whether the Prosecution provided adequate notice of the "particular acts" or "the particular course of conduct" which formed the basis for Kallon's liability for planning the offence under Count 12 in relation to events in Kenema, Kailahun, Kono and Bombali Districts. The Indictment provides notice that Kallon incurred liability pursuant to each mode of liability, in part, as a result of his acts as a "senior officer and commander in the RUF, Junta and AFRC/RUF forces,"[279] his role "[b]etween about May 1996 and about April 1998, [as] a Deputy Area Commander,"[280] and that as a function of these positions "Kallon ... exercised authority, command and control over all subordinate members of the RUF, Junta and AFRC/RUF forces."[281] Kallon's conduct in these positions entailed the acts described in (i) and (ii) above, and thus the Indictment provided sufficient notice in respect of those acts.

7205. para. 143: In respect of (iii) and (iv) above, the Appeals Chamber recalls that a distinction is drawn between the material facts upon which the Prosecution relies and the evidence by which those material facts will be proved. Only the former must be pleaded.[282] In this case, Kallon, while acting in his capacity as a commander personally brought children to a training camp, and issued orders that children should be trained as combatants. In the view of the Appeals Chamber, these two facts constituted evidence of Kallon's conduct as an RUF Commander and his involvement in the execution of the plan to recruit and use child soldiers. The Trial Chamber did not find that this conduct amounted to planning itself, but it inferred Kallon's role in planning from this evidence. As such, these facts were evidence of his role in planning and they need not have been pleaded in the Indictment.

7206. para. 144: Kallon's submission that the Trial Chamber found that the defective pleading of Count 12 was cured through the mere service of witness statements is misconceived. Kallon was convicted of planning the use of children under the age of 15 years to participate actively in hostilities. The Trial Chamber did not find that the pleading of planning liability was defective; it needed no cure.

d. Instigation – Pleading liability

7207. para. 139: When alleging forms of liability pursuant to Article 6(1) other than personal commission, international criminal tribunals have required the Prosecution "to identify the 'particular acts' or 'the particular course of conduct' on the part of the accused which forms the basis for the charges in question."[274] Where possible, the Prosecution should specify "the *form* of participation, such as 'planning' *or* 'instigating' *or* 'ordering' etc."[275] Thus, it is required that the Indictment expressly alleges that Kallon incur liability for "planning" the crime under Count 12, and that the Indictment specify the material facts of his conduct relied upon to establish that liability.

7208. para. 826: The Trial Chamber found that Waiyoh, a Nigerian female who resided in the civilian camp at *Wendedu* and had lived in **Kono District** for twenty years was killed on the orders of Rocky, an RUF Commander in May 1998.[2169] It found that this crime constituted an unlawful killing as charged in Counts 4 and 5 of the Indictment.[2170] It further found that Kallon was liable under Article 6 (1) of the Statute for its instigation.[2171] The Trial Chamber found that although *Wendedu* was not named as a location of murder in the Indictment, the pleading of locations in Counts 4 and 5 was nonexhaustive and sufficiently specific in light of the cataclysmic nature of the alleged crimes.[2172]

7209. para. 828: The Indictment particularises the charge of murder under Counts 4 and 5 in relation to Kono District as follows:

> 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.[2175]

7210. para. 829: The relevant question on appeal is whether the pleading of locations of murder in Kono District as "various locations in Kono District, including Koidu, Tombodu, Foindu, Willifeh, Mortema and Biaya" without naming Wendedu, is sufficiently specific to allow Kallon to prepare his defence to the charge of instigating murder in Wendedu.

7211. para. 830: As a general matter, the location of the crimes alleged to have been committed should be specified in an indictment.[2176] However, the degree of specificity required will depend on the nature of the Prosecution's case.[2177] The specificity required for the pleading of the location of an alleged crime will depend on factors such as: the form of accused's participation in the crime;[2178] the proximity of the accused person to the events at the location for which he is alleged to be criminally responsible;[2179] the nature of the crime itself, such as whether the crime is characterized by the movement of the victim; whether the victim's identity provides specificity; and whether the crime was committed at numerous locations within a defined geographic area that was pleaded.

7212. para. 831: As the form of the accused's participation in the crime is relevant to the specificity required, the material facts to be pleaded will vary according to the particular form of Article 6(1) liability averred. For example, the Appeals Chamber has indicated that the material facts for pleading personal commission are distinct from those pleaded for JCE liability.[2180] As stated by the ICTR Appeals Chamber, there may well be "situations in which the specific location of criminal activities cannot be listed, such as where the accused is charged as having effective control over several armed groups that committed crimes in numerous locations. In cases concerning physical acts of violence perpetrated by the accused personally, however, location can be very important."[2181]

7213. para. 832: This distinction between the specificity requirements for the pleading of locations in relation to different modes of liability is consistent with our holding in the *Brima et al.* Appeal Judgment. There, we held that the Trial Chamber's decision to reconsider an earlier form of indictment decision was a proper exercise of its discretion in the interests of justice.[2182] The *Brima et al.* Trial Chamber held that the indictment had not pleaded locations with sufficient

specificity and they therefore declined to find the accused liable for crimes committed at unnamed locations. Similar to Kallon's present conviction, the accused in *Brima et al.* were not convicted pursuant to their participation in a JCE, but rather they were convicted of more direct forms of participation, such as, *inter alia*, personal commission and instigation.

7214. para. 833: An accused's proximity to the events at the location for which he is alleged to be criminally responsible is also a factor in determining the pleading specificity required. In the present case, Kallon's liability for instigating the murder of Waiyoh in Wendedu stems directly from his conduct in Wendedu. In May 1998, Waiyoh was being held at an RUF civilian camp in Wendedu. Kallon visited the camp and questioned CO Rocky about Waiyoh, "stating that he considered her a threat."[2183] On a subsequent visit to the camp in Wendedu, Kallon asked CO Rocky if he was "still keeping 'enemies' of the RUF in the camp."[2184] Kallon's bodyguards later visited the camp to enquire about Waiyoh again and Rocky then ordered that she be killed.[2185]

7215. para. 834: In view of the mode of Kallon's liability for the crime and that his culpable conduct occurred at the location, the location of the murder as having occurred at Wendedu was a material fact that must have been pleaded in the Indictment to inform Kallon clearly of the charges against him so that he could prepare a defence.[2186]

7216. para. 835: The Prosecution's failure to plead Wendedu as a location in the Indictment rendered the Indictment defective with respect to the pleading of Kallon's instigation of murder at Wendedu. As Kallon objected at trial to the pleading of a nonexhaustive list of locations,[2187] the Prosecution bears the burden of showing on appeal that the defect in the Indictment did not prejudice Kallon's ability to prepare his defence. The Prosecution has not offered any submissions that Kallon had notice of the charge as a result of timely, clear and consistent information detailing the factual underpinnings of the charge.[2188]

7217. para. 836: The Appeals Chamber, therefore, finds that Kallon was not put on notice of the charge that he instigated murder at Wendedu. The trial against Kallon was thereby rendered unfair, and as a result he should not have been found responsible for the killing of Waiyoh.

(ii) Pleading liability – Dissents

a. JCE – Pleading liability - Dissents

7218. Justice Fisher, para. 20 (p.517): The primary justification suggested by the Majority for its radical departure from customary international law is that its conflation of JCE 1 and JCE 3 *mens*

rea standards "is consistent with the pleading of the crimes in the Indictment."[33] That an Indictment may plead in the alternative does not establish that there is no distinction between the forms of liability so pled. Also, whether the Indictment permissibly pleaded JCE is irrelevant as an evidentiary matter.

(iii) JCE

a. JCE – Common Criminal Purpose

7219. para. 282: All three Appellants allege that the Trial Chamber erred in defining the common purpose of the JCE. Sesay in Ground 24, and Kallon in Ground 2, submit that the Trial Chamber found that the common purpose was not criminal and that various errors arise from this finding.[618] Gbao submits under Sub-Ground 8(f) that the Trial Chamber erroneously found multifarious common purposes and confused the common purpose with the criminal means to achieve it.[619] The present section addresses these submissions together.

7220. para. 283: The Trial Chamber found 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."[620] The Trial Chamber considered 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 [JCE]."[621] However, it held that "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."[622] The Trial Chamber concluded that "the crimes charged under Counts 1 to 14 were within the [JCE] and intended by the participants to further the common purpose to take power and control over Sierra Leone."[623]

7221. para. 294: The Appellants' present submissions essentially turn on whether the Trial Chamber found the common purpose of the JCE to be criminal or non-criminal. At the outset, the Appeals Chamber recalls its holding in the *Brima et al*. Appeal Judgment that "the common purpose" of a JCE comprises both the objective of the JCE and the means contemplated to achieve that objective.[659] In order to determine the present submissions within the proper legal framework, it is appropriate to address, as a preliminary matter, Sesay's submissions regarding the interpretation of *Brima et al*. and the relationship between the objective and the means in cases where the objective itself does not amount to a crime within the Statute.

7222. para. 295: In the *Brima et al*. Appeal Judgment, the Appeals Chamber held that "[t]he objective and the means to achieve the objective constitute the common design or plan."[660] Contrary to Sesay's claim, this holding neither "conflate[s] objective and means" nor sets out a legal requirement that they be "inextricably and necessarily" linked.[661] Rather, as the Appeals Chamber clarified, it signifies that the criminal nature of a common purpose can derive from the means contemplated to achieve the objective of the common purpose.[662] That was also the basis for the holding of *Brima et al*. that the Trial Chamber relied on,[663] which stated that a common purpose can be inherently criminal where it "contemplate[s] crimes within the Statute as the means of achieving its objective."[664] In such cases, the objective and the means to achieve the objective constitute the common criminal purpose.

7223. para. 296: Sesay's reference to the *Martić* case does not sustain his claim.[665] While in that case the implementation of the non-criminal objective of creating a united Serb state "necessitated" the forcible removal of non-Serb population,[666] nowhere did the *Martić* Appeals Chamber suggest that such necessity was a legal requirement for a common criminal purpose to exist. Rather, the *Martić* Trial Chamber found that, as a factual matter, the necessary relationship arose from "the prevailing circumstances" of the case, and was buttressed by the employment of criminal means to further the non-criminal objective.[667] As to the law, the *Martić* Appeals Chamber was content to observe that, while the objective itself did not constitute a common criminal purpose, it may still amount to such where it "is intended to be implemented through the commission of crimes within the Statute."[668] This is consistent with the *Kvočka et al*., *Krajišnik* and *Tadić* Appeal Judgments, all of which require as a matter of law only that the common purpose "amounts to or involves" the commission of a crime provided for in the ICTY Statute.[669] It is also consistent with *Brima et al*., which, rather than stipulating a necessary relationship between the objective of a common purpose and its criminal means, only requires that the latter are "contemplated to achieve" the former.[670]

7224. para. 297: For these reasons, the Appeals Chamber rejects Sesay's submission that where the objective does not itself amount to a crime under the Statute, the objective and the means to achieve it must be "conflated" or "inextricably and necessarily" liniked in order to constitute a common criminal purpose.[671] Against this backdrop, the Appeals Chamber now proceeds tpo determine whether the Trial Chamber found the common purpose of the JCE in the present case to be criminbal or non-criminal.

7225. para. 298: The Trial Chamber's findings that the objective of the JCE was "to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond

mining areas" and that this objective in and of itself was not criminal under the Statute are undisputed.[672] Rather, Sesay and Kallon posit that the error of the Trial Chamber lies in finding that the non-criminal objective constituted the common purpose of the JCE, [673] whereas Gbao contends that the definition of the common purpose is unclear.

7226. para. 299: The position of Sesay and Kallon is directly contradicted by the Trial Chamber's finding that the objective to control the territory of Sierra Leone "does not amount to a common purpose within the meaning of the law of [JCE]."[675] Beyond their references to the finding that the *objective* was not criminal,[676] and a finding regarding Gbao's participation in the JCE,[677] neither Sesay nor Kallon points to other findings of the Trial Chamber to support their claim. Sesay refers to the statement in the Dissenting Opinion of Justice Boutet that "the purpose is such that it is not even reflective of a crime … under the jurisdiction of this Court."[678] Reference to the Dissenting Opinion is misguided since it does not underpin any of the findings that resulted in Sesay's conviction.

7227. para. 300: The Appeals Chamber therefore dismisses Sesay's and Kallon's submissions that the Trial Chamber found the objective to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas, constituted the common purpose of the JCE. Having thus found, the next question for determination is what common purpose the Trial Chamber found, and whether such purpose was criminal. The Trial Chamber considered that the non-criminal objective to control the territory of Sierra Leone "may amount to a common criminal purpose" where it "is intended to be implemented through the commission of crimes within the Statute."[679] This statement is legally correct,[680] and contrary to Kallon's submission,[681] it does not allow for JCE liability based on a non-criminal common purpose or absent the requisite *mens rea*.

7228. para. 301: The Trial Chamber proceeded to find in paragraph 1980 of the Trial Judgment that the Junta aimed "to subject the civilian population to AFRC/RUF rule by violent means", which "entailed massive human rights abuses and violence against and mistreatment of the civilian population", and in paragraph 1981 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." Contrary to Gbao's argument,[682] these two findings do not characterise the means differently; both are general findings showing that the means to achieve the objective of controlling the territory of Sierra Leone included the commission of crimes against the civilian population.

7229. para. 302: Paragraph 1982 of the Trial Judgment specifies what those criminal means were. Its wording leaves no room for Gbao's claim that the Trial Chamber wavered in its definition of the common purpose by finding that terrorism (Count 1) might have been the objective of the common purpose, rather than a means.[683] The statement that "[t]he means to terrorise the civilian population" included the crimes under Counts 3 to 11 refers to the fact that the underlying acts of terrorism partly comprised conduct also charged under Counts 3 to 11.[684] Furthermore, the statement is immediately followed by the finding that "[a]dditional means to achieve the common purpose" included the crimes charged under Counts 2 and 12 to 14, which clarifies that the acts of terrorism (and the underlying conduct) were found to be among the means to achieve the common purpose. Against this background, the conclusive finding in paragraph 1982, partly repeated in paragraph 1985, that "the crimes charged under Counts 1 to 14 were within the [JCE] and intended by the participants to further the common purpose" makes it abundantly clear that all those crimes were found to constitute means.[685]

7230. para. 303: Contrary to Sesay's submission, the Trial Chamber considered whether these crimes were committed in a "random and un-orchestrated manner."[686] It found that the "AFRC/RUF forces cooperated on armed operations in which crimes against civilians were committed" and that the "conduct of the operations" demonstrated the wholly disproportionate means by which the Junta intended to suppress all opposition.[687] It further took into account "the entirety of the evidence and in particular the widespread and systematic nature of the crimes committed" and found the existence of a common criminal purpose and that its participants used the perpetrators to commit crimes in furtherance of it.[688] Sesay's claim that the Trial Chamber failed to assess whether there was a "discernable pattern" to the crimes indicative of a common criminal purpose, and Kallon's present argument that the Trial Chamber allowed for JCE liability regardless of the affiliation between the accused and the perpetrator, thus lack merit.[689]

7231. para. 304: Gbao argues that the common purpose in actual fact consisted of the RUF ideology.[690] The Appeals Chamber disagrees. The paragraphs Gbao invokes concern his intent and participation in the JCE, which the Trial Chamber examined only after it had reached its findings on the existence and nature of the common purpose.[691] Indeed, the mention in paragraph 2013 of "a criminal nexus between such an ideology and the crimes charged" was immediately followed by reference to an ICTY case in which the accused's *participation* in a JCE consisted of providing the legal, political and social framework in which the participants of the JCE worked and from which they profited.[692] The end of paragraph 2013 sets out the legal requirements necessary to establish the *mens rea* of Gbao in particular. Similarly, the findings that the crimes "were in application and furtherance of the goals stipulated in the ideology of taking power and control of

Sierra Leone" and that "the revolution was the ideology in action", in paragraphs 2029 and 2032, respectively, signify that the ideology imparted by Gbao[693] "played a key and central role in pursuing the objectives of the RUF" and was a "propelling dynamic behind the commission" of the crimes.[694] As such, the RUF ideology was in the Trial Chamber's view conducive to the commission of crimes and furthered the means of the common purpose. However, it was not itself found to have constituted the common purpose. Instead, Gbao's connection to the ideology was one factor that evidenced his participation and intent. This is reconcilable with the finding that the criminal purpose of the JCE was common to both the RUF and AFRC.[695]

7232. para. 305: For these reasons, the Appeals Chamber concludes that the Trial Chamber found a common criminal purpose. It consisted of the objective to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas, and the crimes as charged under Counts 1 to 14 as means of achieving that objective ("Common Criminal Purpose").[696] Gbao's Sub-Ground 8(f) is therefore dismissed in its entirety.

7233. para. 306: The remaining submissions of Sesay and Kallon are premised on the assertion that the Trial Chamber found the common purpose to be non-criminal.[697] Because the Appeals Chamber has dismissed this assertion above, holding that the Trial Chamber properly found a common criminal purpose, there is no basis for these remaining submissions.

7234. para. 308: The Appellants submit that the Trial Chamber erred in various regards in finding that a common criminal purpose existed. At the outset, Kallon makes two legal challenges to the Trial Chamber's application of the JCE theory. Along with Sesay, he then challenges the Trial Chamber's factual findings that the leaders of the AFRC and RUF acted in concert. Finally, Sesay and Gbao impugn the Trial Chamber's findings on the criminal means to achieve the objective of the JCE. These submissions are addressed in turn below.

7235. para. 312: The Appeals Chamber has previously noted that "the foundation of criminal responsibility is the principle of personal culpability: nobody may be held criminally responsible for acts or transactions in which he has not personally engaged or in some other way participated (*nulla poena sine culpa*)."[705] Kallon relies on the Trial Chamber's legal findings as to the plurality of persons, the nature of the common purpose and the accused's participation to support his claim that this principle was breached.

7236. para. 313: The Appeals Chamber is not persuaded that these findings, as a general matter, expanded JCE beyond the limits of personal culpability. Whereas the Trial Chamber noted that the plurality of persons "may change" as participants enter or withdraw from the JCE, it firmly

required that the accused be a participant of the JCE in order to be held criminally responsible under this form of liability.[706] As regards the nature of the common purpose, the Trial Chamber held that a JCE may be "fluid" in its criminal means, but only to the extent its participants so accept.[707] It did not allow for JCE liability pursuant to a non-criminal common purpose.[708] As to the accused's participation, the Trial Chamber held that it may be geographically more limited than the JCE itself provided he had knowledge of the wider purpose of the common design.[709] Yet it required that the accused's participation "made a significant contribution to the crimes for which he is held responsible."[710] While it is not necessarily correct that "knowledge of the wider purpose of the common design" would suffice to establish the intent requirement for JCE liability[711] nothing in the Trial Judgment otherwise suggests that the Trial Chamber departed from its unambiguous holding that JCE liability requires that the accused intended to participate in a common criminal purpose.[712]

7237. para. 314: The Appeals Chamber therefore finds that Kallon fails to demonstrate a violation of the principle *nulla poene sine culpa* based on the Trial Chamber's findings on the law of JCE. In remaining parts, Kallon's submission hinges on the success of his Grounds 8 and 15 and, as such, do not provide independent support for his present challenge.

7238. para. 316: Contrary to Kallon's submission, the Appeals Chambers observes that his JCE liability is not of an "unprecedented" scope. The Trial Chamber found that Kallon incurred JCE liability for crimes committed in Bo, Kono, Kenema and Kailahun Districts between 25 May 1997 and April 1998.[713] The scope of this liability is no broader than that pronounced in certain post-World War II cases, from which the contemporary notion of JCE is partly derived,[714] which concerned liability for participation in a criminal plan amounting to a "nation wide government-organized system of cruelty and injustice."[715] Likewise, in the *Brđanin* case, the ICTY concluded that JCE liability could apply to crimes committed in the entire Autonomous Region of Krajina,[716] and the accused in the *Krajišnik* case incurred JCE liability for crimes committed throughout the Bosnian Serb Republic.[717] Importantly, adjudicating a challenge similar to that of Kallon, the *Krajišnik* Appeals Chamber held that it is "wrong to speak about an 'expansion' of JCE to cases such as the one of Krajišnik" because "although *Tadić* concerned a relatively low-level accused, the legal elements of JCE set out in that case remain the same in a case where JCE is applied to a high-level accused."[718]

7239. para. 317: Against this backdrop, the Appeals Chamber agrees with the ICTR Appeals Chamber that "an accused's liability under a 'common purpose' mode of commission may be as narrow or as broad as the plan in which he willingly participated."[719] This does not imply,

however, that JCE liability lapses into guilt by association. As persuasively explained by the *Brđanin* Appeals Chamber:

> Where all [the] requirements for JCE liability are met beyond a reasonable doubt, the accused has done far more than merely associate with criminal persons. He has the intent to commit a crime, he has joined with others to achieve this goal, and he has made a significant contribution to the crime's commission.[720]

7240. para. 318: On this basis, the Appeals Chamber is satisfied that "JCE is not an open-ended concept that permits convictions based on guilt by association."[721] As Kallon's submission can be satisfactorily determined based on these sources of international criminal law, there is no need to resort to the specific domestic jurisprudence of the United States on the inchoate offence of conspiracy, which is legally distinct from the mode of liability of JCE.[722]

7241. para. 485: The Trial Chamber defined the Common Criminal Purpose of the JCE as consisting of the objective to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas, and the crimes as charged under Counts 1 to 14 as the means of achieving that objective.[1252] The Trial Chamber further found that Gbao was "a participant" in the JCE.[1253] The Appeals Chamber, Justices Winter and Fisher dissenting, considers that in consequence Gbao, as with the other participants of the JCE, would be liable for all crimes which were a natural and foreseeable consequence of putting into effect that criminal purpose.

7242. para. 493: The Appeals Chamber agrees with the Prosecution's submission during the Appeal Hearing that Gbao "shared the intent for the crimes to be committed in Kailahun District, so he was a participant in the joint criminal enterprise."[1258] Gbao it must be recalled was at all material times the senior RUF Commander stationed in Kailahun. It follows that, since Gbao was a member of the JCE, so long as it was reasonably foreseeable that some of the members of the JCE or persons under their control would commit crimes, Gbao would be criminally liable for the commission of those crimes.[1259] As the Trial Chamber found that the crimes in Bo, Kenema and Kono Districts, which were within the Common Criminal Purpose, were reasonably foreseeable, it follows that the Trial Chamber did not err. Gbao's Ground 8 is accordingly dismissed.

7243. Justice Fisher – Dissent, para. 22 (p. 518): Finally, in a perplexingly contradictory and unexplained pronouncement, the Majority expresses its agreement with the Prosecution's position at the Appeal Hearing that Gbao "shared the intent for the crimes to be committed in Kailahun District, so he was a participant in the joint criminal enterprise."[37] As an initial matter, this position is contrary to the Majority's own reasoning, as it envisages a common criminal purpose

different from that found by the Trial Chamber and confirmed unanimously on appeal. That different "subsidiary" common criminal purpose is limited solely to Kailahun District and excludes acts of pillage (Count 14), as no such crimes were committed there.

7244. Justice Fisher – Dissent, para. 23 (p. 518): If in fact the Majority accepts the position of the Prosecution that the shared intent for commission of the crimes committed in Kailahun describes the common criminal purpose of the JCE, then Gbao would presumably have been liable under JCE 1 for the crimes in Kailahun District, and liable under JCE 3 for the crimes in other Districts. However, such a limited, "subsidiary" JCE was neither sufficiently pleaded in the Indictment nor found by the Trial Chamber. Nor did the Trial Chamber make any findings that the crimes in Bo, Kenema and Kono were reasonably foreseeable by Gbao as a consequence of the implementation of that "subsidiary" JCE, (as opposed to the country-wide JCE found by the Trial Chamber.) This theory therefore finds no support in the pleadings or the evidence.

7245. Justice Fisher – Dissent, para. 24 (p. 518-519): The only JCE pleaded, established and upheld in this case had as its Common Criminal Purpose to control the territory of Sierra Leone through the commission of the crimes charged under Counts 1 to 14.[38] Gbao either shared the intent of this criminal purpose – both in terms of the type of crimes and the geographical scope it encompassed – or he did not.

7246. Justice Fisher – Dissent, para. 25 (p. 519): It remains unclear what common criminal purpose, in the Majority's mind, Gbao did share. It purports to hold that Gbao shared the Common Criminal Purpose that the Trial Chamber found established on the evidence.[39] But as explained, that was a legal impossibility, given that the evidence showed that he did not share the intent of the other "participants" in the JCE. The Majority has not articulated, any alternative common criminal purpose which Gbao shared. Yet it convicts him pursuant to JCE liability. That conviction was neither in accordance with the law nor the facts as found by the Trial Chamber and upheld on appeal.

7247. para. 621: Sesay contests the finding that he participated in the JCE through his involvement in the planning and organising of the forced mining in Kenema District. His first argument, that this involvement was not carried out with the intent to cause terror,[1544] is dismissed because it is based on the erroneous premise that the common criminal purpose of the JCE was to cause terror.[1545]

b. JCE – AFRC-RUF acting in concert

7248. para. 320: The Trial Chamber found 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.723 The highest decision-making body in the Junta regime was the Supreme Council,724 which included, among others, Johnny Paul Koroma as Chairman, Foday Sankoh as Deputy Chairman, Gullit, Bazzy, Bockarie, Sesay and Kallon.[725] The Trial Chamber further found that despite the change of circumstances following the 14 February 1998 ECOMOG Intervention, the leading members of the AFRC and RUF maintained the purpose to take power and control over Sierra Leone, until late April 1998.[726]

7249. para. 321: Sesay, in his Ground 24, and Kallon, in his Ground 2, both submit that the Trial Chamber erred in fact in finding that during the JCE period, senior members of the AFRC and RUF shared a common criminal purpose and acted in concert.

7250. para. 327: Contrary to Sesay's claim, the Trial Judgment is not at all silent on the acts of Johnny Paul Koroma, Eldred Collins or Gibril Massaquoi in the first months of the Junta.[750] Sesay further points to the finding that he and Kallon only attended Supreme Council meetings from August 1997 onwards.[751] However, they were nonetheless both found to have been members of this body with other senior RUF and AFRC members.[752] Moreover, Sesay travelled to Freetown to join the Junta already in the second week of June 1997.[753] The Trial Chamber did not, as asserted by Sesay, ignore the testimony of TF1-371 regarding Sesay's power to vote in the Supreme Council[754] and Sesay fails to explain how its assessment was an error. Whether the Supreme Council controlled the military[755] neither renders unreasonable the findings on the Council's membership nor the finding that it was the highest decision-making body in the Junta regime and the sole executive and legislative authority in Sierra Leone during the Junta period.[756]

7251. para. 328: It is true, as Kallon argues, that the unification of the AFRC's and RUF's military organisations led to conflicts and that orders between the two groups were not always obeyed.[757] Yet, the Trial Chamber found, members of the two groups managed together to control much of Kailahun District,[758] parts of Bo District,[759] and to set up a joint administration in Kenema Town.[760] Kallon does not challenge these findings. Similarly, he refers to the finding that the AFRC received the more senior positions in the Junta government,[761] without accounting for the finding that the appointments of RUF members to deputy positions were approved by Bockarie and Sesay as part of a proposal to integrate the RUF into the AFRC regime.[762]

7252. para. 329: Kallon also selectively refers to the findings that SAJ Musa withdrew from the JCE in February 1998 and that by September 1997 Bockarie, who had become disillusioned with the RUF's limited role in the government and feared assassination, relocated from Freetown to Kenema.[763] However, he does not mention the findings that the majority of AFRC leaders and troops elected to remain allied with the RUF when SAJ Musa broke away[764] and that Bockarie by radio communication from Kenema ensured that the AFRC/RUF cooperation continued.[765]

7253. para. 330: Kallon's reliance on the findings in paragraph 2067 of the Trial Judgment as to the consequences for the AFRC/RUF alliance of the 14 February 1998 ECOMOG intervention is similarly unavailing.[766] He disregards the findings on subsequent joint AFRC/RUF military action in and control over Kono District under the direction of, *inter alia*, Koroma, Sesay, Superman, Bazzy and Five-Five.[767] The findings on Kallon's own conduct of executing two AFRC soldiers and preventing AFRC muster parades in Kono in April 1998 are immaterial for present purposes as they formed part of the basis on which the Trial Chamber found that the JCE ended.[768] Kallon further fails to explain how the fact that the Trial Chamber was unable to ascertain with certainty the date on which the split between the AFRC and RUF occurred[769] sustain that members of the two groups were not acting in concert.

7254. para. 331: In light of the above, the Appeals Chamber is satisfied that the Trial Chamber's findings on Gbao's lack of communication with the Junta leaders and lack of intent[770] do not render unreasonable the Trial Chamber's finding that senior leaders of the AFRC and RUF acted in concert. Sesay's and Kallon's present challenges to that conclusion are dismissed.

7255. para. 1028: The Trial Chamber found that Sankoh, Bockarie, Sesay, Kallon, Superman, Eldred Collins, Mike Lamin, Isaac Mongor, Gibril Massaquoi, Gbao and other RUF Commanders were acting in concert with the AFRC, including at least Koroma, Gullit, Bazzy, Five-Five, SAJ Musa, Zagalo, Eddie Kanneh and others to hold power in Sierra Leone on or shortly after 25 May 1997.[2806] On this basis, it was satisfied that the JCE involved a plurality of persons.[2807]

7256. para. 1033: The Trial Chamber found as a general matter that "the three Accused ... and the other listed individuals were all acting in concert."[2819] Gbao does not contest this finding generally, nor does he contest that other AFRC and RUF members of the JCE were acting in concert. Rather, Gbao only contests the Trial Chamber's failure to find that *he* acted in concert with the AFRC.[2820] In particular, Gbao's arguments are centred on the Trial Chamber's failure to find that he acted in concert with the AFRC in a direct or physical manner.[2821]

7257. para. 1034: The Trial Chamber found that it must be established that the "plurality of persons acted in concert with each other."[2822] The Trial Chamber considered that "[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."[2823] The Appeals Chamber considers that these statements accurately reflect the law. However, contrary to Gbao's suggestion, the Trial Chamber did not introduce an additional element to JCE liability. The Trial Chamber properly understood the law as requiring that the accused participated in the common purpose shared by the members of the JCE.[2824] In contrast, the concept of "acting in concert" advanced by the Trial Chamber serves to clarify the required relationship between the persons said to be a plurality sharing a common purpose. This makes clear that the plurality of persons must have a common purpose, and not merely the same purpose, in the sense that persons act together in the pursuit of that purpose, creating a relationship of inter-dependence and cooperation.[2825] Alternatively, persons with identical purposes who do not share that purpose in common, as evidenced by the absence of joint action between them, do not constitute a plurality of persons having a common criminal purpose within the meaning of JCE liability. Thus, the requirement that the "plurality of persons acted in concert with each other in the implementation of a common purpose"[2826] merely clarifies and restates the first two elements of JCE liability, namely the existence of a plurality of persons sharing a common criminal purpose.

7258. para. 1035: Gbao then errs in proposing an additional legal element of concerted action to establish his participation in the JCE. To establish Gbao's liability under JCE, the Trial Chamber was not required to make findings on Gbao's concerted action with the AFRC beyond finding that his acts established his contribution to the Common Criminal Purpose. In this regard, however, the Appeals Chamber notes that the accused's "joint action" with other members of the JCE, as an *evidentiary* matter, can be relevant to assessing the accused's participation in the JCE. Simply, the character, quality and quantity of the accused's joint action with other members of the JCE may be relevant evidentiary considerations when analysing the intent and contribution of the accused relative to the common purpose of the JCE. The Appeals Chamber considers that this evaluation must be made on a case-by-case basis, but does note that the manner in which the members of the JCE interact and cooperate can take as many forms as conceived by the participants to pursue the realisation of their shared common criminal purpose. What matters is that they are all "the cog[s] in the wheel of events leading up to the result which in fact occurred."[2827] Nonetheless, the manner in and degree to which the accused and the members of the JCE interact, coordinate and mutually rely on one another's contributions can indicate whether the accused shared the common purpose and significantly contributed to realising it.[2828]

7259. para. 1036: For the reasons outlined above, the Appeals Chamber also rejects Gbao's suggestion that it was necessary for the Trial Chamber to find that he worked in concert with the AFRC, once it found that the JCE was composed of senior leaders of the AFRC and RUF and that he was a senior leader of the RUF.[2829]

c. JCE – AFRC-RUF contemplating criminal means to achieve objective

7260. para. 332: This section deals with Gbao's claim that the Trial Chamber failed to provide a reasoned opinion for its conclusion that the AFRC and RUF contemplated crimes to achieve its objective and Sesay's related claim that certain crimes could not form part of the Common Criminal Purpose because they were not found to be committed with certain intent. This analysis is confined to an interpretation of the Trial Chamber's findings, assuming that they are factually correct. Where these claims fail, the Appeals Chamber will proceed to address Gbao's and Sesay's factual challenges to the Trial Chamber's conclusion that senior members of the AFRC/RUF contemplated crimes to achieve their objective of controlling the territory of Sierra Leone.

7261. para. 333: The Trial Chamber held that the crimes charged under Counts 1 to 14 constituted the criminal means of furthering the Common Criminal Purpose.[771] The crimes to maintain power over the territory of Sierra Leone commenced "soon after the coup in May 1997."[772]

7262. para. 343: Gbao's key argument—under both Ground 8(e) and consolidated Grounds 8(g)/(h)—is that the Trial Chamber failed to provide a sufficiently reasoned opinion for its conclusion that the Common Criminal Purpose involved the commission of the crimes charged. Sesay's submission under his Ground 24 that certain crimes could not form part of the Common Criminal Purpose because the Trial Chamber found that they were not committed with the intent to take control of Sierra Leone or to terrorise and collectively punish civilians similarly turns on the Trial Chamber's own reasoning.

7263. para. 344: The fair trial requirements of the Statute include the right of the accused to a reasoned opinion by the Trial Chamber under Article 18 of the Statute and Rule 88(C) of the Rules. The Appeals Chamber finds the well-established jurisprudence of the ICTY and ICTR which interpret their identical provisions[798] persuasive as to the law in this regard.[799] As recently held by the ICTY Appeals Chamber:

> A reasoned opinion ensures that the accused can exercise his or her right of appeal and that the Appeals Chamber can carry out its statutory duty under Article 25 to review these appeals. The reasoned opinion requirement, however, relates to a

Trial Chamber's Judgment rather than to each and every submission made at trial.[800]

7264. para. 345: As a general rule, a Trial Chamber is required only to make findings on those facts which are "essential to the determination of guilt in relation to a particular Count";[801] it "is not required to articulate every step of its reasoning for each particular finding it makes"[802] nor is it "required to set out in detail why it accepted or rejected a particular testimony."[803] However, the requirements to be met by the Trial Chamber may be higher in certain cases.[804] It is "necessary for any appellant claiming an error of law because of the lack of a reasoned opinion to identify the specific issues, factual findings or arguments, which he submits the Trial Chamber omitted to address and to explain why this omission invalidated the decision."[805]

7265. para. 346: Turning to the present case, the Appeals Chamber considers at the outset that Gbao's comparison between the length of parts of the Trial Judgment and the corresponding parts of other trial judgments in different cases is unhelpful,[806] as "general observations on the length of the Trial Judgment, or of particular parts of the Trial Judgment, usually do not suffice to show an error of law because of a lack of reasoned opinion."[807]

7266. para. 347: The Appeals Chamber is not persuaded that the findings now at issue fall short of this threshold. Contrary to Gbao's claim, the Trial Chamber did not "merely state" that the Junta intended crimes to reach its objective without reference to any "explicit or implicit agreement" nor did it fail to consider whether the crimes were simply "committed in the midst of the conflict."[808] In particular, the Trial Chamber specified what the criminal means of the JCE were, and how they actually furthered the AFRC/RUF's objective of controlling the territory of Sierra Leone. The "spread of extreme fear"—that is, acts of terrorism—was intended to "subdue the civilian population in order to exercise power and control over captured territory."[809] These acts included unlawful killings, sexual violence and physical violence.[810] Collective punishments were employed to subdue the civilian population to the same end.[811] Recruitment of child soldiers served to re-enforce the AFRC/RUF military forces in order to assist in specific military operations.[812] Enslavement of civilians was perpetrated to perform farming, logistical chores or diamond mining.[813] Pillage served as compensation to satisfy the fighters and ensure their willingness to fight.[814]

7267. para. 348: Sesay submits that some of these crimes could not be part of the Common Criminal Purpose because they were not found to have been committed with intent to (i) take control over Sierra Leone;[815] or (ii) to spread terror or collectively punish.[816] His first argument fails, because the Trial Chamber found that the JCE participants, in particular Sesay,[817]

contemplated all the crimes charged under Counts 1 to 14 as the means to achieve the objective of gaining and exercising political power and control over the territory of Sierra Leone, in particular the diamond mining areas.[818] It was not required that the persons who perpetrated the crimes shared the same intent.[819] Sesay's second argument is wrong insofar as it states that the means to achieve the objective were limited to acts of terrorism and collective punishment (Counts 1 and 2).[820] As explained, the means also included the crimes charged under Counts 3 to 14. In this regard, the Appeals Chamber notes that the Trial Chamber did not explicitly find that those acts of unlawful killing (Counts 3 to 5), sexual violence (Counts 6 to 9) and physical violence (Counts 10 and 11) which did not amount to terrorism were also means to achieve the objective of controlling the territory of Sierra Leone. However, it is evident that these acts were also found to be means to that end, given the Trial Chamber's conclusion that "the crimes charged under Counts 1 to 14 were within the [JCE] and intended to further the common purpose."[821]

7268. para. 349: Gbao posits that the Trial Chamber equated JCE liability with collective responsibility because it found, without explanation, that all members of the RUF must have intended to commit the above crimes to control Sierra Leone.[822] This contention is not true.[823] The Appeals Chamber therefore need not consider Gbao's argument that the Majority's holding, made in respect of his participation in the JCE, that "resorting to arms to secure a total redemption … necessarily implies the resolve and determination to … commit the crimes" charged was insufficiently reasoned.[824]

7269. para. 350: The Appeals Chamber finds that the Trial Chamber provided a sufficiently reasoned opinion for its conclusion that the Common Criminal Purpose involved the commission of the crimes charged. Sesay's Ground 24 and Gbao's Grounds 8(e) and 8(g)/(h) are dismissed in present parts.

7270. para. 351: Sesay essentially makes four submissions to argue that the Trial Chamber erred in finding that the AFRC/RUF Common Criminal Purpose involved crimes.[825]

7271. para. 352: First, Sesay challenges three specific findings of the Trial Chamber, namely, that (i) the strategy of the Junta from its establishment was "to maintain its power over Sierra Leone and to subject the civilian population to AFRC/RUF rule by violent means;"[826] (ii) the "AFRC/RUF forces cooperated on armed operations in which crimes against civilians were committed";[827] and (iii) "these operations demonstrate that the Junta intended, through wholly disproportionate means, to suppress all opposition to their regime."[828] Sesay submits that the sources cited by the Trial Chamber in support—Exhibit 181,[829] the testimony of George Johnson, and its previous findings concerning "Operation Pay Yourself" and the re-mobilisation to Sierra

Leone of AFRC troops—constitute an insufficient basis for these findings.[830] The Appeals Chamber notes that the cited part of George Johnson's testimony does not directly sustain the entirety of the three impugned findings because it is confined to the identity of the participants in the May 1997 coup.[831] The findings regarding "Operation Pay Yourself" and the mobilisation of AFRC troops concern events following the Intervention in February 1998,[832] which took place almost nine months after the date the Trial Chamber found that the JCE came into existence.[833] As such, they also provide limited support for the impugned findings.

7272. para. 353: Notwithstanding the above, the Appeals Chamber is not satisfied that a miscarriage of justice resulted. It was still open to the Trial Chamber to arrive at the three impugned findings on the basis of the evidence as a whole. The Trial Chamber considered that Exhibit 181, the credibility of which Sesay does not challenge as such,[834] showed that the "AFRC/RUF soon began suppressing political dissent" in Freetown including torturing, killing or detaining demonstrators and journalists.[835] Also, the Trial Chamber found the existence of a "joint AFRC/RUF campaign to strengthen their 'government' through brutal suppression of perceived opposition by killing and beating civilians"[836] and a "concerted campaign against civilians" by AFRC/RUF rebels.[837] Furthermore, the vast majority of the perpetrators of the crimes found to have been committed were "AFRC/RUF" fighters.[838] Sesay's present submissions do not address these findings.[839]

7273. para. 354: Second, Sesay submits that the Trial Chamber erred in finding that the Supreme Council was involved in crimes.[840] In support, he refers to selected findings on particular law-abiding conduct of certain Supreme Council members.[841] The Appeals Chamber considers that the Trial Chamber's findings that these individuals acted legally in some respects do not necessarily render unreasonable the Trial Chamber's findings that they acted illegally in others. First, that Kallon's participation in concerted joint action between the AFRC and RUF (including his cooperation with the AFRC at Teko Barracks in Bo District) "did not directly involve the commission of crimes" is legally irrelevant to and does not detract from his contribution to the JCE, which he lent both through his involvement in the Supreme Council and through direct involvement in other crimes.[842] Second, Isaac Mongor's position in the Junta Government of being responsible for preventing looting in Freetown[843] does not contradict his membership in the Supreme Council[844] nor does it render unreasonable the inference that the Supreme Council initiated crimes.[845] Third, given that SAJ Musa was also a member of the Supreme Council,[846] it is not determinative for present purposes whether the forced mining, for which he was responsible in the Junta government,[847] commenced in August 1997.

7274. para. 355: Sesay also disputes that the Supreme Council itself was involved in crime. The Appeals Chamber notes that, while the Supreme Council "discussed … the security of the Junta; revenue generation; the resolution of conflicts between the AFRC and the RUF; and harassment of civilians,"[848] the Trial Chamber also inferred from the "widespread and systematic nature of the crimes, in particular the attacks on Bo and the forced labour in Kenema District" that such conduct "was a deliberate policy of the ARFC/RUF" that must have been "initiated by the Supreme Council."[849] Contrary to Sesay's claim,[850] the basis for that inference was sufficiently supported by evidence.[851]

7275. para. 356: Indeed, Sesay himself recognises the finding that the Supreme Council was involved in the planning and organisation of the enslavement at Tongo Fields in Kenema from August 1997. However, he argues, the only crimes committed before that point in time were the terror attacks in Bo in June 1997, and so there were no crimes on the basis of which the Trial Chamber could infer the existence of a JCE.[852] However, although the enslavement at Tongo Fields commenced in August 1997,[853] it is evident from the Trial Chamber's findings that the "planned and … systematic policy of the Junta" which devised the large scale enslavement and implemented it "pursuant to a centralised system" must have started much earlier.[854] Indeed, "[w]ithin a week of the coup of 25 May 1997, RUF rebels and the military Junta were in full control of" Kenema Town.[855] Moreover, whether or not it amounted to acts of terrorism,[856] sexual violence in Kailahun was a means to achieve the AFRC/RUF objective throughout the Junta period.[857] The fact that the victims of the forced marriages were initially captured before the Indictment period does not detract from the finding that these crimes were "for the benefit … of the Junta" throughout their continuous commission.[858]

7276. para. 357: Third, Sesay invokes parts of the testimonies of TF1-371, TF1-045 and TF1-334 to argue that the Junta was involved in anti-crime measures and good governance.[859] The Appeals Chamber recalls that evidence indicating that the members of the Junta acted within the law in some respects does not necessarily render unreasonable the Trial Chamber's findings that they acted illegally in others. The Appeals Chamber is not satisfied that the evidence Sesay invokes renders unreasonable the Trial Chamber's conclusion that the AFRC/RUF alliance involved crimes.[860] In relevant parts,[861] TF1-371 testified that Johnny Paul Koroma sought to impose decrees preventing raping, looting and harassment of civilians, but also that "obviously" not everyone obeyed them.[862] TF1-371 further stated that Koroma had some SLA soldiers executed for murder and robbery,[863] but this was in order to stop the negative international publicity resulting from the particular incident when the Iranian Embassy was looted.[864] The relevant parts of TF1-334's testimony concern the witness's knowledge of the investigation of a specific fight

between two police officers.[865] TF1-045 testified in cross-examination that two Supreme Council meetings gave "piece of advice" that commanders should control their men so as to stop harassment of civilians, which the commanders present agreed on, and that the witness heard that the Supreme Council set up nightly security patrols in Freetown to stop looting and harassment.[866] However, this hearsay evidence only refers to "piece of advice" by the Supreme Council, limits the security patrols to Freetown, and does not speak to their efficiency. As such, it does not show an error in the Trial Chamber's reliance on TF1-045's testimony-in-chief to find that the Supreme Council merely "discussed" the harassment of civilians.[867] In any event, Sesay does not address the other evidence the Trial Chamber relied on to make that finding.

7277. para. 358: For the foregoing reasons, the Appeals Chamber finds that the above parts of Sesay's Ground 24 fail to show an error in the Trial Chamber's finding that the AFRC/RUF Common Criminal Purpose involved crimes.

7278. para. 359: Turning to the errors of fact alleged by Gbao, the Appeals Chamber notes that his argument that no evidence was adduced as to the relationship between the AFRC/RUF's ultimate goal and the crimes committed is based on his erroneous position that the Trial Chamber failed to provide a sufficient reasoning regarding that relationship.[868] As such it is unfounded and dismissed. The Appeals Chamber similarly dismisses Gbao's bare assertion that the Trial Chamber failed to provide evidence in support of its finding that senior members of the AFRC and RUF intended to use violent means against the civilian population.[869] As already noted in relation to Sesay's challenge to the same finding, the Trial Chamber did not err in making this finding.[870]

d. JCE – crimes as means to achieve the objective

7279. para. 360: In this section, the Appeals Chamber will consider Sesay's related claims that the Trial Chamber erred in finding that the crimes committed were in furtherance of the Common Criminal Purpose. For each District where the Trial Chamber found crimes were committed in furtherance of the Common Criminal Purpose, Sesay submits various arguments challenging that conclusion.

i. Bo District – JCE – crimes as means to achieve the objective

7280. para. 361: The Trial Chamber found that the Common Criminal Purpose of the JCE was furthered in Bo District through (i) forced mining activity; (ii) the use by the AFRC and RUF of

the levers of State power in an attempt to destroy any support within the civilian population for the Kamajors; and (iii) attacks in June 1997 on Tikonko, Sembehun and Gerihun.[871]

7281. para. 364: The forced mining found by the Trial Chamber to have furthered the Common Criminal Purpose in Bo District consisted of the alluvial diamond mining in Kenema and Kono Districts.[879] Sesay does not dispute that this activity, once it commenced, did further the Common Criminal Purpose in Bo. His position is that it could not have done so before August 1997. However, the Trial Chamber did not find otherwise. In particular, no conviction was entered against Sesay based on these forced mining activities before August 1997.[880] On its own, the finding that diamond mining in Tongo Field in Kenema District did not commence until August 1997 does not render unreasonable the Trial Chamber's conclusion that the JCE included Kenema District from the inception of the JCE.[881] Sesay thus fails to show an error.

7282. para. 365: The Trial Chamber did not expressly link its finding regarding the AFRC/RUF's use of "the levers of State power" to any particular attempt to destroy civilian support for the Kamajors in Bo District.[882] Yet Sesay's present argument neither disputes the veracity of this finding nor does he explain how the alleged fact that it is "meaningless" constitutes an error leading to a miscarriage of justice.[883] His argument is therefore rejected.

7283. para. 366: Turning to the attacks on Tikonko, Sembehun and Gerihun in June 1997, the Appeals Chamber notes that the Trial Chamber did not explicitly find that they were planned by members of the JCE. However, the basis on which the Trial Chamber found that crimes committed during these attacks were committed in furtherance of the Common Criminal Purpose is clear from other parts of the Trial Judgment, for instance, the following finding:

> The temporal and geographic proximity of the various attacks [including those on Tikonko, Sembehun and Gerihun], 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.[884]

7284. para. 367: Although made in relation to the *chapeau* requirements of crimes against humanity, these findings are equally important to the Trial Chamber's findings regarding the JCE. Indeed, in those latter findings, it held that "the conduct of [AFRC/RUF joint] operations demonstrates that the Junta intended, through wholly disproportionate means, to suppress all opposition to their regime"[885] and that 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."[886] Moreover, "the AFRC/RUF alliance intended through the spread of extreme fear … to dominate and subdue the

civilian population in order to exercise power and control over captured territory."[887] The attacks on Tikonko, Sembehun and Gerihun in June 1997, all of which included acts intended to spread extreme fear among the civilian population, [888] fall squarely within this finding. The parts of Witness TF1-054's testimony Sesay invokes for his claim to the contrary neither support his allegation that a delegation was sent to Gerihun before the attack,[889] nor render unreasonable the Trial Chamber's reliance on other parts of TF1-054's testimony for its findings on this attack.[890]

7285. para. 368: In addition, the Trial Chamber found that Bockarie, himself a JCE member,[891] led the attack on Sembehun.[892] Sesay's assertion that Bockarie acted on his own volition in this regard is unpersuasive.[893] First, while claiming an absence of findings on Bockarie's interaction with other JCE members at this time, Sesay fails to account for the Trial Chamber's holdings that it was Bockarie who instructed Superman to move with his troops to Freetown after Sankoh's public order to unite with the AFRC after the coup[894] and that Bockarie became a member of the Supreme Council, the highest decision-making body in the Junta regime.[895] Second, Sesay refers to TF1-008's testimony that Bockarie "said that he was the one who has captured this place, that this place was under his control."[896] Simply citing this evidence, Sesay fails to show how the Trial Chamber's assessment thereof was erroneous,[897] in particular given that Bockarie when entering Sembehun "identified himself as a member of the RUF."[898] Third, the fact that Bockarie pillaged Le 800,000 in Sembehun[899] supports rather than refutes that such conduct was contemplated as a means by the JCE members to further the Common Criminal Purpose.[900] Bockarie himself being a JCE member, it is not determinative whether the money stayed with him. Lastly, because pillage (Count 14) constituted a means to further the Common Criminal Purpose notwithstanding whether it amounted to terrorism, Sesay's argument that this incident fell beyond the Common Criminal Purpose fails.

7286. para. 369: The Appeals Chamber therefore finds that Sesay's Ground 26 fails to demonstrate an error in the Trial Chamber's findings on the means employed to achieve the objective of the JCE in Bo District. Sesay's Ground 26 is dismissed in its entirety.

ii. Kenema District – JCE – crimes as means to achieve the objective

7287. para. 370: The Trial Chamber found that acts of unlawful killings, physical violence and enslavement were committed in Kenema District, some of which amounted to terror and collective punishment.[901] It found that these crimes fell within time period of the Junta and that the common plan and plurality of person remained the same.[902]

7288. para. 374: In his first argument, Sesay essentially submits that the low number of crimes committed in furtherance of the Common Criminal Purpose in **Kenema District** between 25 May 1997 and 11 August 1997 and in Kenema Town between 25 May 1997 and late January 1998 negates the existence of a JCE covering these areas.[909]

7289. para. 375: The Appeals Chamber notes that the Trial Chamber could not determine the specific dates of each crime committed in Kenema Town during the Junta period.[910] It therefore remains unclear whether Sesay is correct that a low number of crimes were committed in Kenema from the onset of the Junta on 25 May 1997 until the commencement of the forced mining activities in August 1997. However, even assuming that Sesay is correct in that regard, the Appeals Chamber is not persuaded that this renders unreasonable the Trial Chamber's finding that a JCE existed which encompassed "the territory of Sierra Leone", *i.e.* also **Kenema District**.[911] While evidence of the number of crimes committed in a certain area may be relevant to the assessment of whether a JCE existed, it is not determinative thereof. The Trial Chamber was entitled to consider, as it did, factors such as the geographic proximity of various crimes, including those in Kenema, their similar *modus operandi*[912] and their widespread and systematic nature[913] in its assessment of that question. Sesay's present submission does not challenge this assessment. In addition, the Appeals Chamber recalls that although the forced mining in Tongo Fields did not commence until August 1997,[914] it is clear from the Trial Chamber's findings that the planned and systematic policy of the Junta and the centralised system pursuant to which this large scale enslavement was implemented must have been devised much earlier.[915] Indeed, "[w]ithin a week of the coup of 25 May 1997, RUF rebels and the military Junta were in full control of" Kenema Town.[916]

7290. para. 376: The Appeals Chamber therefore finds that Sesay fails to demonstrate that no reasonable trier of fact could have found that the JCE extended to Kenema District from the onset of the Junta.

7291. para. 377: Sesay argues that "Bockarie's actions in Kenema Town" were erroneously found to be in pursuance of the Common Criminal Purpose.[917] Sesay's submission primarily concerns the period of time after early September 1997, when Bockarie left Freetown for Kenema.[918]

7292. para. 378: The Appeals Chamber notes that, contrary to Sesay's assertion,[919] the finding that Bockarie's relocation from Freetown to Kenema did not impact on the Common Criminal Purpose and that the cooperation between the leadership continued, was supported by evidence.[920] While Sesay argues that the Trial Chamber "downplayed" the evidence concerning Bockarie's

departure, in support he merely restates evidence already assessed by the Trial Chamber without explaining why such assessment was unreasonable.[921] Sesay invokes[922] evidence suggesting that Bockarie became an "outlaw," refused to take orders from Koroma[923] and, due to his dissatisfaction with the AFRC, felt that the RUF should withdraw from Freetown.[924] However, he fails to acknowledge that the same evidence also shows that the AFRC and RUF "fought together on all the battlefronts until [they] pulled out of Freetown"[925] and that the RUF remained in Freetown until February 1998.[926]

7293. para. 379: This evidence therefore does not render unreasonable the Trial Chamber's balanced conclusion that, even though Bockarie was "disillusioned with the RUF's limited role in the AFRC government" and left for Kenema, and even though "this strained the relationship between the two factions," the cooperation between the ARFC and RUF leadership continued.[927] As to Bockarie's own continued cooperation with members of the JCE, the Trial Chamber found that he was involved in the diamond mining in Tongo Field in Kenema, where the AFRC/RUF Secretariat, headed by Gullit and Sergeant Junior, reported directly to him.[928] Gullit was SAJ Musa's representative at the mines.[929] The proceeds from the diamonds, one of the AFRC/RUF regime's major sources of income, were delivered to Bockarie.[930] Sesay's challenges to these findings have been dismissed elsewhere.[931] His additional reference to temporally unspecific and vague evidence that "things were going beyond control" as a result of unequal weapons distribution between the AFRC and RUF fails to support his claim that Bockarie withdrew cooperation with the AFRC for that reason.[932]

7294. para. 380: Sesay refers to evidence that the AFRC and RUF kept separate command structures in Kenema.[933] This evidence, which was cited by the Trial Chamber in its analysis of the AFRC/RUF organisation in Kenema,[934] does not detract from the finding that the two groups collaborated in Kenema.[935] Moreover, in none of these arguments does Sesay juxtapose the evidence he invokes with the evidence the Trial Chamber relied on, or otherwise attempt to demonstrate why the Trial Chamber could not reasonably have preferred the latter evidence over that which he proffers.

7295. para. 381**:** Sesay challenges the finding that "Bockarie communicated over radio with RUF forces throughout the country and ensured that the AFRC/RUF cooperation continued."[936] Sesay's assertions that this communication was limited to the RUF and that the AFRC and RUF had separate radio systems, even if accepted, do not make it unreasonable to conclude that Bockarie, using the available channels of radio communication, ensured that the cooperation between the two groups continued. Indeed, the Trial Chamber found that Sesay, himself a member of the

Supreme Council together with leaders of the AFRC, received orders from Bockarie over the radio after Bockarie's departure.[937] Sesay further invokes evidence suggesting that Bockarie ordered the RUF not to take up ministerial positions,[938] yet fails to address the finding and evidence that both Bockarie and Sesay approved appointments of RUF members to the Junta government "as part of a proposal to integrate the RUF into the AFRC regime."[939]

7296. para. 382: Furthermore, that Bockarie ensured continued cooperation from Kenema is buttressed by the finding that the forced mining activities, which included acts of terrorism,[940] were jointly conducted and controlled by the AFRC and RUF.941 The Appeals Chamber now turns to Sesay's challenges to this finding.

7297. para. 383: Sesay submits that the AFRC and RUF operated separate forced mining operations in Tongo Field and therefore that these operations do not evidence a common criminal purpose between the two groups.[942] In support of this submission Sesay relies on the evidence given by TF1-045 and TF1-371, but, save for one exception, he either merely offers an alternative reading of this evidence without explaining why the Trial Chamber's assessment thereof was unreasonable, or ignores other evidence relied on by the Trial Chamber.

7298. para. 384: The one exception concerns the Trial Chamber's reliance on TF1-371's testimony to find that the Supreme Council decided to appoint senior members to supervise alluvial mining in Kono and Kenema.[943] Sesay argues that TF1-371 testified that Koroma, and not the Supreme Council, took this decision.[944] The Appeals Chamber notes that, while TF1-371 did testify as argued,[945] this evidence is not necessarily inconsistent with the impugned finding, because Koroma was the Chairman of the Supreme Council and significant decisions were made by himself, SAJ Musa and certain "other Honourables."[946] More importantly, the fact that Koroma made the decision in question does not detract from other evidence, for example, that the forced mining in Kenema was planned and organised in the Supreme Council,[947] on which the Trial Chamber relied to find that the RUF and the AFRC cooperated in respect of Tongo Fields.[948] Because Sesay's present argument does not address this evidence he fails to demonstrate an error.

7299. para. 385: The Appeals Chamber therefore finds that Sesay does not show an error in the Trial Chamber's findings regarding the criminal means employed to achieve the objective in Kenema District.

iii. Kailahun District – JCE – crimes as means to achieve the objective

7300. para. 386: The Trial Chamber found that the RUF sustained a widespread and systematic pattern of conduct in Kailahun which included military training, child recruitment, enslavement of civilians and sexual slavery.[949] These 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.[950]

7301. para. 387: Sesay submits that the evidence concerning Kailahun District supports that no common criminal purpose existed during the Junta period.[951] He argues that paragraph 2047 of the Trial Judgment appeared to conclude that the RUF and AFRC forces did not act jointly in Kailahun.[952] Furthermore, there was no evidence that AFRC/RUF commanders were involved in Kailahun or that any RUF member committed or used others to commit acts of terror and collective punishment there during the Junta period.[953] No additional arguments are offered, either in response or reply.

7302. para. 388: The Appeals Chamber is not persuaded by Sesay's submission. The Trial Chamber made extensive findings on RUF members and Commanders, including Superman,[954] committing acts of sexual slavery and forced marriage955 as well as enslavement[956] in Kailahun District. Whereas only the former two crimes also amounted to acts of terrorism,[957] the Appeals Chamber recalls that it was not required that the crimes constituted either such acts or collective punishment in order to fall within the Common Criminal Purpose.[958]

7303. para. 389: As to whether the AFRC and RUF acted in concert in Kailahun, the Appeals Chamber notes that the relevant part of paragraph 2047 of the Trial Judgment reads:

> 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 [than Kailahun] in the country during the period in question.

This finding by a Majority of the Trial Chamber neither affirms nor rejects that the AFRC and RUF acted jointly in Kailahun.

7304. para. 390: However, whether the leaders of the AFRC and RUF acted in concert in the specific geographical area of Kailahun District was not determinative for the Trial Chamber's conclusion that they shared a common criminal purpose which encompassed that District. Rather, what mattered for the Trial Chamber was whether the two groups acted in concert on a country-wide level:

> The widespread and systematic crimes [by the RUF in Kailahun[959]] 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.[960]

7305. para. 391: Sesay does not argue that these findings are erroneous, either in law or in fact. His submission is therefore rejected.

e. JCE – use of principal perpetrators to commit crimes

7306. para. 393: All Appellants submit that the Trial Chamber erred in concluding that they incurred JCE liability for crimes committed by persons who were found not to be members of the JCE, but who were used as "tools" by one or more JCE members to commit crimes in furtherance of the JCE. They argue that the Trial Chamber failed to make the necessary findings, or made erroneous findings, to arrive at this conclusion. Kallon additionally avers that the "tool" theory is wrong in law. The Appeals Chamber will address this preliminary legal challenge before proceeding to the remainder of the submissions.

7307. para. 394: The Trial Chamber held that to establish the liability of JCE members, the principal perpetrator of the crime need not be a member of the JCE, but may be used as a tool by one of the JCE members.[961]

7308. para. 397: At the outset, the Appeals Chamber does not consider Kallon's references to United States conspiracy law helpful because conspiracy and JCE are legally distinct concepts. Most obviously, conspiracy is an inchoate offence whereas JCE is a mode of liability. As explained by the ICTY Appeals Chamber on two occasions:

> Whilst conspiracy requires a showing that several individuals have agreed to commit a certain crime or set of crimes, a joint criminal enterprise requires, in addition to such a showing, proof that the parties to that agreement took action in furtherance of that agreement. In other words, while mere agreement is sufficient in the case of conspiracy, the liability of a member of a joint criminal enterprise will depend on the commission of criminal acts in furtherance of that enterprise.[968]

7309. para. 398: In *Brđanin*, the ICTY Appeals Chamber examined both post-World War II jurisprudence[969] and ICTY case-law[970] which it found persuasive as to the ascertainment of the contours of JCE liability in customary international law.[971] On that basis it concluded that:

> [W]hat matters in a first category JCE is not whether the person who carried out the *actus reus* of a particular crime is a member of the JCE, but whether the crime in question forms part of the common purpose. In cases where the principal perpetrator of a particular crime is not a member of the JCE, this essential requirement may be inferred from various circumstances, including the fact that the accused or any other member of the JCE closely cooperated with the principal perpetrator in order to further the common criminal purpose. In this respect, when a member of the JCE uses a person outside the JCE to carry out the *actus reus* of a crime, the fact that the person in question knows of the existence of the JCE – without it being established that he or she shares the *mens rea* necessary to become a member of the JCE – may be a factor to be taken into account when determining whether the crime forms part of the common criminal purpose.

However, this is not a *sine qua non* for imputing liability for the crime to that member of the JCE.[972]

With respect to the third category of JCE, the ICTY Appeals Chamber held:

> When the accused, or any other member of the JCE, in order to further the common criminal purpose, uses persons who, in addition to (or instead of) carrying out the *actus reus* of the crimes forming part of the common purpose, commit crimes going beyond that purpose, the accused may be found responsible for such crimes provided that he participated in the common criminal purpose with the requisite intent and that, in the circumstances of the case, (i) it was foreseeable that such a crime might be perpetrated by one or more of the persons used by him (or by any other member of the JCE) in order to carry out the *actus reus* of the crimes forming part of the common purpose; and (ii) the accused willingly took that risk – that is the accused, with the awareness that such a crime was a possible consequence of the implementation of that enterprise, decided to participate in that enterprise.[973]

7310. para. 399: The ICTY Appeals Chamber went on to find that:

> [T]o hold a member of a JCE responsible for crimes committed by non-members of the enterprise, it has to be shown that the crime can be imputed to one member of the joint criminal enterprise, and that this member – when using a principal perpetrator – acted in accordance with the common plan. The existence of this link is a matter to be assessed on a case-by-case basis.[974]

7311. para. 400: Based on the legal authorities and reasoning provided for these holdings, and considering that they have been consistently affirmed by the subsequent jurisprudence of both the ICTY and the ICTR,[975] the Appeals Chamber is satisfied that the holdings reflect customary international law at the time the crimes in the present case were committed, and on that basis endorses them. Kallon's submission that JCE liability cannot attach for crimes committed by principal perpetrators who are not proven to be members of the JCE is therefore dismissed.

7312. para. 401: Kallon fails to develop whether, and if so how, the above holdings in *Brđanin* are contrary to his position that the accused must be shown to have participated "causally" in at least one element of the *actus reus* by the principal perpetrator.[976] Although the accused's participation in the JCE need not be a *sine qua non*, without which the crimes could or would not have been committed,[977] it must at least be a significant contribution to the crimes for which the accused is to be found responsible.[978] As *Brđanin* makes clear, this standard applies also where the accused participates in the JCE by way of using non-JCE members to commit crimes in furtherance of the common purpose.[979]

7313. para. 402: Lastly, Kallon's submission that the *Brđanin* holdings are inapplicable in the present case is based on the premise that the Common Criminal Purpose found by the Trial Chamber was not inherently criminal. As that premise is erroneous, this submission fails.[980]

7314. para. 403: The Trial Chamber found there was 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 members of the JCE.[981] However, taking into account the entirety of the evidence, in particular the widespread and systematic nature of the crimes committed, it was satisfied that these individuals were used by the JCE members to commit crimes that were either within or a natural and foreseeable consequence of the implementation of the Common Criminal Purpose.[982] The Trial Chamber found that the non-JCE members who committed the crimes were sufficiently closely connected to one or more JCE members acting in furtherance of the Common Criminal Purpose that such crimes could be imputed to all members of teh JCE.[983]

7315. para. 404: In the period between 14 February 1998 and the beginning of May 1998, the Trial Chamber found that CO Rocky, Rambo RUF, AFRC Commander Savage and his deputy, Staff Sergeant Alhaji, were not members of the JCE, but that they were directly subordinate to and used by JCE members to commit crimes that were either within or a natural and foreseeable consequence of the Common Criminal Purpose.[984]

7316. para. 414: The link between the crimes of the principal perpetrators and a member of the JCE, required to impute those crimes to the latter, is a matter to be assessed on a case-by-case basis.[1018] Previous jurisprudence shows that factors indicative of such a link include, but are not limited to, evidence that the JCE member closely cooperated with the physical perpetrator or intermediary perpetrator in order to further the common criminal purpose,[1019] explicitly or implicitly requested the non-JCE member to commit such a crime or instigated, ordered, encouraged or otherwise availed himself of the non-JCE member to commit the crime.[1020] It may

also be relevant whether the crimes at issue were committed by forces under the control of JCE members,[1021] or acting in coordination with forces under the control of JCE members.[1022] The Appeals Chamber notes, then, that Kallon's claim that the link requires evidence that a JCE member had "control and influence" as to each incident and group of non-JCE members at issue[1023] does not accurately reflect the law. Similarly, Sesay is incorrect to imply that a trier of fact is prevented, as a matter of law, from taking into account the widespread or systematic nature of the crimes in inferring whether non-members of the JCE were used by the JCE members.[1024] The Appeals Chamber observes, however, that the term "widespread or systematic" as employed in this context may denote facts different from those meeting the *chapeau* requirements of crimes against humanity.

7317. para. 415: The assessment of whether the Trial Chamber failed to make the findings as alleged must be made on a reading of the Trial Judgment as a whole,[1025] and allow for the fact that the Trial Chamber was required only to make findings on those facts which are essential to the determination of guilt on a particular count.[1026] The Trial Chamber was not required to articulate every step of its reasoning for each particular finding it made.[1027] Therefore, while Sesay and Gbao are correct that the Trial Chamber had to be satisfied that all the perpetrators whose crimes were imputed to the JCE members were used by the latter in furtherance of the Common Criminal Purpose, it was not obliged to set out in detail every step of its reasoning which led it to that conclusion.[1028]

i. Bo District – JCE – use of principal perpetrators to commit crimes

7318. para. 416: Gbao alleges that the Trial Chamber provided insufficient reasons for why the principal perpetrators of the unlawful killings during the 15 June 1997 attack on Tikonko and the 26 June 1997 attack on Gerihun (Counts 1 and 3 to 5) were used by a JCE member in furtherance of the Common Criminal Purpose.[1029] Gbao argues no factual errors in the crime-base findings to which he refers.

7319. para.417: The Appeals Chamber notes that the Trial Chamber gave some indication as to how the perpetrators of the crimes during the Tikonko and Gerihun attacks were used by JCE members, by finding that they were "AFRC/RUF fighters."[1030] This finding must moreover be read together with the holdings regarding the context in which the attacks occurred. In that regard, the Trial Chamber found that "the Junta regime did not enjoy consolidated territorial power over Bo District from the outset"[1031] and that "[a]t 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.[1032] the town and its civilians." In June 1997 that attack was carried out.[1033] Shortly thereafter AFRC/RUF fighters also attacked Sembehun and Gerihun.[1034] All three attacks followed the same *modus operandi* as other attacks in terms of the crimes committed in their midst, which, the Trial Chamber reasoned, showed that they "were not isolated incidents but rather a central feature of a concerted campaign against civilians."[1035] Indeed, among the perpetrators in the Gerihun attack were the heads of the AFRC Secretariat in Bo Town, Secretary of State AF Kamara and Brigade Commander Boysie Palmer.[1036]

7320. para.418: The Appeals Chamber is satisfied that these findings provide sufficient reasoning as to how the unlawful killings in Tikonko and Gerihun fitted into the "widespread and systematic nature of the crimes" and how the perpetrators "were sufficiently closely connected" to JCE members acting in furtherance of the Common Criminal Purpose, which was the Trial Chamber's basis for imputing these crimes to one or more JCE members.[1037] Gbao's submission is therefore untenable.

ii. Kenema District – JCE - use of principal perpetrators to commit crimes

7321. para. 419: Both Sesay and Gbao submit that the Trial Chamber made insufficient findings on the links between the principal perpetrators of certain crimes in Kenema and the JCE members.[1038] In order to assess their submissions on the proper factual basis, it is necessary to first address another argument by Sesay relating to the Trial Chamber's crime-base findings regarding Kenema

7322. para. 420: Sesay argues that the finding in paragraph 1100 of the Trial Judgment created a presumption that the crimes in Kenema were committed for personal reasons rather than in pursuance of a common criminal purpose.[1039] The relevant part of paragraph 1100 reads:

> 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.

This finding is silent on the fighters' own reasons for committing crimes in Kenema Town. It only says that the permissive environment created by the AFRC and RUF there permitted them to do so with impunity. The presumption that Sesay reads into this finding is thus his own, and not one the Trial Chamber made. This argument fails.

7323. para. 421: The Appeals Chamber now turns to the alleged failures to make sufficient findings. Sesay and Gbao first submit that no link was shown between the JCE members and the persons who carried out the actus reus of the following crimes in Kenema Town: (i) the beating of TF1-122; (ii) the killing of Mr. Dowi; and (iii) the killing of an alleged Kamajor boss. TF1-122 was beaten by AFRC/RUF rebels at the Junta Secretariat in Kenema Town for having requested them to cease removing property from a woman.[1040] This incident was part of the so-called "flag trick:" It was common practice for those near the Junta Secretariat in Kenema Town to stand still during the raising and lowering of the Sierra Leonean flag; AFRC/RUF fighters would raise and lower the flag at irregular times and harass individuals who did not stand still and seise whatever property the latter were carrying.[1041] As to Mr. Dowi, he was killed by AFRC/RUF rebels when trying to prevent them from looting his freezer at his home in Kenema Town.[1042] Both crimes were found to have taken place in the context of the permissive environment created by the control exercised by the AFRC and RUF over Kenema Town wherein their fighters could commit crimes with impunity.[1043]

7324. para. 422: The fact, as noted, that this finding is silent on the perpetrators' own reasons for beating TF1-122 and killing Mr. Dowi is not determinative for whether the Trial Chamber found that they were used by the JCE members to commit these crimes in furtherance of the Common Criminal Purpose. Of greater relevance for that issue is the finding that the "control exercised" by the AFRC/RUF over Kenema Town "created" an environment which permitted the beating and the killing.[1045] That control, the Trial Chamber found, was exercised by the Junta: "Within one week of the coup of 25 May 1997, RUF rebels and the military Junta were in full control of [Kenema] town."[1046] Indeed, the beating of TF1-122 was found to have taken place while he was in custody at the Junta's own Secretariat building in Kenema Town.[1047] At the head of the Junta were most of the JCE members, who shared the intent to employ beatings and killings, such as those now at issue, as a means to control the territory of Sierra Leone, including Kenema Town.[1048] The Appeals Chamber is satisfied that these findings suffice to show how the perpetrators of the crimes in question were used by JCE members acting in furtherance of the Common Criminal Purpose.[1049] Sesay's and Gbao's submissions to the contrary fail.

7325. para. 423: The alleged Kamajor boss was killed by AFRC/RUF fighters during "Operation No Living Thing," which had been launched by the RUF and AFRC as a pre-emptive measure due to rumours of an impending Kamajor attack.[1050] "Operation No Living Thing" did not refer to a particular military campaign, but it "described a set of brutal and merciless tactics which AFRC/RUF fighters were encouraged to adopt in combat."[1051] The killing also formed part of the AFRC/RUF's "deliberate strategy to terrorise the civilian population and prevent any support for

their opponents."[1052] Seen against the background that the AFRC/RUF Junta, headed by most JCE members, controlled Kenema Town,[1053] the Appeals Chamber is satisfied that these findings suffice to explain the Trial Chamber's reasons why the killing was imputed to the JCE members. Sesay's and Gbao's claims to the contrary fail.

7326. para. 424: Next, Sesay and Gbao allege a lack of findings on the links between the JCE members and the perpetrators of the killings in Tongo Field of (i) a civilian at Lamin Street;[1054] and (ii) a Limba man.[1055] The Trial Chamber found that the killing at Lamin Street was perpetrated by AFRC/RUF fighters in a crowd of civilians publicly protesting against the fighters' raping women.[1056] It found that "the perpetrators intended to impart a clear public message that such protests would be met with violence."[1057] This conduct falls squarely within the finding that the "Junta 'government' brutally suppressed opposition", including through public executions, in order to control captured territory.[1058] These findings explain how the Trial Chamber found that the killing at Lamin Street, among others, evidenced a "systematic nature" of the crimes, which lead it to conclude that the peretrators were used by one or more JCE members acting in furtherance of the Common Criminal Purpose.[1059] Sesay's and Gbao's claims of insufficient reasoning as regards this incident fail.

7327. para. 425: The Trial Chamber found that the Limba man was killed in ***Tongo Field*** by an AFRC/RUF fighter for refusing to give him palm wine.[1060] This crime was neither related to the AFRC/RUF forced mining activities in Tongo Field nor was it committed within the "permissive environment," which was limited to Kenema Town. In fact, the Trial Chamber held that the killing was "apparently [an] isolated crime."[1061] The proposition that the perpetrator was used in furtherance of the Common Criminal Purpose is further contradicted by the finding that "Captain Yamao Kati ordered that as the fighter had used his hand to fire a gun at a civilian, the fighter should also be shot in the hand."[1062] In view of these findings, the mere fact that the perpetrator was an "AFRC/RUF fighter" is insufficient reason for imputing this killing to a JCE member. The Trial Chamber therefore erred in law in so doing. Absent a valid conclusion in this regard, the Appellants' convictions under JCE for the killing of a Limba man in Tongo Field fall. Gbao's submissions are granted insofar they relate to the killing of a Limba man in Tongo Field.

7328. para. 426: As a result, none of the Appellants could be held liable under the JCE mode of liability for crime. The Appellants' remaining challenges to the Trial Chamber's findings on the links between the perpetrators of the crimes in Kenema District and the JCE members fail.

iii. Kono District – JCE - use of principal perpetrators to commit crimes

iv. Unlawful killings – Kono District – JCE – use of principal perpetrators to commit crimes

7329. para. 429: Sesay and Gbao allege that the Trial Chamber erred in imputing to members of the JCE1069 the killings between February and March 1998 in ***Tombodu*** ordered by Savage and Staff Alhaji,1070 the six killings in Yardu (and the subsequent amputation of TF1-197),[1071] and the killings of at least 29 civilians in Penduma on orders of Staff Alhaji in April 1998.[1072] Sesay further argues that the Trial Chamber erred in fact in imputing the killings of 30 to 40 captive civilians by Rocky in Koidu in April 1998,[1073] and the killing of Sata Sesay's family in Wendedu.[1074] In addition, Gbao contends that the Trial Chamber failed to explain why it imputed the killing of Chief Sogbeh in Tombodu at sometime between February/March 1998 to the JCE members.[1075]

7330. para. 430: With regard to the unlawful killings committed or ordered by Rocky, Savage or Staff Alhaji, the Appeals Chamber is satisfied that the Trial Chamber's finding that these individuals, together with Rambo RUF, "were directly subordinate to and used by members of the [JCE]" sufficiently explains how the Trial Chamber imputed their crimes to the JCE members.[1076]

7331. para. 431: Kallon challenges this finding.[1077] However, he does not address the evidence the Trial Chamber relied on to make it.He also fails to point to any parts of the record in support for his assertion that Rocky, Rambo, Savage and Staff Alhaji were not under [1078] the control of the Appellants. For his part, Sesay argues that the crimes of Savage, Staff Alhaji and their men did not fall within the Common Criminal Purpose because the finding that the rapes, killings and amputations in Penduma in April 1998 were committed "in a bid to disempower President Kabbah and to 'topple' his 'selfish and corrupt' regime" was "insufficient" to make such a finding.[1079] However, Sesay neither explains why that finding is insufficient, nor does he attempt to support his assertion with any reference to the evidence. Due to these flaws, Kallon's and Sesay's arguments are dismissed. The Appeals Chamber now turns to the specific killing incidents.

7332. para. 432: As to the killings by Rocky, Sesay argues that they were not part of the Common Criminal Purpose because Bockarie recalled Superman, Kallon and Rocky to Buedu for punishment when he heard of them.[1080] However, the finding he relies on does not sustain his claim that Superman, Kallon and Rocky were recalled "for punishment", as the Trial Chamber only found that they were summoned.[1081] Moreover, contrary to Sesay's claim, the fact that Rambo was not happy that one of the captive civilians (TF1-015) was still alive does not refute

that the killings were committed in furtherance of the Common Criminal Purpose.[1082] To the contrary, Rocky's own admonition to the captives before the massacre suggests that it was committed in furtherance of the Common Criminal Purpose:

> 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.[1083]

In addition, the Trial Chamber found that in March 1998 members of the JCE had ordered the commission of crimes against civilians, including killings in ***Koidu Town***, to punish them for being traitors and for failing to support the Junta.[1084] Sesay points to no part of the record in support for his additional claim that Rocky acted for personal reasons or pursuant to a "localised order from Rambo," nor is that claim borne out by the Trial Chamber findings he refers to, in particular seeing as Kallon was one of the fifteen Commanders assembled after the massacre who voted that TF1-015 should be killed.[1085] This submission fails.

7333. para. 433: With respect to the killings ordered by Savage and Staff Alhaji in ***Tombodu*** between February and March 1998, Sesay submits that they were committed for twisted self-gratification independently from the AFRC/RUF, but he neither points to any evidence in support nor does he address the evidence the Trial Chamber relied on for its findings on these killings.[1086] In particular, he does not challenge the findings that the execution of about 200 civilians on Savage's orders was committed because the victims were cheering for ECOMOG troops[1087] and that the "scale and gruesome nature" of the killings in ***Tombodu*** during this period "guaranteed their notoriety, as reflected by the evidence of several witnesses that the killings were reported to and discussed by Commanders in other locations."[1088] These submissions therefore fail as well.

7334. para. 434: Regarding the six killings in Yardu, Sesay submits that TF1-197 was unable to identify the perpetrators, or even their grouping.[1089] However, in the parts of TF1-197's testimony he invokes, the witness testified that the "RUF and AFRC" amputated his hand and that "those two groups … were the only two groups that were in Kono."[1090] Consequently, in the witness's mind, the "rebels" who captured him and the other six civilians, and who killed those six civilians before proceeding to amputate his hand, belonged to the AFRC/RUF.[1091] [1092] The Trial Chamber therefore did not err in finding that the perpetrators were "AFRC/RUF rebels."Because the witness's alleged failure to identify the perpetrators is the only basis for Sesay's submission that the killings were wrongly imputed, his submission is rejected. The Appeals Chamber is further satisfied that the Trial Chamber sufficiently explained how the JCE members availed themselves of the perpetrators of the killings. It held that the killings were part of a "polic[y] that promoted

violence [and] targeted civilians"[1093] and that the "widespread commission by RUF and AFRC fighters"[1094] of unlawful killings such as the ones at issue demonstrated that the Common Criminal Purpose contemplated the commission of crimes as a means to control the territory of Sierra Leone. Sesay's and Gbao's allegations of a failure to provide a reasoned opinion in respect of this incident lack substance.

7335. para. 435: Sesay and Gbao submit that the Trial Chamber provided insufficient reasons as to why it imputed the killings of at least 29 civilians in Penduma in April 1998 to the JCE members. It is undisputed that these killings were carried out on orders of Staff Alhaji. The Appeals Chamber has already found that the Trial Chamber provided sufficient reasoning as to why Staff Alhaji's crimes were imputed to the JCE members. As Sesay and Gbao do not allege any error of fact in that reasoning, let alone with respect to the specific killings now at issue, their arguments are dismissed.

7336. para. 436: Gbao argues that the Trial Chamber failed to explain why the killing of Town Chief Sogbeh imputed to the JCE members. The Appeals Chamber notes that this crime was committed on the orders of Officer Med at the ***Tombodu*** Bridge mining site sometime in February/March 1998.[1095] Sogbeh was killed for refusing an order to mine, and the rebels warned teh civilians at the mine that the same faith awaited anyone who refused to work.[1096] Officer Med was the mining Commander at Tombodu Bridge[1097] and, as such, reported directly to Sesay.[1098] These findings show how the Trial Chamber imputed the killing to members of the JCE. Gbao's argument is dismissed.

7337. para. 437: Lastly, with respect to the killing of Sata Sesay's family, Sesay fails to explain how the alleged error in imputing this crime to the JCE led to a miscarriage of justice,[1099] seeing as the Trial Chamber did not enter a conviction under JCE for this crime.[1100] This submission is accordingly dismissed.

7338. para. 438: For these reasons, the Appeals Chamber dismisses the Appellants' submissions that the Trial Chamber erred in failing to provide sufficient reasons for its conclusion that the unlawful killings in Kono District could be imputed to the members of the JCE. The Appeals Chamber also dismisses the Appellants' submissions that the Trial Chamber erred in fact in so concluding.

v. Sexual violence – Kono District – JCE – use of principal perpetrators to commit crimes

7339. para. 439: Sesay and Gbao submit that the Trial Chamber failed to explain how it imputed to the JCE members the following crimes of sexual violence committed in **Kono District**:[1101] (i) the rapes and outrages on personal dignity in Bumpeh on or about March 1998;[1102] (ii) the rape of a woman in Tombodu by Staff Alhaji in April 1998;[1103] (iii) the rapes of TF1-127's wife and of an unknown number of women in Penduma in April 1998;[1104] (iv) the rapes and genital mutilations in Bomboafuidu;[1105] (v) the rapes of TF1-195 and of five other women in Sawao between February and April 1998;[1106] [1107] and (vi) the forcible marriage of an unknown number of women in the civilian camp at Wendedu on or about April 1998.

7340. para. 440: The Appeals Chamber notes that the Trial Chamber's finding that the rapes in Kono District "were not intended merely for personal satisfaction or [as] a means of sexual gratification for the fighter."[1108] Rather, these acts were committed "in order to break the will of the population and ensure their submission to AFRC/RUF control."[1109] The Trial Chamber further found that the rebel forces "systematically engage[ed] in sexual violence in order to demonstrate that the communities were unable to protect their on wives, daughters, mothers and sisters."[1110] It also held that "countless women of all ages were routinely" subjected to the practice of forced marriage and sexual slavery.[1111] "[T]he pattern of sexual enslavement employed by the RUF was a deliberate system."[1112] These findings are reflected in the Trial Chamber's findings on the JCE in Kono District, where it held that the "widespread commission by RUF and AFRC fighters of [*inter alia*] rapes, sexual slavery, 'forced marriages'… 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."[1113]

7341. para. 441: In other words, the AFRC/RUF leadership, which included most of the JCE members,[1114] availed themselves[1115] of their fighters to commit sexual violence, including forced marriages, in Kono District in order to achieve the objective of controlling the territory of Sierra Leone. Although not expressed in those exact terms, the Trial Chamber's reasons why it imputed these crimes to the JCE members are nonetheless clear. Sesay's and Gbao's submissions that the Trial Chamber failed to provide a reasoned opinion in this regard are therefore dismissed.

7342. para. 442: Sesay also challenges the imputation of the rapes and genital mutilations in Bomboafuidu on the basis that the perpetrators were unidentified.[1116] However, as he does not

point to the evidence to contest the Trial Chamber's finding that the perpetrators were "AFRC/RUF rebels,"[1117] his argument is rejected.

vi. Physical violence – Kono District – JCE – use of principal perpetrators to commit crimes

7343. para.4 43: Sesay and Gbao submit that the Trial Chamber provided insufficient reasoning to impute the following crimes of physical violence in Kono District to the JCE members:[1118] (i) the beating of TF1-197 on one occasion between February and March 1998 near Tombodu (including the pillaging of property from him);[1119] (ii) the act of knocking TF1-015's teeth out in the Wendedu camp;[1120] (iii) the amputation of the hands of three civilians by rebels led by Staff Alhaji in Tombodu in April 1998;[1121] (iv) the amputations of the hands of at least three men in Penduma in April 1998;[1122] (v) the amputation of the hands of five civilian men in Sawao between February and April 1998;[1123] (vi) the flogging of TF1-197 and his brother by rebels under the command of Staff Alhaji;[1124] (vii) the beating of an unknown number of civilian men with sticks and the butts of guns in Sawao between February and April 1998;[1125] and (viii) the carving of "AFRC" and/or "RUF" on the bodies of 18 civilians in Kayima between February and April 1998.[1126] Sesay also submits that the Trial Chamber erred in fact in imputing these crimes to the JCE members. The Appeals Chamber will consider each crime incident in turn and, in so doing, address the alleged errors of fact and the alleged failure to provide a reasoned opinion together.

7344. para. 444: With regard to the beating of TF1-197 between February and March 1998, Sesay submits that TF1-197's testimony that the witness was told that the leader of the rebels who beat him and pillaged[1127] items from him, named Musa, reported to Staff Alhaji is insufficient to impute this crime to the JCE members.[1128] However, Sesay does not dispute TF1-197's testimony as such, nor does he account for the finding that Staff Alhaji was "directly subordinated" to members of the JCE.[1129] For his part, Gbao refers to the finding that "[o]ne of the rebels referred to his boss as Commando," but fails to explain how this is relevant to the evidence that the rebels' leader, whether he was called "Musa" or "Commando," reported to Staff Alhaji.[1130] In addition, the Appeals Chamber notes that beatings such as the one in question were "regularly" committed by AFRC/RUF rebels in the area between February and March 1998 as part of their looting civilian property,[1131] and that "Operation Pay Yourself," ordered by Koroma in February 1998,[1132] was endorsed by Superman who was the overall Commander for Kono District.[1133] For these reasons, Sesay's submission that the Trial Chamber erred in fact in imputing this crime, as well as his and Gbao's submissions that the Trial Chamber provided insufficient reasons for so doing, are rejected.

7345. para. 445: As regards the knocking out of TF1-015's teeth, Sesay submits that the Trial Chamber found it to be "a capricious punishment instilled on [TF1-015] by Captain Banya."[1134] However, Sesay does not account for the Trial Chamber's finding that this beating took place at the Wendedu camp, to which TF1-015 had been brought by Rocky.[1135] Wendedu camp was one of many camps "established in Kono District by the RUF" in which civilians were rounded up and forced to reside.[1136] [1137] [1138] Kallon in particular was involved in organising the Wendedu camp.Given the Trial Chamber's findings on the general coercive environment in these camps, which included beatings,the Appeals Chamber finds that it was open to a reasonable trier of fact to impute Captain Banya's mistreatment of TF1-015 to the members of the JCE. Sesay's submission that the Trial Chamber erred in fact in imputing this crime, as well as his and Gbao's submissions that the Trial Chamber provided insufficient reasons for so doing, are dismissed.

7346. para. 446: Sesay argues that there is "no evidence" to support that the rebels, led by Staff Alhaji, who (i) amputated the hands of three civilians in Tombodu in April 1998; and (ii) flogged TF1-197 and his brother were used by members of the JCE.[1139] [1140] However, Sesay fails to demonstrate an error as he does not challenge the Trial Chamber's explicit finding that Staff Alhaji was "directly subordinated to and used by" JCE members to commit crimes in furtherance of the Common Criminal Purpose.That finding also sufficiently explains how the Trial Chamber imputed these crimes to the JCE members. Sesay's and Gbao's submissions therefore fail.

7347. para. 447: Sesay submits that there is "no evidence" that the perpetrators of the following crimes were used by members of the JCE: (i) the amputation of the hands of five civilian men in Sawao between February and April 1998; (ii) the beating of an unknown number of civilian men with sticks and the butts of guns in Sawao between February and April 1998; and (iii) the carving of "AFRC" and/or "RUF" on the bodies of 18 civilians in ***Kayima*** between February and April 1998.[1141] Sesay and Gbao also argue that the Trial Chamber gave insufficient reasons for imputing the amputations of the hands of at least three men in Penduma in April 1998 to the JCE members.

7348. para. 448: However, neither Sesay nor Gbao addresses the Trial Chamber's finding, made in respect of these very crimes, that "[t]he 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."[1142] With respect to the mistreatment in Sawao, Sesay also fails to acknowledge the finding that, shortly before being amputated and beaten, the victims were brought before a rebel leader in Sawao who stated: "My instructions are if you capture [civilians], kill them and leave them there."[1143]

7349. para. 449: These findings are examples of the "widespread commission" of these types of crimes, which demonstrated that the AFRC/RUF leadership contemplated the commission of crimes as a means to control the territory of Sierra Leone.[1144] Similar to the crimes of sexual violence, the Trial Chamber thus found that the JCE members availed themselves of the perpetrators to commit these crimes in furtherance of the Common Criminal Purpose. Indeed, the amputations of the three men in Penduma in April 1998 were committed by rebels led by Staff Alhaji, who was explicitly found to have been used by the JCE members in furtherance of the Common Criminal Purpose.[1145] Staff Alhaji's address to one of the victims of this incident is telling: "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."[1146] Sesay's and Gbao's submissions as to these crimes are rejected.

vii. Enslavement and pillage – Kono District – JCE – use of principal perpetrators to commit crimes

7350. para. 451: Sesay argues that the Trial Chamber provided insufficient reasoning for imputing the following crimes in Kono District to members of the JCE:[1147] (i) the enslavement, by using civilians for forced labour, between February and April 1998 (Count 13);[1148] (ii) the acts of pillage during the February/March 1998 attack on Koidu;[1149] and (iii) the looting of funds from the Tankoro bank in Koidu on or about March 1998.[1150] This submission is dismissed on the basis that Sesay fails to address any of the numerous findings on which the Trial Chamber relied to impute these crimes of enslavement[1151] and pillage[1152] to the JCE members.

viii. Burning of civilian homes (acts of terrorism) – Kono District – JCE – use of principal perpetrators to commit crimes

7351. para. 452: Sesay submits that the Trial Chamber erred in imputing to members of the JCE the burning of civilian houses in Tombodu between February and April 1998 ordered by Staff Alhaji. In support, Sesay challenges Trial Chamber's reliance on TF1-012's testimony, yet without explaining why the impugned findings are unreasonable in light of all the evidence on which the Trial Chamber relied which was not limited to TF1-012's testimony.[1154] Sesay also challenges the finding that the burning in question amounted to acts of terrorism. He refers to the Trial Chamber's finding that the burning:

> [W]as intended to punish civilians for failing to support the AFRC/RUF and to prevent civilians from remaining in these towns. 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.[1155]

While Sesay is correct that acts of terrorism and acts of collective punishment require proof of different intentions, it does not follow, as he appears to suggest, that the two cannot be established on the same evidentiary basis.[1156] Beyond that erroneous assertion, Sesay does not challenge the finding that the burning amounted to acts of terrorism. The fact that the Trial Chamber provided sufficient reasons for imputing Staff Alhaji's crimes to the JCE members has already been established.[1157] Sesay's submissions are therefore disallowed.

ix. Kailahun District – JCE - use of principal perpetrators to commit crimes

7352. para. 453: Sesay contends that the Trial Chamber failed to identify the perpetrators or the victims of the forced marriages in Kailahun, and to identify the necessary link between the direct perpetrators and the JCE members.[1158]

7353. para. 454: The Trial Chamber considered that its findings on the acts of sexual violence and forced marriage in Kono District apply also to the forced marriages in Kailahun District now at issue.[1159] Those findings, which have been set out above, clarify how the perpetrators of these crimes were used by members of the JCE.[1160] Furthermore, with respect to Kailahun District specifically, the Trial Chamber held that the "widespread and systematic pattern" of crimes such as forced marriages "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."[1161] Sesay's argument that the Trial Chamber failed to identify the link between the perpetrators of the forced marriages in Kailahun and JCE members acting in furtherance of the Common Criminal Purpose therefore fails. Given the widespread and systematic pattern of these crimes, the fact that some of the victims were unidentified, or that the perpetrators were identified only as "RUF fighters,"[1162] does not render the Trial Chamber's finding on that link unreasonable. In addition, the Appeals Chamber notes that Superman, himself a JCE member,[1163] committed one of the forced marriages in Kailahun District,[1164] and that Bockarie also had a captured "wife."[1165] Sesay's submission is therefore rejected.

7354. para. 650: As Sesay was convicted for the acts of terrorism in question under JCE 1 liability,[1641] and as the Trial Chamber found that one or more members of the JCE used the non-members who carried out the *actus reus* to commit the crime of acts of terrorism,[1642] his

arguments turn on the initial proposition that the Trial Chamber was required to find that the non-members of the JCE who carried out the *actus reus* had the specific intent for those crimes.

7355. para. 651: The Appeals Chamber notes as an initial matter that the *mens rea* of those who carry out the *actus reus* of the crime is not among the elements of JCE 1 liability as set out in *Tadić*.[1643] While "participants in a basic or systemic form of joint criminal enterprise must be shown to share the required intent of the principal perpetrators,"[1644] this holding only reinforces that the members of the JCE must share the intent to commit the crime for which they are held to be responsible under JCE 1 and JCE 2, and does not imply that non-members used by a JCE member to carry out the *actus reus* of the crime must share the intent with the members of the JCE.

7356. para. 652: Further, the Appeals Chamber agrees "that what matters in a first category JCE is not whether the person who carried out the *actus reus* of a particular crime is a member of the JCE, but whether the crime in question forms part of the common purpose."[1645] As persuasively explained by the ICTY Appeals Chamber, the persons who carry out the *actus reus* of the crime need not share the common purpose of the JCE in order for liability for their acts to attach to members of the JCE.[1646] To the contrary, the primary question for the purposes of JCE liability is whether the acts of non-members who carried out the *actus reus* of the crimes can be imputed to the members of the JCE.[1647] So long as it is established that a member of the JCE used the non-member to commit a crime within the common purpose of the JCE, there is no need to show that the non-member intended to further the common purpose of the JCE or indeed even knew of that common purpose.[1648]

7357. para. 653: For the purposes of determining the liability of JCE members for the acts of non-members who carry out the *actus reus* of the crime, the critical inquiry is not the *mens rea* of the non-member, but rather the acts and mental state of the JCE member, who uses the non-member to commit a crime within and in furtherance of the common purpose.[1649] As the *mens rea* element of JCE 1 liability relates solely to the shared intent of the members of the JCE, and as the persons who carry out the *actus reus* of the crime need not be members of the JCE, the *mens rea* of non-members who carry out the *actus reus* of the crime is not a legal element of JCE 1 liability.[1650]

7358. para. 654: The Appeals Chamber does not consider that the finding of the ICTY Appeals Chamber in *Limaj et al.*, cited by Sesay, is relevant to the present issue, as the Appeals Chamber there was concerned with the scope of the common purpose as pleaded in the indictment, a distinct issue from the present question.[1651]

7359. para. 655: Accordingly, the Appeals Chamber concludes that under JCE 1 liability, the Trial Chamber was not required to find, as an element of the liability of JCE members, that non-members who carried out the *actus reus* of the crime had the requisite *mens rea* for the crime of acts of terrorism. Rather, in addition to finding that the members of the JCE shared the intent to commit the crime and finding that the acts of the non-members who carried out the *actus reus* of the crimes could be imputed to a member of the JCE, the Trial Chamber was only required to find that the acts of the non-members satisfied the *actus reus* of the offence.

7360. para. 656: While the Trial Chamber did find that those who carried out the *actus reus* of the crime acted with the specific intent to spread terror,[1652] such a finding is only relevant as a matter of evidence to the other findings that the Trial Chamber was required to make. The Appeals Chamber finds that Trial Chamber's alleged errors with respect to the *mens rea* of the non-members who carried out the *actus reus* of the crimes,[1653] even if accepted *arguendo*, would not render those findings unreasonable. Sesay challenges related to the *mens rea* of non-members who carried out the *actus reus* of the crimes are dismissed.

7361. para. 657: Sesay further challenges the Trial Chamber's findings that Bockarie, as the perpetrator and member of the JCE, acted with the requisite *mens rea* for acts of terrorism. Sesay fails to show an error[1654] in the Trial Chamber's findings regarding the killing of the man at the NIC Building.[1655] Sesay neither explains how the Trial Chamber's finding that Bockarie acted with the requisite intent would be erroneous even if it were accepted that the victim was a Kamajor who was *hors de combat*, nor explains how Bockarie's desire to "do away with all the Kamajors"[1656] is inconsistent with or renders unreasonable the Trial Chamber's finding. This claim is therefore dismissed.

7362. para. 658: Sesay fails to establish that the Trial Chamber erred in finding that the beating of TF1-129 was committed with the specific intent to spread terror.[1657] Contrary to Sesay's claim, the Trial Chamber did not need to find a "single, all-encompassing intention" among all those who participated in the beating of TF1-129,[1658] as the Trial Chamber's findings show that it found that Sesay and Bockarie used those who carried out the beatings to commit the crime.[1659] In particular, the Appeals Chamber notes the following findings: (i) Sesay ordered his bodyguard to molest TF1-129 during his arrest;[1660] (ii) Sesay's bodyguard further injured TF1-129 when he was to be taken to the Secretariat building;[1661] (iii) Sesay instructed a small boy to guard TF1-129 and kill him if he moved;[1662] (iv) TF1-129 was beaten while being taken to Bockarie and Sesay;[1663] (v) Bockarie and Sesay ordered TF1-129 to be taken to the "dungeon", and TF1-129 was beaten on the way to and from the "dungeon".[1664]

7363. para. 659: In addition, Sesay argues that there was no evidence that he sought to publicise the beating,[1665] and that the Trial Chamber therefore erred in finding that he and Bockarie used the non- members who carried out the *actus reus* of the crimes to commit an act of terrorism.[1666] In this respect, the Appeals Chamber recalls the Trial Chamber's findings that acts of terrorism were within the Common Criminal Purpose of the JCE,[1667] and therefore that the intent to commit acts of terrorism was shared by the members of the JCE, including Sesay and Bockarie. The Trial Chamber further found that the six acts of violence in Kenema Town,[1668] including the beating of TF1-129, targeted prominent members of civil society and were publicised.[1669] The Trial Chamber accordingly reasoned that the six acts of violence 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," and therefore were committed with the specific intent to terrorise the civilian population.[1670] The Appeals Chamber also recalls the Trial Chamber's finding "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."[1671] Finally, the Trial Chamber found that Bockarie targeted alleged Kamajors on a number of occasions[1672] and publicly expressed his intent to target alleged Kamajors.[1673]

7364. para. 660: In light of the above findings, whether or not the Trial Chamber found that Sesay or others sought to publicise the beating directly, the Trial Chamber did find that TF1-129 was targeted because he was considered to be prominent[1674] and a "chief Kamajor."[1675] Sesay fails to show that no reasonable trier of fact could have concluded on that basis that he and Bockarie used the non-members who carried out the *actus reus* of the crimes to commit acts of terrorism. Sesay further argues that as TF1-129 was a suspected Kamajor ally, "an aggravated Bockarie" ordered his arrest, and therefore, any crimes committed during TF1-129's arrest were not committed with the primary intent of spreading terror.[1676] Although the Trial Chamber found that certain acts of violence did not constitute acts of terror because the acts were committed in response to conduct that aggravated the perpetrators,[1677] Sesay misinterprets that finding and ignores the evidence as a whole as relied on by the Trial Chamber, in particular the findings noted above. Accordingly, Sesay fails to establish that the Trial Chamber erred in finding that he and Bockarie acted with the specific intent to spread terror.

7365. Separate opinion – Justice Ayoola, para. 22 (p.501): I opine that the finding that in respect of crimes committed in Bo, Kenema and Kono Districts, Gbao did not share the intent of "principal perpetrators" to commit the crimes committed against civilians in furtherance of the joint criminal enterprise under the stated Counts cannot lead, reasonably, to a conclusion that he

was not a member of the JCE, unless the JCE is compartmentalized by District; contrary to the Prosecution's case. On the Indictment the JCE was not presented as a conglomeration of district-based joint common enterprises; but as a single joint criminal enterprise that was nationwide. Besides, Gbao did not need to share the intent of the '*principal perpetrators*' who, themselves, did not need to have been members of the JCE.[33] However, he needed to share the requisite intent with the other participants. This case turns, therefore, partially on the requisite intent.

7366. Separate opinion – Justice Ayoola, para. 23 (p.501-502): "*Principal perpetrators*" are the actual physical perpetrators of the crime, or those who performed the *actus reus* of the crime. As was observed by Judge Bonomy in the *Decision on Odjanics Motion Challenging Jurisdiction*: "Factual scenarios in cases before the Tribunal are rarely such that all persons involved in perpetration of the crimes pursuant to a JCE can be found to be participants in that particular JCE."[34] In this case the Trial Chamber found that "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 other conditions of liability are fulfilled."[35]

f. JCE – temporal scope

7367. para. 456: The Trial Chamber found that, after being expelled from Freetown following the 6 to 14 February 1998 ECOMOG intervention, the leading members of the AFRC and RUF maintained their Common Criminal Purpose,1166 but that a major rift occurred between the AFRC and RUF in April 1998.[1167] The rift led to the departure of the majority of the AFRC fighters from Kono, after which the Trial Chamber found the JCE ended in late April 1998.[1168]

7368. para. 461: The Appeals Chamber finds that Kallon selectively refers to the Trial Chamber's findings in support of his position that the alliance between AFRC and RUF leaders collapsed after the ECOMOG intervention. A reading of the relevant findings in context reveals a conflicting picture of the situation after the ECOMOG intervention. The Trial Chamber's findings show that, while the AFRC/RUF withdrawal from Freetown was "chaotic" and "the status of the AFRC/RUF alliance drastically changed" thereafter,[1177] the leaders of the two factions, including Superman, SAJ Musa, Bockarie and Koroma, nonetheless agreed to mount a joint attack on Koidu Town.[1178] After a failed joint attack in the second half of February 1998,[1179] AFRC/RUF forces, urged on by Sesay,[1180] managed to capture Koidu on or about 1 March 1998.[1181] The AFRC and RUF then set up an integrated command structure in Kono District under the direction of, *inter alia*, Johnny Paul Koroma, Sesay, Superman, Bazzy and Five-Five.[1182] Coupled with its findings

on the continued commission of crimes to achieve their objective,[1183] it was reasonable for the Trial Chamber to find on this basis that the leaders of the AFRC and RUF persisted in their Common Criminal Purpose after the ECOMOG intervention on 6 to 14 February 1998.[1184] The findings on the arrest of Koroma and Gullit and the dispossession of their diamonds that Kallon additionaly refers to were taken into account by the Trial Chamber for its conclusion that the JCE ended, and so do not detract from the abovementioned findings.[1185]

7369. para. 462: Kallon also challenges the finding that he participated in the continued Common Criminal Purpose on the basis that he was not involved in the plan to attack Koidu Town.[1186] By contrast, he argues, SAJ Musa, who was involved in that plan, was not found to be a JCE member in Kono.[1187] The Appeals Chamber notes that whether Kallon participated in planning the attack on Koidu is not determinative of whether he continued to participate in the JCE after the ECOMOG intervention on 6 to 14 February 1998, because the Trial Chamber found that he participated in the JCE in numerous other ways. For instance, he actively participated in the attack against Koidu Town during which civilians were killed, and he endorsed the instructions issued by Sesay and Koroma after the attack that civilians in Kono should be killed and their homes burned.[1188] By contrast, 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, and left before the AFRC/RUF forces proceeded on the Kono attack.[1189] SAJ Musa neither communicated with the joint AFRC/RUF forces nor cooperated with them in any way thereafter.[1190] Kallon does not address these findings. Kallon's present submissions regarding his participation are accordingly rejected.

7370. para. 463: Lastly, Kallon complains that the Trial Chamber failed to specify when the JCE ended and that he was erroneously convicted for crimes in Kono in "May 1998."[1191] The Trial Chamber was "unable to ascertain with certainty" the date on which the split occurred between the AFRC and RUF forces which caused the end of the JCE.[1192] However, it found that it occurred "in late April 1998."[1193] Kallon does not explain how this finding was in error. As to his own JCE liability, the Trial Chamber found that, because the JCE ended in late April 1998, "at that time no responsibility can be imputed to … Kallon … for criminal acts committed by any AFRC fighter under the mode of a [JCE]."[1194] The Trial Chamber's findings in relation to Kallon's participation in the JCE suggest that he incurred JCE liability for the crimes in Kono between 14 February and "April/May 1998."[1195] However, this phrasing is merely imprecise and does not represent an error that invalidates a verdict, because its findings elsewhere, which are discussed above, indicate that the Trial Chamber understood the date to be "late April 1998." The Appeals Chamber rejects this submission.

7371. para. 464: Sesay essentially submits that the split between the AFRC and RUF occurred, not after, but during the ECOMOG attack on their positions in Koidu town in early April 1998. However, in support he simply refers to a number of excerpts or summaries of various testimonies compiled in Annex F to his Appeal, selected parts of TF1-334's testimony, and a list of testimonies allegedly supporting that the crimes in RUF camps fell outside the JCE.[1196] He makes no mention in his Appeal of why or how no reasonable trier of fact could have relied on the evidence the Trial Chamber referenced for its findings regarding the AFRC/RUF split, let alone how any such error occasioned a miscarriage of justice.[1197] The Appeals Chamber recalls that it is for an appellant, not the Appeals Chamber, to clearly articulate the errors alleged to have been committed by the Trial Chamber. Undeveloped assertions such the one now at issue, which merely requests the Appeals Chamber to assess selected parts of the evidence *de novo,* will be summarily dismissed by the Appeals Chamber.

7372. para. 824: Kallon's argument that the Trial Chamber erred in convicting him for crimes outside the JCE's time frame[2165] is dismissed, because the Trial Chamber explicitly held that he could not incur JCE liability after the JCE ended in late April 1998.[2166] Accordingly, it held Kallon responsible under this form of liability for crimes "committed in **Kailahun District** between 25 May 1997 and April 1998."[2167] Kallon's last set of arguments do not extend beyond repetitions of claims which have been previously dismissed.[2168] For these reasons, the Appeals Chamber dismisses Kallon's Ground 15 in its entirety.

7373. para. 1106: The Prosecution's Ground 1 asserts that the Trial Chamber erred in not finding the Appellants responsible under JCE liability for crimes committed after April 1998.[3029] First, the Prosecution alleges that the Trial Chamber erred in holding that the AFRC/RUF JCE ceased to exist some time in late April 1998.[3030] The Prosecution argues that the Common Criminal Purpose continued at least until the end of February 1999.[3031] Second, the Prosecution submits that the Appellants continued to participate in the JCE throughout that period.[3032]

7374. para. 1107: The Prosecution supports its position by six main arguments, namely, that: (i) the AFRC and RUF continued to cooperate after April 1998,[3033] in particular in the lead up to,[3034] during[3035] and after[3036] the invasion of Freetown in January 1999; (ii) they continued to have common interests after April 1998, and each could only achieve their common goal to regain power and control over Sierra Leone through cooperation;[3037] (iii) the pattern of crimes committed by both AFRC and RUF forces continued to be the same after late April 1998;[3038] (iv) the Trial Chamber erred in finding that after April 1998 there was an AFRC plan to "reinstate the army" and in relying on that finding to establish the end of the JCE;[3039] (v) the Trial Chamber erred in

finding that the internal discord in AFRC/RUF relations in late April 1998 signalled the end of the JCE;[3040] and (vi) the Trial Chamber unreasonably relied on the evidence of Sesay to find that the JCE ended in late April 1998.[3041] The Prosecution also submits that the Trial Chamber erred in law in applying the elements of JCE.[3042]

7375. para. 1108: The Appeals Chamber will first consider the alleged error of law. When analysing the alleged errors of fact, the Appeals Chamber will first examine the specific challenges the Prosecution makes to the Trial Chamber's findings, and then consider the Prosecution's ultimate claim that the only reasonable conclusion open to a trier of fact was that the JCE continued until the end of February 1999.

7376. para. 1109: The Trial Chamber found that the RUF "had no control over" the AFRC forces in Freetown during the attack and did not form part of a common operation with the AFRC forces for this attack on 6 January 1999.[3043] In respect of the crimes committed in Koinadugu District, the Trial Chamber held that Superman "had no effective control" over SAJ Musa in that District[3044] and that Superman was not "under the effective control" of Bockarie or Sesay after August 1998.[3045] It also held that the RUF High Command "had no effective control" over the fighters who committed the crimes in Koinadugu and Bombali Districts.[3046]

7377. para. 1111: The Appeals Chamber concludes that the Prosecution fails to identify which elements of JCE liability the Trial Chamber erroneously applied by considering issues of command and control as part of its analysis, and further fails to establish how the Trial Chamber's alleged error invalidates the Trial Chamber's conclusion at paragraph 2075 of the Trial Judgment. The Prosecution has merely attempted to build a legal argument out of what is a question of fact.

7378. para. 1112: The Trial Chamber found that a major rift occurred between the AFRC and RUF forces after their capture of Koidu Town.[3051] Following this rift, Gullit announced that the AFRC troops would withdraw from Kono to join the AFRC Commander SAJ Musa in Koinadugu District.[3052] It found that, after the last joint operation between the RUF and AFRC attacking ECOMOG at the Sewafe Bridge in late April 1998, the common plan between the AFRC and RUF ceased to exist.[3053] Each group thereafter independently pursued separate plans.[3054] The Trial Chamber concluded that the AFRC/RUF Common Criminal Purpose ended in late April 1998.[3055] It further found that the Prosecution failed to establish 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.[3056]

7379. para. 1113: In August 1998, after the RUF's failed attempt to retake Koidu Town from ECOMOG in the Fiti-Fata mission, RUF Commander Superman departed Kono District with loyal RUF fighters and joined SAJ Musa in Koinadugu District.[3057] Although he had sporadic contact with Bockarie and Sesay from Koinadugu, the Trial Chamber found that from August 1998 Superman and his troops operated as an independent RUF faction and not in concert with the RUF High Command in Buedu.[3058]

7380. para. 1117: As a preliminary matter, it is not clear whether the Prosecution argues that the Trial Chamber erred in finding that the attack on the Sewafe Bridge occurred in late April 1998 rather than May 1998.[3070] In any event, the Prosecution merely cites certain evidence regarding the date of the attack on the Sewafe Bridge without addressing the evidence relied on by the Trial Chamber and showing how the Trial Chamber's finding was unreasonable. The Prosecution therefore fails to establish that the Trial Chamber erred.

7381. para. 1118: The Prosecution's bare submission that it was unreasonable for the Trial Chamber to conclude that "Gullit and the AFRC would have participated with the RUF in the Sewafe Bridge attack if it was events prior to that attack that were the cause of the 'rift'"[3071] fails to identify an error. The Prosecution fails to challenge the Trial Chamber's findings that after the Sewafe Bridge attack, Gullit stated that "the AFRC troops would withdraw from Kono District to join SAJ Musa in Koinadugu District" and that "[t]he split was acrimonious and Gullit decisively refused to accept Superman's attempt to re-impose cooperation…."[3072] Nor does the Prosecution challenge the Trial Chamber's findings that this rift erupted after Gullit informed the AFRC troops of how the RUF had treated him and Koroma.[3073] By failing to challenge any of these findings, the Prosecution fails to point to the Trial Chamber's specific error. Similarly, the Prosecution's submission that "the conclusion that the mistreatment of Gullit and Koroma had a dramatic divisive effect in April 1998 was not reasonably open to the Trial Chamber"[3074] is unsupported and does not address the Trial Chamber's unchallenged findings.

7382. para. 1119: The Prosecution's assertion that the radio operators were sent by Bockarie in late August 1998 to reinforce SAJ Musa's and Gullit's forces[3075] is not inconsistent with the Trial Chamber's finding that Bockarie sent the radio operators to act as informants. Indeed, none of the evidence cited by the Prosecution contradicts the Trial Chamber's finding, but only establishes that radio operators were sent to Gullit via SAJ Musa in Koinadugu in response to a request from Gullit.[3076] Moreover, the Trial Chamber found that when SAJ Musa later arrived in Major Eddie Town[3077] to join Gullit, he prohibited the RUF radio operators from using the communications equipment and ordered that any RUF who approached a radio would be killed.[3078] Accordingly,

the Prosecution fails to show that the Trial Chamber erred in finding that Bockarie sent the radio operators as informants.

7383. para. 1120: With respect to the Prosecution's claim that the Trial Chamber erred in finding that from August 1998 Superman and his fighters operated as an independent RUF force and were no longer working in concert with the RUF High Command,[3079] the Trial Chamber found that Superman decided in August 1998 to join forces with SAJ Musa following the failed Fiti-Fata mission,[3080] and that Superman further refused an order from Bockarie to report to Headquarters in Buedu.[3081] The Prosecution argues that Superman was sent by Bockarie to join SAJ Musa in Koinadugu, but merely cites evidence supporting this conclusion without addressing the evidence relied on by the Trial Chamber. In making this finding, the Trial Chamber preferred certain evidence after specifically considering and rejecting the alternative evidence that Bockarie ordered Superman to Koinadugu, reasoning that it was not credible in light of the animosity between Bockarie and Superman and Superman's subsequent refusal to cooperate with the RUF High Command.[3082] Similarly, the finding that Superman communicated with Bockarie after his arrival in Koinadugu District and informed Bockarie of the attack on Kabala was specifically considered by the Trial Chamber, which found that this communication was "sporadic".[3083] The Trial Chamber further found that Bockarie shortly after cut off all communication with Superman and forbade all RUF radio operators from contacting Superman, which finding the Prosecution does not challenge.[3084] Finally, by merely citing the evidence, the Prosecution fails to show how the Trial Chamber erred in not accepting the testimony of Witness TF1-361 that SAJ Musa and Superman consulted with Bockarie via radio concerning the training base in Koinadugu. Accordingly, the Appeals Chamber finds, Justices Kamanda and King dissenting, that the Prosecution fails to establish that no reasonable trier of fact could have found that Superman did not work in concert with the RUF High Command after August 1998, and its claim is rejected. The Appeals Chamber, Justices Kamanda and King dissenting, will therefore not further consider the Prosecution's arguments that suggest the interaction between Superman and the AFRC represented cooperation between the AFRC and RUF.

7384. para. 1121: The Trial Chamber held that, after the common plan between the AFRC and RUF ceased to exist in late April 1998, each group independently pursued separate plans.[3085] Although the AFRC and RUF cooperated occasionally thereafter, there was insufficient evidence to conclude that senior members of the two groups acted jointly.[3086]

7385. para. 1123: Contrary to the Prosecution's submission,[3089] the Trial Chamber did make findings as to the independent objectives of the RUF and AFRC at the time of the attack on

Freetown. The Trial Chamber found that the RUF planned a military operation to capture Freetown,[3090] while the AFRC "contemplated their individual plan to capture Freetown and to 'reinstate the army'."[3091] In this respect, the Appeals Chamber recalls the Trial Chamber's holding that "[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."3092 The Prosecution does not challenge this legal holding by the Trial Chamber, which the Appeals Chamber has previously found accurately reflects the law.[3093]

7386. para. 1124: The Prosecution's claim that the attempted release of Sankoh was inconsistent with the RUF and AFRC pursuing rival plans[3094] misrepresents the Trial Chamber's finding. The Trial Chamber did not find that the RUF and AFRC were pursuing rival plans, but only that they independently pursued separate plans.[3095] As the Prosecution's claim that the attempted release of Sankoh evinces loyalty to the leaders of the RUF offers an alternative interpretation of the evidence, the Appeals Chamber will take it into account when considering the Prosecution's ultimate claim that the Trial Chamber erred in not finding that the JCE continued until at least February 1999.

7387. para. 1125: The Prosecution claims that the only reasonable conclusion that could be drawn from the evidence was that the senior leaders of the RUF intended to cooperate with the AFRC to recapture Freetown.[3096] This claim fails to demonstrate an error. As the Prosecution notes, the Trial Chamber found that although there was evidence that the RUF intended to coordinate with the AFRC's movements so that the two forces together could capture Freetown, there was no evidence that this plan was ever communicated to the AFRC.[3097] The Prosecution does not challenge this finding. The Appeals Chamber concludes, Justices Kamanda and King dissenting, that the Prosecution accordingly fails to show that the Trial Chamber erred.

7388. para. 1126: The Trial Chamber found that, after the AFRC/RUF JCE ended in late April 1998,[3098] the AFRC contemplated a separate plan to "re-instate the army", which plan did not involve the RUF.[3099] SAJ Musa determined that the AFRC should attack Freetown to reinstate the AFRC as the army of Sierra Leone, and he and the AFRC troops began their advance towards Freetown in November 1998.[3100]

7389. para. 1128: The Prosecution fails to establish that the Trial Chamber erred[3102] in finding that the AFRC contemplated their individual plan to capture Freetown and to "reinstate the army."[3103] The Prosecution's argument centres on the contention that "the evidence before the Trial Chamber did not establish that any AFRC commander other than SAJ Musa had or supported this plan."[3104] The Prosecution points to the fact that the majority of the AFRC troops

elected to remain with the RUF following SAJ Musa's departure in February 1998,[3105] but fails to address the Trial Chamber's findings that Gullit left Kono to join SAJ Musa in late April 1998[3106] and later subordinated himself and his forces to SAJ Musa.[3107] While the Trial Chamber found that there were disagreements between SAJ Musa and Gullit regarding communication with the RUF during the planning and advance to Freetown,[3108] these findings do not show that Gullit, much less other AFRC commanders, did not subscribe to the plan to reinstate the army. To the contrary, the fact that the AFRC commanders remained with SAJ Musa and participated in the advance towards Freetown and the absence of any findings of disputes regarding the plan itself[3109] provide a reasonable basis for inferring that they agreed with that plan notwithstanding their disagreements regarding other matters. For these reasons, the Appeals Chamber finds, Justices Kamanda and King dissenting, that the Prosecution's claim that there was no evidence that other AFRC commanders supported SAJ Musa's plan[3110] is incorrect.

7390. para. 1129: Similarly, the evidence cited by the Prosecution[3111] does not directly or clearly support its contention, and some of the evidence cited supports the finding that SAJ Musa's plan was more widely shared.[3112] In any event, by merely citing certain evidence, the Prosecution fails to explain why it was unreasonable for the Trial Chamber to prefer other evidence.

7391. para. 1130: In addition, while the Prosecution suggests that the plan to reinstate the army derived from SAJ Musa's hostility to the RUF and was solely his plan,[3113] the Trial Chamber also found that the existence of separate and independently pursued plans was consistent with "the distrust and animosity that existed between Gullit and the RUF in May 1998…."[3114] The Prosecution does not contest this finding. The fact that the AFRC did not attempt to reinstate the army during its three-day occupation of the city of Freetown in January 1999[3115] does not establish that the AFRC's plan did not continue after SAJ Musa's death, particularly as the AFRC under Gullit continued implementing the plan by attacking Freetown.[3116] Finally, as the Trial Chamber found that the plan to "reinstate the army" was the AFRC's plan,[3117] and that in Koinadugu District the AFRC forces under SAJ Musa, the RUF forces under Superman[3118] and the STF forces under Bropleh were "three distinct factions of fighters",[3119] disagreements between SAJ Musa and Superman and the fact that the STF forces remained with Superman after SAJ Musa departed to join Gullit[3120] do not establish that members of the AFRC did not support the plan to reinstate the army.

7392. para. 1131: The Trial Chamber found that, while the AFRC and RUF initially had a functioning relationship, over time it began to sour and disagreements were frequent.[3121] The Trial

Chamber held that the AFRC/RUF JCE ended following a rift between the two groups in late April 1998.[3122]

7393. para. 1133: While the Prosecution claims that the Trial Chamber "erred in taking one particular instance of fractious relations in April 1998 as signifying the end of the JCE,"[3127] it fails to explain why, on the facts, the Trial Chamber's finding was unreasonable; indeed, it fails to reference or address the circumstances that led the Trial Chamber to that finding. By merely listing prior disagreements between the AFRC and RUF,[3128] the Prosecution neither analogises the circumstances in late April 1998 to those prior disagreements, nor rebuts the particular characteristics of the circumstances in late April 1998 upon which the Trial Chamber relied. Similarly, the lists of disagreements between SAJ Musa and the RUF and within the RUF itself[3129] are not responsive to the Trial Chamber's findings and reasoning regarding events in late April 1998. Moreover, the Appeals Chamber notes that the Trial Chamber did not rely exclusively on the fact and seriousness of the discord between the RUF and AFRC to reach its finding, as it also considered the behaviour of the two groups after April 1998.[3130]

7394. para. 1134: To the extent that the Prosecution suggests that the Trial Chamber could not, as a matter of law, find that the members of the JCE no longer shared a common purpose on the basis of the seriousness of internal discord because it had previously found a common purpose notwithstanding prior disagreements,[3131] such a suggestion must be rejected. While a trier of fact may find a shared common purpose notwithstanding internal friction between the alleged members of the JCE, it is also certainly open to a trier of fact to find that the extent of disagreement was such as to preclude the conclusion that there was a shared common purpose, or to find that the level of internal discord had grown so serious as to show that the members no longer shared a common purpose. Similarly, the Prosecution's submissions that there may be internal struggles, friction, separate motives, and diverging agendas[3132] among the members of the JCE are unresponsive to the issue, as while such factors do not necessarily preclude the finding of a shared common purpose, they are still relevant evidentiary considerations. The assessment of the effect of any disagreements or discord vis-à-vis the existence of a shared common purpose is an evidentiary matter to be made on a case-by-case basis in light of all relevant circumstances.[3133]

7395. para. 1135: The Trial Chamber relied on Sesay's testimony in part to find that (i) Bockarie doubted the veracity of Gullit's claim that SAJ Musa had died and suspected that the AFRC tried to mislead the RUF;[3134] (ii) despite his representations to Gullit, it seemed that Bockarie did not immediately order the deployment of RUF troops;[3135] and (iii) Bockarie regarded the AFRC's

failure to wait for reinforcements as evidence that Gullit had lied to him and that SAJ Musa was in fact still alive.[3136]

7396. para. 1137: The Prosecution's overly broad reference to "other evidence and … the weight of all of the other evidence and findings in the case referred to above"[3139] is vague and fails to precisely explain why no reasonable trier of fact could have accepted the challenged testimony to make the particular findings it impugns. Moreover, the Trial Chamber's findings the Prosecution highlights are not inconsistent or contradictory, as the Trial Chamber found only that Sesay's version of events was "not generally accepted."[3140] The Appeals Chamber recalls that the "Trial Chamber has the advantage of observing witnesses in person and so is better positioned than the Appeals Chamber to assess the reliability and credibility of the evidence."[3141] This submission is accordingly rejected.

7397. para. 1138: The Appeals Chamber now turns to the Prosecution's ultimate claim that the only reasonable inference from the facts as found by the Trial Chamber was that the JCE did not end in late April 1998, but continued until at least until the end of February 1999.

7398. para. 1139: The Appeals Chamber recalls that, in order for the Prosecution to mount a successful appeal against an acquittal based on errors of fact, it must show that, when account is taken of the errors of fact committed by the Trial Chamber, all reasonable doubt of the accused's guilt has been eliminated.[3142]

7399. para. 1140: The Appeals Chamber holds that in order to establish the existence of a joint criminal enterprise, it must be shown that the plurality of persons acted in concert with each other.[3143] The Appeals Chamber recalls that the concept of "acting in concert" restates and clarifies that the plurality of persons alleged to form the joint criminal enterprise must share a common criminal purpose and not simply have identical purposes.[3144] As the ICTY Appeals Chamber held in *Brđanin*, in establishing the elements of JCE liability, it must be shown that "the criminal purpose is not merely the same, but also common to all of the persons acting together within a joint criminal enterprise."[3145] Accordingly, different persons or groups may have *identical* criminal purposes yet be found not to share a *common* criminal purpose for JCE liability, for example because they did not act together or in concert to realise that criminal purpose.[3146] The Appeals Chamber considers that the existence of a shared common criminal purpose is a matter of evidence to be determined by the trier of fact on a case-by-case basis in light of the totality of the circumstances as established by the evidence.[3147]

7400. para. 1141: Factors relevant in determining whether a plurality of persons shared a common criminal purpose include, but are not limited to: the manner and degree of interaction, cooperation and communication (joint action) between those persons;[3148] the manner and degree of mutual reliance by those persons on each other's contributions to achieve criminal objectives that they could not have achieved alone;[3149] the existence of a joint decision-making structure;[3150] the degree and character of dissension; and the scope of any joint action as compared to the scope of the alleged common criminal purpose.[3151] The mere showing of some communication and cooperation is not necessarily sufficient to establish a shared common purpose. As JCE liability attaches individual criminal responsibility for the commission of crimes perpetrated by others, the trier of fact must always ensure that the evidence establishes that the persons alleged to constitute the plurality joined together to realise their common goal.[3152]

7401. para. 1142: Having considered the Prosecution's submissions as a whole, the Appeals Chamber concludes, Justices Kamanda and King dissenting, that the Prosecution fails to establish that the Trial Chamber erred in finding that the Common Criminal Purpose between the AFRC and RUF ended in late April 1998. The Trial Chamber found that after April 1998, the AFRC and RUF were independent groups not acting in concert to realise a shared common purpose, but only irregularly communicating and cooperating in their independent pursuit of similar, but separate purposes.[3153] The Prosecution constructs an alternative interpretation of the evidence and the Trial Chamber's findings to support its contention that the AFRC and RUF continued to share a common purpose following Gullit's departure from Kono District. However, the Prosecution fails to show that all doubts as to the Accused's guilt are eliminated. The Appeals Chamber finds, Justices Kamanda and King dissenting, that the Trial Chamber's interpretation of the evidence and findings were coherent and reasonable in light of the evidence as a whole, and reflect reasonable doubt as to the Accused's liability for the crimes for which they were acquitted.

7402. para. 1143: In arguing that the Trial Chamber erred in finding that the Common Criminal Purpose ended in late April 1998, the Prosecution cites the Trial Chamber's own findings to show that the AFRC and RUF continued to cooperate after April 1998.[3154] In the period prior to the attack on Freetown, the Prosecution highlights communications between AFRC leaders, particularly Gullit, and the RUF High Command and Bockarie's dispatch of four radio operators to join Gullit as reinforcements in response to Gullit's request.[3155] The Prosecution further highlights the communication between Gullit and Bockarie following SAJ Musa's death immediately prior to the invasion of Freetown, as well as the communication and cooperation between Gullit and Bockarie during and after the attack on Freetown.[3156] The Prosecution also makes numerous submissions regarding how these findings should be interpreted, particularly

noting that internal discord, power struggles and ulterior motives do not preclude a finding of a common purpose,[3157] and suggesting how the individual interests of the AFRC and RUF[3158] as well as the pattern of crimes committed[3159] support the finding that the AFRC and RUF continued to share a common purpose. Nonetheless, the Appeals Chamber finds, Justices Kamanda and King dissenting, that the Prosecution merely provides an alternative interpretation of the evidence, and fails to show that the Trial Chamber's conclusion was unreasonable.

7403. para. 1144: As an initial matter, the Appeals Chamber notes that the assessment of whether the alleged plurality was acting in concert to realise a shared common purpose is principally an evidentiary matter. The Prosecution points to a number of considerations that it suggests either support or do not disprove the existence of a shared common purpose. For example, the Prosecution notes that "a gap in communication does not require a finding that action in concert had ceased",[3160] that the rupture of the joint AFRC/RUF command structure "is not fatal to the continuation of the JCE",[3161] that "[h]armony between members of a JCE is not a legal requirement of JCE responsibility",[3162] and that "the fact that strategies may have differed does not detract from the joint commitment to the common goal."[3163] The Appeals Chamber considers, Justices Kamanda and King dissenting, that while these propositions are generally correct as a matter of law, they are largely unhelpful when assessing whether the Trial Chamber factually erred in light of the evidence as a whole. The Appeals Chamber finds, Justices Kamanda and King dissenting, that by merely pointing out that the Trial Chamber *could have found* a shared common purpose notwithstanding those factors, the Prosecution does not show that a reasonable trier of fact must have found a shared common purpose.

7404. para. 1145: Similarly, the Appeals Chamber notes that the Prosecution's submissions with respect to the parallel interests of the AFRC and RUF[3164] and the continuing pattern of crimes[3165] are not particularly probative. The Trial Chamber found that the AFRC and RUF did not act in concert and share a common purpose, notwithstanding their similar objectives.[3166] The Appeals Chamber finds, Justices Kamanda and King dissenting, that the Prosecution's reference to the similarity of their interests and the fact that each group individually continued to commit the crimes that constituted the criminal means of the prior shared criminal purpose is therefore misplaced, as those facts are consistent with the Trial Chamber's reasoning and conclusion. The Appeals Chamber finds, Justices Kamanda and King dissenting, that by pointing to those facts, the Prosecution does not address the critical issue of whether there was a shared common criminal purpose or simply similar purposes, separately and independently pursued.

7405. para. 1146: With respect to the period from April 1998 until December 1998, that is, the period from Gullit's departure to the initial stages of the eventual attack on Freetown, the findings and evidence cited by the Prosecution3167 show only minimal cooperation and communication between the RUF and AFRC. The Trial Chamber found that the interaction between the two groups was "sporadic" and "occasional" and did not establish that the leadership of both groups continued to act in concert.3168 The Appeals Chamber finds, Justices Kamanda and King dissenting, that this conclusion was reasonable, particularly when the scarce amount of cooperation during this period is contrasted with the degree of cooperation between the AFRC and RUF prior to late April 1998 and in light of the degree of discord between the leaders of the AFRC and RUF exemplified by Gullit's "acrimonious" departure from Kono. The Prosecution's argument that such discord does not preclude a finding of a shared common purpose3169 is not responsive to the critical issue, particularly as the Prosecution fails to show that the Trial Chamber erred in its factual findings regarding the degree of cooperation between the AFRC and RUF during this period. The Appeals Chamber further notes that the Prosecution fails to show any mutual reliance between the AFRC and RUF leadership during this period. The Prosecution does not show that the actions of the RUF in Kono and Kailahun Districts directly or indirectly supported the AFRC's operations in Koinadugu and Bombali Districts during this period, or *vice versa*. The Trial Chamber specifically found that after their departure from Kono, the AFRC forces no longer received arms and ammunition from Kailahun, forcing them to be self-sufficient and rely on captured supplies,3170 which the Prosecution does not challenge. In this respect, the Appeals Chamber also notes that while the Prosecution suggests that the AFRC and RUF *could* only realise their individual purposes through cooperation,3171 the critical inquiry is whether they in fact did so to the extent that they can be said to have acted in concert such that a common purpose between them is the only reasonable inference. Accordingly, the Appeals Chamber finds, Justices Kamanda and King dissenting, that the Prosecution fails to establish that all reasonable doubt as to the Accused's guilt has been eliminated.

7406. para. 1147: The Prosecution further argues that the only reasonable interpretation of the Trial Chamber's findings is that the RUF, in particular Bockarie,3172 and the AFRC, in particular Gullit,3173 intended to cooperate together during the attack on Freetown, and that the RUF and AFRC did in fact act in concert prior to, during and after the attack on Freetown.3174 In support of its interpretation, the Prosecution points to the death of SAJ Musa as removing an obstacle to cooperation between the AFRC and RUF,3175 the common interest of both groups in seizing Freetown3176 and the interdependence of the groups to realise their objectives.3177 However, again, the Appeals Chamber finds, Justices Kamanda and King dissenting, that the Prosecution

has only provided an alternative interpretation of the evidence without establishing that all reasonable doubt as to the Accused's guilt has been eliminated.

7407. para. 1148: The Trial Chamber's findings establish only that Gullit and Bockarie communicated on a few occasions prior to and during the attack,3178 and that Bockarie dispatched RUF fighters to Freetown following Gullit's request for reinforcements.3179 The Trial Chamber further found it was not clear when Bockarie dispatched those forces,3180 that it was not clear whether the RUF forces were willing to support the AFRC's retreat3181 and, in any event, the RUF forces did not enter Freetown and only met the AFRC forces after their retreat to Waterloo.3182 While the Prosecution argues that the communication between Bockarie and Gullit, together with other considerations, supports the inference that the AFRC and RUF shared a common purpose,3183 the Trial Chamber interpreted the evidence as showing that the RUF and AFRC continued to act independently.3184 In particular, the Trial Chamber noted that (i) the RUF plans to attack Freetown were not communicated to the AFRC;3185 (ii) Bockarie distrusted Gullit's claim that SAJ Musa had died;3186 (iii) Bockarie did not send the RUF troops until after the AFRC had entered Freetown;3187 (iv) Gullit did not again contact Bockarie for assistance after his arrival in Freetown until the AFRC was encircled by ECOMOG forces;3188 (v) Bockarie and Gullit continued to be in conflict;3189 and (vi) Bockarie publicly overstated his actual role in the Freetown attack.3190 Accordingly, the Trial Chamber was not satisfied that the Prosecution proved beyond reasonable doubt that the leaders of the AFRC and RUF were acting in concert to realise a shared common purpose.3191 In light of these findings and reasoning, the Appeals Chamber finds, Justices Kamanda and King dissenting, that the Prosecution's alternative inferences and interpretations fail to establish that all reasonable doubt as to the Accused's guilt has been eliminated.

7408. para. 1149: Therefore, the Appeals Chamber concludes, Justices Kamanda and King dissenting, that the Prosecution fails to show that the Trial Chamber erred in finding that the Common Criminal Purpose of the AFRC/RUF JCE ended in late April 1998. For that reason, the Appeals Chamber, Justices Kamanda and King dissenting, finds that it need not consider the Prosecution's claims regarding the Appellants' liability pursuant to JCE after that date.

7409. Dissents – Justice Kamanda and Justice King, para. 3 (p. 485): The Trial Chamber found that the common plan between the AFRC and the RUF ceased to exist from late April 1998, when a rift between the two forces erupted. In this regard it stated:

> 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. Gullit declared that the AFRC troops would withdraw from Kono District to join SAJ Musa in Koinadugu District. 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.6

It should be noted here that Gullit aka Alex Tamba Brima, Johnny Paul Koroma aka JPK and Bazzy aka Bazzy Kamara were Commanders in the AFRC. Bockarie aka Mosquito was a Commander in the RUF. The Trial Chamber found that in August 1998, Bockarie modified the RUF radio codes to prevent Superman from monitoring radio transmissions and forbade radio operators from contacting Superman.7 It also found that, in Koinadugu District from August 1998, Superman and those fighters under his command operated as an independent RUF faction.8

7410. Dissents – Justice Kamanda and Justice King, para. 4 (p. 485-486): The above factual findings are at the core of the Trial Chamber's finding that the so-called rift in late 1998 was fatal to the JCE. We opine that, as the Prosecution correctly submitted, no reasonable trier of fact could have found that such instance of a fractious relationship occurring in April 1998 signified the end of the JCE.9 Sesay and Kallon submit that the Trial Chamber did not attribute the rift between AFRC and RUF to the ill treatment of Koroma and Gullit, but to a relatively protracted and prolonged process involving a number of causative factors.10 The submission is unfounded, misguided and not supported by the evidence. In our opinion, such finding - based on the sole evidence of one insider witness given before another Trial Chamber in a previous case11 - could not be regarded by a reasonable trier of fact as conclusive of the termination of the JCE.

7411. Dissents – Justice Kamanda and Justice King, para. 5 (p. 486): *A fortiori,* the Trial Chamber's findings establish that internal friction was an ongoing feature of relations between the AFRC/RUF and within the RUF itself, even during the period within which the Trial Chamber found the JCE existed.12 For instance, it found that "while the two groups initially had a functioning relationship, over time it began to sour and disagreements between the AFRC and RUF were frequent. 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 and the discord was such that he feared that attempts would be made on his life."13

7412. Dissents – Justice Kamanda and Justice King, para. 6 (p. 486): Notwithstanding the disputes that arose in April 1998, the Trial Chamber found that the AFRC and the RUF continued to interact and communicate. It found further that sometime after April 1998, "in one radio communication between Gullit and Sesay, Gullit told Sesay to have confidence in him and insisted

that they needed to cooperate. 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."14 The evidence cited shows that the so-called rift which erupted in April 1998 did not prevent the AFRC/RUF acting in concert in furtherance of their Common Purpose, after April 1998. We, therefore, find that the Trial Chamber erred in fact by giving undue weight to the alleged rift and failing to evaluate the entirety of the evidence which proves that the RUF and AFRC continued their JCE despite the rift.

7413. Dissents – Justice Kamanda and Justice King, para. 7 (p. 487): The Trial Chamber found that after the last combat operation between the RUF and AFRC when they jointly attacked ECOMOG at Sewafe Bridge in late April 1998, the common plan between the AFRC and RUF ceased to exist and that "each group thereafter had its own separate plan."15 It found that the AFRC's plan, hatched by SAJ Musa, was to launch an attack on Freetown for the purpose of reinstating the AFRC as the army of Sierra Leone,16 which plan according to the Trial Chamber, did not involve the RUF.17

7414. Dissents – Justice Kamanda and Justice King, para. 8 (p. 487): We consider that no reasonable trier of fact could have come to the conclusion that because SAJ Musa planned to "reinstate the army," that was evidence of termination of the Common Purpose between the AFRC and the RUF. On the contrary, the plan to reinstate the army is poignant evidence of the Common Purpose to take over the Sierra Leone Government. We say this for the simple reason that the mandate to create, let alone reinstate, the country's army belongs to the legitimate Government of Sierra Leone and no one else. In any event, assuming that SAJ Musa's plan was shared by other AFRC commanders, that is no reason to hold that the common purpose between the AFRC and the RUF ceased to exist. In fact, SAJ Musa's plan is clear proof of an act which was to be done in furtherance of the Common Purpose to regain power and control over the territory of Sierra Leone, through the commission of crimes within the Statute.

7415. Dissents – Justice Kamanda and Justice King, para. 9 (p. 487): The Trial Chamber had found that the JCE between the AFRC and the RUF originated after the *coup d'etat* by the Sierra Leone Army on 27 May 1997, following which, coup leaders of the then recently formed AFRC contacted leaders of the RUF to arrange a joint 'government.' The Trial Chamber further found that following the ECOMOG intervention of 14 February 1998 and "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."18

7416. Dissents – Justice Kamanda and Justice King, para. 10 (p. 488): The Trial Chamber posited that "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."19 However, in the instant case, there is strong evidence of AFRC/RUF concerted action to achieve their common objective in furtherance of their Joint Criminal Enterprise. After Gullit and his troops departed from Kono District in late April 1998, they travelled to Kurubola in Koinadugu District. SAJ Musa advised Gullit to establish an AFRC defensive base in Bombali District. Gullit accordingly led his group of AFRC fighters from Mansofinia across Bombali District to Rosos. **"**A small number of RUF fighters also formed part of the group and were subordinate to Gullit's command."20

7417. Dissents – Justice Kamanda and Justice King, para. 11 (p. 488): This concerted action of the AFRC/RUF continued unabated as can be seen from the following finding of the Trial Chamber:

> The AFRC troops under Gullit's command committed numerous atrocities against civilians in their destructive march across Bombali District. Villages near Bunbuna and the border of Bombali and Koinadugu Districts were razed by fire; 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. Upon arrival at Rosos, Gullit declared that no civilians were to be permitted within 15 miles of the camp and that any civilians captured nearby was to be executed.21

Although a rift erupted between certain commanders of both factions in late April 1998, such storm in a teacup does not detract from the compelling evidence, accepted by the Trial Chamber, that the two forces continued to communicate and to cooperate in furtherance of the shared common purpose. We opine that the decisive question as to whether the JCE continued after April 1998 in spite of the acknowledged RUF/AFRC peevishness is: Did the RUF and AFRC continue to work cooperatively in furtherance of the common purpose in spite of the fractiousness? There is, clearly, abundant evidence, referred to above, to merit an answer in the affirmative.

7418. Dissents – Justice Kamanda and Justice King, para. 12 (p. 488-489): We, therefore, do not agree with our learned colleagues in the Appeals Chamber who consider "reasonable" the Trial Chamber's finding that, from April 1998 until December 1998, the interaction between the two groups was "sporadic" and "occasional" and did not establish that the leadership of both groups continued to act in concert.22 The Trial Judgment makes it clear that the only period when the absence of cooperation and communication between the two forces may be regarded as significant

spanned from the time Gullit and his forces departed from Kono in late April/May 1998 until the time they reached Rosos sometime in July or August 1998.23 Yet, even at that time, the Trial Chamber found that during the march from Mansofinia to Rosos, Gullit's radio operator was captured and the microphone for their radio was lost, as a result of which "Gullit's group was . . . not in direct communication with SAJ Musa or the RUF High Command until they reached Rosos sometime in July or August 1998."24

7419. Dissents – Justice Kamanda and Justice King, para. 13 (p. 489): The Trial Chamber further stated that "[a]t about this time, Gullit also communicated with Sesay and Kallon on the radio."25 These findings lead to the only reasonable conclusion that, even during the period when the tension between the two forces was at its peak – from the AFRC's departure from Kono and their march from Mansofinia to Rosos – the AFRC forces still intended to communicate and did communicate with the RUF as soon as the logistics so permitted. Furthermore, when Gullit's troops abandoned Rosos, due to bombardments by ECOMOG forces, they proceeded to Major Eddie Town, where Gullit communicated with AFRC and RUF Commanders.26

7420. Dissents – Justice Kamanda and Justice King, para. 14 (p. 489-490): The Trial Chamber found that in late August 1998, at the joint training base in Koinadugu, Bockarie ordered that a group of four radio operators be dispatched from Kono to join Gullit's fighting force as informants, in order to ensure that the RUF High Command was apprised of Gullit's movements and intentions.27 Addressing the Prosecution's submission challenging the Trial Chamber's finding that the radio operators were only sent as "informants" rather than to reinforce the RUF/AFRC fighting forces in Rosos,28 the Majority considered that "the Prosecution's assertion . . . is not inconsistent with the Trial Chamber's finding that Bockarie sent the radio operators to act as informants."29 The Majority stated that "none of the evidence cited by the Prosecution contradicts the Trial Chamber's finding, but only establishes that radio operators were sent to Gullit via SAJ Musa in Koinadugu in response to a request from Gullit."30 Even if, *arguendo,* it is accepted that the radio operators were sent as informants only, and not as reinforcements, is that not direct and conclusive evidence that those Commanders of the AFRC and RUF were working in concert in furtherance of their common purpose as at late August 1998?

7421. Dissents – Justice Kamanda and Justice King, para. 15 (p. 490): With respect, the Majority unwittingly glosses over the issue by merely stating that the Prosecution's submission does not contradict the Trial Chamber's finding that radio operators were sent as informants. The critical issue is whether the JCE was being continued by sending radio operators with the aim of ensuring that the AFRC/RUF's forces in Rosos would ultimately be reinforced. The evidence relied on by

the Trial Chamber supports this view.31 The impugned Trial Chamber's finding is, in any event, evidence which confirms interactions between Gullit's troops and RUF High Command up to the time SAJ Musa arrived at Major Edie Town.32

7422. Dissents – Justice Kamanda and Justice King, para. 16 (p. 490): The Trial Chamber's findings further reveal some more significant interaction and cooperation between AFRC and RUF High Commands during the attack on Freetown on 6 January 1999. The evidence discloses that in the heat of the Freetown attack and during the retreat from Freetown, Gullit (AFRC) was in regular contact with Bockarie (RUF), informing the latter of the advance of his troops and requesting RUF reinforcement which Bockarie agreed to send from Makeni.33 The Trial Chamber found that Bockarie agreed to send reinforcements;34 that he made a public announcement on Radio France Internationale, in the afternoon of 6 January 1999, that Gullit's troops had captured Freetown and would continue to defend it.35 Further, that Bockarie and Gullit "arranged that AFRC fighters would meet the RUF reinforcements at a factory near Wellington."36 The Trial Chamber highlighted Bockarie's order that strategic positions, including Government buildings, be burned37 and also the advice from Bockarie to Gullit that if ECOMOG forced them to retreat further, the troops should burn the central part of Freetown.38

7423. Dissents – Justice Kamanda and Justice King, para. 17 (p. 490-491): Many instances of nauseating and barbaric atrocities committed by the RUF and AFRC Forces during their retreat from Freetown in January 1999 are catalogued in the Trial Chamber's findings. Understandably, we will refer to the bare minimum: "According to witness George Johnson, AFRC Commander Five-Five [Santigie Borbor Kanu] issued an order to commit 200 civilian amputations and to send the amputees to the Government. 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. 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."39

7424. Dissents – Justice Kamanda and Justice King, para. 19 (p. 491): State House did not escape the carnage. The Trial Chamber found that "approximately 30 persons were killed by the rebels at State House. On January 6, 1999, the rebels took women to State House where they were raped. Each of the senior Commanders and many of the troops had captured women at their disposal."41 We will cite one more instance of this sickening and sordid episode: "TF1-093, a former RUF fighter, had been living with her brother and her child in Freetown since 1998. On January 6 1999, TF1-093's brother was shot and killed . . . [A] named Commander, who

recognised her . . . 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. TF1-093 and the fighters under her command burned houses and killed and raped civilians . . . They killed more than 20 people, not including those that were caught inside burning houses."42 We opine that these findings would lead a reasonable trier of fact to conclude that Bockarie (RUF) and Gullit (AFRC) continued to act in concert in January 1999 and that the RUF and AFRC shared the common purpose to regain power in Sierra Leone through the commission of crimes within the Statute.

7425. Dissents – Justice Kamanda and Justice King, para. 20 (p. 491-492): Finally, the Trial Chamber found that "after the retreat 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."43 It is therefore, quite clear to us, that having regard to all the evidence to which we have referred, the only reasonable conclusion is that the two forces continued to share the same Common Purpose.

7426. Dissents – Justice Kamanda and Justice King, para. 21 (p. 492): The Prosecution listed the Trial Chamber's findings regarding the attack on the civilian population and the crimes of burning, looting, forced recruitment and forced labour44 and submitted that the pattern of atrocities committed by the AFRC and RUF in obedience to Bockarie's order show that "it was intended that the means used to achieve the goals of capturing Freetown and controlling the seat of power continued to include the same criminal means."45 The Majority found the Prosecution's submissions on the continuing pattern of crimes "not particularly probative"46 and that the Prosecution's reference to "the fact that each group individually continued to commit the crime that constituted the criminal means of the prior shared criminal purpose" is "misplaced, as those facts are consistent with the Trial Chamber's reasoning and conclusion."47 We beg to disagree.

7427. Dissents – Justice Kamanda and Justice King, para. 22 (p. 492): It is quite clear to us - and it makes good sense - that the Prosecution's reference to the continued pattern of crimes is most relevant in assessing whether a common purpose continued to exist between the AFRC and the RUF after April, 1998. In determining whether a common purpose continued to exist after the ECOMOG Intervention of 14 February 1998, the Trial Chamber found "that the common purpose and the means contemplated within remained the same as they were, as there was no fundamental change".48 We endorse this finding.

7428. Dissents – Justice Kamanda and Justice King, para. 23 (p. 492-493): In assessing whether the AFRC/RUF directed a widespread or systematic attack against the civilian population within the meaning of Article 2 of the Statute, the Trial Chamber found the attack on the civilian

population from February 1998 until the end of January 2000 involved a series of large-scale concerted military actions undertaken by the AFRC/RUF forces in multiple locations throughout Sierra Leone. Further, it found that 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.49

7429. Dissents – Justice Kamanda and Justice King, para. 24 (p. 493): The Trial Chamber also found that: "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."50 It further found "that 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."51 The Trial Chamber was satisfied "that the widespread violence against civilians was organised. The evidence contains multiple examples of operations staged by AFRC/RUF forces pursuant to preconceived plans or policies which were given particular names and directed at specific objectives … 'Operation Pay Yourself' ... was instituted by AFRC/RUF Commanders who, unable to pay their troops encouraged the looting of civilian property. The Fiti-Fata mission in August 1998 and the RUF attack to recapture Kono District in December 1998 saw numerous atrocities committed against civilians."52

7430. Dissents – Justice Kamanda and Justice King, para. 25 (p. 493): We list these findings for the simple reason that it follows, logically and conclusively, that the Trial Chamber's findings made in respect of the *chapeau* requirements of crimes against humanity are equally important and relevant to the Trial Chamber's findings regarding the JCE. The Appeals Chamber is also of the view that the widespread and systematic nature of various crimes is a relevant factor in the determination of whether a JCE exists.53

7431. Dissents – Justice Kamanda and Justice King, para. 26 (p.4 93): Therefore, we opine that having regard to the crimes committed by the AFRC and the RUF after late April 1998 throughout Sierra Leone, taking into account the *modus operandi* of the various attacks against the civilian population, and noting the widespread and systematic nature of those attacks, all these factors point, like a gun, in one direction and one direction only: that the criminal means of the Common Purpose that the Trial Chamber found to exist from May 1997 to late April 1998 continued until February, 1999, at the least. In the circumstances, we find that the only conclusion open to a reasonable trier of fact is that the AFRC and the RUF after April 1998, continued to contemplate the commission of crimes within the Statute for the purpose of achieving their common plan to

regain power and control over the territory of Sierra Leone, in particular the diamond mining areas.

7432. Dissents – Justice Kamanda and Justice King, para. 27 (p. 494): In the light of the above considerations, we find that a reasonable trier of fact would have concluded that the AFRC/RUF Joint Criminal Enterprise which the Trial Chamber found to have existed from May 1997 to late April 1998, when the Trial Chamber held it ceased to exist, did in fact continue to exist until at least February 1999, during which period the AFRC and RUF shared a common purpose which contemplated the commission of crimes within the Statute. We, therefore, grant the Prosecution's First Ground of Appeal.

g. JCE – categories of JCE and *mens rea*

7433. para. 467: The Trial Chamber found that "the crimes charged under Counts 1 to 14 were within the [JCE] and intended by the participants to further the common purpose."1199 As previously noted, the Common Criminal Purpose found by the Trial Chamber consisted of the non-criminal objective to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas, and the crimes as charged under Counts 1 to 14 as means of achieving that objective.1200 It further held that mid- and low-level RUF and AFRC Commanders and rank-and-file fighters were used by JCE members 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."1201 The Trial Chamber held that it would not consider the Appellant's liability pursuant to JCE 2.1202

7434. para. 468: The Trial Chamber concluded that Kallon "shared with the other participants in the [JCE] the requisite intent to commit" the crimes in Bo, Kenema, Kono and Kailahun Districts.1203 In terms of Gbao's *mens rea*, the Trial Chamber found that he did not intend the crimes committed in Bo, Kenema and Kono Districts as a means of achieving the Common Criminal Purpose.1204 Instead, the Trial Chamber found that Gbao knew that the crimes in these Districts were being committed by RUF fighters, continued to pursue the Common Criminal Purpose of the joint criminal enterprise,1205 and "willingly took the risk that the crimes charged and proved … might be committed by other members of the joint criminal enterprise or persons under their control."1206 The Trial Chamber found that Gbao shared with the other JCE members the intent to commit the crimes in Kailahun District.1207

7435. para. 474: The *actus reus* is essentially common to all three categories of JCE.1231 What primarily distinguishes them from each other is the *mens rea* required.1232 As found by the ICTY Appeals Chamber in *Tadić*:1233

> With regard to the first category, what is required is the intent to perpetrate a certain crime (this being the shared intent on the part of all co-perpetrators). ["JCE 1"] With regard to the second category (which … is really a variant of the first), personal knowledge of the system of ill-treatment is required (whether proved by express testimony or a matter of reasonable inference from the accused's position of authority), as well as the intent to further this common concerted system of ill-treatment. ["JCE 2"] With regard to the third category, what is required is the *intention* to participate in and further the criminal activity or the criminal purpose of a group and to contribute to the joint criminal enterprise or in any event to the commission of a crime by the group. In addition, responsibility for a crime other than the one agreed upon in the common plan arises only if, under the circumstances of the case, (i) it was *foreseeable* that such a crime might be perpetrated by one or other members of the group and (ii) the accused *willingly took that risk*.1234 ["JCE 3"]

7436. para. 475: At issue here are primarily the *mens rea* elements for JCE 1 and JCE 3. Under JCE 1, also known as the "basic" form of JCE, liability attaches where the accused intended the commission of the crime in question and intended to participate in a common plan aimed at its commission.1235 In other words, JCE 1 liability attaches to crimes within the common criminal purpose.1236 By contrast, JCE 3 liability attaches to crimes which are *not* part of the common criminal purpose.1237 That is why it is often referred to as the "extended" form of JCE.1238 However, before an accused person can incur JCE 3 liability, he must be shown to have possessed "the *intention* to participate in and further the criminal activity or the criminal purpose of a group."1239 Therefore, both JCE 1 and JCE 3 require the existence of a common criminal purpose which must be shared by the members of the JCE, including in particular the accused.1240 Where that initial requirement is met, JCE 3 liability can attach to crimes outside the common criminal purpose committed by members of the JCE or by non-JCE perpetrators used by members of the JCE if it was reasonably foreseeable to the accused that a crime outside the common criminal purpose might be perpetrated by other members of the group in the execution of the common criminal purpose and that the accused willingly took that risk *(dolus eventualis).*1241

7437. para. 476: The Appeals Chamber is not persuaded by Kallon's submissions that the Trial Chamber failed to find whether JCE 1 or JCE 3 liability applied in respect of the crimes and that it instead made its finding in the alternative, that crimes were either within or a foreseeable consequence of the JCE.1242

7438. para. 477: The question of which category of JCE applies depends first and foremost on the particular *mens rea* of the accused. Before turning to the Appellants' *mens rea*, the Trial Chamber found that non-JCE perpetrators were used by JCE members 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."1243 Whether this alternative finding was in error is of no consequence because on the critical question of whether *Kallon* possessed the *mens rea* required for either of the JCE categories the Trial Chamber's findings are unequivocal. In particular, it found that Kallon intended all the crimes for which he incurred JCE liability, thereby finding him liable under JCE 1.1244

7439. para. 478: Kallon's additional argument that the Trial Chamber erroneously convicted him under JCE 2 is also without merit.1245 He references only two findings in support, which state that after "Operation Pay Yourself was announced "looting was a systemic feature of AFRC and RUF operations"1246 and that criminal conduct was initiated pursuant to a "deliberate policy" by the Supreme Council.1247 These two findings are wholly insufficient to show that the Trial Chamber departed from its express holding that it would not consider the Appellants' liability under JCE 2.1248

7440. para. 480: Justices Winter and Fisher dissent from the Majority's holdings in relation to Gbao's sub-grounds 8(j) and 8(k).

7441. para. 481: In answering this question, it is pertinent to recall that apart from Ground 8, Gbao filed a further 19 so-called "sub-grounds," 8(a) to 8(s), of which sub-grounds 8(j) and 8(k) that we are now considering, are a part.

Ground 8 reads: *The Majority of the Trial Chamber erred in law and in fact in finding the existence of a Joint Criminal Enterprise and in finding Gbao a member of the Joint Criminal Enterprise.*

Sub-grounds 8(j) and (k) read:

8(j): The Majority of the Trial Chamber erred in fact by finding Gbao individually criminally responsible using the mens rea standard under the extended form in attributing individual responsibility.

8(k): Gbao did not share the intent with other members of the Joint Criminal Enterprise in Bo, Kenema and Kono.

The three purported grounds are obviously vague, disjointed, imprecise and unclear. They do not fulfil the minimum and basic requirements of pleading Grounds of Appeal which the Appeals Chamber has highlighted, inter alia, in paragraphs 31 and 32 supra. The appellant has not provided any details of the alleged error of law and/or of fact and has not even attempted to state how the alleged error of fact occasioned a miscarriage of justice. The Appeals Chamber would be fully justified in summarily dismissing the grounds were it not for the fact that it is opportune for the Chamber to adumbrate on the developing concept of Joint Criminal Enterprise liability in International Humanitarian Law.

7442. para. 482: In support of Ground 8(j) Gbao states in paragraph 144 of his Appeal Brief: "The Majority of the Trial Chamber erred in fact by finding Gbao individually criminally responsible as a member of the joint criminal enterprise by using the extended JCE *mens rea* against him in Bo, Kenema and Kono Districts when all crimes found to be part of the JCE were found to have been committed pursuant to the first form of JCE." He cites paragraph 1985 of the Trial Judgement in support. A perusal of the whole paragraph shows that the Trial Chamber made no such finding. Paragraph 1985 states:

> 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 the 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 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.

Nowhere in that paragraph did the Majority of the Trial Chamber make the finding alleged by Gbao. It is not proper for Gbao to put words into the mouth of the Trial Chamber for the apparent purpose of manufacturing a case that bears no semblance to reality. The Ground is without merit and the Appeals Chamber, Justices Winter and Fisher dissenting, dismisses it in this short shrift.

7443. para. 483: However, taking the opportunity to adumbrate on JCE, the Appeals Chamber recalls that it has held that pleading the basic and extended forms of JCE in the alternative is now a well-established practice of International criminal tribunals.1249 In the basic and systemic categories of JCE, all members of the JCE may be found criminally liable for all crimes committed that fall within the common design. The extended form of JCE involves criminal acts that fall outside the common design. An Accused who intends to participate in a common design

may be found guilty of acts outside that design if such acts are a "natural and foreseeable consequence of the effecting of that criminal purpose."1250

7444. para. 484: The trial Chamber found

> 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. 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.1251

We opine that this is a correct statement of the law.

7445. para. 485: The Trial Chamber defined the Common Criminal Purpose of the JCE as consisting of the objective to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas, and the crimes as charged under Counts 1 to 14 as the means of achieving that objective.1252 The Trial Chamber further found that Gbao was "a participant" in the JCE.1253 The Appeals Chamber, Justices Winter and Fisher dissenting, considers that in consequence Gbao, as with the other participants of the JCE, would be liable for all crimes which were a natural and foreseeable consequence of putting into effect that criminal purpose.

7446. para. 486: In paragraph 1990 of the Trial Judgment, the Trial Chamber found that the RUF, including in particular Sesay, Kallon, Sankoh, Bockarie, 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 Koromah, Alex Tamba Brima, Bazzy Kamara, Santigie Borbor Klanu, SAJ Musa Zagalo, Eddie Kanneh and others to hold power in Sierra Leone on or shortly after 25 May 1997. The Majority found that Gbao was a participant in the JCE. As stated in paragraph 1985, Gbao shared the 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, and that Gbao contemplated the commission of crimes.

7447. para. 487: The Trial Chamber further found, with respect to Gbao, that

> The Accused person does not need to have been present at the time of the crime.[1254] 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.1255

The Appeals Chamber agrees.

7448. para. 488: As to the crimes in Bo District, the Trial Chamber found in paragraph 2040 of the Trial Judgment that

> Gbao did not share the intent of the **principal perpetrators** to commit the crimes committed against civilians under Counts 3 t o 5 (unlawful killings), and Count 14 (pillage) in Bo District in furtherance of the joint criminal enterprise.

It is important to note here that the 'principal perpetrators' are those persons who personally and physically committed the crimes alleged and may be persons who are not members of the joint criminal enterprise.

7449. para. 489: Further in regard to the crimes in Bo District, the Trial Chamber concluded in paragraph 2048 of the Trial Judgment that although Gbao did not share the intent of the principal perpetrators as aforesaid,

> [T]he 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.

7450. para. 490: In respect of the crimes committed in Kenema District, the Trial Chamber found in paragraph 2060 of the Trial Judgment that

> [T]he 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.

7451. para. 491: Finally, with regard to the crimes committed in Kono District, the Trial Chamber held in paragraph 2109 of the Trial Judgment that

> [T]he 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. (Emphasis supplied)

7452. para. 492: The Appeals Chamber holds that so long as Gbao agreed to the Common Criminal Purpose and was, therefore, a member of the JCE as the Trial Chamber found,1256 he is

responsible for all crimes that he either intended, or were naturally foreseeable would be committed by members of the JCE or persons under their control. This is consistent with the pleading of the crimes in the Indictment (which must be read in its entirety) and which pleaded each of the crimes in Counts 1 to 14 as either within the JCE or as a reasonably foreseeable consequence of the JCE.1257

7453. para. 493: The Appeals Chamber agrees with the Prosecution's submission during the Appeal Hearing that Gbao "shared the intent for the crimes to be committed in Kailahun District, so he was a participant in the joint criminal enterprise."1258 Gbao it must be recalled was at all material times the senior RUF Commander stationed in Kailahun. It follows that, since Gbao was a member of the JCE, so long as it was reasonably foreseeable that some of the members of the JCE or persons under their control would commit crimes, Gbao would be criminally liable for the commission of those crimes.1259 As the Trial Chamber found that the crimes in Bo, Kenema and Kono Districts, which were within the Common Criminal Purpose, were reasonably foreseeable, it follows that the Trial Chamber did not err. Gbao's Ground 8 is accordingly dismissed.

7454. Dissent – Justice Fisher, para. 4 (p. 512-513): As a preliminary matter, I disagree with the Majority that Gbao's Grounds 8(j) and (k) are "vague, disjointed, imprecise and unclear," nor do I agree that these grounds "do not fulfil the minimum basic requirements of pleading Grounds of Appeal."3 Gbao clearly sets forth his arguments under these grounds in his Notice of Appeal,4 and fully develops them in his Appeal Brief,5 citing the applicable law and the Trial Chamber's findings, explaining the precise legal error and how that error invalidates his convictions. Moreover, given that the Parties and the Appeals Chamber extensively discussed these arguments during the Appeal Hearing, I do not consider that they could be subject to summary dismissal.

7455. Dissent – Justice Fisher, para. 5 (p. 513): Gbao contests the Trial Chamber's finding that he could be held liable under JCE for crimes that he did not intend but which the Trial Chamber found were within the Common Criminal Purpose. He takes exception to his conviction for these crimes based on the Trial Chamber's conclusion that he "willingly took the risk" that these crimes might be committed.6 The Majority finds no error in the Trial Chamber's conclusion.

7456. Dissent – Justice Fisher, para. 6 (p. 513): A shared common criminal purpose is the foundation of all JCE liability, under any "form" of JCE recognized in customary international law. By eliminating the requirement for a shared common criminal purpose, the Trial Chamber and Majority dangerously expand the scope of potential JCE liability beyond the limits allowed by law.

7457. Dissent – Justice Fisher, para. 7 (p. 513): JCE is not a crime in itself, nor is JCE liability for membership in an organisation. Instead, JCE is a mode of attaching liability for a crime under the Statute.7 Where it attaches, the accused is responsible for committing that crime.8

7458. Dissent – Justice Fisher, para. 8 (p. 513-514): I am in complete agreement with the general statements of the law on JCE set out in our Appeal Judgment in section V.E.3(a), paragraphs, 474 and 475. We also rightly note in the Judgment that JCE 2 is not at issue in the instant case.9 In particular, we hold that "both JCE 1 and JCE 3 require the existence of a common criminal purpose which must be shared by the members of the JCE, including in particular the accused.10" In other words, before arriving at the question of whether the accused may incur JCE liability for reasonably foreseeable crimes committed *beyond* the scope of the common criminal purpose, a trier of fact must be satisfied beyond reasonable doubt that the accused shared the intent to commit the crimes *within* the common criminal purpose.11 JCE 3 therefore cannot attach without first finding all the elements of JCE 1.

7459. Dissent – Justice Fisher, para. 9 (p. 514): It follows from this section of our Appeal Judgment, consistent with JCE as customary international law, that liability under both JCE 1 and JCE 3 requires, among other things, that the accused possess "the same criminal intention" as the other participants in the JCE – that he shares the common criminal purpose with them.12 Where he shares that intent, all other elements met, he incurs JCE 3 liability for crimes which he does not intend, but which are reasonably foreseeable to him if he willingly takes the risk that they may be committed in the implementation of the crimes that he does intend as part of the common criminal purpose.13

7460. Dissent – Justice Fisher, para. 10 (p. 514): It is therefore crucial to define the common criminal purpose in order to ascertain the accused's liability pursuant to a JCE. In particular, the trier of fact must establish which crime or crimes under the Statute of the Special Court the alleged plurality of persons in the JCE shared the intent to commit.14 Additionally, it must

> specify the common criminal purpose in terms of both the criminal goal intended and its scope (for example, the temporal and geographic limits of this goal, and the general identities of the intended victims) [and] make a finding that this criminal purpose is not merely the same, but also common to all of the persons acting together within a joint criminal enterprise.15

7461. Dissent – Justice Fisher, para. 11 (p. 515): Once the scope of the common criminal purpose shared by the participants has been established, the trier of fact must be satisfied that the accused, too, shares "the same criminal intention" as the other participants.16 Accordingly, he must intend the full extent of the shared common criminal purpose, both in terms of the crimes

intended and the geographical area covered by the JCE. Where this is established, and the other elements of JCE liability are met, customary international law attaches criminal responsibility to the accused not only for his own actions, but also for the actions of his fellow JCE members that further the commonly intended crimes (JCE 1) or that are reasonably foreseeable consequences of carrying out the commonly intended crimes (JCE 3).17 Conversely, if the accused did not intend those crimes to begin with, neither form of JCE liability can arise.

7462. Dissent – Justice Fisher, para. 12 (p. 515): The judgment of the Appeals Chamber reflects that we unanimously find that the common criminal purpose established by the Trial Chamber in the present case was:

> [T]he objective to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas, and the crimes as charged under Counts 1 to 14 as means of achieving that objective ("Common Criminal Purpose").18

7463. Dissent – Justice Fisher, para. 13 (p. 515): The statutory crimes within the Common Criminal Purpose were thus the criminal acts described under Counts 1 to 14 in the Indictment. The geographical scope of the Common Criminal Purpose was the territory of Sierra Leone, though the crimes for which the Appellants were convicted were committed in Bo, Kenema, Kono and Kailahun Districts.

7464. Dissent – Justice Fisher, para. 14 (p. 515-516): Where I first differ from the Majority is in the recognition of what I believe to be the fatal contradiction in the Trial Chamber's conclusion that Gbao was a "participant" in the JCE.19 While Gbao's "participation" in the JCE is a legal conclusion, requiring proof beyond reasonable doubt that Gbao had the requisite *mens rea* and *actus reus*, the Trial Chamber's finding that Gbao was a "participant" is unsupported by any reference to the evidence. In fact, it is contradicted by the Trial Chamber's findings on his *mens rea*. In making its detailed findings on Gbao's "participation" in the Common Criminal Purpose,20 the Trial Chamber found that Gbao did not intend any of the crimes in Bo, Kenema and Kono Districts as means of achieving the Common Criminal Purpose.21 He was found to have intended only the crimes committed in Kailahun District.22 In addition to being geographically distinct from the crimes in Bo, Kenema and Kono, the crimes in Kailahun did not even include all of the counts which formed the means of achieving the common objective, as acts of pillage (Count 14) was neither charged nor found to have been committed there.23

7465. Dissent – Justice Fisher, para. 15 (p. 516): By contrast, Sesay and Kallon, who were also found by the Trial Chamber to have been "participants" in the same JCE as Gbao, were found to

have intended not only the crimes committed in Kailahun, but all the crimes in all four Districts at issue, including the acts of pillage under Count 14.24 Their intent thus is identical to the Common Criminal Purpose.

7466. Dissent – Justice Fisher, para. 16 (p. 516): The inescapable conclusion from the finding that Gbao did not intend the crimes in Bo, Kenema and Kono Districts – a total of approximately 63 crime incidents, and, in addition, the continuous crimes of enslavement and forced marriage25 – is that Gbao did not share the "same criminal intention"26 as the other alleged participants in the Common Criminal Purpose. He cannot, therefore, be found to incur JCE liability.

7467. Dissent – Justice Fisher, para. 17 (p. 516-517): In affirming Gbao's convictions under JCE, the Majority adopts the Trial Chamber's circular reasoning, but compounds the Trial Chamber's error by collapsing the distinction between JCE 1 and JCE 3. The Majority reasons that it was sufficient for the Trial Chamber to conclude that Gbao was a "participant" in the JCE and therefore shared the Common Criminal Purpose.27 By virtue of that conclusion, the Majority reasons, he is responsible for all crimes by members of the JCE that either he intended or were reasonably foreseeable.28 Therefore, according to the Majority's reasoning, it matters not whether Gbao intended the crimes in Bo, Kenema and Kono;29 given that he was "a member of the JCE," he was liable for the commission of "the crimes in Bo, Kenema and Kono Districts, which were within the Common Criminal Purpose," so long as it was "reasonably foreseeable that some of the members of the JCE or persons under their control would commit crimes."30

7468. Dissent – Justice Fisher, para. 18 (p. 517): This reasoning is not only circular, but dangerous. First, describing Gbao as a "participant" under this theory is mistaken because whether or not he was a "participant" is only significant if it means that he shared the common intent of the JCE, that is, the Common Criminal Purpose. The Trial Chamber's findings, unquestioned, and indeed quoted by the Majority, state unequivocally that he did not.31

7469. Dissent – Justice Fisher, para. 19 (p. 517): Second, the Majority collapses the distinction between the *mens rea* required for JCE 1 and the *mens rea* applicable to JCE 3 by holding that Gbao can be liable for crimes *within* the Common Criminal Purpose that he did not intend and that were only reasonably foreseeable to him. Such an extension of JCE liability blatantly violates the principle *nullum crimen sine lege* because it imposes criminal responsibility without legal support in customary international law applicable at the time of the commission of the offence. The Majority makes no effort to reason why it considers that this extension of JCE liability was part of the law to which Gbao was subject at the time these offences were committed and it fails to cite a single case in which this extension of liability is recognized as part of customary international law.

This dearth of jurisprudential support was acknowledged by the Prosecution which admitted at the Appeal Hearing that there "may be no authority" in international criminal law in which the *mens rea* element for JCE is characterized or applied as the Trial Chamber applied it to Gbao.32

7470. Dissent – Justice Fisher, para. 20 (p. 517): The primary justification suggested by the Majority for its radical departure from customary international law is that its conflation of JCE 1 and JCE 3 *mens rea* standards "is consistent with the pleading of the crimes in the Indictment."33 That an Indictment may plead in the alternative does not establish that there is no distinction between the forms of liability so pled. Also, whether the Indictment permissibly pleaded JCE is irrelevant as an evidentiary matter.

7471. Dissent – Justice Fisher, para. 21 (p. 517-518): The Majority further agrees with the Trial Chamber's finding that:

> 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 to him that he would further the joint criminal enterprise.34

"Basic form" is used in the jurisprudence to mean JCE 1.35 The Trial Chamber's pronouncement on the law here is wrong, and the Majority's agreement is therefore misplaced. The distance of an accused to the crimes may of course be a relevant evidentiary consideration in determining whether the necessary *mens rea* and *actus reus* for JCE liability are established. More critically, the Trial Chamber's reference to a foreseeability standard with respect to JCE 1 is plainly erroneous,36 as is the conflation of the *actus reus* and *mens rea* elements in the holding that it must be "foreseeable" to the accused that he "would further" the JCE.

7472. Dissent – Justice Fisher, para. 22 (p. 518): Finally, in a perplexingly contradictory and unexplained pronouncement, the Majority expresses its agreement with the Prosecution's position at the Appeal Hearing that Gbao "shared the intent for the crimes to be committed in Kailahun District, so he was a participant in the joint criminal enterprise."37 As an initial matter, this position is contrary to the Majority's own reasoning, as it envisages a common criminal purpose different from that found by the Trial Chamber and confirmed unanimously on appeal. That different "subsidiary" common criminal purpose is limited solely to Kailahun District and excludes acts of pillage (Count 14), as no such crimes were committed there.

7473. Dissent – Justice Fisher, para. 23 (p. 518): If in fact the Majority accepts the position of the Prosecution that the shared intent for commission of the crimes committed in Kailahun describes the common criminal purpose of the JCE, then Gbao would presumably have been liable under

JCE 1 for the crimes in Kailahun District, and liable under JCE 3 for the crimes in other Districts. However, such a limited, "subsidiary" JCE was neither sufficiently pleaded in the Indictment nor found by the Trial Chamber. Nor did the Trial Chamber make any findings that the crimes in Bo, Kenema and Kono were reasonably foreseeable by Gbao as a consequence of the implementation of that "subsidiary" JCE, (as opposed to the country-wide JCE found by the Trial Chamber.) This theory therefore finds no support in the pleadings or the evidence.

7474. Dissent – Justice Fisher, para. 24 (p. 518-519): The only JCE pleaded, established and upheld in this case had as its Common Criminal Purpose to control the territory of Sierra Leone through the commission of the crimes charged under Counts 1 to 14.38 Gbao either shared the intent of this criminal purpose – both in terms of the type of crimes and the geographical scope it encompassed – or he did not.

7475. Dissent – Justice Fisher, para. 25 (p. 519): It remains unclear what common criminal purpose, in the Majority's mind, Gbao did share. It purports to hold that Gbao shared the Common Criminal Purpose that the Trial Chamber found established on the evidence.39 But as explained, that was a legal impossibility, given that the evidence showed that he did not share the intent of the other "participants" in the JCE. The Majority has not articulated, any alternative common criminal purpose which Gbao shared. Yet it convicts him pursuant to JCE liability. That conviction was neither in accordance with the law nor the facts as found by the Trial Chamber and upheld on appeal.

7476. Dissent – Justice Fisher, para. 26 (p. 519): The Trial Chamber's error with respect to Gbao's *mens rea* is not simply a harmless mistake that can be rectified or overlooked on appeal. Rather, because of this error, the entire legal edifice the Trial Chamber and Majority have constructed for Gbao's JCE liability is so fundamentally flawed that those convictions which rest upon it collapse.

7477. Dissent – Justice Fisher, para. 27 (p. 519): The Trial Chamber found that Gbao did not share the Common Criminal Purpose. Its decision, upheld by the Majority, to nonetheless convict Gbao under JCE absent the crucial element of shared criminal intent constitutes a legal error which invalidates Gbao's conviction under JCE.

7478. Dissent – Justice Fisher, para. 28 (p. 519): I therefore would grant Gbao's Grounds 8(j) and (k). Although Gbao formally only requests his JCE convictions to be reversed in respect of Bo, Kenema and Kono Districts, the critical submission in these grounds of appeal is that he was not part of the JCE at all. As that submission in my opinion succeeds, there is no basis on which

the Trial Chamber was permitted to convict Gbao under the JCE mode of liability for any of the crimes in the four Districts. I further note that the elimination of Gbao as a participant in the JCE might have implications for the scope of his co-accused's JCE liability for crimes in Kailahun.

7479. Dissent – Justice Winter, para. 5 (p. 482): In addition to this clarification, I also wish to express my complete agreement with the reasoning and conclusions expressed by Hon. Justice Fisher in her Partially Dissenting and Concurring Opinion insofar as it pertains to Gbao's Sub-Grounds 8(j) and 8(k), Gbao's Sub-Ground 8(i), Sesay's Grounds 33 and 46, and her opinion regarding the failure to plead locations with sufficient specificity. In particular, I join her dissent from the Majority's decision to confirm Gbao's conviction under JCE liability, given the Trial Chamber's findings that he did not share the Common Criminal Purpose with the other participants in the case before us.

7480. Separate opinion – Justice Ayoola, para. 22 (p. 501): I opine that the finding that in respect of crimes committed in Bo, Kenema and Kono Districts, Gbao did not share the intent of "principal perpetrators" to commit the crimes committed against civilians in furtherance of the joint criminal enterprise under the stated Counts cannot lead, reasonably, to a conclusion that he was not a member of the JCE, unless the JCE is compartmentalized by District; contrary to the Prosecution's case. On the Indictment the JCE was not presented as a conglomeration of district-based joint common enterprises; but as a single joint criminal enterprise that was nationwide. Besides, Gbao did not need to share the intent of the '*principal perpetrators*' who, themselves, did not need to have been members of the JCE.33 However, he needed to share the requisite intent with the other participants. This case turns, therefore, partially on the requisite intent.

7481. Separate opinion – Justice Ayoola, para. 23 (p. 501-502): "*Principal perpetrators*" are the actual physical perpetrators of the crime, or those who performed the *actus reus* of the crime. As was observed by Judge Bonomy in the *Decision on Odjanics Motion Challenging Jurisdiction*: "Factual scenarios in cases before the Tribunal are rarely such that all persons involved in perpetration of the crimes pursuant to a JCE can be found to be participants in that particular JCE."34 In this case the Trial Chamber found that "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 other conditions of liability are fulfilled."35

7482. Separate opinion – Justice Ayoola, para. 24 (p. 502): The imposition of liability upon an accused for his participation intended to further a common criminal purpose does not require an understanding or an agreement between the accused and the principal perpetrator of the crime to

commit the particular crime.36 It follows that a shared intention between Gbao and the principal perpetrators, who may not be members of the JCE, is not the shared intention envisaged in stating the JCE principles; even though the intent of the principal perpetrators may be relevant in determining whether the crime committed by them is within the common purpose or not. In the result, not much weight needs be attributed to the finding by the Trial Chamber that Gbao did not share the intent of the principal perpetrators in determining his participation in the JCE. It is noted that the ICTY Appeal Chamber held in *Brdanin* that:

> as far as the basic form of JCE is concerned, an essential requirement in order to impute to any accused member of the JCE liability for a crime committed by another person is that the crime in question forms part of the common criminal purpose. In cases where the principal perpetrator shares that common criminal purpose of the JCE or, in other words, is a member of the JCE, and commits a crime in furtherance of the JCE, it is superfluous to require an additional agreement between that person and the accused to commit that particular crime.37

7483. Separate opinion – Justice Ayoola, para. 25 (p. 502): For reasons that will be stated, presently; there is really no substance in the suggestion by Gbao that in the absence of a shared intention to use the crimes committed in Bo, Kenema and Kono District *as means* of achieving the common purpose, Gbao was not a member of the JCE. Such suggestion must have emanated from an unduly narrow interpretation of the applicable principles and a misconception of what constituted the JCE in this case. The applicable principles cannot be applied in this case as if the JCE is concerned with a one-transaction criminal activity like, for instance robbing a bank.

7484. Separate opinion – Justice Ayoola, para. 26 (p. 502-503): In my opinion, as long as Gbao agreed with the common criminal purpose his choice of the extent of the criminal campaign does not terminate his membership; unless he withdraws from the JCE. Where members of a JCE agree, as in this case, on a criminal campaign of widespread and systematic attack on a civilian population; it is reasonable to presume that they agree to the underlying crimes that constitute the attack. The agreement need not be express; it can be tacit, manifesting in conduct signifying assent. There is sufficient evidence before the Trial Chamber for its finding that Gbao was a member of the JCE.

7485. Separate opinion – Justice Ayoola, para. 27 (p. 503): The consideration of the issues will, therefore, proceed on the footing that Gbao was at all material times a member of the JCE; and, that the requisite objective and subjective elements of his membership have been found proved beyond doubt by the Trial Chamber.

7486. Separate opinion – Justice Ayoola, para. 28 (p. 503): It is recalled that Gbao's participation did not need to involve direct commission of crimes or presence at the time a crime was committed.38 The requisite shared intent that needs to be established in regard to Gbao's JCE liability is the shared intent on the part of all co-perpetrators to perpetrate crimes against humanity and war crimes charged in the Indictment. It is sufficient for a participant in a joint criminal enterprise to perform acts that in some way are directed to the furtherance of that common design.39 The requisite mental element is intent to pursue a common purpose.40

7487. Separate opinion – Justice Ayoola, para. 29 (p. 503): The submission by the Prosecution that applicable legal principles do not require, in order to establish JCE liability, the proof of significant contribution and the requisite intent for the crimes charged with respect to each location covered by the JCE is in accord with the theory of JCE. Where the JCE is expansive, adequate safeguard for the accused is in the requirement that there must be a link between the accused and the crime as legal basis for the imputation of a JCE criminal liability.41

7488. Separate opinion – Justice Ayoola, para. 30 (p. 503-504): In the final analysis, the substance of the issues that arise from the two sub-grounds is: whether Gbao is a member of the JCE and whether he has rightly been found to be criminally responsible for crimes in Bo, Kenema and Kono Districts; notwithstanding that the Trial Chamber held that he did not directly intend those crimes *as a means* of achieving the common purpose but which he willingly took the risk might be committed by other members of the JCE or persons under their control. It is apt to observe that the fact that Gbao did not intend the crimes found and proved in Bo, Kenema and Kono *as means* of achieving the common purpose does not by itself lead to a conclusion that he did not subscribe to the common purpose.

7489. Separate opinion – Justice Ayoola, para. 31 (p. 504): The two questions that arise from the two sub-grounds and fall to be addressed later are (i) whether Gbao was convicted of first form of JCE by way of the *mens rea* standard applicable to the third form of JCE; and (ii) whether the *mens rea* element of JCE was not met.

7490. Separate opinion – Justice Ayoola, para. 32 (p. 504): The JCE principle expounded in *Tadic* is adequate to deal with these issues. It is to be recalled, however, that *Tadic* continues to be discussed in regard to some issues which, understandably, could not have been resolved in the case; understandably, issues determined in a case are essentially shaped and defined by the factual scenario of the case.42 It is also essential to the application of the principles to convert terms used when the case is about a simple one-event criminal activity (like killing a person) to suit cases, such as the present case, of a joint criminal enterprise that contemplates a widespread and

systematic collective criminality. The "same criminal intention to kill" where killing is the common design of the JCE must be converted to the "same criminal intention to attack the civilian population" where that is the common design."

7491. Separate opinion – Justice Ayoola, para. 33 (p. 504-505): In applying the law of joint criminal enterprise expounded in *Tadic* to this case it needs be borne in mind that the joint common enterprise on which the case for the prosecution rests in this case is one joint criminal enterprise; not as many enterprises as there are Districts in Sierra Leone, nor as many joint criminal enterprises as there are crimes. As described in the Trial Judgment it was "*a common plan* which was to take any action necessary to gain and exercise political power and control *over the territory of Sierra Leone*43, in particular the diamond mining areas";44 crimes were contemplated by the participants of the joint criminal enterprise to be within the common purpose. In considering these matters it is also borne in mind that, as was stated by the ICTY Appeals Chamber in Decision on Ordanic's Motion Challenging Jurisdiction – Joint Criminal Enterprise in *Milutinovic*:45 "Criminal liability pursuant to a joint criminal enterprise is not a liability for mere membership or for conspiring to commit crimes, but a form of liability concerned with the participation in the commission of a crime as part of a joint criminal enterprise, a different matter." This is why factors that need to be adverted to for the purpose of determining the criminal responsibility of an accused under the JCE theory include his significant contribution to the execution of the enterprise that contemplates the commission of numerous crimes; and, the link between such contribution and the crime. In this regard, that factual element must necessarily be determined case-by-case.

7492. Separate opinion – Justice Ayoola, para. 34 (p. 505): In the case law of JCE the first category of JCE applies in cases "where all participants in the common design possess the same criminal intent to commit a crime (and one or more of them actually perpetrate the crime with intent)."46 Often the first category presents the simplest form of JCE, such as when two or more persons plan to rob a bank, without any intent to kill anyone, and execute their plan without killing. All the persons who participate in the plan are criminally responsible regardless of the individual roles of the participant in the crime. An illustration of this category given in *Tadic* is quite elaborate; but it is not difficult to conceive of an even more complex form of the basic category where the scope of the JCE is large.47

7493. Separate opinion – Justice Ayoola, para. 35 (p. 505): There may arise situations, such as the present, in which one of the parties to the common criminal enterprise does not agree *to some extent* to *the means*; but nevertheless *continues to participate in the enterprise* with the foresight

that the other members would use the means in furtherance of the common criminal enterprise. In such a case the other members would not be acting outside the common design but, rather, playing it out, as the party (Gbao in this case) foresaw they would within and in furtherance of the joint criminal enterprise, fulfilling its shared *intention*.

7494. Separate opinion – Justice Ayoola, para. 36 (p. 505-506): There are some authorities which, I presume, proceed from common-sense and reason, that an accused would be criminally responsible if he realises, (although he did not agree with the conduct being used) that a member of the criminal enterprise may commit a criminal act within the purpose of the enterprise with the requisite intent, but nevertheless continues to participate with the member in the criminal enterprise as that would be sufficient mental element for the accused to be guilty of the offence committed. In the decision of the High Court of Australia in *McAuliffe v R48*, reference was made to remarks made in *Chang Wing-Su v. The Queen*49 as being the correct principle accepted in some other decision. It was stated as follows:

> "If B realizes (*without agreeing to such conduct being used*) that A may kill or inflict serious injury, but nevertheless continues to participate with A in the venture, that will amount to a sufficient mental element for B to be guilty of murder if A, with the requisite intent, kills in the course of the venture."50

7495. Separate opinion – Justice Ayoola, para. 37 (p. 506): It may not be inappropriate to refer also to the opinion of the High Court of Australia in *McAuliffe51* as follows: "There was no occasion for the Court to turn its attention to the situation where one party foresees, but does not agree to, a crime *other than that which is planned*, and continues to participate in the venture. However, the secondary offender in that situation is as much a party to the crime which is an incident of the agreed venture as he is *when the incidental crime falls within the common purpose*." (Italics supplied)

7496. Separate opinion – Justice Ayoola, para. 38 (p. 506): In regard to the third category, there would have been a common design to pursue one course of conduct, but one of the perpetrators commits an act which, *while outside the common design*, was nevertheless a natural and foreseeable consequence of the common purpose.52 This category deals with a crime foreseen as incidental to the planned crime. An example of this is described in *Tadic*.53

7497. Separate opinion – Justice Ayoola, para. 39 (p. 507): That a joint criminal enterprise may incorporate both basic and extended forms of the enterprise is illustrated by the example given in the Separate Opinion of Judge Hunt in *Milutinovic*.54

7498. Separate opinion – Justice Ayoola, para. 40 (p. 507): In this case the three requirements that are common to the three categories of JCE are found by the Trial Chamber, namely: (i) a plurality of persons; (ii) the existence of a common purpose (or plan) which amounts to or involves the commission of a crime provided in the Statute, and (iii) the participation of the accused in the common purpose. It is instructive to recall that the plurality found by the Trial Chamber was not on a District by District basis; but a single plurality covering all the criminal activities of the JCE in Sierra Leone, including criminal activities in Kailahun where Gbao's activities were undertaken. The common purpose in this case, as pleaded and found, is expansive; it involves a criminal design that contemplates perpetration of numerous crimes on a large and nation-wide scale.

7499. Separate opinion – Justice Ayoola, para. 41 (p. 507): The issues in regard to the sub-grounds now being considered, therefore, turn on the subjective elements of the first and third categories of JCE liability as expounded in the case law in light of the factual scenario in the case.

7500. Separate opinion – Justice Ayoola, para .43 (p. 507): The question arose because the nub of the criminal responsibility imputed to Gbao is that he foresaw that crimes charged and proved 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, but willingly took the risk.55

7501. Separate opinion – Justice Ayoola, para. 44 (p. 507-508): In this case Gbao foresaw that crimes charged and proved which he did not intend *as a means of achieving the common purpose*, might be committed by other members of the joint criminal enterprise (of which he is a participant) or persons under their control, but willingly took the risk by continuing to participate in the enterprise.56 The principle earlier referred to in *Chang Wing-Su v. The Queen*57 becomes readily persuasive in regard to him and becomes even more apposite when adapted and rendered thus: "If Gbao realizes (*without agreeing to such conduct being used*) that other members of the JCE may commit crimes as a means of achieving the common purpose of the JCE, but nevertheless continues to participate with the other members in the venture, that will amount to a sufficient mental element for Gbao to be criminally responsible as a member of the JCE if the other members, with the requisite intent, commits the crimes within the common criminal purpose in the course of the venture."

7502. Separate opinion – Justice Ayoola, para. 45 (p. 508): There is really no need to discuss this aspect of the matter at any length further. It suffices to refer to Gbao's submission which accepted that the reasonable and foreseeable consequence element may well be accommodated within the

basic element of JCE when Gbao submits as follows: "The basic element of JCE, the common purpose, either has such crimes within it or *as a reasonable and foreseeable consequence of it.*"58 A reasonable and foreseeable consequence of the common criminal purpose is that it will lead to widespread commission of the crimes charged without limitation as to Districts; as has happened. In the circumstances it is difficult to understand how he turns round to claim that there was a misplacement of *mens rea* standard by the Trial Chamber.

7503. Separate opinion – Justice Ayoola, para. 46 (p. 508): Besides, the submission by the Prosecution, offered in the alternative, is persuasive. The Prosecution submitted as follows: "As an alternative argument, to the extent that the Trial Chamber applied the mens rea standard for the third category of JCE to Gbao with respect to Bo, Kenema and Kono, this was legally permissible because, in principle, there is nothing to prevent a JCE from being seen as divisible in the sense of certain crimes in certain locations being intended by some members but foreseeable only to others."

7504. Separate opinion – Justice Ayoola, para. 47 (p. 509): It is fitting to add the whichever category is relied on, the underlying rational basis of making a party to the JCE liable for the acts of other participants of the JCE is clear. It is that a party who embarks on a criminal venture with others is criminally responsible for the acts of those others either, because he intended it; or, because it is reasonably foreseen by him as an incident of the venture. In this wise, the issue raised by Gbao, in my opinion is merely academic. The evidence that points to his membership of the JCE is ample. He has not shown how the decision is invalidated even if a third category *mens rea* standard is applied since either of the standards leads to a finding of his criminal responsibility as a co-perpetrator. He has also not shown how a miscarriage of justice has been occasioned since he had notice in the Indictment that the Prosecution would be relying on both categories.

7505. Separate opinion – Justice Ayoola, para. 48 (p. 509): In any event, it is a misconception to conclude that the Trial Chamber applied the wrong *mens rea* standard in convicting Gbao. With the foresight that the other members of the JCE would perpetrate the crimes as means of achieving the objectives of the common purpose he, nevertheless, continued to function as member of the JCE for the realization of the common purpose through the criminal means that are also within the common purpose and are designed to strengthen the criminal campaign.

7506. Separate opinion – Justice Ayoola, para. 49 (p. 509): In this regard it is pertinent to recall that Gbao, who was found by the Trial Chamber to be a member of the JCE; was also found to have faithfully pursued the means of achieving the purpose of the JCE in Kailahun District to which he was assigned and was found criminally liable for offences of terrorism, collective

punishments, extermination, murder, violence to life etc, sexual slavery, other inhumane acts, outrages upon personal dignity committed in that District in furtherance of the common purpose of the JCE. There has been no suggestion that he withdrew from the JCE at any time, as was the case of SAJ Musa, formerly a participant of the JCE, who withdrew from the JCE in February 1998.59

7507. Separate opinion – Justice Ayoola, para. 50 (p. 509): The complaint that the Trail Chamber used the extended JCE form *mens rea* standard against him lacks substance and is rejected.

7508. Separate opinion – Justice Ayoola, para. 51 (p. 509-510): As earlier noted, Gbao argued that the Trial Chamber, having found that he did not share the intent to commit the crimes committed in Bo, Kono and Kenema with the JCE members; erred in its legal conclusion by finding that he was nonetheless criminally responsible. He submitted that as the *mens rea* element of JCE is not met, a conviction under this mode of responsibility is impermissible.

7509. Separate opinion – Justice Ayoola, para. 52 (p. 510): Earlier in this Opinion the issue has been discussed at some length. Enough has been said about the question of shared intent. The conclusion of the matter is that the submission made by Gbao that the findings by the Trial Chamber concerning his intent in regard to the crimes found committed in Bo, Kenema and Kono negate the findings as to his criminal responsibility on the basis of the JCE, is misconceived and untenable.

7510. Separate opinion – Justice Ayoola, para. 53 (p. 510): Merely as a recapitulation; it is recalled that The Trial Chamber made an assessment of Gbao's responsibility in Kaliahun and found the requisite intent for the relevant crimes under the first category of JCE. The findings concerning his intent in relation to the crimes committed in Bo, Kenema and Kono as a means of achieving the common purpose of the JCE are inconsequential and unnecessary in light of other findings made. It is not necessary to ascertain the intent of a member of the JCE in regard to criminal activities of the JCE in every town or District where such activity took place in order to determine whether there was a JCE or whether, if there was, Gbao was a participant of that JCE. His membership of the JCE has been found to become manifest in his activities in Kaillahun. What was required under the doctrine of JCE of such large scale as in this case is, as was the opinion expressed in *Brjanin*, that in regard to JCE a trier of fact must find that the accused made a contribution to the common criminal purpose; and that the common intended crime (or, for convictions under the third category of JCE, crime) did in fact take place.60 In this case "the common intended crimes" are crimes against humanity; designed to be committed nationwide.

7511. Separate opinion – Justice Ayoola, para. 54 (p. 510-511): Besides, it is expedient to reiterate that a close and holistic reading of the Trial Judgment does disclose that the Trial Chamber was emphatic in its findings in regard to Bo, Kenema and Kono that the three accused were acting in concert; and that non-members who committed crimes (described as principal participants) were sufficiently closely connected to one or more members of the JCE acting in furtherance of the common purpose that such crimes can properly be imputed to all members of the JCE when the other conditions of liability are fulfilled.61 There was no finding that any of the crimes went beyond the scope of the JCE.

7512. Separate opinion – Justice Ayoola, para. 55 (p. 511): The conclusion that Gbao sought to draw from the findings on which he relied: that the *mens rea* element of JCE is not met, does not follow. Where the joint criminal enterprise is not based on an understanding as to the limited extent of the territorial scope of the enterprise, a member of the JCE who actively participates in the enterprise cannot by himself limit the scope of the enterprise. His reasonable option is to withdraw from the enterprise. It defies reason to suggest that: whereas Gbao, who was assigned by the RUF to Kailahun and actively implemented the criminal means by which the RUF intended to achieve the objectives of the JCE in his sphere of activities, his intent in regard to the crimes in Bo, Kenema and Kono, leads to a reasonable conclusion that he and the other members of the JCE do not share an intent in regard to the existence of the JCE and the means of achieving its common purpose.

7513. Separate opinion – Justice Ayoola, para. 56 (p. 511): For these reasons, the submission that the *mens rea* element of JCE is not met is not tenable.

7514. Separate opinion – Justice Ayoola, para. 57 (p. 511): I agree with the conclusion arrived at by Justice Kamanda and Justice King contained in the body of the Appeal Judgment that Gbao's sub-grounds 8(j) and 8(k) be dismissed. Gbao's sub-ground 8(a) has earlier been allowed with the result that his role as an RUF Ideology Instructor is not taken into consideration in defining his role in the JCE or at all in consideration of the issues arising in regard to sub-grounds 8(j) and 8(k). The rest of the findings made by the Trial Chamber in regard to his role and contribution to the JCE without the finding that he was an Ideology Instructor are sufficient to support the conclusion that he is a member of the JCE.

7515. para. 650: As Sesay was convicted for the acts of terrorism in question under JCE 1 liability,1641 and as the Trial Chamber found that one or more members of the JCE used the non-members who carried out the *actus reus* to commit the crime of acts of terrorism,1642 his

arguments turn on the initial proposition that the Trial Chamber was required to find that the non-members of the JCE who carried out the *actus reus* had the specific intent for those crimes.

7516. para. 651: The Appeals Chamber notes as an initial matter that the *mens rea* of those who carry out the *actus reus* of the crime is not among the elements of JCE 1 liability as set out in *Tadić*.1643 While "participants in a basic or systemic form of joint criminal enterprise must be shown to share the required intent of the principal perpetrators,"1644 this holding only reinforces that the members of the JCE must share the intent to commit the crime for which they are held to be responsible under JCE 1 and JCE 2, and does not imply that non-members used by a JCE member to carry out the *actus reus* of the crime must share the intent with the members of the JCE.

7517. para. 652: Further, the Appeals Chamber agrees "that what matters in a first category JCE is not whether the person who carried out the *actus reus* of a particular crime is a member of the JCE, but whether the crime in question forms part of the common purpose."1645 As persuasively explained by the ICTY Appeals Chamber, the persons who carry out the *actus reus* of the crime need not share the common purpose of the JCE in order for liability for their acts to attach to members of the JCE.1646 To the contrary, the primary question for the purposes of JCE liability is whether the acts of non-members who carried out the *actus reus* of the crimes can be imputed to the members of the JCE.1647 So long as it is established that a member of the JCE used the non-member to commit a crime within the common purpose of the JCE, there is no need to show that the non-member intended to further the common purpose of the JCE or indeed even knew of that common purpose.1648

7518. para. 653: For the purposes of determining the liability of JCE members for the acts of non-members who carry out the *actus reus* of the crime, the critical inquiry is not the *mens rea* of the non-member, but rather the acts and mental state of the JCE member, who uses the non-member to commit a crime within and in furtherance of the common purpose.1649 As the *mens rea* element of JCE 1 liability relates solely to the shared intent of the members of the JCE, and as the persons who carry out the *actus reus* of the crime need not be members of the JCE, the *mens rea* of non-members who carry out the *actus reus* of the crime is not a legal element of JCE 1 liability.1650

7519. para. 654: The Appeals Chamber does not consider that the finding of the ICTY Appeals Chamber in *Limaj et al.*, cited by Sesay, is relevant to the present issue, as the Appeals Chamber there was concerned with the scope of the common purpose as pleaded in the indictment, a distinct issue from the present question.1651

7520. para. 655: Accordingly, the Appeals Chamber concludes that under JCE 1 liability, the Trial Chamber was not required to find, as an element of the liability of JCE members, that non-members who carried out the *actus reus* of the crime had the requisite *mens rea* for the crime of acts of terrorism. Rather, in addition to finding that the members of the JCE shared the intent to commit the crime and finding that the acts of the non-members who carried out the *actus reus* of the crimes could be imputed to a member of the JCE, the Trial Chamber was only required to find that the acts of the non-members satisfied the *actus reus* of the offence.

7521. para. 656: While the Trial Chamber did find that those who carried out the *actus reus* of the crime acted with the specific intent to spread terror,1652 such a finding is only relevant as a matter of evidence to the other findings that the Trial Chamber was required to make. The Appeals Chamber finds that Trial Chamber's alleged errors with respect to the *mens rea* of the non-members who carried out the *actus reus* of the crimes,1653 even if accepted *arguendo*, would not render those findings unreasonable. Sesay challenges related to the *mens rea* of non-members who carried out the *actus reus* of the crimes are dismissed.

7522. para. 657: Sesay further challenges the Trial Chamber's findings that Bockarie, as the perpetrator and member of the JCE, acted with the requisite *mens rea* for acts of terrorism. Sesay fails to show an error1654 in the Trial Chamber's findings regarding the killing of the man at the NIC Building.1655 Sesay neither explains how the Trial Chamber's finding that Bockarie acted with the requisite intent would be erroneous even if it were accepted that the victim was a Kamajor who was *hors de combat*, nor explains how Bockarie's desire to "do away with all the Kamajors"1656 is inconsistent with or renders unreasonable the Trial Chamber's finding. This claim is therefore dismissed.

7523. para. 658: Sesay fails to establish that the Trial Chamber erred in finding that the beating of TF1-129 was committed with the specific intent to spread terror.1657 Contrary to Sesay's claim, the Trial Chamber did not need to find a "single, all-encompassing intention" among all those who participated in the beating of TF1-129,1658 as the Trial Chamber's findings show that it found that Sesay and Bockarie used those who carried out the beatings to commit the crime.1659 In particular, the Appeals Chamber notes the following findings: (i) Sesay ordered his bodyguard to molest TF1-129 during his arrest;1660 (ii) Sesay's bodyguard further injured TF1-129 when he was to be taken to the Secretariat building;1661 (iii) Sesay instructed a small boy to guard TF1-129 and kill him if he moved;1662 (iv) TF1-129 was beaten while being taken to Bockarie and Sesay;1663 (v) Bockarie and Sesay ordered TF1-129 to be taken to the "dungeon", and TF1-129 was beaten on the way to and from the "dungeon".1664

7524. para. 659: In addition, Sesay argues that there was no evidence that he sought to publicise the beating,1665 and that the Trial Chamber therefore erred in finding that he and Bockarie used the non- members who carried out the *actus reus* of the crimes to commit an act of terrorism.1666 In this respect, the Appeals Chamber recalls the Trial Chamber's findings that acts of terrorism were within the Common Criminal Purpose of the JCE,1667 and therefore that the intent to commit acts of terrorism was shared by the members of the JCE, including Sesay and Bockarie. The Trial Chamber further found that the six acts of violence in Kenema Town,1668 including the beating of TF1-129, targeted prominent members of civil society and were publicised.1669 The Trial Chamber accordingly reasoned that the six acts of violence 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," and therefore were committed with the specific intent to terrorise the civilian population.1670 The Appeals Chamber also recalls the Trial Chamber's finding "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."1671 Finally, the Trial Chamber found that Bockarie targeted alleged Kamajors on a number of occasions1672 and publicly expressed his intent to target alleged Kamajors.1673

7525. para. 660: In light of the above findings, whether or not the Trial Chamber found that Sesay or others sought to publicise the beating directly, the Trial Chamber did find that TF1-129 was targeted because he was considered to be prominent1674 and a "chief Kamajor."1675 Sesay fails to show that no reasonable trier of fact could have concluded on that basis that he and Bockarie used the non-members who carried out the *actus reus* of the crimes to commit acts of terrorism. Sesay further argues that as TF1-129 was a suspected Kamajor ally, "an aggravated Bockarie" ordered his arrest, and therefore, any crimes committed during TF1-129's arrest were not committed with the primary intent of spreading terror.1676 Although the Trial Chamber found that certain acts of violence did not constitute acts of terror because the acts were committed in response to conduct that aggravated the perpetrators,1677 Sesay misinterprets that finding and ignores the evidence as a whole as relied on by the Trial Chamber, in particular the findings noted above. Accordingly, Sesay fails to establish that the Trial Chamber erred in finding that he and Bockarie acted with the specific intent to spread terror.

7526. para. 778: In Ground 2, Kallon advances three arguments of general applicability to his contribution to the JCE. First, he challenges the Trial Chamber's holding that an accused can incur JCE liability even if his significant contributions occurred only in a smaller geographical area, provided he had knowledge of the wider common purpose,2028 arguing it infringes the

requirement that the accused share the purpose of the JCE.2029 Second, Kallon submits that the Trial Chamber erroneously tried him for the conduct of the RUF as an organisation.2030 Third, Kallon submits that the evidence showed him acting benignly toward civilians.2031 The Prosecution responds that participation in a JCE does not require a significant contribution in all geographical areas covered by the JCE2032 and that the Trial Chamber observed that "this trial is not a trial of the RUF organisation."2033 Kallon replies that the Prosecution ignores that the JCE covered different crimes involving different participants, victims and circumstances.2034

7527. para. 779: The Appeals Chamber is not persuaded by Kallon's first submission. Kallon fails to explain how, in his view, the Trial Chamber's error in holding that an accused's contribution to the JCE may be more limited in geographical scope than the JCE itself if the accused knew of the wider common purpose, invalidates the decision. In particular, he ignores the Trial Chamber's findings that an accused must have made a significant contribution to the crimes for which he is to be held responsible, and that Kallon intended and contributed to all of the crimes in all the Districts for which he incurred JCE liability.2035 Moreover, contrary to Kallon's arguments, the Trial Chamber did not rely on his contribution to the JCE in Kono in order to establish his contribution in Kenema,2036 and JCE liability does not require that the accused ordered or was responsible as a superior for the crime. Kallon's submissions relating to his contribution in respect of Kono and the link between him as a JCE member and non-JCE perpetrators are addressed elsewhere.2037 This submission is therefore rejected.

7528. para. 823: Kallon's submission that he did not share the intent with the other JCE participants, is based on the premise that the Trial Chamber failed to state who they were, what role they had in the crimes, and how he shared their intent.2159 However, the Trial Chamber made findings on these issues.2160 Having concluded, *inter alia*, on the basis of these findings,2161 that Kallon shared the intent to commit the crimes in Kailahun in furtherance of the Common Criminal Purpose,2162 the Trial Chamber was not, contrary to Kallon's suggestion,2163 required to establish that he, in addition, knew of the specific crimes committed there.2164 Kallon's submission is therefore rejected.

h. JCE – significant contribution

7529. para. 778: In Ground 2, Kallon advances three arguments of general applicability to his contribution to the JCE. First, he challenges the Trial Chamber's holding that an accused can incur JCE liability even if his significant contributions occurred only in a smaller geographical area, provided he had knowledge of the wider common purpose,2028 arguing it infringes the

requirement that the accused share the purpose of the JCE.2029 Second, Kallon submits that the Trial Chamber erroneously tried him for the conduct of the RUF as an organisation.2030 Third, Kallon submits that the evidence showed him acting benignly toward civilians.2031 The Prosecution responds that participation in a JCE does not require a significant contribution in all geographical areas covered by the JCE2032 and that the Trial Chamber observed that "this trial is not a trial of the RUF organisation."2033 Kallon replies that the Prosecution ignores that the JCE covered different crimes involving different participants, victims and circumstances.2034

7530. para. 779: The Appeals Chamber is not persuaded by Kallon's first submission. Kallon fails to explain how, in his view, the Trial Chamber's error in holding that an accused's contribution to the JCE may be more limited in geographical scope than the JCE itself if the accused knew of the wider common purpose, invalidates the decision. In particular, he ignores the Trial Chamber's findings that an accused must have made a significant contribution to the crimes for which he is to be held responsible, and that Kallon intended and contributed to all of the crimes in all the Districts for which he incurred JCE liability.2035 Moreover, contrary to Kallon's arguments, the Trial Chamber did not rely on his contribution to the JCE in Kono in order to establish his contribution in Kenema,2036 and JCE liability does not require that the accused ordered or was responsible as a superior for the crime. Kallon's submissions relating to his contribution in respect of Kono and the link between him as a JCE member and non-JCE perpetrators are addressed elsewhere.2037 This submission is therefore rejected.

7531. para. 780: The Appeals Chamber notes that, contrary to Kallon's submission, the Trial Chamber did not convict him based on "mere membership" in the Supreme Council or in the RUF. Rather, it inferred from the widespread and systematic nature of the crimes, in particular the attacks on Bo and the forced labour in Kenema District, that such conduct was a "deliberate policy" which must have been initiated by the members of the Supreme Council, of which he was one.2038 Moreover, Kallon's contribution to the JCE did not consist solely of his actions on the Supreme Council.2039 These submissions are rejected.

7532. para. 781: Lastly, the Appeals Chamber is not satisfied that the finding that Kallon "on one occasion" advised Rocky that the rebels "should not be 'hostile' with the civilians"2040 and the evidence on Kallon's allegedly benign behaviour described in a witness statement by TF1-122 read out to the witness in cross-examination,2041 render unreasonable the Trial Chamber's conclusion, based on numerous pieces of evidence, that he participated in the JCE. The fact that Kallon did not incur responsibility for personal commission for any of the crimes for which he

incurred JCE liability2042 is not dispositive of whether he could be held responsible for them under this form of responsibility.2043 This submission is rejected.

7533. para. 782: The Trial Chamber was satisfied that Kallon's involvement as a member of the Supreme Council, the governing body of the Junta, contributed to the JCE, 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 Sierra Leone.2044 The widespread and systematic nature of the crimes in which the RUF was engaged indicate that such conduct was a deliberate policy of the AFRC/RUF that the Trial Chamber found "must have been" initiated by the Supreme Council, of which Kallon was a member.2045

7534. para. 785: The Appeals Chamber understands Kallon to be making a four-pronged argument, such that: (i) the Trial Chamber confused the Supreme Council with the AFRC; (ii) if it did not, the Supreme Council was not involved in crimes; (iii) even if the Supreme Council were involved in crimes, Kallon was not a member of it; and (iv) if Kallon was a member, he did not participate in criminal activity on the Supreme Council.

7535. para. 786: The Appeals Chamber finds Kallon's first argument to be internally inconsistent. While some of his submissions appear to suggest that the two bodies were indistinct, others refer to evidence which, on Kallon's own submission, shows the existence of the Supreme Council as distinct from the AFRC. The Appeals Chamber need not address so ambiguous an argument. Kallon's argument is therefore rejected.

7536. para. 787: The next prong of Kallon's appeal is that the Supreme Council was not itself inherently criminal or involved in planning or executing criminal policies. In support, he invokes the finding in paragraph 756 of the Trial Judgment that the major issues discussed by the Supreme Council were "the security of the Junta; revenue generation; the resolution of conflicts between the AFRC and the RUF; and harassment of civilians", and Exhibit 224, which form part of the evidentiary basis for this finding.2052 The Appeals Chamber has already considered and dismissed a similar claim under Sesay's Ground 242053 because the finding in paragraph 756 does not detract from the Trial Chamber's inference, based on the "widespread and systematic nature of the crimes, in particular the attacks on Bo and the forced labour in Kenema District," that such conduct "was a deliberate policy of the AFRC/RUF" that must have been "initiated by the Supreme Council."2054 Since Kallon does not address the evidence relied on by the Trial Chamber to draw that inference,2055 his argument is rejected.

7537. para. 788: Next, Kallon argues that he was not a member of the Supreme Council. This position is contradicted by Exhibit 224, which Kallon himself invokes. He further relies on Exhibit 6 to suggest that he was not a member at the time of the meeting referenced in Exhibit 224 (11 August 1997), but fails to acknowledge that although in relevant parts they are dated 3 September 1997, both Exhibits 6 and 150 list Kallon as a member of the Supreme Council "with effect from the 25th day of May, 1997." Kallon further posits that TF1-167 did not know where Kallon was assigned during the Junta period and that the witness was not an AFRC member, that Kallon had difficulty travelling to Freetown and that Exhibit 39 does not mention him. However, Kallon does not address any of the evidence the Trial Chamber relied on to conclude that he attended Supreme Council meetings on a reasonably regular basis from August 1997 onwards, notwithstanding that Kamajor attacks often made it difficult for him to travel to Freetown.2056 The mere fact that Exhibit 39, considered by the Trial Chamber in its findings on the Supreme Council,2057 does not mention Kallon or that TF1-167 did not know where Kallon was assigned does not render unreasonable the Trial Chamber's conclusion, based on a multitude of evidence which Kallon fails to address, that he was a member of the Supreme Council.2058 His argument therefore fails.

7538. para. 789: Kallon's last submission is that he did not participate in criminal activity by his involvement with the Supreme Council. The Trial Chamber inferred that Kallon, by his membership in the Supreme Council, was involved in decisions or policy-making by the Supreme Council.2059 Contrary to Kallon's claim,2060 the Trial Chamber based this finding on evidence that he was one of the few RUF Commanders to be a member of the Supreme Council, which was a privileged position in the Junta governing body, and that he attended Supreme Council meetings on a fairly regular basis.2061 Similarly, the inference that Kallon cooperated with the AFRC at Teko Barracks was reasonable based on evidence that he was received by former SLA when he arrived there on 3 June 1997 and that he was based at Teko Barracks until August 1997.2062 Kallon's additional claim that he was not involved in any of the national diamond mining programmes is but a bare assertion which he acknowledges will be addressed under other grounds of appeal.2063

7539. para. 790: Kallon therefore fails to show an error in the Trial Chamber's inference that he contributed to the JCE through his involvement on the Supreme Council. The Appeals Chamber rejects Kallon's Ground 2 in present parts, and dismisses his Ground 8 in its entirety.

7540. para. 1063: Finally, Gbao argues that the lack of findings that he acted "in concert" with the senior leaders or members of the AFRC demonstrates that he did not significantly contribute to

the JCE.2937 In light of all the above findings and discussion, the Appeals Chamber is not satisfied that the absence of findings that Gbao directly acted together with members of the AFRC precluded a reasonable trier of fact from concluding that Gbao significantly contributed to the JCE. The Appeals Chamber recalls that the manner in which the members of the JCE interact and cooperate can take as many forms as conceived by the participants to pursue the realisation of their shared common criminal purpose.2938 In this respect, the Appeals Chamber notes that the Trial Chamber found that Gbao remained in Kailahun after the May 1997 coup on Bockarie's instructions, and that in June 1997 Bockarie ordered Gbao to move from Giema to Kailahun Town.2939 The Trial Chamber further found that other senior RUF Commanders also remained in Kailahun District, including the Area Commander Denis Lansana and the overall G5 Commander Prince Taylor.2940 Furthermore it found that the RUF and AFRC worked alongside one another in Kailahun District.2941 The Appeals Chamber also notes the important role Kailahun District played in the realisation of the Common Criminal Purpose.2942

7541. Dissent – Justice Fisher, para. 29 (p. 520): Although the absence of the requisite *mens rea* is sufficient to compel a reversal of Gbao's convictions under JCE liability, the same result is also required by the absence of a finding of Gbao's significant contribution to the crimes within the JCE for which he was found responsible, an element necessary to establish the *actus reus* of JCE liability.40

7542. Dissent – Justice Fisher, para. 30 (p. 520): In dismissing Gbao's Ground 8(i), the Majority holds that a reasonable trier of fact could have concluded, on the basis of the Trial Chamber's confirmed findings, that Gbao significantly contributed to the realisation of the Common Criminal Purpose.41 I dissent from this conclusion.

7543. Dissent – Justice Fisher, para. 31 (p. 520): The Majority has considered whether the Trial Chamber reasonably found that Gbao significantly contributed to the Common Criminal Purpose through his role as OSC and his participation in forced farming in Kailahun District.42 However, the Majority overlooks the fact that the Trial Chamber did not itself make such a finding. The Majority thereby upholds Gbao's conviction under JCE in the absence of any confirmed finding by a trier of fact that Gbao significantly contributed to the furtherance of the Common Criminal Purpose.

7544. Dissent – Justice Fisher, para. 32 (p. 520): In the Appeal Judgement we unanimously uphold Gbao's Ground 8(a) and disallow the Trial Chamber's finding "of [Gbao's] significant contribution to the JCE through his role as an ideology expert and instructor."43 We hold that reference to Gbao's role as an ideology instructor and expert must be struck from the Trial

Chamber's findings because Gbao had no notice of the allegation that he contributed to the JCE in this capacity.44 The Majority fails to consider the consequences of this holding, but is content in this regard to note that "[c]onsideration of Gbao's challenges to the Trial Chamber's findings that he significantly contributed to the JCE through his role as the RUF ideology expert and instructor therefore does not arise."45 Instead they assert that Gbao's position as OSC and his role in forced farming in Kailahun District were sufficient to establish beyond a reasonable doubt his significant contribution to the JCE, a finding never made by the Trial Chamber.

7545. Dissent – Justice Fisher, para. 33 (p. 521): I cannot agree. Having determined that the Trial Chamber erred in relying on Gbao's role as RUF ideology instructor and expert in finding that he significantly contributed to the JCE, it was incumbent on the Appeals Chamber to fully consider the consequences of its conclusion. In particular, the Appeals Chamber had to determine whether the reversed finding on Gbao's role as an ideology instructor and expert was so integral to the Trial Chamber's finding on his contribution to the JCE that the latter cannot stand without the former.

7546. Dissent – Justice Fisher, para. 34 (p. 521): We say in our Judgment granting Gbao's Appeal on Ground 8(a) that the Trial Chamber's erroneous finding on Gbao's role as the RUF ideology instructor and expert was integral to its finding on his contribution to the JCE. Indeed, we hold that "[t]he Trial Chamber … found it necessary to assess the significance of the RUF ideology to the RUF, and Gbao's role in implementing the ideology in order to find that Gbao participated in the JCE."46 We further hold that Gbao's unpleaded role as RUF ideology instructor and expert was "found [by the Trial Chamber] to be *necessary* to the determination of Gbao's participation in the JCE."47

7547. Dissent – Justice Fisher, para. 35 (p. 521-522): The Trial Chamber clearly expressed its decisive reliance on Gbao's unpleaded role as the RUF ideology instructor and expert to find that he significantly contributed to the JCE. The Trial Chamber stated, *inter alia*:

> 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.48
>
> We recall that Gbao was not a member of the AFRC/RUF Supreme Council and remained in Kailahun District during the Junta regime. He was not directly involved or did not directly participate in any 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….49

> [W]e are of the opinion that where the evidence establishes that there is a criminal nexus between [a revolutionary] 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. …50
>
> … Therefore, the distance of Gbao to many of the crimes is not a reason for denying his participation under the basic form. … 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; [and] the nexus between the ideology and the joint criminal enterprise….51
>
> 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 and were [sic] natural and foreseeable consequences of the same.52

7548. Dissent – Justice Fisher, para. 36 (p. 522): Additionally, the Trial Chamber confirmed in the Sentencing Judgment the centrality of Gbao's role as the RUF ideology instructor and expert to his contribution to the JCE:

> We have also found that Gbao's personal role within the overall enterprise was neither at the policy making level, nor was it at the "fighting end" where the majority of the actual atrocities were committed. Indeed, as the Gbao Defence pointed out in its closing submissions, Gbao has not been found to have ever fired a single shot and never to have ordered the firing of a single shot. Gbao was a loyal and committed functionary of the RUF organisation, whose major contributions to the joint criminal enterprise can be characterised by his role as an ideology instructor and his planning and direct involvement in the enslavement of civilians on RUF government farms within Kailahun District.53

7549. Dissent – Justice Fisher, para. 37 (p. 522): In light of this clear reasoning the Appeals Chamber holds that Gbao's unpleaded role as RUF ideology instructor and expert was "found [by the Trial Chamber] to be *necessary* to the determination of Gbao's participation in the JCE."54 Indeed, the Trial Chamber itself confirmed that "it include[d] *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."55 In short, the Trial Chamber was not satisfied beyond reasonable doubt that Gbao significantly participated in the JCE without this reversed finding.

7550. Dissent – Justice Fisher, para. 38 (p. 522-523): The Appeals Chamber is not in the position to speculate whether the Trial Chamber would have found that Gbao significantly contributed to the realisation of the Common Criminal Purpose had it not considered his role as the RUF ideology instructor and expert. The Appeals Chamber's role is limited to reviewing the Trial

Chamber's findings as the Trial Chamber found them. It must take those findings as they are, and cannot intuit or conjecture what conclusions the Trial Chamber would have reached in other circumstances.

7551. Dissent – Justice Fisher, para. 39 (p. 523): In my respectful opinion, the Majority fails to appreciate this crucial aspect of the appeal process. Instead, it proceeds as if the Trial Chamber found that Gbao significantly contributed to the Common Criminal Purpose only through his role as OSC and his participation in forced farming in Kailahun District.56 The Trial Chamber, however, made no such finding.

7552. Dissent – Justice Fisher, para. 40 (p. 523): The Majority accordingly misapplies the standard of review and analyses the reasonableness of a hypothetical finding that the Trial Chamber did not make. The standard on appeal requires deference to a finding of fact reached by the Trial Chamber.57 The Majority here has misapplied that standard. Having struck the actual finding of the actual Trial Chamber, the Majority has theorized that a hypothetical reasonable trier of fact could have reached a different finding. As a consequence, the Majority upholds Gbao's conviction under JCE in the absence of any confirmed finding by the trier of fact that Gbao significantly contributed to the realisation of the Common Criminal Purpose.

7553. Dissent – Justice Fisher, para. 41 (p. 523): It is be beyond the scope of appellate review for the Appeals Chamber to act as the trier of fact and determine itself whether the Trial Chamber's confirmed findings prove beyond a reasonable doubt that Gbao significantly contributed to the realization of the Common Criminal Purpose. In this respect, I fully concur that:

> an appeal is not a trial *de novo* and the Appeals Chamber cannot be expected to act as a primary trier of fact. Not only is the Appeals Chamber not in the best position to assess the reliability and credibility of the evidence, but doing so would also deprive the Parties of their fundamental right to appeal factual findings.58

I consider that making findings on such critical questions as an accused's significant contribution to the common criminal purpose is a task only within the purview of the trier of fact and beyond the proper scope of appellate review.

7554. para. 1024: The Trial Chamber found that "[i]n 1995, Gbao was a Sergeant and was sent to the Baima base in Kailahun District as an ideology instructor."2794 The Trial Chamber found that "Gbao was responsible for the teaching of the ideology to the new commando recruits."2795 The Trial Chamber further held that "Gbao was a strict adherent to the RUF ideology and gave instruction on its principles to all new recruits to the RUF."2796

7555. para. 1027: The Appeals Chamber has previously upheld Gbao's Ground 8(a) and overruled the Trial Chamber's findings that he significantly contributed to the JCE through his role as an ideology expert and instructor.2805 Gbao's Ground 8(b) is therefore moot. The Appeals Chamber will further consider below whether a reasonable trier of fact could have found, on the basis of the Trial Chamber's other findings, that Gbao significantly contributed to the JCE.

7556. para. 1040: Examining whether Gbao participated in the JCE, the Trial Chamber found that he was an "ideology instructor"2835 who taught RUF recruits and monitored the implementation of the RUF ideology.2836 It held that this ideology, in its normative and operational settings, significantly contributed to the crimes which were within the JCE or a natural and foreseeable consequence thereof.2837

7557. para. 1041: The Trial Chamber also considered other ways in which Gbao participated in the JCE. For instance, it found that Gbao had a "supervisory role"2838 over the IDU,2839 the MP,2840 the IO2841 and the G5,2842 which entailed travelling widely in Kailahun to monitor the implementation of the RUF ideology.2843 Gbao was also found to have been involved in the forced labour of civilians to produce foodstuffs,2844 which in the Trial Chamber's view significantly contributed to maintaining the strength and cohesiveness of the RUF fighting force.2845 Moreover, the Trial Chamber held that Gbao's "status, rank and personal relationship with Sankoh, as well as his knowledge of the RUF's ideology" gave him considerable prestige in the RUF in Kailahun.2846 It further considered that Gbao's failure to properly investigate allegations against a civilian woman (TF1-113) and his instruction that she be publicly beaten, would have had a demonstrative effect to compel the obedience of the civilian population in Kailahun to RUF authority.2847

7558. para. 1048: Gbao raises a number of specific issues of fact as preliminary challenges. He further claims that the Trial Chamber erred in fact in concluding that his alleged contributions significantly contributed to the joint criminal enterprise. The Appeals Chamber will first consider those preliminary issues, before turning to the broader issue of Gbao's contribution.

7559. para. 1049: The Appeals Chamber has previously upheld Gbao's Ground 8(a) and overruled the Trial Chamber's findings that he significantly contributed to the JCE through his role as an ideology expert and instructor.2877 Consideration of Gbao's challenges to the Trial Chamber's findings that he significantly contributed to the JCE through his role as the RUF ideology expert and instructor therefore does not arise.

7560. para. 1050: Gbao challenges the Trial Chamber's finding that he supervised the MP and G5 units in Kailahun District to ensure that the RUF ideology was put into practice.2878 Gbao contests this finding on the grounds that Witness DIS-188, upon whom the Trial Chamber relied was previously found to require corroboration and that the witness's testimony does not support the Trial Chamber's finding.2879 Gbao fails to establish that the Trial Chamber erred in finding this testimony credible. The Trial Chamber did find as a general matter that the witness's testimony required corroboration, as it was "inconsistent" and the witness "was not genuinely assisting the Court to arrive at the truth."2880 However, the Trial Chamber further noted that it had doubts as to the witness's veracity because the witness's testimony "was influenced in part by his support for the RUF movement and its ideology."2881 By merely pointing to the Trial Chamber's own finding, Gbao fails to demonstrate that it was unreasonable for the Trial Chamber to rely on this witness's testimony in these circumstances. The Appeals Chamber recalls that the Trial Chamber "is not required to articulate every step of its reasoning for each particular finding it makes,"2882 nor is it "required to set out in detail why it accepted or rejected a particular testimony."2883

7561. para. 1051: Moreover, contrary to Gbao's claim, the testimony of Witness DIS-188 cited in footnote 37702884 does support the finding that Gbao

> was a "popular" and "effective Commander" who travelled widely in Kailahun District, visiting different areas behind the front lines, reporting 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.2885

The testimony of Witness DIS-188 cited in footnote 3 77 1 2886 does not support the finding that Gbao's "supervisory role entailed, in great measure, the monitoring of the implementation of the ideology."2887 However, Gbao fails to show that this error rendered unreasonable the Trial Chamber's finding that as OSC he travelled widely in Kailahun District, reported on whether the MP and G5 units were doing their jobs and observed the conduct of investigations in order to ensure that the RUF ideology was put into practice. The Appeals Chamber will accordingly disregard the characterization of Gbao's supervisory role as monitoring the implementation of the RUF ideology, but the remaining impugned findings stand.

7562. para. 1052: Gbao's claim that the RUF security apparatus - the IDU, MP, IO and G5 - had no or only a nominal role during the Junta Period2888 relies on bare assertions unsupported by evidence and questionable inferences from other facts established by the Trial Chamber. Gbao further fails to address the Trial Chamber's finding that the RUF "security units enjoyed enhanced importance [in RUF controlled territory] as the central components of a static

administration."2889 Thus, Gbao merely provides an alternative interpretation of the evidence and fails to show that the Trial Chamber's findings were unreasonable.

7563. para. 1053: In arguing that he had limited authority and responsibility in his role as OSC, Gbao has pointed to a number of the Trial Chamber's findings regarding the structure and operations of the RUF security apparatus.2890 Gbao highlights, in particular, findings that he had little or no authority to issue orders to the Overall Unit Commanders,2891 initiate investigations2892 or enforce punishments.2893 However, the Trial Chamber did not disregard these findings in its reasoning, specifically noting that "the evidence is insufficient to conclude that Gbao had effective control over [the IDU, MP, IO and G5] as OSC."2894 Nonetheless, the Trial Chamber found that Gbao still had "considerable influence over the decisions taken by these bodies" due to "his appointment to this position by Sankoh, his status as a Vanguard and his power to issue recommendations."2895 The Trial Chamber further specifically found that whatever his *de jure* authority, Gbao "enjoyed substantial practical authority over the members of the security units."2896 The Trial Chamber considered then, that it was his "considerable influence" and "practical authority" as the supervisor of the RUF security apparatus, rather than his formal power and authority,that founded in part Gbao's contribution to the JCE through his role as OSC. By merely pointing to other findings, Gbao fails to address the Trial Chamber's reasoning and its finding that he had "considerable influence" over the RUF security apparatus.

7564. para. 1054: The Appeals Chamber has previously considered Gbao's claims under his Grounds 8(s) and 11 regarding forced farming in Kailahun District.2897 The Appeals Chamber recalls its conclusions that Gbao fails to establish that the Trial Chamber erred in concluding that forced farming took place in Kailahun District during the Junta period, or that the Trial Chamber erred in finding that Gbao shared the intent to commit the crime of enslavement with respect to that of forced farming.2898

7565. para. 1055: Gbao's claim that the Trial Chamber failed to explain how the forced farming in Kailahun District furthered the goals of the Junta government2899 ignores the Trial Chamber's findings. The Trial Chamber found that the produce from these farms was used by the RUF in their operations2900 and that the produce was turned over by Gbao to Sesay for commercialisation.2901 Similarly, Gbao's claim that the Trial Chamber failed to make findings as to how his involvement in forced farming furthered the goal of the JCE2902 fails to address the Trial Chamber's findings on Gbao's involvement2903 and articulate how those findings were erroneous or could not support the Trial Chamber's conclusion.

7566. para. 1056: In both Grounds 8(c) and (i), Gbao claims that he was not a senior leader of the RUF, but only a captain and mid-level officer, arguing that the Trial Chamber thus erred in finding his rank significant was significant in its determination of whether he significantly contributed to the JCE.2904 In arguing that he only held the rank of captain and that the Trial Chamber therefore erred in finding his rank significant, Gbao mischaracterizes the Trial Chamber's finding and ignores the Trial Chamber's relevant findings.2905 Gbao does not dispute the Trial Chamber's finding that he was OSC for the RUF and Overall IDU Commander,2906 and that he often served as Chairman of the Joint Security Board of Investigations.2907 More importantly, Gbao does not challenge the Trial Chamber's finding that "in RUF controlled territory, the OSC was responsible for the enforcement of discipline and law and order."2908 Similarly, Gbao neither challenges the Trial Chamber's finding that he was a Vanguard,2909 nor the findings regarding the status and authority Vanguards held.2910 In particular, he does not challenge the Trial Chamber's finding that assignment and status could be more important in terms of authority and influence than rank in the RUF.2911 Accordingly, Gbao's citation to testimonial evidence of his rank by Witness DAG-048 and the testimony of Witness TF1-371 does not establish that the Trial Chamber unreasonably found that he had considerable prestige and power in Kailahun District.

7567. para. 1057: Gbao further claims that the Trial Chamber erred in finding that he gained additional prestige and power within the RUF as a result of a personal connection with Foday Sankoh.2912 However, Gbao fails to articulate how this error rendered unreasonable the Trial Chamber's finding that "Gbao had considerable prestige and power within the RUF in Kailahun District,"2913 particularly as he does not contest his assignment as OSC and Overall IDU Commander and his status as a Vanguard, as noted above.

7568. para. 1058: Gbao misrepresents the Trial Chamber's findings regarding the general credibility of TF1-113. Contrary to his assertion, the Trial Chamber did not consider that this witness required corroboration when testifying about Gbao's acts and conduct.2914 Rather, the Trial Chamber was not convinced that the whole of the witness's testimony was not credible, and found that it was only necessary to exercise extreme caution and often seek corroborative evidence.2915 Furthermore, Gbao fails to support his assertion that the testimonies of witnesses who lie under oath should, as a rule, be disregarded,2916 as none of the authorities he cites supports such a proposition.2917 In that regard, the Appeals Chamber notes that Rules 77 and 91 of the Rules allow a Chamber to hold in contempt a witness who wilfully gives false testimony under oath, but nothing in the Rules obligates a Chamber to discard the testimony of such witnesses for that reason alone. Rather, Rule 89 permits a Chamber to admit any evidence it deems relevant. The Appeals Chamber will not lightly disturb the Trial Chamber's exercise of its

discretion in this respect. Indeed, "it is primarily for the Trial Chamber to determine whether a witness is credible and to decide which witness' testimony to prefer, without necessarily articulating every step of the reasoning in reaching a decision on these points."2918 Accordingly, Gbao's claim that the Trial Chamber erred in finding TF1-113's testimony credible on this issue is rejected.2919

7569. para. 1059: In addition to the claims previously addressed, Gbao submits four grounds in support of his argument that the Trial Chamber erred in finding that he significantly contributed to the JCE.

7570. para. 1060: Gbao first argues that the Trial Chamber erred in finding that he significantly contributed as the OSC, submitting that the RUF security apparatus had a nominal role during the Junta period,2920 and that he had limited authority over the RUF security units.2921 Gbao further submits that the security apparatus did not deal with most disciplinary issues in fact, which "were instead handled by the local Area Commander where the crime was alleged to have taken place."2922 The Appeals Chamber has previously dismissed Gbao's first submission,2923 and has noted that the Trial Chamber found that Gbao, whatever his *de jure* authority, exercised "considerable influence" and "practical authority" over the RUF security apparatus.2924 The Appeals Chamber further notes with respect to the last submission that the Trial Chamber specifically distinguished between discipline in combat areas and RUF-controlled territory, finding that although "Gbao may have possessed only limited authority in respect to combat operations," "the OSC was responsible for the enforcement of discipline and law and order" in RUF-controlled territory.2925 In this regard, the Appeals Chamber recalls the Trial Chamber's findings regarding the role of the RUF security apparatus and the RUF disciplinary system in maintaining the cohesiveness of the RUF as an armed force and allowing the RUF leadership to control RUF fighters.2926

7571. para. 1061: Second, Gbao argues that he had only a nominal role as OSC outside Kailahun District,2927 noting that the Trial Chamber found that there was insufficient evidence that he received reports of unlawful killings in Bo, Kenema and Kono Districts or that he failed in his duty to ensure proper investigations were conducted in those areas.2928 The Appeals Chamber notes that the findings Gbao cites do not show that no reasonable trier of fact could have found that he had a more than nominal role outside Kailahun District, particularly in light of the Trial Chamber's specific findings regarding his practical influence and authority over the RUF security apparatus as a whole. Furthermore, Gbao fails to show that it was not open to a reasonable trier of fact to conclude that he significantly contributed to the JCE on the basis of his contributions in

Kailahun District. The Appeals Chamber recalls that the Trial Chamber's findings regarding Gbao's significant role as OSC in Kailahun District,2929 his supervision of the MP and G5 units in Kailahun District2930 and the finding that Gbao had considerable prestige and power in the RUF in Kailahun District.2931 Moreover, the Trial Chamber specifically found that Kailahun District played an important role in the realisation of the Common Criminal Purpose:

> The[] widespread and systematic crimes [by the RUF in Kailahun2932] 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.2933

7572. para. 1062: Third, Gbao argues that the Trial Chamber did not demonstrate how the forced farming significantly contributed to the JCE, with respect to the forced farming in Kailahun District.2934 However, Gbao does not address the Trial Chamber's findings that the produce from these farms was used by the RUF in their operations2935 and that the produce was turned over by Gbao to Sesay for commercialisation.2936 Furthermore, Gbao characterises as "generic" the Trial Chamber's finding that his role in the forced farming significantly contributed to maintaining the strength and cohesiveness of the RUF fighting force. This does not, however, show that the Trial Chamber erroneously concluded that Gbao significantly contributed to the JCE through his role in the forced farming.

7573. para. 1063: Finally, Gbao argues that the lack of findings that he acted "in concert" with the senior leaders or members of the AFRC demonstrates that he did not significantly contribute to the JCE.2937 In light of all the above findings and discussion, the Appeals Chamber is not satisfied that the absence of findings that Gbao directly acted together with members of the AFRC precluded a reasonable trier of fact from concluding that Gbao significantly contributed to the JCE. The Appeals Chamber recalls that the manner in which the members of the JCE interact and cooperate can take as many forms as conceived by the participants to pursue the realisation of their shared common criminal purpose.2938 In this respect, the Appeals Chamber notes that the Trial Chamber found that Gbao remained in Kailahun after the May 1997 coup on Bockarie's instructions, and that in June 1997 Bockarie ordered Gbao to move from Giema to Kailahun Town.2939 The Trial Chamber further found that other senior RUF Commanders also remained in Kailahun District, including the Area Commander Denis Lansana and the overall G5 Commander Prince Taylor.2940 Furthermore it found that the RUF and AFRC worked alongside one another

in Kailahun District.2941 The Appeals Chamber also notes the important role Kailahun District played in the realisation of the Common Criminal Purpose.2942

7574. para. 1064: Accordingly, the Appeals Chamber concludes that Gbao fails to show that the Trial Chamber erred in finding that he significantly contributed to the JCE.

(iv) Planning

a. Legal test – Planning

7575. para. 687: The Appeals Chamber recalls that the *actus reus* of this mode of liability requires that the planning was a factor "substantially contributing" to the criminal conduct for which the accused is to be held responsible.1764 The Trial Chamber correctly set out this legal requirement when pronouncing on the legal elements of planning.1765 However, when applying the legal test for planning to the facts now at issue, it found Sesay liable for planning on the basis that his conduct was a "significant" contributory factor to the perpetration of enslavement.1766

7576. para. 688: An accused's "significant" contribution may denote a lesser degree of impact on the crime than "substantial" contribution.1767 Having set out the proper legal standard for planning, which requires "substantial" contribution, the Trial Chamber proceeded to make findings on Sesay's involvement in the enslavement in Kono District between the recapture of the District by RUF troops under his command in December 1998, and January 2000,1768 which demonstrate a "substantial" contribution on his part. For example, the Mining Commander reported to Sesay, and in 2000, Sesay himself appointed a new Overall Mining Commander.1769 Sesay visited Kono District and collected diamonds and kept a house in Koidu Town where he received mining Commanders for this purpose.1770 He visited the mines and ordered that civilians be captured from other Districts and arranged for transportation of the captured civilians to the mines.1771 The Trial Chamber further found that, as the illicit sale of diamonds was the RUF's primary means of financing, the mining system in Kono was designed and supervised at the highest levels, and 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.1772

7577. para. 689: The Appeals Chamber therefore holds that the Trial Chamber did not apply the wrong legal test for planning.

7578. para. 1170: Planning and aiding and abetting also require that the accused contribute to the crimes, to an even higher degree. These forms of liability only attach where the accused "substantially" contributed to the crimes.3258

(v) Aiding and abetting

a. Legal test – aiding and abetting

7579. para. 1170: Planning and aiding and abetting also require that the accused contribute to the crimes, to an even higher degree. These forms of liability only attach where the accused "substantially" contributed to the crimes.3258

(vi) Kenema District

a. JCE – Participation in and shared intent – Kenema District

i. Sesay – JCE – Participation in and shared intent – Kenema District

7580. para. 617: The Trial Chamber found that Sesay actively participated in the furtherance of the Common Criminal Purpose and thereby significantly contributed to the acts of terrorism (Count 1), collective punishments (Count 2), unlawful killings (Counts 3 to 5), physical violence (Count 11), enslavement (Count 13) and pillage (Count 14) found to have been committed in Kenema District between 25 May 1997 and 19 February 1998.1533

7581. para. 619: Sesay's first challenge to his participation in the JCE in Kenema District concerns the Trial Chamber's finding that, "on Sesay's orders, from 1997 onwards, captured civilians were taken to Bunumbu for military training."1538 The Trial Chamber found that the Bunumbu training camp was established in 1998,1539 and that the AFRC/RUF Junta was ousted from power by the ECOMOG intervention on 14 February 1998.1540 It did not say whether the Bunumbu training camp was established before or after 14 February 1998, but the testimony of TF1-362, relied on by the Trial Chamber for the impugned finding and invoked by Sesay and the Prosecution on appeal, suggests that the camp was established shortly after the ECOMOG intervention.1541 Sesay thus appears to be correct that the Bunumbu training camp did not open until after the Junta period.

7582. para. 620: However, it does not follow that his orders in question did not constitute a participation in the JCE, because the JCE continued beyond the Junta period, until late April 1998.1542 Sesay does not address the question of whether he issued any orders between the opening of the Bunumbu training camp sometime in February 1998 and late April 1998. The extent that these orders contributed to the crimes in Kenema District, which occurred between 25 May 1997 and 19 February 1998,1543 would have been limited to the period of temporal overlap, but this fact alone does not render unreasonable the Trial Chamber's conclusion that Sesay lent a significant contribution to those crimes, particularly in light of his other forms of participation in the JCE in Kenema. The Appeals Chamber therefore dismisses Sesay's present argument, and proceeds to consider his challenges to the findings on his other forms of participation in Kenema.

7583. para. 621: Sesay contests the finding that he participated in the JCE through his involvement in the planning and organising of the forced mining in Kenema District. His first argument, that this involvement was not carried out with the intent to cause terror,1544 is dismissed because it is based on the erroneous premise that the common criminal purpose of the JCE was to cause terror.1545

7584. para. 622: Second, Sesay contends that the finding in paragraph 1091 of the Trial Judgment that "[d]iamonds were then either given to RUF Commanders including Bockarie, Sesay and Mike Lamin" was an insufficient basis for the Trial Chamber to conclude in paragraph 1997 that "the forced mining was a planned and a systematic policy of the Junta Government devised at the highest level" and that he "as a member of the Supreme Council, was involved in the planning and organisation of the forced mining in Kenema District."1546 However, Sesay only selectively quotes paragraph 1091 in support of his claim. The full finding states that many civilians dug for diamonds in Tongo Field and

> [T]he diamonds found would be taken to the Secretariat to be valued. 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. Eddie Kanneh was known to arrange for diamonds to be sold abroad to finance the acquisition of arms and ammunition.1547

Also, Sesay does not challenge the finding in paragraph 1997 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." Rather, Sesay refers to TF1-371's testimony to argue that the issue of force was not discussed and that the Supreme Council would replace the commander if civilians were harassed while mining in his area.1548 However, he does not explain how it was unreasonable for the Trial Chamber to disregard this

evidence given "[t]he sheer scale of the enslavement in Kenema District."1549 Further, merely invoking the finding that "significant decisions were made by Koroma, SAJ Musa and certain other Honourables,"1550 Sesay fails to show that the Trial Chamber's finding concerning his participation was unreasonable.

7585. para. 623: The Appeals Chamber therefore rejects the arguments in Sesay's Ground 27 that he did not participate in the JCE in Kenema District.

7586. para. 646: The Trial Chamber found that six acts of unlawful killings and physical violence committed in Kenema Town constituted acts of terrorism.1622 The Trial Chamber found that "a number of the victims were prominent members of civil society and were targeted on this account."1623 It further found that AFRC/RUF fighters publicised these crimes.1624 The Trial Chamber concluded 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",1625 and thus were committed with the specific intent to terrorise the civilian population.1626

7587. para. 650: As Sesay was convicted for the acts of terrorism in question under JCE 1 liability,1641 and as the Trial Chamber found that one or more members of the JCE used the non-members who carried out the *actus reus* to commit the crime of acts of terrorism,1642 his arguments turn on the initial proposition that the Trial Chamber was required to find that the non-members of the JCE who carried out the *actus reus* had the specific intent for those crimes.

7588. para. 651: The Appeals Chamber notes as an initial matter that the *mens rea* of those who carry out the *actus reus* of the crime is not among the elements of JCE 1 liability as set out in *Tadić*.1643 While "participants in a basic or systemic form of joint criminal enterprise must be shown to share the required intent of the principal perpetrators,"1644 this holding only reinforces that the members of the JCE must share the intent to commit the crime for which they are held to be responsible under JCE 1 and JCE 2, and does not imply that non-members used by a JCE member to carry out the *actus reus* of the crime must share the intent with the members of the JCE.

7589. para. 652: Further, the Appeals Chamber agrees "that what matters in a first category JCE is not whether the person who carried out the *actus reus* of a particular crime is a member of the JCE, but whether the crime in question forms part of the common purpose."1645 As persuasively explained by the ICTY Appeals Chamber, the persons who carry out the *actus reus* of the crime need not share the common purpose of the JCE in order for liability for their acts to attach to

members of the JCE.1646 To the contrary, the primary question for the purposes of JCE liability is whether the acts of non-members who carried out the *actus reus* of the crimes can be imputed to the members of the JCE.1647 So long as it is established that a member of the JCE used the non-member to commit a crime within the common purpose of the JCE, there is no need to show that the non-member intended to further the common purpose of the JCE or indeed even knew of that common purpose.1648

7590. para. 653: For the purposes of determining the liability of JCE members for the acts of non-members who carry out the *actus reus* of the crime, the critical inquiry is not the *mens rea* of the non-member, but rather the acts and mental state of the JCE member, who uses the non-member to commit a crime within and in furtherance of the common purpose.1649 As the *mens rea* element of JCE 1 liability relates solely to the shared intent of the members of the JCE, and as the persons who carry out the *actus reus* of the crime need not be members of the JCE, the *mens rea* of non-members who carry out the *actus reus* of the crime is not a legal element of JCE 1 liability.1650

7591. para. 654: The Appeals Chamber does not consider that the finding of the ICTY Appeals Chamber in *Limaj et al.*, cited by Sesay, is relevant to the present issue, as the Appeals Chamber there was concerned with the scope of the common purpose as pleaded in the indictment, a distinct issue from the present question.1651

7592. para. 655: Accordingly, the Appeals Chamber concludes that under JCE 1 liability, the Trial Chamber was not required to find, as an element of the liability of JCE members, that non-members who carried out the *actus reus* of the crime had the requisite *mens rea* for the crime of acts of terrorism. Rather, in addition to finding that the members of the JCE shared the intent to commit the crime and finding that the acts of the non-members who carried out the *actus reus* of the crimes could be imputed to a member of the JCE, the Trial Chamber was only required to find that the acts of the non-members satisfied the *actus reus* of the offence.

7593. para. 656: While the Trial Chamber did find that those who carried out the *actus reus* of the crime acted with the specific intent to spread terror,1652 such a finding is only relevant as a matter of evidence to the other findings that the Trial Chamber was required to make. The Appeals Chamber finds that Trial Chamber's alleged errors with respect to the *mens rea* of the non-members who carried out the *actus reus* of the crimes,1653 even if accepted *arguendo*, would not render those findings unreasonable. Sesay challenges related to the *mens rea* of non-members who carried out the *actus reus* of the crimes are dismissed.

7594. para. 657: Sesay further challenges the Trial Chamber's findings that Bockarie, as the perpetrator and member of the JCE, acted with the requisite *mens rea* for acts of terrorism. Sesay fails to show an error1654 in the Trial Chamber's findings regarding the killing of the man at the NIC Building.1655 Sesay neither explains how the Trial Chamber's finding that Bockarie acted with the requisite intent would be erroneous even if it were accepted that the victim was a Kamajor who was *hors de combat,* nor explains how Bockarie's desire to "do away with all the Kamajors"1656 is inconsistent with or renders unreasonable the Trial Chamber's finding. This claim is therefore dismissed.

7595. para. 658: Sesay fails to establish that the Trial Chamber erred in finding that the beating of TF1-129 was committed with the specific intent to spread terror.1657 Contrary to Sesay's claim, the Trial Chamber did not need to find a "single, all-encompassing intention" among all those who participated in the beating of TF1-129,1658 as the Trial Chamber's findings show that it found that Sesay and Bockarie used those who carried out the beatings to commit the crime.1659 In particular, the Appeals Chamber notes the following findings: (i) Sesay ordered his bodyguard to molest TF1-129 during his arrest;1660 (ii) Sesay's bodyguard further injured TF1-129 when he was to be taken to the Secretariat building;1661 (iii) Sesay instructed a small boy to guard TF1-129 and kill him if he moved;1662 (iv) TF1-129 was beaten while being taken to Bockarie and Sesay;1663 (v) Bockarie and Sesay ordered TF1-129 to be taken to the "dungeon", and TF1-129 was beaten on the way to and from the "dungeon".1664

7596. para. 659: In addition, Sesay argues that there was no evidence that he sought to publicise the beating,1665 and that the Trial Chamber therefore erred in finding that he and Bockarie used the non- members who carried out the *actus reus* of the crimes to commit an act of terrorism.1666 In this respect, the Appeals Chamber recalls the Trial Chamber's findings that acts of terrorism were within the Common Criminal Purpose of the JCE,1667 and therefore that the intent to commit acts of terrorism was shared by the members of the JCE, including Sesay and Bockarie. The Trial Chamber further found that the six acts of violence in Kenema Town,1668 including the beating of TF1-129, targeted prominent members of civil society and were publicised.1669 The Trial Chamber accordingly reasoned that the six acts of violence 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," and therefore were committed with the specific intent to terrorise the civilian population.1670 The Appeals Chamber also recalls the Trial Chamber's finding "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."1671 Finally, the Trial Chamber found that Bockarie

targeted alleged Kamajors on a number of occasions1672 and publicly expressed his intent to target alleged Kamajors.1673

7597. para. 660: In light of the above findings, whether or not the Trial Chamber found that Sesay or others sought to publicise the beating directly, the Trial Chamber did find that TF1-129 was targeted because he was considered to be prominent1674 and a "chief Kamajor."1675 Sesay fails to show that no reasonable trier of fact could have concluded on that basis that he and Bockarie used the non-members who carried out the *actus reus* of the crimes to commit acts of terrorism. Sesay further argues that as TF1-129 was a suspected Kamajor ally, "an aggravated Bockarie" ordered his arrest, and therefore, any crimes committed during TF1-129's arrest were not committed with the primary intent of spreading terror.1676 Although the Trial Chamber found that certain acts of violence did not constitute acts of terror because the acts were committed in response to conduct that aggravated the perpetrators,1677 Sesay misinterprets that finding and ignores the evidence as a whole as relied on by the Trial Chamber, in particular the findings noted above. Accordingly, Sesay fails to establish that the Trial Chamber erred in finding that he and Bockarie acted with the specific intent to spread terror.

ii. Kallon – JCE – Participation in and shared intent – Kenema District

7598. para. 798: The Trial Chamber held that its previous findings, described in its JCE findings on Bo District, regarding Kallon's participation and significant contribution "apply *mutatis mutandis* to the crimes committed in Kenema District."2081 It therefore concluded that Kallon participated in the furtherance of the Common Criminal Purpose and thereby significantly contributed to the crimes found to have been committed in Kenema.2082 It held that Kallon shared with the other JCE members the requisite intent to commit these crimes.2083

7599. para. 801: As to the Trial Chamber's application of its findings on Kallon's contribution in Bo District *mutatis mutandis* to its findings on events in Kenema District, the Appeals Chamber recalls that Kallon's challenges to the former findings have been dismissed.2091 In remaining parts, Kallon's argument relies on the assertion that the evidence supporting both his conviction and the existence of the crimes in Kenema was different from that pertaining to Bo. This is correct insofar as the crime incidents in the two Districts were not the same. However, Kallon does not point to any examples in the evidence to sustain that, inasmuch as his own participation is concerned, no reasonable trier of fact could have found, as the Trial Chamber did, that his contribution was such that it contributed to both the crimes in Bo and the crimes in **Kenema**. Kallon therefore fails to demonstrate an error and accordingly his argument is rejected.

7600. para. 802: Second, Kallon contends that he did not contribute to or share the intent for the JCE in Kenema because he "featured nowhere in [the] power equation" between Bockarie and Eddie Kanneh, who were in control of the District.2092 The Appeals Chamber notes that Kallon's contribution and intent in respect of Kenema did not turn on whether he was in any particular position of control together with Bockarie and Kanneh there. Rather, the Trial Chamber inferred that he contributed to and intended, in particular, the "forced labour in Kenema District" through his involvement on the Supreme Council.2093 The Appeals Chamber has already dismissed Kallon's challenge to that inference.2094 Moreover, as also previously noted, whether Kallon personally committed any crimes in Kenema is not determinative for his JCE liability.2095 This argument is rejected.

7601. para. 803: Third, Kallon argues that he was absent from Kenema and Tongo Field at the time the unlawful killings there were committed.2096 His reference in support to the testimonies of TF1-071, TF1-125, TF1-367 and DMK-047 is but a mere restatement of this evidence as presented before the Trial Chamber in support of his alibi for Kenema District.2097 The Trial Chamber assessed this evidence, but was not convinced that there was any reasonable possibility that his alibi was true.2098 Simply repeating this evidence on appeal, Kallon fails to demonstrate that the Trial Chamber's assessment thereof was unreasonable.

7602. para. 804: For its finding that Kallon was present during two of the killings at ***Tongo Field*** in August 1997, the Trial Chamber relied on Witness TF1-035's testimony.2099 Kallon challenges this evidence, arguing first that it conflicts with the testimony of DIS-069 that Kallon was not present during the "attack against Tongo in August 1997"2100 and the evidence given by DIS-157 that between June 1997 and February 1998 he did not receive any information that Kallon was involved in any killings in Tongo.2101 However, the Trial Chamber found both witnesses to be generally unreliable.2102 Kallon's additional three challenges to TF1-035's testimony as such are, as Kallon himself points out, reiterations of arguments made in his Final Trial Brief.2103 As such, they are insufficient to show an error in the Trial Chamber's assessment of this testimony. These arguments are rejected.

7603. para. 900: In relation to acts of physical violence in Kenema District, Kallon submits that there was no evidence that he knew about, contributed to, or shared with the perpetrators the intent to commit the beatings of TF1-122 and of TF1-129.2352 He also claims a lack of evidence that he knew about or shared the intent for the amputations of the hands of three civilians and the flogging of TF1-197 and his younger brother.2353 As to the amputations, Kallon further claims a lack of evidence that he "was in any way linked to the perpetrators of the crime," and as to the flogging he

avers that the perpetrators "were neither under his control or authority."2354 The Prosecution responds that it was only required that Kallon substantially contributed to the JCE.2355 Kallon offers no additional arguments in reply.

7604. para. 905: With respect to physical violence in Kenema District, the Appeals Chamber notes that the Trial Chamber did not specifically detail how it reached the conclusion that Kallon shared the intent for the acts of physical violence in question, nor did it expressly set out on which evidence it relied.2361 Nonetheless, the Appeals Chamber considers that the Trial Chamber's conclusion was open to a reasonable trier of fact. Based on the "widespread and systematic nature of the crimes," the Trial Chamber found that the Supreme Council, of which Kallon was a member, initiated a "deliberate" policy of commission of crimes.2362 Kallon was also "directly involved in the commission of crimes designed to further the common purpose," in particular the killing of enslaved civilian miners and enslavement, both of which he was found to have endorsed.2363 He had an active combat role in the February/March 1998 attack on Koidu Town during which an unknown number of civilians were killed by Junta forces.2364 Moreover, the Trial Chamber found that Kallon endorsed Johnny Paul Koroma's order to burn houses and kill civilians in Koidu Town in March 1998.2365 He was further found to have participated in a mock vote on TF1-015's life, wherein he voted to kill the witness.2366 In addition, Kallon received regular communications about the activities of the joint forces in Kono.2367

7605. para. 906: The Appeals Chamber, Justices Winter and Fisher dissenting, holds that these findings provide a sufficient basis on which a reasonable trier of fact could have inferred that Kallon also intended this crime. As Kallon does not question the evidence underpinning these findings, and in light of the fact that JCE liability does not require that Kallon knew about or intended the specific criminal incidents in question,2368 the Appeals Chamber, Justices Winter and Fisher dissenting, rejects his submission.

7606. para. 907: Turning to Kallon's *actus reus*, the Appeals Chamber notes that he did not have to participate specifically in the crimes, so long as his participation in the JCE was such that he thereby significantly contributed to them.2369 JCE liability also does not require "control or authority" over the perpetrators.2370 Trial Chamber found that the three amputations and the flogging were both committed by fighters led by Staff Alhaji, who was used by the JCE members to commit crimes in furtherance of the Common Criminal Purpose.2371 These findings demonstrate how the Trial Chamber "linked" the crimes to Kallon as a participant in the JCE.2372 Because Kallon does not address the evidence relied on for these findings, his submission is dismissed.

7607. para. 928: The Trial Chamber found that Kallon incurred JCE liability for enslavement (Count 13) in Kenema, Kono and Kailahun Districts.2422 Kallon had bodyguards who were under the age of 15 years, and he knew the SBUs were used to force the enslaved mining and guard the mining sites.2423 During 1998 and 1999, Kallon brought persons under 15 years of age to be trained by the RUF at *Bunumbu*.2424 Kallon, therefore, was 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.2425 Through these acts, among others, Kallon was found to have participated in the JCE.2426 The Trial Chamber also found Kallon guilty under superior responsibility for the enslavement of hundreds of civilians in camps throughout Kono District between February and December 1998.2427

7608. para. 931: The Appeals Chamber notes that the finding that the "SBUs seen by TF1-141 with Kallon … in Kono in February 1998" and "the boys in SBUs seen by TF1-045 with Kallon in Freetown in 1997 and in Makeni in 1999 to 2000" were not bodyguards2434 could be read to contradict the finding that "Kallon had bodyguards who were under the age of 15 years."2435 However, Kallon fails to establish that this contradiction, if any, occasioned a miscarriage of justice. In inferring that Kallon was engaged in the system of enslavement, the Trial Chamber's findings show that it also relied on his contribution to the use of children under the age of 15 to actively participate in hostilities,2436 which the Trial Chamber found included the use of children to guard the mines at Tombodu in Kono in February/March 1998,2437 and to intimidate and kill civilians working there.2438 These findings were supported by evidence which Kallon does not address. This submission is therefore rejected.

7609. para. 932: The Trial Chamber's holding that it would not use evidence that Kallon may have personally conscripted children is limited to the use of that evidence for the purpose of determining Kallon's responsibility for *personal* commission under Count 12.2439 For purposes of that mode of liability, the allegation that Kallon brought children for training at *Bunumbu* was a material fact which was insufficiently pleaded in the Indictment, and so the Trial Chamber declined to enter a conviction that Kallon personally committed the crimes charged under Count 12. However, Kallon's conviction under Count 13, which is the subject matter of his present ground of appeal, was not based on personal commission, but instead on his participation in a JCE.2440 The Trial Chamber did not exclude evidence of Kallon bringing children for training at *Bunumbu* from consideration in respect of the mode of liability of JCE, the pleading requirements of which are different from personal commission.2441 Kallon's submission is therefore rejected.

7610. para. 933: The Appeals Chamber finds that a reasonable trier of fact could have relied on the relevant parts of TF1-141's testimony to find that "Kallon was actively engaged in the abduction for and planning of training of SBUs in Kono District in February/March 1998."2442 In particular, TF1-141, a former child soldier,2443 testified that after being captured he was with "Morris Kallon's men" and was then taken to a junction in Koidu Town where he saw Kallon. From there, TF1-141 was taken by Akisto, who was "close to Morris Kallon," with a group of combatants to Guinea Highway where he kept "guard in the night as security."2444 The Appeals Chamber recalls that is has upheld the finding that Kallon was in charge of the Guinea Highway area.2445 The Trial Chamber further provided corroboration of these parts of TF1-141's testimony.2446 This submission is rejected.

iii. Gbao – JCE – Participation in and shared intent – Kenema District

7611. See above: Chapter 12 – Article 6.1. Liability – RUF – Appellate Judgment – Findings and conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

7612. See above: Chapter 12 – Article 6.1. Liability – RUF – Appellate Judgment – Findings and conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras.4 – 28 [7454].

7613. See above: Chapter 12 – Article 6.1. Liability – RUF – Appellate Judgment – Findings and conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

7614. See above: Chapter 12 – Article 6.1. Liability – RUF – Appellate Judgment – Findings and conclusions – JCE – Categories of JCE and *mens rea* – Separate opinion – Justice Ayoola – paras.22-41. 43 – 57 [7480].

7615. para. 946: In these sub-grounds of appeal, Gbao challenges the Trial Chamber's findings regarding his *mens rea* for his convictions under JCE 1 and JCE 3 liability. In his Grounds 8(l) and (m), Gbao alleges that the Trial Chamber erred in finding that the crimes for which he was convicted under JCE 3 liability in Bo, Kenema and Kono Districts were reasonably foreseeable to him and that he willingly took the risk that those crimes might be committed. In his Grounds 8(o), (p), (q), (r) and (s), Gbao alleges that the Trial Chamber erred in finding that he shared the intent to commit the crimes for which he was convicted under JCE 1 liability in Kailahun District.

7616. para. 947: The Trial Chamber found with respect to Bo District that Gbao either knew or had reason to know that the deliberate, widespread killings of civilians occurred during RUF

military assaults, that suspected Kamajor collaborators would be killed and that pillage took place during AFRC/RUF operations.2479 As regards Kenema District, the Trial Chamber found that Gbao knew or had reason to know that deliberate, widespread physical violence against civilians occurred during RUF military assaults, that suspected Kamajor collaborators would be killed or subject to great suffering or serious physical injury and that civilians were enslaved in order to pursue the Common Criminal Purpose.2480 With respect to Kono District, the Trial Chamber found that Gbao knew or had reason to know that deliberate, widespread sexual violence against civilians occurred during RUF military assaults, that sexual violence would have been inflicted upon these persons, that non-consensual sexual relationships in the context of forced marriages were likely to be committed by RUF fighters, that sexual violence was intended by the members of the JCE to further the goals of the JCE and that civilians were enslaved in order to pursue the Common Criminal Purpose.2481 The Trial Chamber further found that despite knowing that these crimes were being committed, Gbao "continued to pursue the common purpose of the joint criminal enterprise."2482

7617. para. 948: On the basis of those findings, the Trial Chamber concluded that Gbao "willingly took the risk that the crimes charged and proved under Counts 3-5 (unlawful killings) and Count 14(pillage) might be committed" in Bo District,2483 that the crimes charged and proved under Counts 3 to 5, 11 and 13 might be committed in Kenema District2484 and that the crimes charged and proved under Counts 3 to 5, 6 to 9, 10 and 11, 13 and 14 might be committed in Kono District.2485 Accordingly, the Trial Chamber concluded that Gbao was liable for those crimes as a member of the joint criminal enterprise.2486

7618. para. 951: Gbao's claim that the Trial Chamber erred in failing to make any findings linking him to the crimes committed by the principal perpetrators is undeveloped and unsupported.2505

7619. para. 952: Gbao claims that the Trial Chamber failed to adequately explain how the crimes committed in Bo, Kenema and Kono Districts were reasonably foreseeable to him.2506 The Appeals Chamber finds that Gbao has mischaracterized the Trial Chamber's findings. Contrary to Gbao's submission, the Trial Chamber did not find that the crimes in Bo, Kenema and Kono Districts were reasonably foreseeable to him. Rather, the Trial Chamber found that he "knew or had reason to know" of those crimes.2507 The Trial Chamber's only findings with respect to foreseeability were in regard to the crimes of acts of terrorism and acts of collective punishment committed in Bo and Kenema Districts, which the Trial Chamber found were not reasonably foreseeable to Gbao.2508 Gbao's contention is therefore flawed and misconceived, as the Trial

Chamber found that he knew or had reason to know of the crimes in those Districts for which he was held responsible, and did not find, as Gbao suggests, that those crimes were reasonably foreseeable to him. In this respect, the Appeals Chamber notes that the Trial Chamber based its conclusion that Gbao knew or had reason to know of the crimes in Bo, Kenema and Kono Districts2509 on numerous factors, including the facts that: (i) as IDU Commander, Gbao was charged with investigating crimes against civilians;2510 (ii) in his capacity as OSC, Gbao oversaw the G5, which managed the capture and deployment of civilians in furtherance of the RUF's goals;2511 (iii) Gbao had the position as a Vanguard and senior Commander in the RUF;2512 (iv) the RUF ideology justified abuses against civilians considered to be "enemies of the revolution";2513 and (v) RUF fighters deliberately killed civilians on a massive scale during military attacks from the time of the initial invasion in 1991.2514 Moreover, with respect to the crimes of sexual violence in Kono District, the Trial Chamber noted the deliberate and widespread commission of these crimes during RUF military assaults,2515 and inferred from Gbao's important role and oversight functions that he knew that non-consensual sexual relationships were likely to be committed by RUF fighters in the context of forced marriage.2516 It further considered that forced marriage was important to the RUF both as a tactic of war and as a means of obtaining unpaid logistical support for troops.2517

7620. para. 953: Finally, Gbao fails to establish that the Trial Chamber did not explain its finding that Gbao willingly took the risk that such crimes might be committed in Bo, Kenema and Kono Districts.2518 The Appeals Chamber recalls that, as a general rule, a Trial Chamber "is required only to make findings on those facts which are essential to the determination of guilt on a particular count";2519 it "is not required to articulate every step of its reasoning for each particular finding it makes"2520 nor is it "required to set out in detail why it accepted or rejected a particular testimony."2521 For each of the types of crimes committed in those districts, the Trial Chamber found that Gbao knew or had reason to know of the crimes.2522 The Trial Chamber further found that Gbao, despite having that knowledge, continued to pursue the Common Criminal Purpose of the JCE.2523 Accordingly, the Trial Chamber concluded that Gbao willingly took the risk that such crimes would be committed in Bo, Kenema and Kono Districts and was responsible for those crimes as a member of the JCE.2524 In light of these findings, the Appeals Chamber concludes that Gbao fails to establish that the Trial Chamber did not provide sufficient reasoning for its conclusion.

7621. para. 954: Gbao argues that the Trial Chamber's finding that he had any knowledge of the crimes in Bo, Kenema and Kono Districts is "principally based upon Gbao's alleged role in training all recruits" in the RUF ideology.2525 Gbao points to the Trial Chamber's finding that

"by receiving and adhering to this ideology and imparting it to all recruits … 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."2526 Gbao fails to show that it was unreasonable for the Trial Chamber to rely on his role as an ideological instructor at Baima base and his knowledge of the RUF ideology more generally to establish that he knew or had reason to know of the crimes. In addition, the Trial Chamber relied on a number of different grounds to establish Gbao's *mens rea*.

7622. para. 955: In arguing that the Trial Chamber erred in finding that he knew or had reason to know of the crimes committed, Gbao points to certain other of the Trial Chamber's findings and argues that these findings contradict that conclusion. However, Gbao fails to address the findings upon which the Trial Chamber relied. In particular, Gbao does not address the Trial Chamber's findings that the RUF ideology justified abuses against civilians considered to be "enemies of the revolution"2527 and that RUF fighters deliberately killed civilians on a massive scale during military attacks from the time of the initial invasion in 1991.2528 While Gbao notes that the Trial Chamber found no evidence to indicate that Gbao received reports regarding unlawful killings,2529 that finding does not establish that no reasonable trier of fact could conclude that Gbao knew or had reason to know of the unlawful killings. Similarly, Gbao notes the finding that the IDU did not have power or authority over military activities,2530 and the finding that Gbao did not visit the frontline and was not involved in military planning.2531 However, these findings do not establish that the Trial Chamber erred in relying on Gbao's roles as OSC and overall IDU Commander, in which roles he supervised the RUF security units, and was charged with investigating crimes against civilians, to determine that he knew or had reason to know of the crimes.2532 Finally, in arguing that he was not in and did not communicate with anyone in Bo, Kenema or Kono Districts, and did not communicate with the AFRC Supreme Council,2533 Gbao fails to address the Trial Chamber's finding that the members of the JCE, including himself,2534 ever contemplated the crimes charged under Counts 1 to 14 in order to gain and exercise political power and control "over … Sierra Leone."2535 He therefore fails to establish that no reasonable trier of fact could have concluded that he knew or had reason to know of the crimes in Bo, Kenema and Kono Districts.

7623. para. 1061: Second, Gbao argues that he had only a nominal role as OSC outside Kailahun District,2927 noting that the Trial Chamber found that there was insufficient evidence that he received reports of unlawful killings in Bo, Kenema and Kono Districts or that he failed in his duty to ensure proper investigations were conducted in those areas.2928 The Appeals Chamber notes that the findings Gbao cites do not show that no reasonable trier of fact could have found

that he had a more than nominal role outside Kailahun District, particularly in light of the Trial Chamber's specific findings regarding his practical influence and authority over the RUF security apparatus as a whole. Furthermore, Gbao fails to show that it was not open to a reasonable trier of fact to conclude that he significantly contributed to the JCE on the basis of his contributions in Kailahun District. The Appeals Chamber recalls that the Trial Chamber's findings regarding Gbao's significant role as OSC in Kailahun District,2929 his supervision of the MP and G5 units in Kailahun District2930 and the finding that Gbao had considerable prestige and power in the RUF in Kailahun District.2931 Moreover, the Trial Chamber specifically found that Kailahun District played an important role in the realisation of the Common Criminal Purpose:

> The[] widespread and systematic crimes [by the RUF in Kailahun2932] 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.2933

b. Planning – Kenema District

i. Sesay – Planning – Child soldiers - Kenema District

7624. para. 749: The Trial Chamber 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, Bombali and Kenema Districts.1948 The Trial Chamber held 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.1949

7625. para. 750: The Trial Chamber also found that Sesay, as one of the most senior RUF Commanders, made a substantial contribution to the planning of this system of conscription.1950 It, therefore, convicted him under Article 6(1) for planning the "use of persons under the age of 15 to participate actively in hostilities in Kailahun, Kenema, Kono and Bombali Districts between 1997 and September 2000, as charged in Count 12."1951

7626. para. 755: The Trial Chamber found that Sesay contributed to the planning of the offence under Count 12 by issuing orders that "young boys" should be trained at *Bunumbu*.1971 Sesay contends that the Trial Chamber found that these "young boys" were in fact 15 years of age and

above.1972 However, Sesay misinterprets the Trial Chamber's findings which referred to "young boys" to include persons of at least 15 years of age as well as SBUs comprising children as young as 9 to 11 years of age.1973

7627. para. 756: Sesay further submits that "in any event, the Trial Chamber cites only one piece of valid evidence for this finding: the evidence of Witness TF1-366," and that the testimonies of Witnesses TF1-199 and TF1-371, also cited by the Trial Chamber in further support, do not in fact support the finding.1974 The Trial Chamber provided no citations for its finding that Sesay issued the orders in June 1998, however, it cited the testimony of TF1-366, TF1-199 and TF1-371 for its findings that SBUs were children tasked with carrying weapons for the RUF. Witness TF1-366's testimony most closely supports both findings of the Trial Chamber, including that Sesay issued orders. He testified directly that Kallon and Superman issued orders and Sesay "sent messages" that young boys should be brought to be trained at Bunumbu.1975 He stated that some of the "young boys" were 15 years of age, but that many were SBUs comprising children ages 9 to 11 years and smaller boys.1976 Witness TF1-199 testified that SBUs were "really small boys" and because he was a small boy of 12 years of age, he was called an SBU.1977 However, he did not mention Sesay in his testimony or testify to anyone giving orders. Witness TF1-371 testified that children between the ages of 12 and 18 years were classified as SBUs, and that Sesay had SBUs, one of whom was around 15 years and the other around the age of 16.1978 Importantly, of the testimony cited by the Trial Chamber, only TF1-366 supports the finding that Sesay issued orders for "young boys" to be trained at Bunumbu in June 1998.

7628. para. 757: This testimony is consistent with the testimony of TF1-362, relied on by the Trial Chamber to find that civilians captured on the highway to Freetown from 1997 onward, as well as people from Daru and the SLA, were brought to *Bunumbu training base* at the command of Issa Sesay.1979 Importantly, although Sesay challenges the Trial Chamber's reliance on TF1-362 in other contexts, he does not impugn these findings.1980

7629. para. 758: Trial Chambers enjoy broad discretion in their assessment of evidence and determination of the weight to accord testimony. In general, a Trial Chamber may in the exercise of its discretion rely on a single witness for support of its factual findings. With respect to TF1-366, the Trial Chamber stated that it "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."1981

7630. para. 759: The Appeals Chamber considers that the testimony of TF1-366 was corroborated "in some material aspect" by the testimony of TF1-199 and TF1-362, whose

evidence was found credible by the Trial Chamber.1982 The Trial Chamber's failure to explicitly cite TF1-362's testimony for the impugned finding is unfortunate, but in the circumstances caused no error.

7631. para. 760: Sesay contends that the Trial Chamber erred in finding, on the basis of testimony of TF1-362, that he personally communicated reports to Bunumbu and ordered that the training camp be moved from Bunumbu to Yengema.1983 Sesay, however, fails to demonstrate that the Trial Chamber could not reasonably rely on TF1-362 for these findings. As Sesay does not show an error in the Trial Chamber's exercise of its discretion to assess the witness's credibility or determine the weight it attached to his testimony, this part of Sesay's argument fails.

7632. para. 761: Sesay further submits that the Trial Chamber unreasonably relied upon Witnesses TF1-114 and TF1-1081984 to support its finding that children were forcibly trained,1985 but disregarded their testimony that, Sesay contends, "contradicted TF1-362's account of Sesay's involvement in the training base." However, Sesay fails to demonstrate how the testimony of TF1-114 and TF1-108 contradicts the testimony relied upon by the Trial Chamber, and the Appeals Chamber is unable to infer his argument. The Appeals Chamber recalls that "[w]hile 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."1986 Sesay fails to show error in the Trial Chamber's finding.

7633. para. 762: The Trial Chamber found that Sesay, as one of the most senior RUF commanders, made a substantial contribution to the planning of the RUF system of child use by, *inter alia*, receiving reports on training at Bunumbu and subsequently at Yengema.1987 Specifically, the Trial Chamber found that the adjutant at the base drew up a list of recruits including their names, ages and other personal data.1988 Sesay submits that the Trial Chamber erred in finding that receipt of reports substantially contributed to the crime of child conscription or use.1989 He posits that the alleged planning must be found to have actually led to the commission of specific crimes.1990

7634. para. 763: 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 the reports to an advisor.1991 Next, the reports were either delivered by hand or communicated via radio to Sesay and finally to Bockarie;1992 and Sesay would confirm delivery of the report back to the base.1993 The Trial Chamber found that "[e]very such report was either hand-delivered or communicated via radio to Sesay."1994 The Trial Chamber also found that the training commander at Yengema

reported directly through Sesay to Bockarie, until Bockarie left the RUF in December 1999, after which she reported to Sesay only.1995 According to the Trial Chamber, records were kept of the ages of SBUs and SGUs trained at Bunumbu and Yengema, from which it could be inferred that the fighters who conducted the training knew or had reason to know that certain trainees were under the age of 15.1996

7635. para. 764: The Appeals Chamber considers that Sesay's receipt of reports is relevant circumstantial evidence supporting the findings that "the execution of this system of conscription [of child soldiers] required a substantial degree of planning"1997 and that "this planning was conducted at the highest levels of the RUF organization,"1998 including Sesay.1999 That reports on the training of child soldiers were transmitted to RUF headquarters signifies that the conscription of child soldiers was highly organised, and that the RUF leadership was responsible for that organisation. Moreover, the creation and transmission of training reports represents a mechanism through which the RUF headquarters could monitor the implementation of the planned conscription of child soldiers. Sesay's receipt of such reports was indicative that he had participated in that planning process. Accordingly, contrary to Sesay's contention, the Trial Chamber did not consider that he substantially contributed to the planning by merely receiving reports, but that his receipt of such reports was part of the evidence taken into consideration in coming to the conclusion that he had participated in the planning at both the preparatory and execution phases.

7636. para. 765: Sesay contends that the Trial Chamber's reliance on TF1-141 to find that he participated in the training bases by giving speeches at *Bunumbu training camp*, passing and receiving messages and threatening to execute those child soldiers who attempted to leave2000 is "wholly unreasonable given [the witness's] frailties" and the numerous and significant contradictions in the witness's testimony.2001

7637. para. 766: The Trial Chamber acknowledged the "concerns" raised by the Defence,2002 and indicated that it was "uneasy with portions of TF1-141's testimony that appear[ed] to be fanciful and thus implausible."2003 The Trial Chamber noted that the witness was captured by the RUF in 1998 and remained with the group until 2000, when he was demobilised.2004 The Trial Chamber considered that although the witness was diagnosed with Post-Traumatic Stress Disorder as a result of his experience as a child soldier with the RUF, he was nonetheless able to give truthful testimony.2005 The Trial Chamber concluded that, after seeing the witness in court, hearing his testimony and observing him under cross-examination, he "came across as a candid

witness." The Trial Chamber, therefore, "generally accepted his testimony, especially as it relates to his own experiences as a child combatant."2006

7638. para. 767: Sesay contends the witness was "constantly contradicting himself," and that the Trial Chamber disregarded a "significant contradiction" in the witness's testimony, but he only points to one purported contradiction, which, even if a contradiction, was not material to the findings Sesay contests here.2007 Sesay further fails to show what portions of the witness's testimony contain discrepancies that made the Trial Chamber's assessment of the witness's credibility unreasonable. Seasy thus fails to establish that the Trial Chamber erred in accepting parts of the witness's evidence.

7639. para. 768: Taking into account the foregoing discussion, the Appeals Chamber will now consider Sesay's broader claim that the Trial Chamber erred in finding him liable for planning the use of child soldiers.

7640. para. 769: Sesay argues that the Trial Chamber erred in law and in fact in concluding that his acts amounted to "planning."2008 The Appeals Chamber considers that whether particular acts amount to a substantial contribution to the crime for the purposes of planning liability is to be assessed on a case-by-case basis in light of the evidence as a whole. In concluding that Sesay's cumulative conduct fulfilled the *actus reas* of planning, the Trial Chamber relied on its findings that: (i) Sesay gave orders in June 1998 that "young boys" should be trained at Bunumbu and that he received reports on training in Bunumbu and subsequently at Yengema;2009 (ii) he visited Camp Lion where he addressed the recruits and told them that they would be sent to the battlefield; and that if they failed to comply with orders they would be executed;2010 (iii) he visited RUF fighters including children under the age of 15 who were preparing to conduct an attack on Daru and distributed drugs as "morale boosters" for these fighters;2011 and (iv) he participated in an attack on Koidu in December 1998 together with his bodyguards, including children under the age of 15.2012

7641. para. 770: Sesay fails to explain how no reasonable trier of fact could have found that he performed the *actus reus* of planning. His contention appears to be centred on the notion that none of his acts as found by the Trial Chamber constitute the "planning" or "designing" of the crimes *per se*. However, Sesay does not explain why a reasonable trier of fact could not have inferred from these findings and other evidence that he had substantially contributed to designing the criminal conduct. In this regard, the Appeals Chamber notes in particular the Trial Chamber's findings that Sesay ordered the training of child soldiers, received reports on such training and personally visited the *Camp Lion* training camp, addressing and threatening the child soldier

conscripts there. Therefore, in inferring that Sesay contributed to the planning of the crimes, the Trial Chamber did not rely solely on Sesay's command role, as Sesay suggests.2013 Rather, the Trial Chamber further considered Sesay's personal and direct participation in the conscription and training process. Specifically, the acts relied on by the Trial Chamber evince that Sesay participated in all stages of that process, from ordering the training of child soldiers to monitoring the implementation of the training to monitoring the use of child soldiers. In addition, although not referenced in its reasoning, the Trial Chamber found that Bockarie and Sesay "issued orders to move the RUF training base from Bunumbu to Yengema in Kono District," and that "Sesay personally discussed the creation of the new Yengema base with the training commander."2014 Finally, as noted above, the Trial Chamber found that the highly organised character of the conscription process was such as to demand a substantial degree of prior planning by the RUF leadership.2015 It was on the basis of these findings as a whole that the Trial Chamber found that Sesay substantially contributed to the planning of the crimes. Sesay fails to show that the Trial Chamber's finding, on the basis of the evidence as a whole, was unreasonable. Sesay's submission is dismissed.

7642. para. 771: Sesay further submits a number of related challenges to the scope of his liability as found by the Trial Chamber. Sesay argues first that by failing to identify the victims and by failing to require a specimen count, the Trial Chamber was unable to "identify a representative sample of child soldiers" and therefore could not make proper findings as to whether "the use/conscription of any such child was within the framework of Sesay's design."2016 Second, Sesay argues that the Trial Chamber erred in fact in convicting him for child conscription and use in Bombali and Kenema Districts, as its findings on his responsibility do not refer to acts outside Kailahun and Kono Districts.2017 Finally, Sesay contends that the Trial Chamber's failure to approximate the number of child soldiers used pursuant to his plan invalidates any finding that the crimes committed were within the framework of his design.2018 During the oral hearings, Sesay further argued that the Trial Chamber made no findings as to his criminal liability for planning the use of child soldiers in 1997, and that "from 1997 to February 1998 there is simply no evidence of [his] involve[ment] in any type of activity which could amount to planning."2019

7643. para. 772: However, Sesay again fails to explain how no reasonable trier of fact, on the basis of the Trial Chamber's findings, could have concluded that he substantially contributed to the planning of the crimes for which he was held liable. Although Sesay argues that the Trial Chamber's findings with respect to *Bunumbu* are "simply insufficient,"2020 and points to the absence of findings regarding his acts with respect to the conscription and use of child soldiers in Kenema and Bombali Districts2021 and before February 1998,2022 he does not explain how the

Trial Chamber's conclusion was accordingly unreasonable. In particular, Sesay does not show that no reasonable trier of fact could infer from the Trial Chamber's findings regarding his acts, in combination with other findings such as those concerning the nature of the conscription and use of child soldiers, that he substantially contributed to the planning of crimes committed in other locations as well. In merely submitting that the Trial Chamber's findings with respect to *Bunumbu* are insufficient to ground his liability for planning the other instances of the crime, Sesay fails to explain why this is so. Sesay further fails to point to other findings or evidence to show that the crimes in Kenema and Bombali Districts were unique or distinct from the crimes in Kailahun and Kono Districts. While Sesay correctly submits that he can only be held liable for those crimes he substantially contributed to the planning of, he does not show how no reasonable trier of fact could infer, on the basis of his acts with respect to Bunumbu and Yengema in particular, that he substantially contributed as well to the planning of the other crimes for which he was held liable.

7644. para. 773: Sesay further fails to explain why the manner in which the Trial Chamber evaluated the evidence precluded it from finding that he substantially contributed to the planning of the specific crimes for which he was held liable.2023 Sesay cites no authority for his position that the Trial Chamber could only make such a finding on the basis of the identity of the victims, or that the Trial Chamber was required to demand a specimen count here. In this respect, the Appeals Chamber considers that the Trial Chamber found that the crimes committed were those that Sesay substantially contributed to the planning of on the basis of the identity of the perpetrators and the manner in which the crimes were committed. Sesay fails to address the Trial Chamber's approach and to explain how it was erroneous.

7645. para. 774: Finally, the Appeals Chamber does not consider Sesay's citation to the ICTY Trial Chamber's findings in *Brđanin* to be determinative of the issue here.2024 That the accused in that proceeding was not found liable for planning crimes is not particularly probative as to whether the Trial Chamber here erred, because the facts of the two cases are too distinct for a meaningful analogy to be made. Moreover, Sesay fails to show that no reasonable trier of fact could have found that he planned the specific crimes for which he was held liable, and he does not argue that the Trial Chamber's reasoning and conclusion evince that it misapplied the law.

7646. para. 775: Sesay's contention that the Trial Chamber erred in law in finding him responsible for the offence in Bombali when it had specifically held that he could not be liable for crimes committed in Bombali District2025 is misconceived. The Trial Chamber held that Sesay was not liable for crimes in Bombali District in relation to crimes attributable to AFRC forces

under the control of Gullit after the cessation of the JCE.2026 In contrast, Sesay was found to have planned an RUF system of use of child soldiers.2027

ii. Kallon – Planning – Child soldiers – Kenema District

7647. para. 909: The Trial Chamber convicted Kallon for planning the crime of using children under the age of 15 by the RUF to participate actively in hostilities in Kailahun, Kenema, Kono and Bombali Districts between 1997 and September 2000.2373

7648. para. 917: In finding that Kallon was a senior RUF commander during the attack on Koidu Town in February 1998,2390 the Trial Chamber found that Kallon held the rank of Major during the retreat to Kono in February 19982391 and that he gave orders which were complied with by troops.2392 Kallon does not challenge these findings or show how no reasonable trier of fact could have reached those findings on the basis of the evidence.2393 This submission is dismissed.

7649. para. 918: Kallon argues that the Trial Chamber erred in finding that he gave orders that "young boys" be trained, as the Trial Chamber itself found that the boys to be trained were over 15 years of age.2394 The Appeals Chamber has previously considered this issue in addressing Sesay's Ground 43, and reiterates its conclusion that Kallon misinterprets the Trial Chamber's findings.2395 Similarly, the Appeals Chamber has previously considered the Trial Chamber's reliance on the testimony of Witness TF1-366 in addressing Sesay's Ground 43, and reiterates its conclusion that the Trial Chamber reliance on that testimony was not erroneous.2396 Kallon further fails otherwise to establish that the Trial Chamber erred in finding the testimony of Witness TF1-366 credible. This submission is rejected.

7650. para. 919: The Appeals Chamber also rejects Kallon's argument that it is not established beyond reasonable doubt that the boys and girls trained at the RUF training bases were under the age of 15.2397 Witnesses TF1-141 and TF1-263 testified that they were 12 and 14 years of age respectively at the time they were abducted and sent for military training.2398 Similarly, Witness Dennis Koker saw Kallon bring juveniles under the age of 15 to Bunumbu for training.2399 The Trial Chamber accepted the testimonies of the Witnesses and found them credible. Kallon has not established that no reasonable trier of fact could rely on their testimonies for a finding of fact. This submission is rejected.

7651. para. 920: Kallon argues that the Trial Chamber relied on the testimony of Witness TF1-045 to establish his guilt for planning use of child soldiers.2400 However, contrary to Kallon's assertion,2401 the Trial Chamber did not rely on his presence in Camp Zogoda to demonstrate a

consistent pattern of conduct in violation of Rule 93(B) of the Rules. Rather, the Trial Chamber found that the fact that children between the ages of 8 and 15 were trained at Camp Naama in Liberia; and Matru Jong and Pendembu and Camp Zogoda in Sierra Leone "demonstrates a consistent pattern of conduct by the RUF of recruiting and training children for military purpose that began as early as 1991 and continued throughout the Indictment period."2402 Although the Trial Chamber also noted that Kallon was seen at Camp Zogoda with fighters in 1994, its finding on the consistent pattern of conduct related to the RUF rather than Kallon specifically. Moreover, there is no further indication that the Trial Chamber relied on the evidence that Kallon was at *Camp* Zogoda in 1994 to establish his liability for planning the crimes between 1997 and 2000. There is therefore no violation of Rule 93(B) of the Rules and consequently, no error as alleged. This submission is rejected.

7652. para. 921: With respect to Kallon's submission that the Trial Chamber found that he and Sesay gave orders for "young boys" to be trained, but that those boys were 15 years of age and above, the Appeals Chamber refers to its conclusion above that some of the "young boys" included persons both under and above the age of 15.2403 The Appeals Chamber recalls its decision concerning the Trial Chamber's assessment of the credibility of Witnesses TF1-141, TF1-263, TF1-366 and Dennis Koker, particularly in relation to the ages of the children with whom they associated Kallon.2404 The Appeals Chamber also recalls that the Trial Chamber exercised caution in determining the ages of children associated with the rebel factions in its findings.2405 The Appeals Chamber defers to these findings2406 and dismisses Kallon's argument regarding the testimonies of Witnesses TF1-141, TF1-263, TF1-366 and Dennis Koker relating to the ages of children.

7653. para. 922: Kallon contends that the Trial Chamber found that he "knew or had reason to know that the persons conscripted 'may have been' under the age of 15" was erroneous given its inconclusive nature, thereby suggesting that it was not the only reasonable inference that could be drawn from the evidence.2407 Kallon mischaracterises the Trial Chamber's findings. Contrary to his assertion, the Trial Chamber did not find that he "knew or had reason to know that persons conscripted 'may have been' under the age of 15."2408 Rather, the Trial Chamber identified several factors which it found to be "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."2409 Accordingly, this part of Kallon's argument must fail.

7654. para. 923: Kallon further submits that the Trial Chamber shifted the burden of proof to him by stating that "where doubt existed as to whether a person abducted or trained was under the age

of 15, it was incumbent upon the perpetrator to ascertain the person's age."2410 The Appeals Chamber has previously held that the prohibition on conscripting or using child soldiers existed in customary international law at the times relevant to the offences in this case, and that violation of this prohibition incurs individual criminal responsibility in customary international law.2411 In reaching those holdings, the Appeals Chamber observed that a significant body of conventional international law imposes an obligation on parties to "take all feasible measures" to ensure that children are not recruited or used in hostilities.2412 The accused are under a duty to act with due diligence to ensure that children under the age of 15 are not recruited or used in combat. Failure to exercise such due diligence to ascertain the age of recruits does not relieve an accused of his liability for their recruitment or use.2413 The Appeals Chamber therefore finds no error in the Trial Chamber's statement that the accused were under a duty to exercise due diligence to ascertain the age of a child.

7655. para. 924: Kallon submits a number of arguments contesting the Trial Chamber's finding that he planned the use of child soldiers.2414 Kallon argues that the Trial Chamber relied solely on his command role to support that finding,2415 and argues that there was no evidence that he was involved in the planning of the abduction and training of children.2416

7656. para. 925: The Trial Chamber found that Kallon "participated in the design and maintenance of [the RUF] system of forced recruitment and use [of child soldiers] and that his contribution in this regard was substantial."2417 In reaching this conclusion, the Trial Chamber relied on its findings that: (i) 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; (ii) Kallon gave orders for children to be trained at RUF camps; (iii) Kallon brought a group of children to Bunumbu for training in 1998; and (iv) Kallon was the senior RUF Commander on 3 May 2000 at Moria where child soldiers were used in the ambush of UNAMSIL forces.2418 The Trial Chamber also found that the highly organised character of the process of conscripting and using child soldiers was such as to demand a substantial degree of prior planning by the RUF leadership.2419As these findings make clear, the Trial Chamber did not solely rely on Kallon's command role to find that he planned the use of child soldiers.2420

7657. para. 926: Kallon fails to show that no reasonable trier of fact could have inferred from these findings and the evidence as a whole that he planned the use of child soldiers.2421 This submission is rejected.

(vii) Kono District

a. JCE – Participation in and shared intent – Kono District

i. Sesay - JCE – Participation in and shared intent - Kono District

7658. para. 624: The Trial Chamber found that Sesay actively participated in the furtherance of the Common Criminal Purpose and thereby significantly contributed to the 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) found to have been committed in Kono District between 14 February 1998 and April/May 1998.1551 It held that he shared the intent with the other JCE members to commit these crimes.1552

7659. para. 627: The Appeals Chamber addresses Sesay's five challenges in turn. First, Sesay challenges his participation in respect of the attack on Koidu Town and his tacit endorsement and encouragement of the looting during Operation Pay Yourself.1562 He argues that, "[e]ven if the Trial Chamber's conclusion that Sesay planned [the Koidu] attack was correct," no evidence showed that such planning also involved planning the crimes of terror and collective punishment committed during the attack.1563 The Appeals Chamber observes, however, that it was not required that Sesay planned the crimes committed during the attack in order to significantly contribute to them. As to the looting, Sesay merely repeats the fact, noted by the Trial Chamber, that he was not actively engaged in the attack on Koidu Town as he was still recovering from the injury he had sustained during the attack on Bo Town.1564 However, Sesay fails to account for the finding that, even though Sesay was injured, the Commander of the attack (Superman) was subordinate to him during the attack.1565 Sesay therefore fails to demonstrate that, on the evidence as a whole, no reasonable trier of fact could have found that he tacitly endorsed and encouraged the looting. These arguments are rejected.

7660. para. 628: Second, Sesay disputes the Trial Chamber's finding that he endorsed Johnny Paul Koroma's instructions to burn houses and kill civilians in ***Koidu*** in March 1998.1566 This challenge turns on the quality of Witness TF1-334's testimony, on which the impugned finding relies.1567 Sesay claims that TF1-334, contrary to the Trial Chamber's finding, did not testify that the meeting at which Sesay endorsed Koroma's instructions took place at Kimberlite, yet he fails to address the other evidence relied upon by the Trial Chamber when it found that the meeting was held at Kimberlite.1568 In any event, he fails to explain how such a mistake as to location would

render unreasonable the finding that the meeting took place and that Sesay endorsed Koroma's instructions.

7661. para. 629: Sesay further argues that the Trial Chamber failed to explain why it accepted TF1-334's testimony in spite of the fact that the witness was an accomplice, was released from prison during his involvement with the Prosecution, sought relocation, obtained unexplained payments from the Prosecution, and gave evidence in court which differed from a previous interview.1569 This is not true. The Trial Chamber noted TF1-334 among the "insider" witnesses who may be considered accomplices, and "cautioned itself on the risk and danger of accepting uncorroborated evidence from an insider witness as credible."1570 The Trial Chamber also considered that "[t]he 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."1571 It noted the forms of remuneration to which individuals testifying before the Special Court may be entitled, and that the payments received by certain witnesses were disclosed and admitted as evidence.1572 Further, Sesay neither provides any reference to the alleged earlier interview of TF1-334, nor does he explain why it was unreasonable for the Trial Chamber to prefer the witness's *viva voce* evidence instead of the interview.1573 Sesay's challenges to the quality of TF1-334's testimony are accordingly dismissed.

7662. para. 630: Third, Sesay disputes that he was involved in the forced mining in Kono before December 1998, and argues that his involvement with the Yengema training base could not constitute participation in the JCE because the base did not start operating until late 1998 or early 1999.1574 Both arguments are based on the Trial Chamber's findings. The Appeals Chamber notes that the Trial Chamber found that Sesay participated in the forced labour in diamond mines in Kono "between 14 February and May 1998" in order to further the Common Criminal Purpose.1575 While the Trial Chamber provided more detailed findings on Sesay's involvement in the mining in Kono after December 1998,1576—and appears to have erroneously relied on some of this later involvement for its finding on Sesay's participation in the JCE1577—the Appeals Chamber is satisfied it was nonetheless open to a reasonable trier of fact to conclude that Sesay participated in the JCE by being involved in forced mining in Kono between 14 February and May 1998. The Trial Chamber found that "[a]s early as August 1997 the AFRC/RUF Junta forced civilians to conduct alluvial diamond mining throughout Kono District"1578 and that the practice of forced mining in Kono "continued throughout 1998."1579 During the period of joint AFRC/RUF control over Kono District between February/March 1998 and late April 1998, there was a "widespread commission by RUF and AFRC fighters of … enslavement."1580 Sesay

organised the integrated AFRC/RUF command structure in Koidu Town and appointed Superman overall Commander in Kono District;1581 it was Superman who on 30 March 1998 issued a written order to Commanders to hand over all civilians for mining.1582 The Appeals Chamber therefore dismisses Sesay's challenge to his participation in the JCE insofar as it pertains to the forced mining in Kono District.

7663. para. 631: As to the Yengema training base, the Appeals Chamber notes that the Trial Chamber found that it was established after Kono had been recaptured by the RUF in December 1998, that is, at least seven months after the JCE ended.1583 The Prosecution argues that the "reference to *Yengema* must also be seen in its context as a reference to involvement in the planning and creation of the base."1584 However, the Appeals Chamber fails to see how the fact that Sesay was involved in planning and creating a training base which started operating seven months after the crimes for which he allegedly incurred JCE liability were committed could have significantly contributed to those crimes, and any contribution under these circumstances is not explained by Trial Chamber. Such a conclusion was not open to any reasonable trier of fact. The Trial Chamber therefore erred in finding that Sesay participated in the JCE by ordering the establishment, and being involved in the planning and creation of the Yengema training base.1585 The Appeals Chamber will determine whether this error occasioned a miscarriage of justice after having considered Sesay's remaining challenges to his participation in the JCE in Kono District.1586

7664. para. 632: Fourth, Sesay's speculation that the fact that 500 people were trained at Bunumbu during its operation is insufficient to constitute a significant contribution to the maintenance of military manpower, operations or territory as well as terror and collective punishment1587 is unsupported and fails to account for the other ways in which he contributed in Kono District.1588 This submission is dismissed.1589

7665. para. 633: Sesay's last challenge concerns his knowledge of events in Kono. He submits that the Trial Chamber erred in relying exclusively on TF1-361 to find that, after he departed Koidu Town for Buedu in Kailahun District, he received regular radio reports from Kono District, including reports of crimes committed by RUF and AFRC fighters.1590 His first argument, that "there is not a single reference" in the Trial Judgment to any of his objections to TF1-361's testimony,1591 is wholly unfounded.1592 Sesay's second argument is that TF1-361's testimony was "nonsensical" because the witness stated that radio messages to Bockarie's house would first be taken to Sesay whether or not Bockarie was home.1593 However, the Trial Chamber made no such finding; it merely found that "messages were sent to Sesay as BFC, who would pass them to

Sam Bockarie."1594 Sesay's description of the testimony, even if accepted, is not such that it would render this finding unreasonable. Finally, the fact that the Trial Chamber accepted Sesay's testimony that he heard about the killings by Savage in Tombodu in September 1998 does not render unreasonable its conclusion that he received regular radio reports from Kono District, including reports of crimes committed by RUF and AFRC fighters.1595 Whether Bockarie was informed about Rocky's crimes in April or May 1998 is irrelevant to this finding. These submissions are dismissed. Consequently, the Appeals Chamber need not address Sesay's challenge to the finding that Kallon reported to Sesay as BFC, and in any event, this argument is improperly raised for the first time in Sesay's Reply.1596

7666. para. 634: The Appeals Chamber recalls that it has found that the Trial Chamber erred in finding that Sesay participated in the JCE by ordering the establishment and being involved in the planning and creation of the Yengema training base.1597 In light of the extensive findings on Sesay's participation in the JCE in Kono District, which we have upheld,1598 and those which have not been challenged,1599 we do not find that the error in relation to the *Yengema training base* occasioned a miscarriage of justice. For these reasons, the Appeals Chamber dismisses Sesay's Ground 34 in its entirety.

ii. Kallon - JCE – Participation in and shared intent - Kono District

7667. para. 806: Analysing Kallon's participation in the JCE in Kono District, the Trial Chamber held, *inter alia*, that Kallon held a high ranking position, was able to give orders to troops that were obeyed and commanded troops within his area of responsibility of laying ambushes.2104 He was assigned to an area known as Guinea Highway, and responsible for mounting ambushes against ECOMOG troops along the Makeni-Kono Highway.2105 In the joint AFRC/RUF hierarchy in Kono District, Kallon was an important and influential Commander who enjoyed considerable respect, power, authority and prestige.2106 Kallon agreed to and endorsed Sesay's and Koroma's instructions to unlawfully kill civilians and burn their houses.2107

7668. para. 810: Kallon's argument that the Trial Chamber failed to point to any significant position of responsibility he had is wrong. Indeed, Kallon himself recognises the findings on his authority in his subsequent challenges which are addressed below.2119 He also fails to explain what allegations of authority in the Indictment were left undecided by the Trial Chamber and how that prejudiced him. This argument is rejected.

7669. para. 811: Kallon's second submission is that the Trial Chamber contradicted itself as to his authority. The Trial Chamber found that, after the February/March 1998 attack on Koidu,

Kallon remained in Kono District "and reported to Superman."2120 He was one of several RUF Commanders who were "not directly within the control hierarchy of Superman and did not have discrete combat units or forces assigned to their command."2121 The Appeals Chamber fails to see how these findings prevented any reasonable trier of fact from finding that Kallon nonetheless "was an operational Commander who gave orders which were complied with by troops" and entrusted with the assignments given to Kallon.2122 The finding that Kallon "did not occupy a formal position within the operational command structure of the RUF" and that "it is therefore unclear to what extent he received reports on the actions of troops throughout Kono District"2123 pertains to Kallon's superior responsibility for mutilations in Tomandu in Kono in May 1998, that is, after the JCE had ended as found by the Trial Chamber,2124 and so do not detract from the Appeals Chamber's conclusion. This argument is rejected.

7670. para. 812: Third, Kallon argues that the Trial Chamber's finding that he "would instruct Commanders to undertake ambush laying missions on the basis of orders from Superman" is unsupported by evidence.2125 The Appeals Chamber notes that this finding is not followed by any reference to the evidence. However, the two findings immediately preceding it, namely, that Kallon could give orders which were complied with by troops and that he was entrusted with defending the Makeni-Kono Highway, were both based on evidence, including the testimony of George Johnson.2126 The passage of his testimony relied on by the Trial Chamber for these two findings support the impugned finding that Kallon instructed Commanders to lay ambushes.2127 The remaining part of the impugned finding (that Kallon issued those instructions on the orders of Superman) was not relied on by the Trial Chamber in its relevant findings on Kallon's participation in the JCE,2128 and Kallon does not say whether and if so how it affects his position of authority in Kono as found by the Trial Chamber. Therefore, although the Trial Chamber did not cite evidence for its impugned finding, that did not amount to an error. Kallon's additional claims that his posting at the Makeni-Kono Highway did not vest him with "overall command authority" and that the fighters he instructed did not commit the crimes charged are irrelevant as the Trial Chamber made no such findings,2129 nor was it obliged to do so in order to find him liable under the JCE theory. This submission is rejected.

7671. para. 813: Fourth, Kallon submits that the Trial Chamber erred in relying on the uncorroborated testimony of TF1-141 to find that he "gave orders to fighters at daily muster parades in the Guinea Highway area"2130 and that he "enjoyed privileges only afforded to senior RUF Commanders, such as personal bodyguards."2131 The Appeals Chamber finds that the Trial Chamber did not rely exclusively on TF1-141 for these two findings, which concern the acts and

conduct of Kallon, because it made other similar findings based on other evidence.2132 This submission is rejected.

7672. para. 814: Fifth, Kallon challenges the reliability of TF1-361, the testimony of which the Trial Chamber relied on to find that "Kallon supervised the burning of homes on the orders of Superman" during the retreat from Kono during the April 1998 ECOMOG attack.2133 However, in support Kallon simply invites the Appeals Chamber to reassess the witness's evidence, arguing without more that the witness's testimony in cross-examination should be preferred over that relied on by the Trial Chamber. In any event, the Appeals Chamber notes that the parts of TF1-361's testimony Kallon invokes are not inconsistent with the impugned finding.2134 This submission is rejected.

7673. para. 815: Lastly, Kallon's challenge to the finding that being a Vanguard afforded him "power and engendered respect," is dismissed because Kallon addresses none of the findings or evidence the Trial Chamber relied on to reach this conclusion.2135

7674. para. 928: The Trial Chamber found that Kallon incurred JCE liability for enslavement (Count 13) in Kenema, Kono and Kailahun Districts.2422 Kallon had bodyguards who were under the age of 15 years, and he knew the SBUs were used to force the enslaved mining and guard the mining sites.2423 During 1998 and 1999, Kallon brought persons under 15 years of age to be trained by the RUF at Bunumbu.2424 Kallon, therefore, was 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.2425 Through these acts, among others, Kallon was found to have participated in the JCE.2426 The Trial Chamber also found Kallon guilty under superior responsibility for the enslavement of hundreds of civilians in camps throughout Kono District between February and December 1998.2427

7675. para. 931: The Appeals Chamber notes that the finding that the "SBUs seen by TF1-141 with Kallon … in Kono in February 1998" and "the boys in SBUs seen by TF1-045 with Kallon in Freetown in 1997 and in Makeni in 1999 to 2000" were not bodyguards2434 could be read to contradict the finding that "Kallon had bodyguards who were under the age of 15 years."2435 However, Kallon fails to establish that this contradiction, if any, occasioned a miscarriage of justice. In inferring that Kallon was engaged in the system of enslavement, the Trial Chamber's findings show that it also relied on his contribution to the use of children under the age of 15 to actively participate in hostilities,2436 which the Trial Chamber found included the use of children to guard the mines at Tombodu in Kono in February/March 1998,2437 and to intimidate and kill

civilians working there.2438 These findings were supported by evidence which Kallon does not address. This submission is therefore rejected.

7676. para. 932: The Trial Chamber's holding that it would not use evidence that Kallon may have personally conscripted children is limited to the use of that evidence for the purpose of determining Kallon's responsibility for *personal* commission under Count 12.2439 For purposes of that mode of liability, the allegation that Kallon brought children for training at Bunumbu was a material fact which was insufficiently pleaded in the Indictment, and so the Trial Chamber declined to enter a conviction that Kallon personally committed the crimes charged under Count 12. However, Kallon's conviction under Count 13, which is the subject matter of his present ground of appeal, was not based on personal commission, but instead on his participation in a JCE.2440 The Trial Chamber did not exclude evidence of Kallon bringing children for training at Bunumbu from consideration in respect of the mode of liability of JCE, the pleading requirements of which are different from personal commission.2441 Kallon's submission is therefore rejected.

7677. para. 933: The Appeals Chamber finds that a reasonable trier of fact could have relied on the relevant parts of TF1-141's testimony to find that "Kallon was actively engaged in the abduction for and planning of training of SBUs in Kono District in February/March 1998."2442 In particular, TF1-141, a former child soldier,2443 testified that after being captured he was with "Morris Kallon's men" and was then taken to a junction in Koidu Town where he saw Kallon. From there, TF1-141 was taken by Akisto, who was "close to Morris Kallon," with a group of combatants to Guinea Highway where he kept "guard in the night as security."2444 The Appeals Chamber recalls that is has upheld the finding that Kallon was in charge of the Guinea Highway area.2445 The Trial Chamber further provided corroboration of these parts of TF1-141's testimony.2446 This submission is rejected.

7678. para. 935: The Trial Chamber found that Kallon incurred JCE liability for the following instances of pillage: (i) the looting of Le 800,000 by Bockarie from Ibrahim Kamara in June 1997 in Sembehun in Bo District;2447 (ii) the appropriation of a bicycle, Le 500,000 and other items from TF1-197 near Tombodu in Kono District;2448 (iii) an unknown number of acts of pillage during the February/March 1998 attack on Koidu Town;2449 and (iv) the looting of funds from Tankoro Bank in Koidu Town.2450 The Trial Chamber found that Kallon was present at a meeting when Johnny Paul Koroma ordered that all houses in Koidu Town should be burned to the ground, which message Sesay reiterated.2451 Looting of civilian property was committed during the execution of the order.2452 Civilians complained to Kallon and Superman, who were

Commanders on the ground, about the burning, harassment and looting, but they took no action in response.2453

7679. para. 941: Regarding the finding that Kallon was present at the meeting when Johnny Paul Koroma ordered the burning of Koidu Town, the Appeals Chamber notes that the Trial Chamber referred solely to Witness TF1-366 for this finding.2471 It also referenced only TF1-366's testimony to find that Kallon took no action in response to civilians complaining to him about the burning, harassment and looting that followed Koroma's order.2472 The Trial Chamber held that it would not accept TF1-366's testimony without corroboration as it relates to the acts and conducts of the Appellants.2473

7680. para. 942: The Appeals Chamber is satisfied that the findings on Kallon's involvement in the pillage in Kono provide sufficient corroboration for the impugned findings. Kallon "had an active combat role" during the attack on Koidu Town, during which an unknown number of acts of pillage were committed by AFRC/RUF troops, marking the continuation of "Operation Pay Yourself."2474 Moreover, whether or not Kallon attended the meeting when Koroma issued his order to burn Koidu, his "subsequent conduct in Kono District demonstrates that he agreed to the order issued by Sesay and Johnny Paul Koroma and endorsed their actions."2475 Indeed, Kallon was present in Koidu when the order, including the accompanying looting,2476 was carried out, and rather than preventing the burning or warning the civilians, he and the other Commanders present "participated in it."2477 As Kallon does not challenge the evidence relied on for these findings here, his argument fails.

7681. para. 943: The above findings by the Trial Chamber also demonstrate that Kallon shared the intent with the perpetrators of the pillage in Kono, which is why his submission to the contrary with respect to the looting of items from TF1-197 fails. The Appeals Chamber further recalls that it was not required that Kallon knew about this specific criminal incident in order for him to incur JCE liability for it. As to the "relationship" between Kallon and the perpetrators of this crime, the Appeals Chamber has already found that the Trial Chamber provided a sufficiently reasoned opinion as to how it imputed the crimes of pillage in Kono to the JCE members.2478 Kallon addresses none of the evidence on which that reasoning relies. Kallon's challenge relating to the looting of items from TF1-197 is therefore rejected.

iii. Gbao - JCE – Participation in and shared intent - Kono District

7682. See above: Chapter 12 – Article 6.1. Liability – RUF – Appellate Judgment – Findings and conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

7683. See above: Chapter 12 – Article 6.1. Liability – RUF – Appellate Judgment – Findings and conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras.4 – 28 [7454].

7684. See above: Chapter 12 – Article 6.1. Liability – RUF – Appellate Judgment – Findings and conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

7685. See above: Chapter 12 – Article 6.1. Liability – RUF – Appellate Judgment – Findings and conclusions – JCE – Categories of JCE and *mens rea* – Separate opinion – Justice Ayoola – paras. 22-41, 43– 57 [7480].

7686. para. 946: In these sub-grounds of appeal, Gbao challenges the Trial Chamber's findings regarding his *mens rea* for his convictions under JCE 1 and JCE 3 liability. In his Grounds 8(l) and (m), Gbao alleges that the Trial Chamber erred in finding that the crimes for which he was convicted under JCE 3 liability in Bo, Kenema and Kono Districts were reasonably foreseeable to him and that he willingly took the risk that those crimes might be committed. In his Grounds 8(o), (p), (q), (r) and (s), Gbao alleges that the Trial Chamber erred in finding that he shared the intent to commit the crimes for which he was convicted under JCE 1 liability in Kailahun District.

7687. para. 947: The Trial Chamber found with respect to Bo District that Gbao either knew or had reason to know that the deliberate, widespread killings of civilians occurred during RUF military assaults, that suspected Kamajor collaborators would be killed and that pillage took place during AFRC/RUF operations.2479 As regards Kenema District, the Trial Chamber found that Gbao knew or had reason to know that deliberate, widespread physical violence against civilians occurred during RUF military assaults, that suspected Kamajor collaborators would be killed or subject to great suffering or serious physical injury and that civilians were enslaved in order to pursue the Common Criminal Purpose.2480 With respect to Kono District, the Trial Chamber found that Gbao knew or had reason to know that deliberate, widespread sexual violence against civilians occurred during RUF military assaults, that sexual violence would have been inflicted upon these persons, that non-consensual sexual relationships in the context of forced marriages were likely to be committed by RUF fighters, that sexual violence was intended by the members of the JCE to further the goals of the JCE and that civilians were enslaved in order to pursue the Common Criminal Purpose.2481 The Trial Chamber further found that despite knowing that these crimes were being committed, Gbao "continued to pursue the common purpose of the joint criminal enterprise."2482

7688. para. 948: On the basis of those findings, the Trial Chamber concluded that Gbao "willingly took the risk that the crimes charged and proved under Counts 3-5 (unlawful killings) and Count 14(pillage) might be committed" in Bo District,2483 that the crimes charged and proved under Counts 3 to 5, 11 and 13 might be committed in Kenema District2484 and that the crimes charged and proved under Counts 3 to 5, 6 to 9, 10 and 11, 13 and 14 might be committed in Kono District.2485 Accordingly, the Trial Chamber concluded that Gbao was liable for those crimes as a member of the joint criminal enterprise.2486

7689. para. 951: Gbao's claim that the Trial Chamber erred in failing to make any findings linking him to the crimes committed by the principal perpetrators is undeveloped and unsupported.2505

7690. para. 952: Gbao claims that the Trial Chamber failed to adequately explain how the crimes committed in Bo, Kenema and Kono Districts were reasonably foreseeable to him.2506 The Appeals Chamber finds that Gbao has mischaracterized the Trial Chamber's findings. Contrary to Gbao's submission, the Trial Chamber did not find that the crimes in Bo, Kenema and Kono Districts were reasonably foreseeable to him. Rather, the Trial Chamber found that he "knew or had reason to know" of those crimes.2507 The Trial Chamber's only findings with respect to foreseeability were in regard to the crimes of acts of terrorism and acts of collective punishment committed in Bo and Kenema Districts, which the Trial Chamber found were not reasonably foreseeable to Gbao.2508 Gbao's contention is therefore flawed and misconceived, as the Trial Chamber found that he knew or had reason to know of the crimes in those Districts for which he was held responsible, and did not find, as Gbao suggests, that those crimes were reasonably foreseeable to him. In this respect, the Appeals Chamber notes that the Trial Chamber based its conclusion that Gbao knew or had reason to know of the crimes in Bo, Kenema and Kono Districts2509 on numerous factors, including the facts that: (i) as IDU Commander, Gbao was charged with investigating crimes against civilians;2510 (ii) in his capacity as OSC, Gbao oversaw the G5, which managed the capture and deployment of civilians in furtherance of the RUF's goals;2511 (iii) Gbao had the position as a Vanguard and senior Commander in the RUF;2512 (iv) the RUF ideology justified abuses against civilians considered to be "enemies of the revolution";2513 and (v) RUF fighters deliberately killed civilians on a massive scale during military attacks from the time of the initial invasion in 1991.2514 Moreover, with respect to the crimes of sexual violence in Kono District, the Trial Chamber noted the deliberate and widespread commission of these crimes during RUF military assaults,2515 and inferred from Gbao's important role and oversight functions that he knew that non-consensual sexual relationships were likely to be committed by RUF fighters in the context of forced marriage.2516 It further

considered that forced marriage was important to the RUF both as a tactic of war and as a means of obtaining unpaid logistical support for troops.2517

7691. para. 953: Finally, Gbao fails to establish that the Trial Chamber did not explain its finding that Gbao willingly took the risk that such crimes might be committed in Bo, Kenema and Kono Districts.2518 The Appeals Chamber recalls that, as a general rule, a Trial Chamber "is required only to make findings on those facts which are essential to the determination of guilt on a particular count";2519 it "is not required to articulate every step of its reasoning for each particular finding it makes"2520 nor is it "required to set out in detail why it accepted or rejected a particular testimony."2521 For each of the types of crimes committed in those districts, the Trial Chamber found that Gbao knew or had reason to know of the crimes.2522 The Trial Chamber further found that Gbao, despite having that knowledge, continued to pursue the Common Criminal Purpose of the JCE.2523 Accordingly, the Trial Chamber concluded that Gbao willingly took the risk that such crimes would be committed in Bo, Kenema and Kono Districts and was responsible for those crimes as a member of the JCE.2524 In light of these findings, the Appeals Chamber concludes that Gbao fails to establish that the Trial Chamber did not provide sufficient reasoning for its conclusion.

7692. para. 954: Gbao argues that the Trial Chamber's finding that he had any knowledge of the crimes in Bo, Kenema and Kono Districts is "principally based upon Gbao's alleged role in training all recruits" in the RUF ideology.2525 Gbao points to the Trial Chamber's finding that "by receiving and adhering to this ideology and imparting it to all recruits … 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."2526 Gbao fails to show that it was unreasonable for the Trial Chamber to rely on his role as an ideological instructor at Baima base and his knowledge of the RUF ideology more generally to establish that he knew or had reason to know of the crimes. In addition, the Trial Chamber relied on a number of different grounds to establish Gbao's *mens rea*.

7693. para. 955: In arguing that the Trial Chamber erred in finding that he knew or had reason to know of the crimes committed, Gbao points to certain other of the Trial Chamber's findings and argues that these findings contradict that conclusion. However, Gbao fails to address the findings upon which the Trial Chamber relied. In particular, Gbao does not address the Trial Chamber's findings that the RUF ideology justified abuses against civilians considered to be "enemies of the revolution"2527 and that RUF fighters deliberately killed civilians on a massive scale during military attacks from the time of the initial invasion in 1991.2528 While Gbao notes that the Trial

Chamber found no evidence to indicate that Gbao received reports regarding unlawful killings,2529 that finding does not establish that no reasonable trier of fact could conclude that Gbao knew or had reason to know of the unlawful killings. Similarly, Gbao notes the finding that the IDU did not have power or authority over military activities,2530 and the finding that Gbao did not visit the frontline and was not involved in military planning.2531 However, these findings do not establish that the Trial Chamber erred in relying on Gbao's roles as OSC and overall IDU Commander, in which roles he supervised the RUF security units, and was charged with investigating crimes against civilians, to determine that he knew or had reason to know of the crimes.2532 Finally, in arguing that he was not in and did not communicate with anyone in Bo, Kenema or Kono Districts, and did not communicate with the AFRC Supreme Council,2533 Gbao fails to address the Trial Chamber's finding that the members of the JCE, including himself,2534 ever contemplated the crimes charged under Counts 1 to 14 in order to gain and exercise political power and control "over … Sierra Leone."2535 He therefore fails to establish that no reasonable trier of fact could have concluded that he knew or had reason to know of the crimes in Bo, Kenema and Kono Districts.

7694. para. 1061: Second, Gbao argues that he had only a nominal role as OSC outside Kailahun District,2927 noting that the Trial Chamber found that there was insufficient evidence that he received reports of unlawful killings in Bo, Kenema and Kono Districts or that he failed in his duty to ensure proper investigations were conducted in those areas.2928 The Appeals Chamber notes that the findings Gbao cites do not show that no reasonable trier of fact could have found that he had a more than nominal role outside Kailahun District, particularly in light of the Trial Chamber's specific findings regarding his practical influence and authority over the RUF security apparatus as a whole. Furthermore, Gbao fails to show that it was not open to a reasonable trier of fact to conclude that he significantly contributed to the JCE on the basis of his contributions in Kailahun District. The Appeals Chamber recalls that the Trial Chamber's findings regarding Gbao's significant role as OSC in Kailahun District,2929 his supervision of the MP and G5 units in Kailahun District2930 and the finding that Gbao had considerable prestige and power in the RUF in Kailahun District.2931 Moreover, the Trial Chamber specifically found that Kailahun District played an important role in the realisation of the Common Criminal Purpose:

> The[] widespread and systematic crimes [by the RUF in Kailahun2932] 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.2933

b. Planning – Kono District

i. Sesay – Planning – Enslavement - Kono District

7695. para. 681: The Trial Chamber found Sesay criminally responsible for planning the enslavement of hundreds of civilians to work in mines at Tombodu and throughout Kono District between December 1998 and January 2000.1742

7696. para. 687: The Appeals Chamber recalls that the *actus reus* of this mode of liability requires that the planning was a factor "substantially contributing" to the criminal conduct for which the accused is to be held responsible.1764 The Trial Chamber correctly set out this legal requirement when pronouncing on the legal elements of planning.1765 However, when applying the legal test for planning to the facts now at issue, it found Sesay liable for planning on the basis that his conduct was a "significant" contributory factor to the perpetration of enslavement.1766

7697. para. 688: An accused's "significant" contribution may denote a lesser degree of impact on the crime than "substantial" contribution.1767 Having set out the proper legal standard for planning, which requires "substantial" contribution, the Trial Chamber proceeded to make findings on Sesay's involvement in the enslavement in Kono District between the recapture of the District by RUF troops under his command in December 1998, and January 2000,1768 which demonstrate a "substantial" contribution on his part. For example, the Mining Commander reported to Sesay, and in 2000, Sesay himself appointed a new Overall Mining Commander.1769 Sesay visited Kono District and collected diamonds and kept a house in Koidu Town where he received mining Commanders for this purpose.1770 He visited the mines and ordered that civilians be captured from other Districts and arranged for transportation of the captured civilians to the mines.1771 The Trial Chamber further found that, as the illicit sale of diamonds was the RUF's primary means of financing, the mining system in Kono was designed and supervised at the highest levels, and 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.1772

7698. para. 689: The Appeals Chamber therefore holds that the Trial Chamber did not apply the wrong legal test for planning.

7699. para. 690: The Trial Chamber found Sesay liable for planning the enslavement of hundreds of civilians to work in mines in Tombodu and throughout Kono District between December 1998 and January 2000.1773 The Trial Chamber relied primarily on Witnesses TF1-077 and TF1-304 for its findings on the mining in Tombodu.1774

7700. para. 691: Sesay's first argues that the Trial Chamber disregarded TF1-304's evidence that the mining in Tombodu did not start in 1999, but instead, that it started between March and April 2000.1775 He specifically impugns the findings at paragraph 1255 of the Trial Judgment, which concern events relating to mining in Tombodu that, the Trial Chamber found, took place "in April 1999." The Trial Chamber relied on TF1-304's testimony-in-chief for these findings.1776 Sesay correctly notes that, when cross-examined on when the mining commenced, the witness repeatedly stated it started in 2000.1777 The latter evidence, if accepted, would place the mining in Tombodu largely outside the timeframe pleaded for the relevant charges in the Indictment.1778

7701. para. 692: The Appeals Chamber, however, is not satisfied that it was unreasonable for the Trial Chamber to rely on TF1-304's testimony-in-chief to find that the mining activities described in paragraph 1255 of the Trial Judgment took place in April 1999. The reason is that a comparison of other parts of TF1-304's testimony with key events in the case demonstrates that TF1-304's chronological description of events corresponds with other findings of the Trial Chamber. TF1-304 testified that Junta forces attacked Tombodu in March 1998,1779 which is consistent with the finding that the AFRC/RUF attacked Kono on or about March 1998.1780 After the RUF attack on Tombodu, TF1-304 fled for Guinea and returned to Tombodu in February 1999, at which point in time the RUF was in Tombodu.1781 This evidence corresponds with the Trial Chamber's finding that, after the RUF re-captured Koidu Town on 16 December 1998,1782 Kono District remained largely under RUF control throughout the Indictment period.1783 While in Tombodu, TF1-304 continued, around March 1999 he was forced by the rebels to retrieve vehicles from the bush,1784 and carried luggage for them and performed other tasks.1785 TF1-304 testified that "when we ceased carrying the luggages [*sic*]" diamond mining began when Officer Med came in April 1999.1786 Sesay's reference to the testimony of TF1-071 does not support his contention that Officer Med first arrived in Tombodu in 2000; at most, this evidence merely places Officer Med in Tombodu at that time, but it is silent on when he arrived.1787 His additional reference to the testimony of TF1-012 is equally unpersuasive.1788 Sesay's challenge to the Trial Chamber's reliance on TF1-304 in paragraph 1255 is therefore rejected.

7702. para. 693: Next, Sesay challenges the Trial Chamber's assessment of TF1-077. The Trial Chamber found that TF1-077 was "mistaken about the year" when testifying to being captured in

Koidu Town in December 1999 and then sent to Tombodu to mine, since the witness testified that this incident occurred during the recapture of Koidu, which took place in December 1998.1789 Sesay essentially argues that the Trial Chamber's interpretation is contrary to TF1-077's pre-trial statement, that the witness testified that Officer Med, who allegedly arrived in Tombodu in 2000, was among his capturers, and that the witness mined until disarmament, which did not occur in Kono during 1999.1790 The Appeals Chamber is not persuaded by Sesay's arguments. First, Sesay does not address why the Trial Chamber was unreasonable to rely on the witness's reference to the recapture of Koidu, as opposed to other events, to find that the witness was mistaken about the year. Second, as already noted, TF1-071 did not testify when Officer Med arrived in Tombodu in 2000. In fact, TF1-071 indicated that diamond mining by hand occurred in Tombodu from 1998.1791 Third, the Trial Chamber's interpretation that TF1-077 was mistaken about the year is consistent with TF1-304's testimony in examination-in-chief that the mining in Tombodu began in 1999. The Appeals Chamber is satisfied on this basis that the Trial Chamber's impugned finding was reasonable. Sesay's argument is rejected.

7703. para. 694: Sesay correctly notes that while the Trial Chamber limited its legal findings on Count 13 in Kono District between December 1998 and January 2000 to holding that enslavement was committed in Tombodu,1792 it nonetheless held him responsible for planning enslavement in mines in "Tombodu and throughout Kono District."1793 It provided no reasons for this addition to the scope of Sesay's liability. The Appeals Chamber finds that this constitutes an error of law. The error invalidates the verdict insofar as Sesay was convicted for planning enslavement between December 1998 and January 2000 in parts of Kono District other than Tombodu. This part of Sesay's appeal is granted. The Appeals Chamber will consider any implications of this finding on sentence.

7704. para. 695: In remaining parts, Sesay's complaint about a lack of reasoned opinion is confined to the Trial Chamber's introductory findings providing an "overview" of the mining process in Kono District between December 1998 and January 2000 and its findings on "government" mining sites in Kono.1794 He does not, however, address the Trial Chamber's findings on the mining in Tombodu, which he was convicted for having planned and which is challenged under his present ground of appeal.1795 In this respect, the Appeals Chamber recalls that the Trial Chamber was required only to make findings on those facts which were essential to the determination of Sesay's guilt on Count 13.1796

7705. para. 696: Moreover, Sesay attempts to support his position by an incomplete and selective reading of the findings and alleges contradictions therein where there are none. For

instance, he avers that the Trial Chamber failed to address his "real defence" that there was no organised system of enslavement in Kono, but ignores its findings showing precisely such a system.1797 That the Trial Chamber found there was such a system in spite of his position that there was none, does not establish that the Trial Chamber failed to address his "real defence." He also argues without support that the Trial Chamber's finding that "[c]ivilians would go to the surrounding villages on the weekends to find food and would then return to work" contradicts the findings that "[c]ivilians who refused to mine were beaten" and "were constantly supervised by armed men [and so] there was no possibility of escape."1798 Similarly, he fails to explain how the finding indicating that some civilians may have been "willing volunteers" detracts from the findings that other civilians were "captured and brought forcefully to mining sites … and forced to work at gunpoint."1799 The findings that Sesay points to are neither legally contradictory in view of the law of enslavement nor factually contradictory in the context of the Trial Chamber's findings as a whole. Contrary to Sesay's contention, then, the Trial Chamber did not err in failing to explain these "contradictions." In this regard, Sesay alleges an error of fact, arguing that TF1-367 testified that some of the 200 to 300 civilians captured and forced to work at Kaisambo volunteered and that the civilians were not forced to return, but fails to avert to the evidence supporting the finding that civilians who refused to mine were beaten.1800 Further relevant indicia of enslavement is found in the holdings that the "conditions for the hundreds of civilians forced to mine were poor; they were neither paid nor given adequate housing, food or medical treatment" and "they were constantly supervised by armed men."1801

7706. para. 697: Except for the error of law found above, the Appeals Chamber finds that the Trial Chamber did not fail to provide a reasoned opinion.

7707. para. 698: The Appeals Chamber notes that Sesay's claims regarding TF1-367's "lies" are in effect submissions that TF1-367's testimony contradicts other evidence.1802 Sesay does not explain how, or in what respects, these contradictions caused the Trial Chamber to err. As to TF1-367's alleged motives to implicate Sesay, the Appeals Chamber is not satisfied that the evidence Sesay invokes1803 precluded a reasonable trier of fact from finding, as the Trial Chamber did, that the witness was "generally credible."1804 Sesay's submission is dismissed.

7708. para. 699: The Appeals Chamber recalls that "[w]hile there must be a sufficient link between the planning of a crime both at the preparatory and the execution phases, it is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct."1805 The Appeals Chamber considers that Sesay's actions both before and after December 1998 are relevant in this regard. In particular, contrary to the Prosecution's

argument,1806 Sesay's conduct pre-December 1998 is relevant to whether a reasonable trier of fact could have found that he planned the enslavement which ensued thereafter.

7709. para. 700: As to his conduct before December 1998, Sesay essentially relies on the findings underlying the conclusion that he was not in a superior-subordinate relationship with RUF fighters in Kono from May to the end of November 1998.1807 The Appeals Chamber is not satisfied that these findings alone show that it was unreasonable for the Trial Chamber to find that he planned the enslavement from December 1998 onward. The following findings provided a basis for a reasonable trier of fact to find that Sesay was involved in the preparatory phase of planning the enslavement: (i) the RUF continued conducting mining operations in parts of Kono District after having been forced to retreat from Koidu Town in early April 1998;1808 (ii) he led and commanded the RUF troops who re-captured Koidu Town on 16 December 1998, although the Trial Chamber could not specifically determine Sesay's involvement in Kono District between August and November 1998;1809 and (iii) after Koidu Town was retaken, RUF mining in Kono District "intensified significantly,"1810 and "mining operations expanded" to different areas in Kono District, in particular Tombodu.1811 These findings must be read together with those on Sesay's involvement in mining in Kono after December 1998. In particular, the Trial Chamber found that the Mining Commander reported to Sesay,1812 that Sesay visited the mining site at Tombodu and collected diamonds (for which purpose he maintained a house in Koidu),1813 and that he ordered that civilians be captured from other Districts and arranged for transportation of the captured civilians to the mines in Kono.1814

7710. para. 701: Sesay's reference to evidence that Bockarie was in control of the mining,1815 or other evidence allegedly showing that Sesay "had nothing to do with the mining,"1816 fails to address the evidence on which the Trial Chamber based its findings. Moreover, the Trial Chamber recognised that Sesay was "subordinate to Bockarie at the time," but that since 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" and "Sesay, as the BFC … was actively and intimately involved in the forced mining operations" in Kono.1817 The fact that Sesay was subordinate to Bockarie does not exclude that Sesay was involved in planning the enslavement. Sesay's arguments regarding Bockarie's control over the diamond mining in Kono, and Sesay's general lack thereof, are therefore rejected.

7711. para. 702: Other parts of Sesay's submission, however, challenge the evidence on which the Trial Chamber found that he collected diamonds and that he ordered civilians to be captured for mining. As to the former finding, Sesay avers that the Trial Chamber should have relied on

TF1-071's evidence in cross-examination instead of that given during examination-in-chief, but fails to explain why the Trial Chamber's assessment of the testimony was unreasonable.1818 He also argues that the Trial Chamber erred in relying on TF1-371, as the witness had no knowledge of pre-2000 mining operations, but fails to explain why the Trial Chamber could not reasonably rely on TF1-367 and TF1-366.1819 This challenge is rejected.

7712. para. 703: Regarding Sesay's order that civilians be captured for mining, the Trial Chamber, relying on TF1-041's testimony, found that Sesay sent a message to Kallon in Makeni requiring civilians to be gathered and sent to Kono for mining. Approximately 400 civilians were gathered by Kallon, jailed and then taken daily to Kono in trucks sent by Sesay.1820 Sesay fails to explain why the fact that none of the persons who executed the order, other than Kallon, were mentioned by the Trial Chamber renders the finding unreasonable. The alleged inconsistencies in TF1-041's testimony Sesay refers to were not such that the Trial Chamber erred in failing to explain expressly how it resolved them.1821 Sesay's challenge to this finding is thus rejected.

7713. para. 704: In light of the foregoing, the Appeals Chamber finds that Sesay fails to establish that, on the basis of its factual findings as a whole, the Trial Chamber erred in finding him responsible for planning the enslavement in Tombodu in Kono District between December 1998 and January 2000. Having thus found, the Appeals Chamber need not address Sesay's argument that the Trial Chamber erred in relying on Exhibits 41 and 42 (RUF diamond productions records from Kono), as that challenge is premised on the success of the other arguments under this part of his appeal.1822

ii. Sesay – Planning – Child soldiers – Kono District

7714. para. 749: The Trial Chamber 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, Bombali and Kenema Districts.1948 The Trial Chamber held 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.1949

7715. para. 750: The Trial Chamber also found that Sesay, as one of the most senior RUF Commanders, made a substantial contribution to the planning of this system of conscription.1950 It, therefore, convicted him under Article 6(1) for planning the "use of persons under the age of 15 to participate actively in hostilities in Kailahun, Kenema, Kono and Bombali Districts between 1997 and September 2000, as charged in Count 12."1951

7716. para. 755: The Trial Chamber found that Sesay contributed to the planning of the offence under Count 12 by issuing orders that "young boys" should be trained at *Bunumbu*.1971 Sesay contends that the Trial Chamber found that these "young boys" were in fact 15 years of age and above.1972 However, Sesay misinterprets the Trial Chamber's findings which referred to "young boys" to include persons of at least 15 years of age as well as SBUs comprising children as young as 9 to 11 years of age.1973

7717. para. 756: Sesay further submits that "in any event, the Trial Chamber cites only one piece of valid evidence for this finding: the evidence of Witness TF1-366," and that the testimonies of Witnesses TF1-199 and TF1-371, also cited by the Trial Chamber in further support, do not in fact support the finding.1974 The Trial Chamber provided no citations for its finding that Sesay issued the orders in June 1998, however, it cited the testimony of TF1-366, TF1-199 and TF1-371 for its findings that SBUs were children tasked with carrying weapons for the RUF. Witness TF1-366's testimony most closely supports both findings of the Trial Chamber, including that Sesay issued orders. He testified directly that Kallon and Superman issued orders and Sesay "sent messages" that young boys should be brought to be trained at Bunumbu.1975 He stated that some of the "young boys" were 15 years of age, but that many were SBUs comprising children ages 9 to 11 years and smaller boys.1976 Witness TF1-199 testified that SBUs were "really small boys" and because he was a small boy of 12 years of age, he was called an SBU.1977 However, he did not mention Sesay in his testimony or testify to anyone giving orders. Witness TF1-371 testified that children between the ages of 12 and 18 years were classified as SBUs, and that Sesay had SBUs, one of whom was around 15 years and the other around the age of 16.1978 Importantly, of the testimony cited by the Trial Chamber, only TF1-366 supports the finding that Sesay issued orders for "young boys" to be trained at Bunumbu in June 1998.

7718. para. 757: This testimony is consistent with the testimony of TF1-362, relied on by the Trial Chamber to find that civilians captured on the highway to Freetown from 1997 onward, as well as people from Daru and the SLA, were brought to *Bunumbu training base* at the command of Issa Sesay.1979 Importantly, although Sesay challenges the Trial Chamber's reliance on TF1-362 in other contexts, he does not impugn these findings.1980

7719. para. 758: Trial Chambers enjoy broad discretion in their assessment of evidence and determination of the weight to accord testimony. In general, a Trial Chamber may in the exercise of its discretion rely on a single witness for support of its factual findings. With respect to TF1-366, the Trial Chamber stated that it "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."1981

7720. para. 759: The Appeals Chamber considers that the testimony of TF1-366 was corroborated "in some material aspect" by the testimony of TF1-199 and TF1-362, whose evidence was found credible by the Trial Chamber.1982 The Trial Chamber's failure to explicitly cite TF1-362's testimony for the impugned finding is unfortunate, but in the circumstances caused no error.

7721. para. 760: Sesay contends that the Trial Chamber erred in finding, on the basis of testimony of TF1-362, that he personally communicated reports to Bunumbu and ordered that the training camp be moved from Bunumbu to Yengema.1983 Sesay, however, fails to demonstrate that the Trial Chamber could not reasonably rely on TF1-362 for these findings. As Sesay does not show an error in the Trial Chamber's exercise of its discretion to assess the witness's credibility or determine the weight it attached to his testimony, this part of Sesay's argument fails.

7722. para. 761: Sesay further submits that the Trial Chamber unreasonably relied upon Witnesses TF1-114 and TF1-1081984 to support its finding that children were forcibly trained,1985 but disregarded their testimony that, Sesay contends, "contradicted TF1-362's account of Sesay's involvement in the training base." However, Sesay fails to demonstrate how the testimony of TF1-114 and TF1-108 contradicts the testimony relied upon by the Trial Chamber, and the Appeals Chamber is unable to infer his argument. The Appeals Chamber recalls that "[w]hile 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."1986 Sesay fails to show error in the Trial Chamber's finding.

7723. para. 762: The Trial Chamber found that Sesay, as one of the most senior RUF commanders, made a substantial contribution to the planning of the RUF system of child use by, *inter alia*, receiving reports on training at Bunumbu and subsequently at Yengema.1987 Specifically, the Trial Chamber found that the adjutant at the base drew up a list of recruits including their names, ages and other personal data.1988 Sesay submits that the Trial Chamber erred in finding that receipt of reports substantially contributed to the crime of child conscription or use.1989 He posits that the alleged planning must be found to have actually led to the commission of specific crimes.1990

7724. para. 763: 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 the reports to an advisor.1991 Next, the reports were either delivered by hand or communicated via radio to Sesay and finally to Bockarie;1992 and Sesay would confirm delivery of the report back to the base.1993 The Trial Chamber found that "[e]very such report was either hand-delivered or communicated via radio to Sesay."1994 The Trial Chamber also found that the training commander at *Yengema* reported directly through Sesay to Bockarie, until Bockarie left the RUF in December 1999, after which she reported to Sesay only.1995 According to the Trial Chamber, records were kept of the ages of SBUs and SGUs trained at *Bunumbu* and *Yengema*, from which it could be inferred that the fighters who conducted the training knew or had reason to know that certain trainees were under the age of 15.1996

7725. para. 764: The Appeals Chamber considers that Sesay's receipt of reports is relevant circumstantial evidence supporting the findings that "the execution of this system of conscription [of child soldiers] required a substantial degree of planning"1997 and that "this planning was conducted at the highest levels of the RUF organization,"1998 including Sesay.1999 That reports on the training of child soldiers were transmitted to RUF headquarters signifies that the conscription of child soldiers was highly organised, and that the RUF leadership was responsible for that organisation. Moreover, the creation and transmission of training reports represents a mechanism through which the RUF headquarters could monitor the implementation of the planned conscription of child soldiers. Sesay's receipt of such reports was indicative that he had participated in that planning process. Accordingly, contrary to Sesay's contention, the Trial Chamber did not consider that he substantially contributed to the planning by merely receiving reports, but that his receipt of such reports was part of the evidence taken into consideration in coming to the conclusion that he had participated in the planning at both the preparatory and execution phases.

7726. para. 765: Sesay contends that the Trial Chamber's reliance on TF1-141 to find that he participated in the training bases by giving speeches at Bunumbu training camp, passing and receiving messages and threatening to execute those child soldiers who attempted to leave2000 is "wholly unreasonable given [the witness's] frailties" and the numerous and significant contradictions in the witness's testimony.2001

7727. para. 766: The Trial Chamber acknowledged the "concerns" raised by the Defence,2002 and indicated that it was "uneasy with portions of TF1-141's testimony that appear[ed] to be fanciful and thus implausible."2003 The Trial Chamber noted that the witness was captured by the

RUF in 1998 and remained with the group until 2000, when he was demobilised.2004 The Trial Chamber considered that although the witness was diagnosed with Post-Traumatic Stress Disorder as a result of his experience as a child soldier with the RUF, he was nonetheless able to give truthful testimony.2005 The Trial Chamber concluded that, after seeing the witness in court, hearing his testimony and observing him under cross-examination, he "came across as a candid witness." The Trial Chamber, therefore, "generally accepted his testimony, especially as it relates to his own experiences as a child combatant."2006

7728. para. 767: Sesay contends the witness was "constantly contradicting himself," and that the Trial Chamber disregarded a "significant contradiction" in the witness's testimony, but he only points to one purported contradiction, which, even if a contradiction, was not material to the findings Sesay contests here.2007 Sesay further fails to show what portions of the witness's testimony contain discrepancies that made the Trial Chamber's assessment of the witness's credibility unreasonable. Seasy thus fails to establish that the Trial Chamber erred in accepting parts of the witness's evidence.

7729. para. 768: Taking into account the foregoing discussion, the Appeals Chamber will now consider Sesay's broader claim that the Trial Chamber erred in finding him liable for planning the use of child soldiers.

7730. para. 769: Sesay argues that the Trial Chamber erred in law and in fact in concluding that his acts amounted to "planning."2008 The Appeals Chamber considers that whether particular acts amount to a substantial contribution to the crime for the purposes of planning liability is to be assessed on a case-by-case basis in light of the evidence as a whole. In concluding that Sesay's cumulative conduct fulfilled the *actus reas* of planning, the Trial Chamber relied on its findings that: (i) Sesay gave orders in June 1998 that "young boys" should be trained at Bunumbu and that he received reports on training in Bunumbu and subsequently at Yengema;2009 (ii) he visited Camp Lion where he addressed the recruits and told them that they would be sent to the battlefield; and that if they failed to comply with orders they would be executed;2010 (iii) he visited RUF fighters including children under the age of 15 who were preparing to conduct an attack on Daru and distributed drugs as "morale boosters" for these fighters;2011 and (iv) he participated in an attack on Koidu in December 1998 together with his bodyguards, including children under the age of 15.2012

7731. para. 770: Sesay fails to explain how no reasonable trier of fact could have found that he performed the *actus reus* of planning. His contention appears to be centred on the notion that none of his acts as found by the Trial Chamber constitute the "planning" or "designing" of the crimes

per se. However, Sesay does not explain why a reasonable trier of fact could not have inferred from these findings and other evidence that he had substantially contributed to designing the criminal conduct. In this regard, the Appeals Chamber notes in particular the Trial Chamber's findings that Sesay ordered the training of child soldiers, received reports on such training and personally visited the Camp Lion training camp, addressing and threatening the child soldier conscripts there. Therefore, in inferring that Sesay contributed to the planning of the crimes, the Trial Chamber did not rely solely on Sesay's command role, as Sesay suggests.2013 Rather, the Trial Chamber further considered Sesay's personal and direct participation in the conscription and training process. Specifically, the acts relied on by the Trial Chamber evince that Sesay participated in all stages of that process, from ordering the training of child soldiers to monitoring the implementation of the training to monitoring the use of child soldiers. In addition, although not referenced in its reasoning, the Trial Chamber found that Bockarie and Sesay "issued orders to move the RUF training base from Bunumbu to Yengema in Kono District," and that "Sesay personally discussed the creation of the new Yengema base with the training commander."2014 Finally, as noted above, the Trial Chamber found that the highly organised character of the conscription process was such as to demand a substantial degree of prior planning by the RUF leadership.2015 It was on the basis of these findings as a whole that the Trial Chamber found that Sesay substantially contributed to the planning of the crimes. Sesay fails to show that the Trial Chamber's finding, on the basis of the evidence as a whole, was unreasonable. Sesay's submission is dismissed.

7732. para. 771: Sesay further submits a number of related challenges to the scope of his liability as found by the Trial Chamber. Sesay argues first that by failing to identify the victims and by failing to require a specimen count, the Trial Chamber was unable to "identify a representative sample of child soldiers" and therefore could not make proper findings as to whether "the use/conscription of any such child was within the framework of Sesay's design."2016 Second, Sesay argues that the Trial Chamber erred in fact in convicting him for child conscription and use in Bombali and Kenema Districts, as its findings on his responsibility do not refer to acts outside Kailahun and Kono Districts.2017 Finally, Sesay contends that the Trial Chamber's failure to approximate the number of child soldiers used pursuant to his plan invalidates any finding that the crimes committed were within the framework of his design.2018 During the oral hearings, Sesay further argued that the Trial Chamber made no findings as to his criminal liability for planning the use of child soldiers in 1997, and that "from 1997 to February 1998 there is simply no evidence of [his] involve[ment] in any type of activity which could amount to planning."2019

7733. para. 772: However, Sesay again fails to explain how no reasonable trier of fact, on the basis of the Trial Chamber's findings, could have concluded that he substantially contributed to the planning of the crimes for which he was held liable. Although Sesay argues that the Trial Chamber's findings with respect to Bunumbu are "simply insufficient,"2020 and points to the absence of findings regarding his acts with respect to the conscription and use of child soldiers in Kenema and Bombali Districts2021 and before February 1998,2022 he does not explain how the Trial Chamber's conclusion was accordingly unreasonable. In particular, Sesay does not show that no reasonable trier of fact could infer from the Trial Chamber's findings regarding his acts, in combination with other findings such as those concerning the nature of the conscription and use of child soldiers, that he substantially contributed to the planning of crimes committed in other locations as well. In merely submitting that the Trial Chamber's findings with respect to Bunumbu are insufficient to ground his liability for planning the other instances of the crime, Sesay fails to explain why this is so. Sesay further fails to point to other findings or evidence to show that the crimes in Kenema and Bombali Districts were unique or distinct from the crimes in Kailahun and Kono Districts. While Sesay correctly submits that he can only be held liable for those crimes he substantially contributed to the planning of, he does not show how no reasonable trier of fact could infer, on the basis of his acts with respect to Bunumbu and Yengema in particular, that he substantially contributed as well to the planning of the other crimes for which he was held liable.

7734. para. 773: Sesay further fails to explain why the manner in which the Trial Chamber evaluated the evidence precluded it from finding that he substantially contributed to the planning of the specific crimes for which he was held liable.2023 Sesay cites no authority for his position that the Trial Chamber could only make such a finding on the basis of the identity of the victims, or that the Trial Chamber was required to demand a specimen count here. In this respect, the Appeals Chamber considers that the Trial Chamber found that the crimes committed were those that Sesay substantially contributed to the planning of on the basis of the identity of the perpetrators and the manner in which the crimes were committed. Sesay fails to address the Trial Chamber's approach and to explain how it was erroneous.

7735. para. 774: Finally, the Appeals Chamber does not consider Sesay's citation to the ICTY Trial Chamber's findings in *Brđanin* to be determinative of the issue here.2024 That the accused in that proceeding was not found liable for planning crimes is not particularly probative as to whether the Trial Chamber here erred, because the facts of the two cases are too distinct for a meaningful analogy to be made. Moreover, Sesay fails to show that no reasonable trier of fact could have found that he planned the specific crimes for which he was held liable, and he does not argue that the Trial Chamber's reasoning and conclusion evince that it misapplied the law.

7736. para. 775: Sesay's contention that the Trial Chamber erred in law in finding him responsible for the offence in Bombali when it had specifically held that he could not be liable for crimes committed in Bombali District2025 is misconceived. The Trial Chamber held that Sesay was not liable for crimes in Bombali District in relation to crimes attributable to AFRC forces under the control of Gullit after the cessation of the JCE.2026 In contrast, Sesay was found to have planned an RUF system of use of child soldiers.2027

iii. Kallon – Planning – Child soldiers – Kono District

7737. para. 909: The Trial Chamber convicted Kallon for planning the crime of using children under the age of 15 by the RUF to participate actively in hostilities in Kailahun, Kenema, Kono and Bombali Districts between 1997 and September 2000.2373

7738. para. 917: In finding that Kallon was a senior RUF commander during the attack on Koidu Town in February 1998,2390 the Trial Chamber found that Kallon held the rank of Major during the retreat to *Kono* in February 19982391 and that he gave orders which were complied with by troops.2392 Kallon does not challenge these findings or show how no reasonable trier of fact could have reached those findings on the basis of the evidence.2393 This submission is dismissed.

7739. para. 918: Kallon argues that the Trial Chamber erred in finding that he gave orders that "young boys" be trained, as the Trial Chamber itself found that the boys to be trained were over 15 years of age.2394 The Appeals Chamber has previously considered this issue in addressing Sesay's Ground 43, and reiterates its conclusion that Kallon misinterprets the Trial Chamber's findings.2395 Similarly, the Appeals Chamber has previously considered the Trial Chamber's reliance on the testimony of Witness TF1-366 in addressing Sesay's Ground 43, and reiterates its conclusion that the Trial Chamber reliance on that testimony was not erroneous.2396 Kallon further fails otherwise to establish that the Trial Chamber erred in finding the testimony of Witness TF1-366 credible. This submission is rejected.

7740. para. 919: The Appeals Chamber also rejects Kallon's argument that it is not established beyond reasonable doubt that the boys and girls trained at the RUF training bases were under the age of 15.2397 Witnesses TF1-141 and TF1-263 testified that they were 12 and 14 years of age respectively at the time they were abducted and sent for military training.2398 Similarly, Witness Dennis Koker saw Kallon bring juveniles under the age of 15 to *Bunumbu* for training.2399 The Trial Chamber accepted the testimonies of the Witnesses and found them credible. Kallon has not established that no reasonable trier of fact could rely on their testimonies for a finding of fact. This submission is rejected.

7741. para. 920: Kallon argues that the Trial Chamber relied on the testimony of Witness TF1-045 to establish his guilt for planning use of child soldiers.2400 However, contrary to Kallon's assertion,2401 the Trial Chamber did not rely on his presence in Camp Zogoda to demonstrate a consistent pattern of conduct in violation of Rule 93(B) of the Rules. Rather, the Trial Chamber found that the fact that children between the ages of 8 and 15 were trained at Camp Naama in Liberia; and Matru Jong and Pendembu and Camp Zogoda in Sierra Leone "demonstrates a consistent pattern of conduct by the RUF of recruiting and training children for military purpose that began as early as 1991 and continued throughout the Indictment period."2402 Although the Trial Chamber also noted that Kallon was seen at Camp Zogoda with fighters in 1994, its finding on the consistent pattern of conduct related to the RUF rather than Kallon specifically. Moreover, there is no further indication that the Trial Chamber relied on the evidence that Kallon was at Camp Zogoda in 1994 to establish his liability for planning the crimes between 1997 and 2000. There is therefore no violation of Rule 93(B) of the Rules and consequently, no error as alleged. This submission is rejected.

7742. para. 921: With respect to Kallon's submission that the Trial Chamber found that he and Sesay gave orders for "young boys" to be trained, but that those boys were 15 years of age and above, the Appeals Chamber refers to its conclusion above that some of the "young boys" included persons both under and above the age of 15.2403 The Appeals Chamber recalls its decision concerning the Trial Chamber's assessment of the credibility of Witnesses TF1-141, TF1-263, TF1-366 and Dennis Koker, particularly in relation to the ages of the children with whom they associated Kallon.2404 The Appeals Chamber also recalls that the Trial Chamber exercised caution in determining the ages of children associated with the rebel factions in its findings.2405 The Appeals Chamber defers to these findings2406 and dismisses Kallon's argument regarding the testimonies of Witnesses TF1-141, TF1-263, TF1-366 and Dennis Koker relating to the ages of children.

7743. para. 922: Kallon contends that the Trial Chamber found that he "knew or had reason to know that the persons conscripted 'may have been' under the age of 15" was erroneous given its inconclusive nature, thereby suggesting that it was not the only reasonable inference that could be drawn from the evidence.2407 Kallon mischaracterises the Trial Chamber's findings. Contrary to his assertion, the Trial Chamber did not find that he "knew or had reason to know that persons conscripted 'may have been' under the age of 15."2408 Rather, the Trial Chamber identified several factors which it found to be "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."2409 Accordingly, this part of Kallon's argument must fail.

7744. para. 923: Kallon further submits that the Trial Chamber shifted the burden of proof to him by stating that "where doubt existed as to whether a person abducted or trained was under the age of 15, it was incumbent upon the perpetrator to ascertain the person's age."2410 The Appeals Chamber has previously held that the prohibition on conscripting or using child soldiers existed in customary international law at the times relevant to the offences in this case, and that violation of this prohibition incurs individual criminal responsibility in customary international law.2411 In reaching those holdings, the Appeals Chamber observed that a significant body of conventional international law imposes an obligation on parties to "take all feasible measures" to ensure that children are not recruited or used in hostilities.2412 The accused are under a duty to act with due diligence to ensure that children under the age of 15 are not recruited or used in combat. Failure to exercise such due diligence to ascertain the age of recruits does not relieve an accused of his liability for their recruitment or use.2413 The Appeals Chamber therefore finds no error in the Trial Chamber's statement that the accused were under a duty to exercise due diligence to ascertain the age of a child.

7745. para. 924: Kallon submits a number of arguments contesting the Trial Chamber's finding that he planned the use of child soldiers.2414 Kallon argues that the Trial Chamber relied solely on his command role to support that finding,2415 and argues that there was no evidence that he was involved in the planning of the abduction and training of children.2416

7746. para. 925: The Trial Chamber found that Kallon "participated in the design and maintenance of [the RUF] system of forced recruitment and use [of child soldiers] and that his contribution in this regard was substantial."2417 In reaching this conclusion, the Trial Chamber relied on its findings that: (i) 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; (ii) Kallon gave orders for children to be trained at RUF camps; (iii) Kallon brought a group of children to *Bunumbu* for training in 1998; and (iv) Kallon was the senior RUF Commander on 3 May 2000 at Moria where child soldiers were used in the ambush of UNAMSIL forces.2418 The Trial Chamber also found that the highly organised character of the process of conscripting and using child soldiers was such as to demand a substantial degree of prior planning by the RUF leadership.2419As these findings make clear, the Trial Chamber did not solely rely on Kallon's command role to find that he planned the use of child soldiers.2420

7747. para. 926: Kallon fails to show that no reasonable trier of fact could have inferred from these findings and the evidence as a whole that he planned the use of child soldiers.2421 This submission is rejected.

c. Instigation – Kono District

i. Kallon – Instigation – Kono District

7748. para. 826: The Trial Chamber found that Waiyoh, a Nigerian female who resided in the civilian camp at Wendedu and had lived in Kono District for twenty years was killed on the orders of Rocky, an RUF Commander in May 1998.2169 It found that this crime constituted an unlawful killing as charged in Counts 4 and 5 of the Indictment.2170 It further found that Kallon was liable under Article 6 (1) of the Statute for its instigation.2171 The Trial Chamber found that although Wendedu was not named as a location of murder in the Indictment, the pleading of locations in Counts 4 and 5 was nonexhaustive and sufficiently specific in light of the cataclysmic nature of the alleged crimes.2172

7749. para. 828: The Indictment particularises the charge of murder under Counts 4 and 5 in relation to Kono District as follows:

> 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.2175

7750. para. 829: The relevant question on appeal is whether the pleading of locations of murder in Kono District as "various locations in Kono District, including Koidu, Tombodu, Foindu, Willifeh, Mortema and Biaya" without naming Wendedu, is sufficiently specific to allow Kallon to prepare his defence to the charge of instigating murder in Wendedu.

7751. para. 830: As a general matter, the location of the crimes alleged to have been committed should be specified in an indictment.2176 However, the degree of specificity required will depend on the nature of the Prosecution's case.2177 The specificity required for the pleading of the location of an alleged crime will depend on factors such as: the form of accused's participation in the crime;2178 the proximity of the accused person to the events at the location for which he is alleged to be criminally responsible;2179 the nature of the crime itself, such as whether the crime is characterized by the movement of the victim; whether the victim's identity provides specificity; and whether the crime was committed at numerous locations within a defined geographic area that was pleaded.

7752. para. 831: As the form of the accused's participation in the crime is relevant to the specificity required, the material facts to be pleaded will vary according to the particular form of

Article 6(1) liability averred. For example, the Appeals Chamber has indicated that the material facts for pleading personal commission are distinct from those pleaded for JCE liability.2180 As stated by the ICTR Appeals Chamber, there may well be "situations in which the specific location of criminal activities cannot be listed, such as where the accused is charged as having effective control over several armed groups that committed crimes in numerous locations. In cases concerning physical acts of violence perpetrated by the accused personally, however, location can be very important."2181

7753. para. 832: This distinction between the specificity requirements for the pleading of locations in relation to different modes of liability is consistent with our holding in the *Brima et al.* Appeal Judgment. There, we held that the Trial Chamber's decision to reconsider an earlier form of indictment decision was a proper exercise of its discretion in the interests of justice.2182 The *Brima et al.* Trial Chamber held that the indictment had not pleaded locations with sufficient specificity and they therefore declined to find the accused liable for crimes committed at unnamed locations. Similar to Kallon's present conviction, the accused in *Brima et al.* were not convicted pursuant to their participation in a JCE, but rather they were convicted of more direct forms of participation, such as, *inter alia*, personal commission and instigation.

7754. para. 833: An accused's proximity to the events at the location for which he is alleged to be criminally responsible is also a factor in determining the pleading specificity required. In the present case, Kallon's liability for instigating the murder of Waiyoh in Wendedu stems directly from his conduct in Wendedu. In May 1998, Waiyoh was being held at an RUF civilian camp in Wendedu. Kallon visited the camp and questioned CO Rocky about Waiyoh, "stating that he considered her a threat."2183 On a subsequent visit to the camp in Wendedu, Kallon asked CO Rocky if he was "still keeping 'enemies' of the RUF in the camp."2184 Kallon's bodyguards later visited the camp to enquire about Waiyoh again and Rocky then ordered that she be killed.2185

7755. para. 834: In view of the mode of Kallon's liability for the crime and that his culpable conduct occurred at the location, the location of the murder as having occurred at Wendedu was a material fact that must have been pleaded in the Indictment to inform Kallon clearly of the charges against him so that he could prepare a defence.2186

7756. para. 835: The Prosecution's failure to plead Wendedu as a location in the Indictment rendered the Indictment defective with respect to the pleading of Kallon's instigation of murder at Wendedu. As Kallon objected at trial to the pleading of a nonexhaustive list of locations,2187 the Prosecution bears the burden of showing on appeal that the defect in the Indictment did not prejudice Kallon's ability to prepare his defence. The Prosecution has not offered any submissions

that Kallon had notice of the charge as a result of timely, clear and consistent information detailing the factual underpinnings of the charge.2188

7757. para. 836: The Appeals Chamber, therefore, finds that Kallon was not put on notice of the charge that he instigated murder at Wendedu. The trial against Kallon was thereby rendered unfair, and as a result he should not have been found responsible for the killing of Waiyoh.

(viii) Kailahun District

a. JCE – Participation in and shared intent – Kailahun District

i. Sesay - JCE – Participation in and shared intent - Kailahun District

7758. para. 635: Sesay relies on Grounds 24-34 to challenge the findings on his participation and intent regarding Kailahun District.1600 Ground 37 is accordingly also dismissed.

ii. Kallon - JCE – Participation in and shared intent - Kailahun District

7759. para. 817: Determining Kallon's JCE liability, the Trial Chamber held that his participation in the JCE as "set out above" furthered the JCE and significantly contributed to the crimes in Kailahun District.2136 It found that Kallon contributed to the JCE "by securing revenues, territory and manpower for the Junta Government, and by aiming to reduce or eliminate civilian opposition to Junta rule."2137 By his participation in the JCE Kallon significantly contributed to the crimes in Kailahun District, and he shared with the other participants in the JCE the requisite intent to commit these crimes.2138

7760. para. 820: The Appeals Chamber notes that Kallon correctly states that the unlawful killings in Kailahun were committed on 19 February 1998, which was after the Junta was ousted from power on 14 February 1998.2149 The Trial Chamber found that Kallon's participation in the JCE in Kailahun consisted of "securing revenues, territory and manpower *for the Junta government*, and by aiming to reduce or eliminate civilian opposition to *Junta rule*."2150 However, the JCE which existed between members of the AFRC and the RUF during the Junta period continued after the Junta government had been ousted.2151 In particular, their Common Criminal Purpose continued to contemplate crimes "as a means of increasing [their] exercise of power and control over the territory of Sierra Leone."2152 Accordingly, the unlawful killings now at issue "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."2153 Both Bockarie, who committed and ordered the killings, and Kallon continued to be members of the JCE after 14 February 1998.2154 As such, the Trial Chamber's findings must be understood to mean that the determinative question is not whether Kallon contributed to the killings by assisting the Junta government *per se*, but, instead, whether he lent such contribution by his participation in the Common Criminal Purpose of the JCE.2155 In that regard, the Appeals Chamber fails to see how it was unreasonable for the Trial Chamber to rely on Kallon's contribution by way of securing revenues, territory and manpower to achieve the Common Criminal Purpose of the JCE during the Junta period in determining whether he also contributed to the JCE after the Junta was ousted from power. Kallon fails to show that the AFRC/RUF Common Criminal Purpose would not have continued to benefit from such contributions even after the alliance was ousted from government power.

7761. para. 821: Kallon's claim that the Trial Chamber erred in finding that he so contributed is unsupported, particularly as it was not required that he was present in Kailahun when the killings were carried out.2156 Also, the "link"—to use Kallon's term—between the killings and the continued JCE, as well as the "nexus" between Kallon and Bockarie's intent to rid Kailahun of possible Kamajors among the civilian population, were both established by the Trial Chamber's finding that the killings were committed in furtherance of the Common Criminal Purpose which Kallon and Bockarie shared.2157 Kallon's submission is therefore rejected.

7762. para. 822: Kallon's challenges to his conviction for the crimes of sexual violence and enslavement in Kailahun, provide no arguments in support in addition to those already considered and dismissed in this ground of appeal.2158

7763. para. 823: Kallon's submission that he did not share the intent with the other JCE participants, is based on the premise that the Trial Chamber failed to state who they were, what role they had in the crimes, and how he shared their intent.2159 However, the Trial Chamber made findings on these issues.2160 Having concluded, *inter alia*, on the basis of these findings,2161 that Kallon shared the intent to commit the crimes in Kailahun in furtherance of the Common Criminal Purpose,2162 the Trial Chamber was not, contrary to Kallon's suggestion,2163 required to establish that he, in addition, knew of the specific crimes committed there.2164 Kallon's submission is therefore rejected.

7764. para. 824: Kallon's argument that the Trial Chamber erred in convicting him for crimes outside the JCE's time frame2165 is dismissed, because the Trial Chamber explicitly held that he could not incur JCE liability after the JCE ended in late April 1998.2166 Accordingly, it held

Kallon responsible under this form of liability for crimes "committed in Kailahun District between 25 May 1997 and April 1998."2167 Kallon's last set of arguments do not extend beyond repetitions of claims which have been previously dismissed.2168 For these reasons, the Appeals Chamber dismisses Kallon's Ground 15 in its entirety.

7765. para. 928: The Trial Chamber found that Kallon incurred JCE liability for enslavement (Count 13) in Kenema, Kono and Kailahun Districts.2422 Kallon had bodyguards who were under the age of 15 years, and he knew the SBUs were used to force the enslaved mining and guard the mining sites.2423 During 1998 and 1999, Kallon brought persons under 15 years of age to be trained by the RUF at Bunumbu.2424 Kallon, therefore, was 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.2425 Through these acts, among others, Kallon was found to have participated in the JCE.2426 The Trial Chamber also found Kallon guilty under superior responsibility for the enslavement of hundreds of civilians in camps throughout Kono District between February and December 1998.2427

7766. para. 931: The Appeals Chamber notes that the finding that the "SBUs seen by TF1-141 with Kallon … in Kono in February 1998" and "the boys in SBUs seen by TF1-045 with Kallon in Freetown in 1997 and in Makeni in 1999 to 2000" were not bodyguards[2434] could be read to contradict the finding that "Kallon had bodyguards who were under the age of 15 years."[2435] However, Kallon fails to establish that this contradiction, if any, occasioned a miscarriage of justice. In inferring that Kallon was engaged in the system of enslavement, the Trial Chamber's findings show that it also relied on his contribution to the use of children under the age of 15 to actively participate in hostilities,[2436] which the Trial Chamber found included the use of children to guard the mines at Tombodu in Kono in February/March 1998,[2437] and to intimidate and kill civilians working there.[2438] These findings were supported by evidence which Kallon does not address. This submission is therefore rejected.

7767. para. 932: The Trial Chamber's holding that it would not use evidence that Kallon may have personally conscripted children is limited to the use of that evidence for the purpose of determining Kallon's responsibility for *personal* commission under Count 12.[2439] For purposes of that mode of liability, the allegation that Kallon brought children for training at Bunumbu was a material fact which was insufficiently pleaded in the Indictment, and so the Trial Chamber declined to enter a conviction that Kallon personally committed the crimes charged under Count 12. However, Kallon's conviction under Count 13, which is the subject matter of his present ground of appeal, was not based on personal commission, but instead on his participation in a

JCE.[2440] The Trial Chamber did not exclude evidence of Kallon bringing children for training at Bunumbu from consideration in respect of the mode of liability of JCE, the pleading requirements of which are different from personal commission.[2441] Kallon's submission is therefore rejected.

7768. para. 933: The Appeals Chamber finds that a reasonable trier of fact could have relied on the relevant parts of TF1-141's testimony to find that "Kallon was actively engaged in the abduction for and planning of training of SBUs in Kono District in February/March 1998."[2442] In particular, TF1-141, a former child soldier,[2443] testified that after being captured he was with "Morris Kallon's men" and was then taken to a junction in Koidu Town where he saw Kallon. From there, TF1-141 was taken by Akisto, who was "close to Morris Kallon," with a group of combatants to Guinea Highway where he kept "guard in the night as security."[2444] The Appeals Chamber recalls that is has upheld the finding that Kallon was in charge of the Guinea Highway area.[2445] The Trial Chamber further provided corroboration of these parts of TF1-141's testimony.[2446] This submission is rejected.

iii. Gbao - JCE – Participation in and shared intent - Kailahun District

7769. See above: Chapter 12 – Article 6.1. Liability – RUF – Appellate Judgment – Findings and conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

7770. See above: Chapter 12 – Article 6.1. Liability – RUF – Appellate Judgment – Findings and conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras. 4 – 28 [7454].

7771. See above: Chapter 12 – Article 6.1. Liability – RUF – Appellate Judgment – Findings and conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

7772. See above: Chapter 12 – Article 6.1. Liability – RUF – Appellate Judgment – Findings and conclusions – JCE – Categories of JCE and *mens rea* – Separate opinion – Justice Ayoola – paras. 22-41, 43– 57 [7480].

7773. para. 958: The Trial Chamber found that Gbao incurred JCE 1 liability for the unlawful killings (Counts 3 to 5) of 63 alleged Kamajors in Kailahun Town on 19 February 1998 pursuant to the orders of Bockarie.[2536] It found that "Gbao intended the death of the suspected Kamajors as a consequence of his failure to halt the executions."[2537] Also, "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."[2538] In addition, the deaths were found to be a "logical consequence to the pursuance of the goals prescribed in RUF ideology."[2539]

7774. para. 959: With regard to these unlawful killings, the Trial Chamber found that Bockarie ordered suspected Kamajors to be arrested for investigation by Gbao.[2540] Pursuant to Bockarie's orders, 110 men were arrested and detained by Kailahun District MP Commander John Aruna Duawo and MPs subordinate to him.[2541] They were divided into two groups of 45 and 65 men, respectively.[2542] The first group was declared not to be Kamajors and then released by a JSBI panel led by Gbao.[2543] The second group was released on parole while the JSBI investigation was on-going.[2544] Upon learning that the second group had been released on parole, Bockarie ordered their re-arrest and execution.[2545] The Trial Chamber found that "Gbao was present when Bockarie gave the order and while it was carried out, but he did not directly participate in the killing.[2546]

7775. para. 962: Whether it was reasonable for the Trial Chamber to find that Gbao intended the killings of the suspected Kamajors turns in part on what power Gbao had to halt them, and whether such power was the only sufficient basis on which his intent for this crime could be reasonably inferred.

7776. para. 963: The Trial Chamber found that generally "Gbao's ability to exercise his powers effectively in areas where Bockarie ordered the commission of crimes is doubtful."[2559] It is uncontested that Bockarie ordered the killings of the suspected Kamajors.[2560]

7777. para. 964: After Bockarie ordered the killing of the suspected Kamajors, and he killed three of them himself in front of Gbao and others, Bockarie left Kailahun Town before the remaining suspected Kamajors were killed.[2561] Gbao, however, stayed throughout the remainder of the executions.[2562] Although the Prosecution does not substantiate its assertion that Gbao was the most senior officer present, the Trial Chamber's findings make clear that he was a senior officer in Kailahun at the time of the killing.[2563] As such, while he was not found to have effective control over the security units as OSC, Gbao, by virtue of his supervisory role as OSC and status as a Vanguard, had "considerable influence" over the decisions taken by these units, which included MP Officers[2564] such as the ones who carried out the executions.[2565]

7778. para. 965: In the Appeals Chamber's view, these findings show that, while limited by the fact that Bockarie had ordered the executions, Gbao was not without power to halt them. Moreover, whether Gbao's power in the circumstances was such that he could actually have stopped the killings is not determinative of whether the Trial Chamber erred in inferring intent from his failure to intervene. Gbao had chaired the JSBI panel responsible for investigating the

victims, and he was present when Bockarie executed three of them. He elected to stay, and did not interfere with the execution of the remaining suspected Kamajors. The Appeals Chamber is not satisfied that this was an unreasonable basis for inferring Gbao's intent. In addition, Gbao does not support his further assertions with any reference to evidence or the Trial Chamber's findings that Bockarie had a propensity to be dictatorial, that Bockarie harassed him, and would have killed him if he attempted to halt the executions.[2566] As to Gbao's claim that he "did all in his power" to release the victims, this argument is without merit given that Gbao did have some power to halt the executions and that his failure to do so is undisputed.[2567] It was therefore not unreasonable for the Trial Chamber to rely on Gbao's failure to halt the executions to infer his intent.

7779. para. 966: For these reasons, the Appeals Chamber finds that Gbao fails to demonstrate that no reasonable trier of fact could have concluded that he shared the intent for the killings of the 63 suspected Kamajors. Gbao's sub-ground 8(q) is rejected.

7780. para. 967: As regards Gbao's participation in the JCE in Kailahun District, the Trial Chamber found 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."[2568] It further held that forced marriages were a "logical consequence to the pursuance of the goals prescribed in their ideology, the instruction of which … was imparted particularly by Gbao."[2569]

7781. para. 972: Gbao was found to have shared with the other participants in the JCE the requisite intent to commit acts of sexual violence in Kailahun District.[2594] The Trial Chamber found that these acts included subjecting an unknown number of women to sexual slavery and forced marriages in Kailahun.[2595] With regard to Gbao, the Trial Chamber found that he "shared the requisite intent for rape in the context of 'forced marriage' in order to further the goals of the JCE."[2596] The Trial Chamber further found that rapes and forced marriages "were a logical consequence to the pursuance of the goals prescribed in the RUF ideology."[2597] Contrary to Gbao's assertion that there are no findings connecting him to the acts of sexual violence in question,[2598] the Trial Chamber thus explained how it inferred his intent for these acts from its explicit finding that he shared the intent for rape within forced marriages. The Appeals Chamber is accordingly satisfied that the Trial Chamber provided a sufficiently reasoned opinion for its finding that Gbao shared the requisite intent for the acts under Counts 7 to 9 in Kailahun. Gbao's submission to the contrary is rejected.

7782. para. 973: Turning to the reasonableness of the impugned finding, Gbao's challenge that the Trial Chamber impermissibly relied on expert evidence to establish his intent[2599] has been addressed under Gbao's Ground 2.[2600] The remaining three challenges allege that the Trial

Chamber erred in relying on insufficiently corroborated testimony, temporally irrelevant evidence and on the testimony of Witness DIS-080.[2601] These challenges will be addressed in turn below.

7783. para. 974: The Appeals Chamber notes that the testimonies of Witnesses TF1-314,[2602] TF1-093,[2603] TF1-371,[2604] TF1-366[2605] and TF1-045[2606] were found by the Trial Chamber to require corroboration in some, but not every circumstance. Thus, the Trial Chamber accepted the core of TF1-093's testimony without corroboration, particularly as it related to her own experiences, such as her time spent as a "bush wife."[2607] Similarly, the Trial Chamber accepted the evidence of TF1-371 and TF1-366 without corroboration where the evidence was more general in nature, or in the case of TF1-366, where the testimony also related to the witness's own experiences.[2608] TF1-314 was found to be "largely credible."[2609] The Trial Chamber did not rely on the testimony of TF1-045 for its findings on forced marriage and sexual slavery in Kailahun District.[2610]

7784. para. 975: The Trial Chamber only required corroboration of the testimony of Witnesses TF1-371, TF1-366 and TF1-314 in relation to any evidence that related to the acts and conduct of the Appellants.[2611] TF1-093's testimony was found to require corroboration where her testimony did not relate to her own experiences.[2612]

7785. para. 976: The Appeals Chamber notes that the Trial Chamber's findings based on the evidence provided by Witnesses TF1-314, TF1-093, TF1-371, and TF1-366 generally describe the occurrence of forced marriage and sexual slavery in Kailahun District,[2613] and in the case of TF1-093 and TF1-314 their evidence relates to their personal experience as "bush wives."[2614] As such, this evidence does not relate to acts and conduct of the accused as defined by the Trial Chamber,[2615] and therefore by the Trial Chamber's own findings, does not require corroboration.[2616]

7786. para. 977: Gbao asserts that the testimony of these witnesses was "employed to find he possessed the requisite intent" and therefore relates to his acts and conduct.[2617] However, he does not point to any relevant intent findings that are based on the testimony of the aforementioned witnesses.[2618] Accordingly, Gbao fails to demonstrate how the Trial Chamber erred in basing its findings on the uncorroborated evidence of the above mentioned witnesses. This argument fails.

7787. para. 978: Gbao's argument that the Trial Chamber relied on evidence of events outside the Junta period is limited to the testimony of Denis Koker (TF1-114).[2619] Gbao points to parts of Koker's testimony relating to the witness's observation of forced marriage in Kailahun District as an MP Adjutant.[2620] This evidence pertains to the period after the 6 to 14 February 1998

ECOMOG intervention, which according to the Trial Chamber marked the end of the Junta period.[2621]

7788. para. 979: However, the Appeals Chamber notes that the Trial Chamber's findings on forced marriages during the Junta period were not based solely on Koker's testimony.[2622] In fact, the only one of these findings singly based on Koker's testimony is that "it was regular practice for women to be forcibly taken as 'wives' and some Commanders had five or six 'wives.'"[2623] Gbao does not address the numerous other pieces of evidence the Trial Chamber relied on, such as the testimony of Witness TF1-371 that many Commanders had a captured 'wife,'[2624] to conclude that such a practice existed "throughout the Indictment period."[2625] This submission is untenable.

7789. para. 980: Gbao argues that the Trial Chamber erred in relying on Witness DIS-080's testimony to support its finding that a woman's married status was no bar to becoming a "bush wife."[2626] He asserts that this finding falls by DIS-080's lack of credibility and denial that forced marriages occurred in Kailahun.26[2]7 The Appeals Chamber notes that the Trial Chamber put DIS-080 in the category of defense witnesses who "testified out of loyalty to the RUF and their superior commanders … and not necessarily to assist the Trial Chamber in its search for the truth."[2628] The impugned finding, however, was supported by the testimony of other witnesses, such as TF1-093 and TF1-371.[2629] The Trial Chamber accepted Witness TF1-093's testimony, where, as here, it related to her own experience as a "bush wife."[2630] The challenged finding is further supported by Witness TF1-371, whose testimony on general matters relating to forced marriages did not require corroboration.[2631] Aside from his challenges to the testimonies of TF1-093 and TF1-371 dismissed above, Gbao does not dispute the substance of their evidence. The Appeals Chamber is therefore not satisfied that the denial by DIS-080 that forced marriages occurred, rendered unreasonable the Trial Chamber's impugned finding. Gbao accordingly fails to show an error.

7790. para. 981: Gbao's Ground 8(r) is dismissed in its entirety. Having thus found, the Appeals Chamber need not consider Gbao's additional assertion that in the absence of a valid finding that he shared the intent for these acts under Counts 7 to 9, he could also not be held responsible therefore under Count 1.

7791. para. 982: The Trial Chamber found that Gbao incurred JCE liability for the acts of terrorism of unlawful killings and sexual violence in Kailahun District.[2632] He was found to have shared with other participants in the JCE the requisite intent to commit acts of terror.[2633] Also, acts of terror committed in Kailahun were "the logical consequence to the pursuance of the goals

prescribed in the RUF ideology, the instruction on which … was imparted particularly by Gbao, who was present during the execution of suspected Kamajors."[2634]

7792. para. 983: The unlawful killings constituting acts of terrorism were the killings of the suspected Kamjors ordered by Bockarie.[2635] As to sexual violence, the Chamber found a consistent pattern of sexual slavery and forced marriage that was committed with the requisite specific intent to terrorise the civilian population in Kailahun District.[2636]

7793. para. 986: This ground essentially turns on whether the Trial Chamber's findings on the requisite intent for acts of terror in respect of Gbao were sufficiently reasoned and if so, whether the Trial Chamber could reasonably find that Gbao shared such intent.

7794. para. 987: In the section of the Trial Judgment on Gbao's JCE liability for the crimes committed in Kailahun District, the Trial Chamber concluded that Gbao "shared with the other participants in the joint criminal enterprise the requisite intent to commit," acts of terror in Kailahun.[2648] The Trial Chamber did not explicitly enumerate the findings on which it based this conclusion. Nevertheless, the question is whether a reading of the Trial Judgment as a whole[2649] reveals on what basis the Trial Chamber determined Gbao's *mens rea*.

7795. para. 988: After making extensive findings regarding the killing of 63 suspected Kamajors[2650] and sexual violence in Kailahun,[2651] the Trial Chamber concluded that these acts constituted "violence committed with the specific intent to spread terror among the civilian population."[2652] The Trial Chamber noted that the required intent "can be inferred from the circumstances of the acts or threats, that is, from their nature, manner, timing and duration."[2653] Accordingly, the Trial Chamber reasoned that the killings in Kailahun found to be acts of terror were carried out in public,[2654] on a large scale[2655] and targeted civilians.[2656] As to the acts of sexual violence, the Trial Chamber explained that they amounted to acts of terrorism based on the "consistent pattern of conduct" in respect of these crimes.[2657] The Trial Chamber therefore sufficiently explained its reasoning that the killings of suspected Kamajors and acts of sexual violence were committed with the specific intent to spread terror.

7796. para. 989: As to whether Gbao shared this intent, the Trial Chamber found that he intended the killings of the suspected Kamajors "in order to strengthen the power and control of the RUF over Kailahun District and the civilian population there."[2658] Gbao was also found to have "shared the requisite intent for rape within the context of 'forced marriage' in order to further the goals of the joint criminal enterprise."[2659] The Trial Chamber further concluded that the acts of terror committed in Kailahun "were a logical consequence to the pursuance of the goals prescribed in the

RUF ideology, which … was imparted particularly by Gbao."[2660] Considering that the Trial Chamber is not required to articulate every step of its reasoning for each particular finding that it makes,[2661] the Appeals Chamber is satisfied that the Trial Chamber, by these findings, provided a sufficiently reasoned opinion on why Gbao held the requisite intent for acts of terrorism in Kailahun.

7797. para. 990: In support of his position to the contrary, Gbao refers to the Trial Chamber's finding that the "Prosecution failed to adduce evidence of acts of terrorism in parts of Kailahun District that were controlled by the RUF and where Gbao was located."[2662] The Trial Chamber, however, firmly based its substantial findings regarding the killings of the 63 suspected Kamajors[2663] and sexual violence in Kailahun[2664] on the evidence adduced at trial, and on that basis found the killings and sexual violence to constitute acts of terrorism.[2665] The finding Gbao which refers to cannot be read in isolation from the context in which it was made. The "acts of terrorism" to which it primarily refers was the RUF practice of "burning of civilian houses and targeting of traditional civilian authorities."[2666] The Trial Chamber rightly noted that evidence of *such* acts of terrorism was not adduced in respect of Kailahun District.[2667] In Kailahun District, the acts of terrorism found to have occurred included the killing of 63 suspected Kamajors and acts of sexual violence.[2668] Furthermore, the Trial Chamber held that based on "evidence adduced in relation to the various Districts," that sexual violence and forced marriages as acts of terrorism were "regularly committed" by AFRC/RUF members, including Kailahun.[2669] In this regard, the Appeals Chamber also notes the finding that some of the victims of these crimes had been abducted from locations throughout Sierra Leone and brought to Kailahun District.[2670] The abduction, sexual violence and forced marriage committed against these women and girls were found by the Trial Chamber to constitute acts of terrorism.[2671] Because forced marriage is a continuing crime, it follows that the acts of terrorism continued from the place of abduction to Kailahun District. Gbao's allegation of a lack of reasoned opinion is therefore rejected.

7798. para. 991: The Appeals Chamber now turns to Gbao's submission that the Trial Chamber's finding that he held the requisite intent for acts of terrorism in Kailahun is unreasonable. As a preliminary matter, the Appeals Chamber notes that while Gbao disputes that he shared such intent for both the killing of the 63 suspected Kamajors and the sexual violence in Kailahun, his present ground of appeal only details that challenge in respect of the killings. The detailed arguments for why he did not share the intent required under Count 1 in respect of the acts of sexual violence, Gbao submits, are presented under his Ground 8(r).[2672] Gbao's Ground 8(r) has been earlier rejected.[2673]

7799. para. 992: Gbao's challenge is based on the claim that he was doing his best to facilitate the release of the victims and therefore did not have the requisite intent under Count 1 in relation to the killings.[2674] Gbao has misconstrued the Trial Chamber's findings. While the panel chaired by Gbao paroled the 63 suspected Kamajors as he alleges,[2675] the Trial Chamber made no findings as to whether that group would have been released eventually or what active steps, if any, Gbao took in attempting to secure their release. As such, Gbao fails to demonstrate that it was unreasonable for the Trial Chamber to infer his intent to commit acts of terror from his adherence to the RUF ideology and his presence as a senior and effective commander at the execution of 63 suspected Kamajors.[2676]

7800. para. 993: In addition, the Appeals Chamber notes that the acts of terror committed in Kailahun were found to be "the logical consequence to the pursuance of the goals prescribed in RUF ideology, the instruction on which … was imparted particularly by Gbao, who was present during the execution of the suspected Kamajors."[2677] The Trial Chamber in this way linked Gbao's imparting of the RUF ideology to the requisite intent to commit acts of terror by finding that Gbao, being "a strict adherent to the RUF ideology"[2678] and the acts of terror having been found by the Trial Chamber to be a logical consequence of that ideology,[2679] had the requisite intent to commit acts of terror.[2680]

7801. para. 994: For these reasons, Gbao fails to demonstrate that no reasonable trier of fact could have concluded that he shared the intent for the killing of the 63 suspected Kamajors as an act of terror. Gbao's sub-ground 8(o) fails.

7802. para. 998: The Trial Chamber found that "Gbao was directly involved in the planning and maintaining of a system of enslavement."[2690] It held that enslavement and forced labour, among other crimes, were a logical consequence of RUF ideology, the instruction of which was imparted particularly by Gbao.[2691] The Trial Chamber concluded that Gbao shared with the other JCE members the requisite intent to commit, *inter alia*, enslavement in Kailahun.[2692] Among the underlying acts constituting enslavement in Kailahun District were forced farming, forced mining and forced military training.[2693] Gbao was found to have managed the forced civilian farming in Kailahun between 1996 and 2001,[2694] and in 1997 and 1998, Gbao met with civilian Commanders and instructed them regarding the produce and labour they were to provide in support of the war.[2695] Civilians were also forced to work on *Gbao's personal farm* in 1997 and 1998.[2696] Further, Gbao and Patrick Bangura oversaw the forced civilian mining at *Giema*, which took place from 1998 to 1999.[2697]

7803. para. 1004: Gbao challenges the reasonableness of the Trial Chamber's finding that he shared the requisite intent for enslavement in Kailahun by attacking the evidence relied on by the Trial Chamber to make findings regarding forced farming and forced mining found to constitute enslavement.[2720] Alternatively, Gbao submits that neither forced farming nor forced mining furthered the goals of the JCE.[2721]

7804. para.1005: In relation to forced farming, Gbao generally claims that the evidence relied on by the Trial Chamber is temporally irrelevant and unreliable. In particular, Gbao challenges the Trial Chamber's findings in relation to (i) RUF "government" farms operating in Kailahun; (ii) physical violence perpetrated against civilian farm workers; (iii) the large-scale coordination of farms and use of produce by the RUF and his meeting with civilian commanders in 1997 and 1998; (iv) the use of forced labour on his personal farm; and (v) his involvement in the management of forced farming in Kailahun from 1996 to 2000. As to forced mining, Gbao asserts that uncorroborated and temporally irrelevant evidence relied on by the Trial Chamber does not establish that forced mining took place in Kailahan during the Junta period. The Appeals Chamber deals with each challenge in turn.

7805. para. 1006: The Appeals Chamber notes that Witnesses TF1-141,[2722] TF1-113,[2723] TF1-114[2724] and TF1-367[2725] gave evidence of forced farming after the Junta period. As to the testimony of TF1-036, the transcript pages cited by Gbao refer to a screening process in relation to military training, not forced farming, and accordingly do not relate to Gbao's present argument.[2726] The observations of TF1-045, contrary to Gbao's assertion, are relevant to the Junta period as the witness observed forced farming from "1997 to disarmament."[2727] Gbao only points to three findings[2728] — two in relation to two separate RUF "government" farms[2729] and a finding relating to civilian workers subjected to physical violence on such farms[2730] — that are supported by the abovementioned testimonies relating to events outside the Junta period. The Appeals Chamber addresses Gbao's temporal relevancy concerns specific to the impugned findings below.[2731]

7806. para. 1007: In addition to temporal challenges to the evidence, Gbao challenges the credibility of the testimony of TF1-330,[2732] TF1-108[2733] and TF1-366.[2734] Gbao's general credibility challenges to TF1-330 and TF1-108, are addressed in the discussion of his Ground 11.[2735] Under his present ground of appeal, Gbao asserts that TF1-108, TF1-366,[2736] and TF1-045's[2737] testimonies required corroboration, but were uncorroborated. The Appeals Chamber addresses whether the testimony in relation to the impugned findings were adequately corroborated below.[2738]

7807. para. 1008: The Appeals Chamber notes that the Trial Chamber found that two RUF government farms, one located in *Pendembu* and another located between *Benduma* and *Buedu*, operated outside the Junta period.[2739] These findings were primarily based on the testimony of TF1-141 and TF1-113.[2740] Gbao, however, does not explain the error occasioned by consideration of this evidence. The Trial Chamber limited Gbao's JCE liability in respect of Kailahun District to the period between 25 May 1997 and 19 February 1998.[2741] While the two farms in question operated outside this time period, *other RUF "government" farms* operated in Kailahun from 1996 to 2001,[2742] which included the Junta period.[2743] Consequently, in the context of Gbao's JCE liability for crimes committed in Kailahun, the Trial Chamber's findings on RUF "government" farms were not based solely on the evidence which Gbao asserts is temporally irrelevant. Gbao's submission is therefore rejected.

7808. para. 1009: Gbao challenges the Trial Chamber's finding that there was "ample evidence that civilians were enslaved and subjected to physical violence while working on RUF government farms."[2744] The supporting testimony of TF1-114 and TF1-113 mainly concerned physical violence against civilians working on RUF farms in Kailahun after 19 February 1998.[2745] This temporal irrelevance does not render the Trial Chamber's finding inapplicable to Gbao, since it does not disprove the occurrence of physical violence on RUF farms during the time period relating to Gbao's JCE liability. Indeed, the Trial Chamber's finding on physical violence on RUF "government" farms is sufficiently supported by the credible testimony of other witnesses,[2746] whose temporal relevance is unchallenged by Gbao.[2747] TF1-108's testimony supporting the impugned finding was corroborated by the credible testimony of TF1-330 and TF1-045.[2748] The Trial Chamber did not question TF1-330's credibility[2749] and found that TF1-045 did not need corroboration, unless testifying to the "acts and conduct of the accused."[2750] Here, TF1-045 was simply testifying to general matters regarding the working conditions on RUF farms.[2751] As such, this evidence does not relate to the acts and conduct of the accused as defined by the Trial Chamber,[2752] and therefore by the Trial Chamber's own findings did not require corroboration.[2753] While Gbao correctly asserts, in his final challenge to the above finding, that DAG-111 did not testify that civilian farm workers were subjected to violence on RUF farms on the cited transcript page,[2754] the Appeals Chamber is satisfied that the Trial Chamber's finding was open to a reasonable trier of fact based on the other credible witnesses. Gbao accordingly fails to show an error, and his submission is untenable.

7809. para. 1010: Gbao challenges the Trial Chamber's findings that farming was coordinated on a large-scale[2755] and that he met with "civilian Commanders" to instruct them about produce and labour to be provided in support of the war.[2756] He does so by attacking the credibility of TF1-108

and TF1-3 3 0 [2757] and arguing that TF1-108 did not testify regarding Gbao's meeting with "civilian Commanders" in 1997 and 1998 at the transcript pages cited.[2758] The Trial Chamber's credibility concerns were addressed when it stated that TF1-108's testimony was corroborated by a credible witness such as TF1-3 3 0.[2759] Gbao's claim that TF1-108 did not testify that Gbao met with civilian commanders is without merit; the witness testified that Gbao met with "civilian Commanders" regarding produce and labour in support of the war in 1997, 1998, and 1999.[2760] This submission fails.

7810. para. 1011: With regard to Gbao's use of forced labour on his personal farm, the Trial Chamber found that "civilians were required to work on farms owned by ...Gbao... in each year from 1995 to 2000."[2761] Gbao correctly asserts that this finding is not fully supported by TF1-330, as TF1-330 did not testify that civilians were *forced* to work, but rather simply worked on Gbao's farm.[2762] Contrary to Gbao's assertion, however, the occurrence of forced farming on Gbao's personal farm is supported by other evidence: TF1-366 testified that he captured civilians and sent them to work on Gbao's farm.[2763] As this evidence related to TF1-366's own experience, it did not require corroboration.[2764] Accordingly, TF1-366's testimony as to forced labour also provides the credible evidence needed to corroborate TF1-108's testimony[2765] that Gbao had a farm where civilians involuntarily worked.[2766] The Trial Chamber's finding therefore stands. Additionally, Gbao's claim that it is "unclear whether this all took place" during the Junta period is without merit as the Trial Chamber found that Gbao had a private farm in every year between 1995 and 2000.[2767] Gbao's challenge to the impugned finding is therefore rejected.

7811. para. 1012: Finally, in relation to the Trial Chamber's finding that Gbao managed large-scale forced civilian farming in Kailahun which existed from 1996 to 2001, Gbao asserts that the Trial Chamber's finding does not stand as it relates to events outside the period from 25 May 1997 to 19 February 1998, the temporal limit imposed by the Trial Chamber to his JCE liability for crimes committed in Kailahun.[2768] As some farms created before or during the Junta period continued in operation thereafter,[2769] evidence relating to these farms falls within the relevant time period for Gbao's JCE liability. Gbao accordingly fails to explain the error in considering evidence relating to the existence of these farms and his involvement in their management in order to determine whether he shared the requisite intent for enslavement in Kailahun during the relevant time period.

7812. para. 1013: The Appeals Chamber notes that Gbao was in Bombali District between March 1999 and May 2000.[2770] The Appeals Chamber also notes that the Trial Chamber did not make findings as to how Gbao managed RUF "government" farms in Kailahun from afar.[2771] However,

while the Trial Chamber found that Gbao managed large-scale forced civilian farming until 2001, Gbao argues that his liability for these crimes was limited to 19 February 1998. Accordingly, no demonstrable error results from a failure to consider events relevant to a time period for which Gbao, on his own submission, was not held responsible.

7813. para. 1015: The Appeals Chamber notes that Gbao was found to have overseen forced civilian mining in *Giema*, which took place between 1998 and 1999.[2772] Gbao asserts, however, that mining did not (i) take place in Kailahun, (ii) take place during the Junta period, and (iii) even if it did, TF1-330 did not explicitly testify that civilians were forced to mine.[2773]

7814. para. 1016: First, the Appeals Chamber notes that TF1-371's testimony in relation to the Supreme Council's appointment of senior members to supervise diamond mining areas only refers to Kono and Kenema Districts as traditional areas of diamond mining.[2774] Contrary to Gbao's assertion, however, there is ample evidence of forced mining activity in Kailahun. TF1-366, whose testimony in relation to general matters did not require corroboration,[2775] testified that forced mining took place in Kailahun in locations such as Yenga, Jabama and Golahun.[2776] TF1-108's corroborated testimony,[2777] also provided evidence of forced mining activities throughout Kailahun.[2778] Consequently, the fact that senior members of the Supreme Council were appointed to supervise diamond mining areas in Kono and Kenema, as suggested by Gbao,[2779] does not disprove that mining took place in Kailahun, especially in light of testimony provided by TF1-108 and TF1-366.[2780]

7815. para. 1017: Second, in respect of Gbao's temporal challenge to the evidence, he argues that TF1-330 testified about mining activities in 1998 "at a time when Bockarie was in Kailahun District" which, Gbao argues, puts TF1-330's testimony after the Junta period.[2781] However, the Trial Chamber's findings Gbao relies on do not unequivocally support his claim,[2782] and Gbao does not support it beyond reference to those findings.[2783] Rather, the salient passages in the Trial Judgment to which Gbao refers, concern mining in 1998 and state that "Gbao and Patrick Bangura oversaw the civilians mining at Giema as well as 'the soldiers who had guns.'"[2784] Gbao fails to show an error and therefore his challenge is rejected.

7816. para. 1018: Third, while TF1-330 did not explicitly state that civilians were "forced" to mine for diamonds in Giema, the witness did testify that civilians were not given food and soldiers with guns oversaw the civilians as they worked.[2785] The Trial Chamber therefore reasonably inferred from the evidence that the labour civilians provided was forced. Gbao's submission in relation to forced mining in Kailahun is therefore rejected.

7817. para. 1019: For these reasons, Gbao fails to demonstrate that the evidence adduced at trial does not support a finding that he was involved in forced farming or forced mining in Kailahun. Having determined that the Trial Chamber did not so err, the Appeals Chamber now turns to Gbao's argument that these activities were not done in furtherance of the JCE.[2786]

7818. para. 1020: The Appeals Chamber notes the finding that Gbao's "involvement in designing, securing and organizing the forced labour of civilians to produce foodstuffs significantly contributed to maintaining the strength and cohesiveness of the RUF fighting force." [2787] This finding is not predicated on the use of forced labour on Gbao's personal farm,[2788] but rather, as the Trial Chamber explained in detail, on a system whereby produce collected from RUF "government" farms was turned over to Gbao and then Sesay for commercialisation.[2789] The money made from the trade of this produce was used to buy ammunition.[2790] In this way, the Trial Chamber found that Gbao's involvement in forced farming was directed towards furthering the goals of the JCE as it was a method to secure revenue to strengthen the RUF fighting force.[2791]

7819. para. 1021: The Trial Chamber also found that the "RUF engaged in diamond mining in Kailahun District as early as 1996 and until 2000," and that "the mining activities were an important and vitalsource of income for the RUF, and later the AFRC/RUF Junta."[2792] Gbao's claim that no diamond was ever found in Kailahun and diamond mining was but "an elaborate ruse," and therefore could not have furthered the JCE is unsupported, as the transcript pages he cites do not mention mining, let alone any "elaborate ruse."[2793]

7820. para. 1022: Gbao's challenge to the Trial Chamber's finding that forced farming and forced mining were done in furtherance of the JCE therefore fails.

7821. para. 1024: The Trial Chamber found that "in 1995, Gbao was a Sergeant and was sent to the Baima base in Kailahun District as an ideology instructor."[2794] The Trial Chamber found that "Gbao was responsible for the teaching of the ideology to the new commando recruits."[2795] The Trial Chamber further held that "Gbao was a strict adherent to the RUF ideology and gave instruction on its principles to all new recruits to the RUF."[2796]

7822. para. 1027: The Appeals Chamber has previously upheld Gbao's Ground 8(a) and overruled the Trial Chamber's findings that he significantly contributed to the JCE through his role as an ideology expert and instructor.[2805] Gbao's Ground 8(b) is therefore moot. The Appeals Chamber will further consider below whether a reasonable trier of fact could have found, on the basis of the Trial Chamber's other findings, that Gbao significantly contributed to the JCE.

7823. para. 1028: The Trial Chamber found that Sankoh, Bockarie, Sesay, Kallon, Superman, Eldred Collins, Mike Lamin, Isaac Mongor, Gibril Massaquoi, Gbao and other RUF Commanders were acting in concert with the AFRC, including at least Koroma, Gullit, Bazzy, Five-Five, SAJ Musa, Zagalo, Eddie Kanneh and others to hold power in Sierra Leone on or shortly after 25 May 1997.[2806] On this basis, it was satisfied that the JCE involved a plurality of persons.[2807]

7824. para. 1033: The Trial Chamber found as a general matter that "the three Accused ... and the other listed individuals were all acting in concert."[2819] Gbao does not contest this finding generally, nor does he contest that other AFRC and RUF members of the JCE were acting in concert. Rather, Gbao only contests the Trial Chamber's failure to find that *he* acted in concert with the AFRC.[2820] In particular, Gbao's arguments are centred on the Trial Chamber's failure to find that he acted in concert with the AFRC in a direct or physical manner.[2821]

7825. para. 1034: The Trial Chamber found that it must be established that the "plurality of persons acted in concert with each other."[2822] The Trial Chamber considered that "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."[2823] The Appeals Chamber considers that these statements accurately reflect the law. However, contrary to Gbao's suggestion, the Trial Chamber did not introduce an additional element to JCE liability. The Trial Chamber properly understood the law as requiring that the accused participated in the common purpose shared by the members of the JCE.[2824] In contrast, the concept of "acting in concert" advanced by the Trial Chamber serves to clarify the required relationship between the persons said to be a plurality sharing a common purpose. This makes clear that the plurality of persons must have a common purpose, and not merely the same purpose, in the sense that persons act together in the pursuit of that purpose, creating a relationship of inter-dependence and cooperation.[2825] Alternatively, persons with identical purposes who do not share that purpose in common, as evidenced by the absence of joint action between them, do not constitute a plurality of persons having a common criminal purpose within the meaning of JCE liability. Thus, the requirement that the "plurality of persons acted in concert with each other in the implementation of a common purpose"[2826] merely clarifies and restates the first two elements of JCE liability, namely the existence of a plurality of persons sharing a common criminal purpose.

7826. para. 1035: Gbao then errs in proposing an additional legal element of concerted action to establish his participation in the JCE. To establish Gbao's liability under JCE, the Trial Chamber was not required to make findings on Gbao's concerted action with the AFRC beyond finding that his acts established his contribution to the Common Criminal Purpose. In this regard, however, the

Appeals Chamber notes that the accused's "joint action" with other members of the JCE, as an *evidentiary* matter, can be relevant to assessing the accused's participation in the JCE. Simply, the character, quality and quantity of the accused's joint action with other members of the JCE may be relevant evidentiary considerations when analysing the intent and contribution of the accused relative to the common purpose of the JCE. The Appeals Chamber considers that this evaluation must be made on a case-by-case basis, but does note that the manner in which the members of the JCE interact and cooperate can take as many forms as conceived by the participants to pursue the realisation of their shared common criminal purpose. What matters is that they are all "the cogs in the wheel of events leading up to the result which in fact occurred."[2827] Nonetheless, the manner in and degree to which the accused and the members of the JCE interact, coordinate and mutually rely on one another's contributions can indicate whether the accused shared the common purpose and significantly contributed to realising it.[2828]

7827. para. 1036: For the reasons outlined above, the Appeals Chamber also rejects Gbao's suggestion that it was necessary for the Trial Chamber to find that he worked in concert with the AFRC, once it found that the JCE was composed of senior leaders of the AFRC and RUF and that he was a senior leader of the RUF.[2829]

7828. para. 1038: The Appeals Chamber rejects the premise of Gbao's argument that he could not be a member of the AFRC/RUF JCE if he was not a senior officer of the RUF.[2830] While the Trial Chamber found as a general matter that there was insufficient evidence to establish that mid- and low-level commanders of the AFRC and RUF, as well as rank-and-file soldiers of both groups, were members of the JCE, this was only a general finding as to a broad group of persons.[2831] This finding did not strictly limit the JCE to only "senior leaders" of the RUF and AFRC, nor did it imply that the Trial Chamber was foreclosed from finding that individuals not found to be "senior leaders" were also members of the JCE. Thus, notwithstanding such a finding, it was open to a reasonable trier of fact, in light of more specific, individualised evidence, to conclude that Gbao, even if a non-senior officer, was also a member of the AFRC/RUF JCE together with senior officers of those groups.

7829. para. 1039: Gbao mischaracterises the Trial Chamber's findings with respect to Bombali District.[2832] The Trial Chamber found that the crimes committed in Bombali District were not attributable to the Accused because the crimes occurred after the termination of the JCE and the pepetrators of those crimes were AFRC forces under the command of Gullit.[2833] The Trial Chamber further reasoned that while there were RUF troops among those forces, the crimes could still not be attributed to the Accused because the most senior RUF commander among those RUF

troops, Major Brown, was not in a command position, confirming that RUF troops were under the control of the AFRC and Gullit.[2834] The Trial Chamber neither reasoned nor found that Major Brown was not a participant in the JCE because he was not in a position of command over soldiers.

7830. para. 1040: Examining whether Gbao participated in the JCE, the Trial Chamber found that he was an "ideology instructor"[2835] who taught RUF recruits and monitored the implementation of the RUF ideology.[2836] It held that this ideology, in its normative and operational settings, significantly contributed to the crimes which were within the JCE or a natural and foreseeable consequence thereof.[2837]

7831. para. 1041: The Trial Chamber also considered other ways in which Gbao participated in the JCE. For instance, it found that Gbao had a "supervisory role"[2838] over the IDU,[2839] the MP,[2840] the IO[2841] and the G5,[2842] which entailed travelling widely in Kailahun to monitor the implementation of the RUF ideology.[2843] Gbao was also found to have been involved in the forced labour of civilians to produce foodstuffs,[2844] which in the Trial Chamber's view significantly contributed to maintaining the strength and cohesiveness of the RUF fighting force.[2845] Moreover, the Trial Chamber held that Gbao's "status, rank and personal relationship with Sankoh, as well as his knowledge of the RUF's ideology" gave him considerable prestige in the RUF in Kailahun.[2846] It further considered that Gbao's failure to properly investigate allegations against a civilian woman (TF1-113) and his instruction that she be publicly beaten, would have had a demonstrative effect to compel the obedience of the civilian population in Kailahun to RUF authority.[2847]

7832. para. 1048: Gbao raises a number of specific issues of fact as preliminary challenges. He further claims that the Trial Chamber erred in fact in concluding that his alleged contributions significantly contributed to the joint criminal enterprise. The Appeals Chamber will first consider those preliminary issues, before turning to the broader issue of Gbao's contribution.

7833. para. 1049: The Appeals Chamber has previously upheld Gbao's Ground 8(a) and overruled the Trial Chamber's findings that he significantly contributed to the JCE through his role as an ideology expert and instructor.[2877] Consideration of Gbao's challenges to the Trial Chamber's findings that he significantly contributed to the JCE through his role as the RUF ideology expert and instructor therefore does not arise.

7834. para. 1050: Gbao challenges the Trial Chamber's finding that he supervised the MP and G5 units in Kailahun District to ensure that the RUF ideology was put into practice.[2878] Gbao contests this finding on the grounds that Witness DIS-188, upon whom the Trial Chamber relied

was previously found to require corroboration and that the witness's testimony does not support the Trial Chamber's finding.[2879] Gbao fails to establish that the Trial Chamber erred in finding this testimony credible. The Trial Chamber did find as a general matter that the witness's testimony required corroboration, as it was "inconsistent" and the witness "was not genuinely assisting the Court to arrive at the truth."[2880] However, the Trial Chamber further noted that it had doubts as to the witness's veracity because the witness's testimony "was influenced in part by his support for the RUF movement and its ideology."[2881] By merely pointing to the Trial Chamber's own finding, Gbao fails to demonstrate that it was unreasonable for the Trial Chamber to rely on this witness's testimony in these circumstances. The Appeals Chamber recalls that the Trial Chamber "is not required to articulate every step of its reasoning for each particular finding it makes,"[2882] nor is it "required to set out in detail why it accepted or rejected a particular testimony."[2883]

7835. para. 1051: Moreover, contrary to Gbao's claim, the testimony of Witness DIS-188 cited in footnote 3770 [2884] does support the finding that Gbao

> was a "popular" and "effective Commander" who travelled widely in Kailahun District, visiting different areas behind the front lines, reporting 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.[2885]

The testimony of Witness DIS-188 cited in footnote 3 77 1 [2886] does not support the finding that Gbao's "supervisory role entailed, in great measure, the monitoring of the implementation of the ideology."[2887] However, Gbao fails to show that this error rendered unreasonable the Trial Chamber's finding that as OSC he travelled widely in Kailahun District, reported on whether the MP and G5 units were doing their jobs and observed the conduct of investigations in order to ensure that the RUF ideology was put into practice. The Appeals Chamber will accordingly disregard the characterization of Gbao's supervisory role as monitoring the implementation of the RUF ideology, but the remaining impugned findings stand.

7836. para. 1052: Gbao's claim that the RUF security apparatus - the IDU, MP, IO and G5 - had no or only a nominal role during the Junta Period[2888] relies on bare assertions unsupported by evidence and questionable inferences from other facts established by the Trial Chamber. Gbao further fails to address the Trial Chamber's finding that the RUF "security units enjoyed enhanced importance in RUF controlled territory as the central components of a static administration."[2889] Thus, Gbao merely provides an alternative interpretation of the evidence and fails to show that the Trial Chamber's findings were unreasonable.

7837. para. 1053: In arguing that he had limited authority and responsibility in his role as OSC, Gbao has pointed to a number of the Trial Chamber's findings regarding the structure and operations of the RUF security apparatus.[2890] Gbao highlights, in particular, findings that he had little or no authority to issue orders to the Overall Unit Commanders,[2891] initiate investigations[2892] or enforce punishments.[2893] However, the Trial Chamber did not disregard these findings in its reasoning, specifically noting that "the evidence is insufficient to conclude that Gbao had effective control over the IDU, MP, IO and G5 as OSC."[2894] Nonetheless, the Trial Chamber found that Gbao still had "considerable influence over the decisions taken by these bodies" due to "his appointment to this position by Sankoh, his status as a Vanguard and his power to issue recommendations."[2895] The Trial Chamber further specifically found that whatever his *de jure* authority, Gbao "enjoyed substantial practical authority over the members of the security units."[2896] The Trial Chamber considered then, that it was his "considerable influence" and "practical authority" as the supervisor of the RUF security apparatus, rather than his formal power and authority,that founded in part Gbao's contribution to the JCE through his role as OSC. By merely pointing to other findings, Gbao fails to address the Trial Chamber's reasoning and its finding that he had "considerable influence" over the RUF security apparatus.

7838. para. 1054: The Appeals Chamber has previously considered Gbao's claims under his Grounds 8(s) and 11 regarding forced farming in Kailahun District.[2897] The Appeals Chamber recalls its conclusions that Gbao fails to establish that the Trial Chamber erred in concluding that forced farming took place in Kailahun District during the Junta period, or that the Trial Chamber erred in finding that Gbao shared the intent to commit the crime of enslavement with respect to that of forced farming.[2898]

7839. para. 1055: Gbao's claim that the Trial Chamber failed to explain how the forced farming in Kailahun District furthered the goals of the Junta government[2899] ignores the Trial Chamber's findings. The Trial Chamber found that the produce from these farms was used by the RUF in their operations[2900] and that the produce was turned over by Gbao to Sesay for commercialisation.[2901] Similarly, Gbao's claim that the Trial Chamber failed to make findings as to how his involvement in forced farming furthered the goal of the JCE[2902] fails to address the Trial Chamber's findings on Gbao's involvement[2903] and articulate how those findings were erroneous or could not support the Trial Chamber's conclusion.

7840. para. 1056: In both Grounds 8(c) and (i), Gbao claims that he was not a senior leader of the RUF, but only a captain and mid-level officer, arguing that the Trial Chamber thus erred in finding his rank significant was significant in its determination of whether he significantly contributed to

the JCE.[2904] In arguing that he only held the rank of captain and that the Trial Chamber therefore erred in finding his rank significant, Gbao mischaracterizes the Trial Chamber's finding and ignores the Trial Chamber's relevant findings.[2905] Gbao does not dispute the Trial Chamber's finding that he was OSC for the RUF and Overall IDU Commander,[2906] and that he often served as Chairman of the Joint Security Board of Investigations.[2907] More importantly, Gbao does not challenge the Trial Chamber's finding that "in RUF controlled territory, the OSC was responsible for the enforcement of discipline and law and order."[2908] Similarly, Gbao neither challenges the Trial Chamber's finding that he was a Vanguard,[2909] nor the findings regarding the status and authority Vanguards held.[2910] In particular, he does not challenge the Trial Chamber's finding that assignment and status could be more important in terms of authority and influence than rank in the RUF.[2911] Accordingly, Gbao's citation to testimonial evidence of his rank by Witness DAG-048 and the testimony of Witness TF1-371 does not establish that the Trial Chamber unreasonably found that he had considerable prestige and power in Kailahun District.

7841. para. 1057: Gbao further claims that the Trial Chamber erred in finding that he gained additional prestige and power within the RUF as a result of a personal connection with Foday Sankoh.[2912] However, Gbao fails to articulate how this error rendered unreasonable the Trial Chamber's finding that "Gbao had considerable prestige and power within the RUF in Kailahun District,"[2913] particularly as he does not contest his assignment as OSC and Overall IDU Commander and his status as a Vanguard, as noted above.

7842. para. 1058: Gbao misrepresents the Trial Chamber's findings regarding the general credibility of TF1-113. Contrary to his assertion, the Trial Chamber did not consider that this witness required corroboration when testifying about Gbao's acts and conduct.[2914] Rather, the Trial Chamber was not convinced that the whole of the witness's testimony was not credible, and found that it was only necessary to exercise extreme caution and often seek corroborative evidence.[2915] Furthermore, Gbao fails to support his assertion that the testimonies of witnesses who lie under oath should, as a rule, be disregarded,[2916] as none of the authorities he cites supports such a proposition.[2917] In that regard, the Appeals Chamber notes that Rules 77 and 91 of the Rules allow a Chamber to hold in contempt a witness who wilfully gives false testimony under oath, but nothing in the Rules obligates a Chamber to discard the testimony of such witnesses for that reason alone. Rather, Rule 89 permits a Chamber to admit any evidence it deems relevant. The Appeals Chamber will not lightly disturb the Trial Chamber's exercise of its discretion in this respect. Indeed, "it is primarily for the Trial Chamber to determine whether a witness is credible and to decide which witness' testimony to prefer, without necessarily articulating every step of the

reasoning in reaching a decision on these points."[2918] Accordingly, Gbao's claim that the Trial Chamber erred in finding TF1-113's testimony credible on this issue is rejected.[2919]

7843. para. 1059: In addition to the claims previously addressed, Gbao submits four grounds in support of his argument that the Trial Chamber erred in finding that he significantly contributed to the JCE.

7844. para. 1060: Gbao first argues that the Trial Chamber erred in finding that he significantly contributed as the OSC, submitting that the RUF security apparatus had a nominal role during the Junta period,[2920] and that he had limited authority over the RUF security units.[2921] Gbao further submits that the security apparatus did not deal with most disciplinary issues in fact, which "were instead handled by the local Area Commander where the crime was alleged to have taken place."[2922] The Appeals Chamber has previously dismissed Gbao's first submission,[2923] and has noted that the Trial Chamber found that Gbao, whatever his *de jure* authority, exercised "considerable influence" and "practical authority" over the RUF security apparatus.[2924] The Appeals Chamber further notes with respect to the last submission that the Trial Chamber specifically distinguished between discipline in combat areas and RUF-controlled territory, finding that although "Gbao may have possessed only limited authority in respect to combat operations," "the OSC was responsible for the enforcement of discipline and law and order" in RUF-controlled territory.[2925] In this regard, the Appeals Chamber recalls the Trial Chamber's findings regarding the role of the RUF security apparatus and the RUF disciplinary system in maintaining the cohesiveness of the RUF as an armed force and allowing the RUF leadership to control RUF fighters.[2926]

7845. para. 1061: Second, Gbao argues that he had only a nominal role as OSC outside Kailahun District,[2927] noting that the Trial Chamber found that there was insufficient evidence that he received reports of unlawful killings in Bo, Kenema and Kono Districts or that he failed in his duty to ensure proper investigations were conducted in those areas.[2928] The Appeals Chamber notes that the findings Gbao cites do not show that no reasonable trier of fact could have found that he had a more than nominal role outside Kailahun District, particularly in light of the Trial Chamber's specific findings regarding his practical influence and authority over the RUF security apparatus as a whole. Furthermore, Gbao fails to show that it was not open to a reasonable trier of fact to conclude that he significantly contributed to the JCE on the basis of his contributions in Kailahun District. The Appeals Chamber recalls that the Trial Chamber's findings regarding Gbao's significant role as OSC in Kailahun District,[2929] his supervision of the MP and G5 units in Kailahun District[2930] and the finding that Gbao had considerable prestige and power in the RUF in

Kailahun District.[2931] Moreover, the Trial Chamber specifically found that Kailahun District played an important role in the realisation of the Common Criminal Purpose:

> The widespread and systematic crimes by the RUF in Kailahun[2932] 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.[2933]

7846. para. 1062: Third, Gbao argues that the Trial Chamber did not demonstrate how the forced farming significantly contributed to the JCE, with respect to the forced farming in Kailahun District.[2934] However, Gbao does not address the Trial Chamber's findings that the produce from these farms was used by the RUF in their operations[2935] and that the produce was turned over by Gbao to Sesay for commercialisation.[2936] Furthermore, Gbao characterises as "generic" the Trial Chamber's finding that his role in the forced farming significantly contributed to maintaining the strength and cohesiveness of the RUF fighting force. This does not, however, show that the Trial Chamber erroneously concluded that Gbao significantly contributed to the JCE through his role in the forced farming.

7847. para. 1063: Finally, Gbao argues that the lack of findings that he acted "in concert" with the senior leaders or members of the AFRC demonstrates that he did not significantly contribute to the JCE.[2937] In light of all the above findings and discussion, the Appeals Chamber is not satisfied that the absence of findings that Gbao directly acted together with members of the AFRC precluded a reasonable trier of fact from concluding that Gbao significantly contributed to the JCE. The Appeals Chamber recalls that the manner in which the members of the JCE interact and cooperate can take as many forms as conceived by the participants to pursue the realisation of their shared common criminal purpose.[2938] In this respect, the Appeals Chamber notes that the Trial Chamber found that Gbao remained in Kailahun after the May 1997 coup on Bockarie's instructions, and that in June 1997 Bockarie ordered Gbao to move from Giema to Kailahun Town.[2939] The Trial Chamber further found that other senior RUF Commanders also remained in Kailahun District, including the Area Commander Denis Lansana and the overall G5 Commander Prince Taylor.[2940] Furthermore it found that the RUF and AFRC worked alongside one another in Kailahun District.[2941] The Appeals Chamber also notes the important role Kailahun District played in the realisation of the Common Criminal Purpose.[2942]

7848. para. 1064: Accordingly, the Appeals Chamber concludes that Gbao fails to show that the Trial Chamber erred in finding that he significantly contributed to the JCE.

7849. para. 1094: Gbao's submission that the Trial Chamber erred in finding that he played a role in the forced labour has already been partially addressed in the Appeals Chamber's discussion above. Four of Gbao's arguments in support of that submission remain to be addressed here

7850. para. 1095: Gbao first challenges the credibility of Witnesses TF1-108, TF1-336 and TF1-330. With regard to TF1-108, the Appeals Chamber has upheld the Trial Chamber's assessment of this witness in relation to Sesay's Ground 18, which presents similar challenges to this witness.[3010] As to TF1-366, Gbao relies on a statement by Judge Thompson that the witness was "virtually repudiating his own record." Gbao does not substantiate this quotation with a reference to the transcript. In any event, this statement in itself is insufficient to demonstrate an error in the Trial Chamber's assessment of TF1-366 that his testimony required reliable corroboration with respect to the acts and conduct of the Appellants.[3011] As to TF1-330, Gbao merely asserts that Exhibit 84b, a handwritten note dated 13 February 1999, shows that TF1-330 was paid in kind for his work, and that it is "surprising" that TF1-330 did not mention Gbao's significant role in forced labour until a couple of months before testifying.[3012] These submissions fail to show TF1-330 lacked credibility.

7851. para. 1096: Second, Gbao impugns the finding that "Gbao and Patrick Bangura oversaw the civilians mining at *Giema* as well as 'the soldiers who had guns.'"[3013] This challenge is dismissed since Gbao misrepresents TF1-330's testimony to diminish his (Gbao) role in the mining.[3014]

7852. para. 1097: Third, Gbao asserts that, if he had truly planned the enslavement in Kailahun District, "one may have expected that Gbao's role might have been remembered by the relevant RUF insiders."[3015] This speculative submission is untenable.

7853. para. 1098: Lastly, Gbao argues that TF1-330's testimony was insufficient to show that Gbao designed the forced labour at both the preparatory and execution phases, which is a requirement for planning.[3016] The Appeals Chamber notes that the Trial Chamber did not convict Gbao for the enslavement in Kailahun District under the mode of liability of planning. Instead, Gbao's direct involvement "in the planning and maintaining of a system of enslavement" in Kailahun was found to constitute a form of contribution to the JCE in this case.[3017] For that purpose, it was not required that Gbao's conduct in question was such that it met the legal elements of planning as a mode of liability distinct from JCE. The submission also fails on the

ground that the Trial Chamber did not rely solely on the testimony of TF1-330 for its findings on Gbao's involvement in the forced labour which constituted enslavement in Kailahun.[3018]

7854. para. 1100: The Trial Chamber found that the acts of sexual slavery and forced marriage in Kailahun District were committed with the specific intent to spread terror and therefore constituted acts of terrorism.[3019]

7855. para. 1103: The Appeals Chamber recalls its conclusion that the Trial Chamber was not required to find that those who carried out the *actus reus* of the crimes had the requisite *mens rea* for acts of terrorism.[3024] The Appeals Chamber notes the Trial Chamber's findings that acts of terrorism were within the Common Criminal Purpose of the JCE,[3025] and that, with respect to Kailahun District, Gbao intended the commission of acts of terrorism and shared that Common Criminal Purpose.[3026] The Trial Chamber further found that one or more members of the JCE used the non-members who carried out the *actus reus* of the crimes to commit the crime of acts of terrorism.[3027]

7856. para. 1104: By merely referring to the Trial Chamber's factual findings on acts of sexual slavery and forced marriage in Kailahun District,[3028] Gbao fails to establish that no reasonable trier of fact could have found that the persons who committed those acts acted with the specific intent to spread terror. Gbao only offers an alternative interpretation of the evidence without explaining how the Trial Chamber's conclusion was unreasonable. Gbao further fails to address the Trial Chamber's finding that the members of the JCE intended the commission of acts of terrorism.

b. Planning – Kailahun District

i. Sesay – Planning – Child soldiers - Kailahun District

7857. para. 749: The Trial Chamber 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, Bombali and Kenema Districts.[1948] The Trial Chamber held 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.[1949]

7858. para. 750: The Trial Chamber also found that Sesay, as one of the most senior RUF Commanders, made a substantial contribution to the planning of this system of conscription.[1950] It, therefore, convicted him under Article 6(1) for planning the "use of persons under the age of 15 to

participate actively in hostilities in Kailahun, Kenema, Kono and Bombali Districts between 1997 and September 2000, as charged in Count 12."[1951]

7859. para. 755: The Trial Chamber found that Sesay contributed to the planning of the offence under Count 12 by issuing orders that "young boys" should be trained at *Bunumbu*.[1971] Sesay contends that the Trial Chamber found that these "young boys" were in fact 15 years of age and above.[1972] However, Sesay misinterprets the Trial Chamber's findings which referred to "young boys" to include persons of at least 15 years of age as well as SBUs comprising children as young as 9 to 11 years of age.[1973]

7860. para. 756: Sesay further submits that "in any event, the Trial Chamber cites only one piece of valid evidence for this finding: the evidence of Witness TF1-366," and that the testimonies of Witnesses TF1-199 and TF1-371, also cited by the Trial Chamber in further support, do not in fact support the finding.[1974] The Trial Chamber provided no citations for its finding that Sesay issued the orders in June 1998, however, it cited the testimony of TF1-366, TF1-199 and TF1-371 for its findings that SBUs were children tasked with carrying weapons for the RUF. Witness TF1-366's testimony most closely supports both findings of the Trial Chamber, including that Sesay issued orders. He testified directly that Kallon and Superman issued orders and Sesay "sent messages" that young boys should be brought to be trained at Bunumbu.[1975] He stated that some of the "young boys" were 15 years of age, but that many were SBUs comprising children ages 9 to 11 years and smaller boys.[1976] Witness TF1-199 testified that SBUs were "really small boys" and because he was a small boy of 12 years of age, he was called an SBU.[1977] However, he did not mention Sesay in his testimony or testify to anyone giving orders. Witness TF1-371 testified that children between the ages of 12 and 18 years were classified as SBUs, and that Sesay had SBUs, one of whom was around 15 years and the other around the age of 16.[1978] Importantly, of the testimony cited by the Trial Chamber, only TF1-366 supports the finding that Sesay issued orders for "young boys" to be trained at Bunumbu in June 1998.

7861. para. 757: This testimony is consistent with the testimony of TF1-362, relied on by the Trial Chamber to find that civilians captured on the highway to Freetown from 1997 onward, as well as people from Daru and the SLA, were brought to Bunumbu training base at the command of Issa Sesay.[1979] Importantly, although Sesay challenges the Trial Chamber's reliance on TF1-362 in other contexts, he does not impugn these findings.[1980]

7862. para. 758: Trial Chambers enjoy broad discretion in their assessment of evidence and determination of the weight to accord testimony. In general, a Trial Chamber may in the exercise of its discretion rely on a single witness for support of its factual findings. With respect to TF1-

366, the Trial Chamber stated that it "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."[1981]

7863. para. 759: The Appeals Chamber considers that the testimony of TF1-366 was corroborated "in some material aspect" by the testimony of TF1-199 and TF1-362, whose evidence was found credible by the Trial Chamber.[1982] The Trial Chamber's failure to explicitly cite TF1-362's testimony for the impugned finding is unfortunate, but in the circumstances caused no error.

7864. para. 760: Sesay contends that the Trial Chamber erred in finding, on the basis of testimony of TF1-362, that he personally communicated reports to Bunumbu and ordered that the training camp be moved from Bunumbu to Yengema.[1983] Sesay, however, fails to demonstrate that the Trial Chamber could not reasonably rely on TF1-362 for these findings. As Sesay does not show an error in the Trial Chamber's exercise of its discretion to assess the witness's credibility or determine the weight it attached to his testimony, this part of Sesay's argument fails.

7865. para. 761: Sesay further submits that the Trial Chamber unreasonably relied upon Witnesses TF1-114 and TF1-108[1984] to support its finding that children were forcibly trained,[1985] but disregarded their testimony that, Sesay contends, "contradicted TF1-362's account of Sesay's involvement in the training base." However, Sesay fails to demonstrate how the testimony of TF1-114 and TF1-108 contradicts the testimony relied upon by the Trial Chamber, and the Appeals Chamber is unable to infer his argument. The Appeals Chamber recalls 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."[1986] Sesay fails to show error in the Trial Chamber's finding.

7866. para. 762: The Trial Chamber found that Sesay, as one of the most senior RUF commanders, made a substantial contribution to the planning of the RUF system of child use by, *inter alia*, receiving reports on training at Bunumbu and subsequently at Yengema.[1987] Specifically, the Trial Chamber found that the adjutant at the base drew up a list of recruits including their names, ages and other personal data.[1988] Sesay submits that the Trial Chamber erred in finding that receipt of reports substantially contributed to the crime of child conscription or use.[1989] He posits that the alleged planning must be found to have actually led to the commission of specific crimes.[1990]

7867. para. 763: 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 the reports to an advisor.[1991] Next, the reports were either delivered by hand or communicated via radio to Sesay and finally to Bockarie;[1992] and Sesay would confirm delivery of the report back to the base.[1993] The Trial Chamber found that "every such report was either hand-delivered or communicated via radio to Sesay."[1994] The Trial Chamber also found that the training commander at *Yengema* reported directly through Sesay to Bockarie, until Bockarie left the RUF in December 1999, after which she reported to Sesay only.[1995] According to the Trial Chamber, records were kept of the ages of SBUs and SGUs trained at *Bunumbu* and *Yengema*, from which it could be inferred that the fighters who conducted the training knew or had reason to know that certain trainees were under the age of 15.[1996]

7868. para. 764: The Appeals Chamber considers that Sesay's receipt of reports is relevant circumstantial evidence supporting the findings that "the execution of this system of conscription of child soldiers required a substantial degree of planning"[1997] and that "this planning was conducted at the highest levels of the RUF organization,"[1998] including Sesay.[1999] That reports on the training of child soldiers were transmitted to RUF headquarters signifies that the conscription of child soldiers was highly organised, and that the RUF leadership was responsible for that organisation. Moreover, the creation and transmission of training reports represents a mechanism through which the RUF headquarters could monitor the implementation of the planned conscription of child soldiers. Sesay's receipt of such reports was indicative that he had participated in that planning process. Accordingly, contrary to Sesay's contention, the Trial Chamber did not consider that he substantially contributed to the planning by merely receiving reports, but that his receipt of such reports was part of the evidence taken into consideration in coming to the conclusion that he had participated in the planning at both the preparatory and execution phases.

7869. para. 765: Sesay contends that the Trial Chamber's reliance on TF1-141 to find that he participated in the training bases by giving speeches at Bunumbu training camp, passing and receiving messages and threatening to execute those child soldiers who attempted to leave[2000] is "wholly unreasonable given the witness's frailties" and the numerous and significant contradictions in the witness's testimony.[2001]

7870. para. 766: The Trial Chamber acknowledged the "concerns" raised by the Defence,[2002] and indicated that it was "uneasy with portions of TF1-141's testimony that appeared to be fanciful and thus implausible."[2003] The Trial Chamber noted that the witness was captured by the RUF in

1998 and remained with the group until 2000, when he was demobilised.[2004] The Trial Chamber considered that although the witness was diagnosed with Post-Traumatic Stress Disorder as a result of his experience as a child soldier with the RUF, he was nonetheless able to give truthful testimony.[2005] The Trial Chamber concluded that, after seeing the witness in court, hearing his testimony and observing him under cross-examination, he "came across as a candid witness." The Trial Chamber, therefore, "generally accepted his testimony, especially as it relates to his own experiences as a child combatant."[2006]

7871. para. 767: Sesay contends the witness was "constantly contradicting himself," and that the Trial Chamber disregarded a "significant contradiction" in the witness's testimony, but he only points to one purported contradiction, which, even if a contradiction, was not material to the findings Sesay contests here.[2007] Sesay further fails to show what portions of the witness's testimony contain discrepancies that made the Trial Chamber's assessment of the witness's credibility unreasonable. Seasy thus fails to establish that the Trial Chamber erred in accepting parts of the witness's evidence.

7872. para. 768: Taking into account the foregoing discussion, the Appeals Chamber will now consider Sesay's broader claim that the Trial Chamber erred in finding him liable for planning the use of child soldiers.

7873. para. 769: Sesay argues that the Trial Chamber erred in law and in fact in concluding that his acts amounted to "planning."[2008] The Appeals Chamber considers that whether particular acts amount to a substantial contribution to the crime for the purposes of planning liability is to be assessed on a case-by-case basis in light of the evidence as a whole. In concluding that Sesay's cumulative conduct fulfilled the *actus reas* of planning, the Trial Chamber relied on its findings that: (i) Sesay gave orders in June 1998 that "young boys" should be trained at Bunumbu and that he received reports on training in Bunumbu and subsequently at Yengema;[2009] (ii) he visited Camp Lion where he addressed the recruits and told them that they would be sent to the battlefield; and that if they failed to comply with orders they would be executed;[2010] (iii) he visited RUF fighters including children under the age of 15 who were preparing to conduct an attack on Daru and distributed drugs as "morale boosters" for these fighters;[2011] and (iv) he participated in an attack on Koidu in December 1998 together with his bodyguards, including children under the age of 15.[2012]

7874. para. 770: Sesay fails to explain how no reasonable trier of fact could have found that he performed the *actus reus* of planning. His contention appears to be centred on the notion that none of his acts as found by the Trial Chamber constitute the "planning" or "designing" of the crimes

per se. However, Sesay does not explain why a reasonable trier of fact could not have inferred from these findings and other evidence that he had substantially contributed to designing the criminal conduct. In this regard, the Appeals Chamber notes in particular the Trial Chamber's findings that Sesay ordered the training of child soldiers, received reports on such training and personally visited the Camp Lion training camp, addressing and threatening the child soldier conscripts there. Therefore, in inferring that Sesay contributed to the planning of the crimes, the Trial Chamber did not rely solely on Sesay's command role, as Sesay suggests.[2013] Rather, the Trial Chamber further considered Sesay's personal and direct participation in the conscription and training process. Specifically, the acts relied on by the Trial Chamber evince that Sesay participated in all stages of that process, from ordering the training of child soldiers to monitoring the implementation of the training to monitoring the use of child soldiers. In addition, although not referenced in its reasoning, the Trial Chamber found that Bockarie and Sesay "issued orders to move the RUF training base from Bunumbu to Yengema in Kono District," and that "Sesay personally discussed the creation of the new Yengema base with the training commander."[2014] Finally, as noted above, the Trial Chamber found that the highly organised character of the conscription process was such as to demand a substantial degree of prior planning by the RUF leadership.[2015] It was on the basis of these findings as a whole that the Trial Chamber found that Sesay substantially contributed to the planning of the crimes. Sesay fails to show that the Trial Chamber's finding, on the basis of the evidence as a whole, was unreasonable. Sesay's submission is dismissed.

7875. para. 771: Sesay further submits a number of related challenges to the scope of his liability as found by the Trial Chamber. Sesay argues first that by failing to identify the victims and by failing to require a specimen count, the Trial Chamber was unable to "identify a representative sample of child soldiers" and therefore could not make proper findings as to whether "the use/conscription of any such child was within the framework of Sesay's design."[2016] Second, Sesay argues that the Trial Chamber erred in fact in convicting him for child conscription and use in Bombali and Kenema Districts, as its findings on his responsibility do not refer to acts outside Kailahun and Kono Districts.[2017] Finally, Sesay contends that the Trial Chamber's failure to approximate the number of child soldiers used pursuant to his plan invalidates any finding that the crimes committed were within the framework of his design.[2018] During the oral hearings, Sesay further argued that the Trial Chamber made no findings as to his criminal liability for planning the use of child soldiers in 1997, and that "from 1997 to February 1998 there is simply no evidence of his involvement in any type of activity which could amount to planning."[2019]

7876. para. 772: However, Sesay again fails to explain how no reasonable trier of fact, on the basis of the Trial Chamber's findings, could have concluded that he substantially contributed to the planning of the crimes for which he was held liable. Although Sesay argues that the Trial Chamber's findings with respect to Bunumbu are "simply insufficient,"[2020] and points to the absence of findings regarding his acts with respect to the conscription and use of child soldiers in Kenema and Bombali Districts[2021] and before February 1998,[2022] he does not explain how the Trial Chamber's conclusion was accordingly unreasonable. In particular, Sesay does not show that no reasonable trier of fact could infer from the Trial Chamber's findings regarding his acts, in combination with other findings such as those concerning the nature of the conscription and use of child soldiers, that he substantially contributed to the planning of crimes committed in other locations as well. In merely submitting that the Trial Chamber's findings with respect to Bunumbu are insufficient to ground his liability for planning the other instances of the crime, Sesay fails to explain why this is so. Sesay further fails to point to other findings or evidence to show that the crimes in Kenema and Bombali Districts were unique or distinct from the crimes in Kailahun and Kono Districts. While Sesay correctly submits that he can only be held liable for those crimes he substantially contributed to the planning of, he does not show how no reasonable trier of fact could infer, on the basis of his acts with respect to Bunumbu and Yengema in particular, that he substantially contributed as well to the planning of the other crimes for which he was held liable.

7877. para. 773: Sesay further fails to explain why the manner in which the Trial Chamber evaluated the evidence precluded it from finding that he substantially contributed to the planning of the specific crimes for which he was held liable.[2023] Sesay cites no authority for his position that the Trial Chamber could only make such a finding on the basis of the identity of the victims, or that the Trial Chamber was required to demand a specimen count here. In this respect, the Appeals Chamber considers that the Trial Chamber found that the crimes committed were those that Sesay substantially contributed to the planning of on the basis of the identity of the perpetrators and the manner in which the crimes were committed. Sesay fails to address the Trial Chamber's approach and to explain how it was erroneous.

7878. para. 774: Finally, the Appeals Chamber does not consider Sesay's citation to the ICTY Trial Chamber's findings in *Brđanin* to be determinative of the issue here.[2024] That the accused in that proceeding was not found liable for planning crimes is not particularly probative as to whether the Trial Chamber here erred, because the facts of the two cases are too distinct for a meaningful analogy to be made. Moreover, Sesay fails to show that no reasonable trier of fact could have found that he planned the specific crimes for which he was held liable, and he does not argue that the Trial Chamber's reasoning and conclusion evince that it misapplied the law.

7879. para. 775: Sesay's contention that the Trial Chamber erred in law in finding him responsible for the offence in Bombali when it had specifically held that he could not be liable for crimes committed in Bombali District [2025] is misconceived. The Trial Chamber held that Sesay was not liable for crimes in Bombali District in relation to crimes attributable to AFRC forces under the control of Gullit after the cessation of the JCE.[2026] In contrast, Sesay was found to have planned an RUF system of use of child soldiers.[2027]

ii. Kallon – Planning – Child soldiers – Kailahun District

7880. para. 909: The Trial Chamber convicted Kallon for planning the crime of using children under the age of 15 by the RUF to participate actively in hostilities in Kailahun, Kenema, Kono and Bombali Districts between 1997 and September 2000.[2373]

7881. para. 917: In finding that Kallon was a senior RUF commander during the attack on Koidu Town in February 1998,[2390] the Trial Chamber found that Kallon held the rank of Major during the retreat to Kono in February 1998[2391] and that he gave orders which were complied with by troops.[2392] Kallon does not challenge these findings or show how no reasonable trier of fact could have reached those findings on the basis of the evidence.[2393] This submission is dismissed.

7882. para. 918: Kallon argues that the Trial Chamber erred in finding that he gave orders that "young boys" be trained, as the Trial Chamber itself found that the boys to be trained were over 15 years of age.[2394] The Appeals Chamber has previously considered this issue in addressing Sesay's Ground 43, and reiterates its conclusion that Kallon misinterprets the Trial Chamber's findings.[2395] Similarly, the Appeals Chamber has previously considered the Trial Chamber's reliance on the testimony of Witness TF1-366 in addressing Sesay's Ground 43, and reiterates its conclusion that the Trial Chamber reliance on that testimony was not erroneous.[2396] Kallon further fails otherwise to establish that the Trial Chamber erred in finding the testimony of Witness TF1-366 credible. This submission is rejected.

7883. para. 919: The Appeals Chamber also rejects Kallon's argument that it is not established beyond reasonable doubt that the boys and girls trained at the RUF training bases were under the age of 15.[2397] Witnesses TF1-141 and TF1-263 testified that they were 12 and 14 years of age respectively at the time they were abducted and sent for military training.[2398] Similarly, Witness Dennis Koker saw Kallon bring juveniles under the age of 15 to Bunumbu for training.[2399] The Trial Chamber accepted the testimonies of the Witnesses and found them credible. Kallon has not established that no reasonable trier of fact could rely on their testimonies for a finding of fact. This submission is rejected.

7884. para. 920: Kallon argues that the Trial Chamber relied on the testimony of Witness TF1-045 to establish his guilt for planning use of child soldiers.[2400] However, contrary to Kallon's assertion,[2401] the Trial Chamber did not rely on his presence in Camp Zogoda to demonstrate a consistent pattern of conduct in violation of Rule 93(B) of the Rules. Rather, the Trial Chamber found that the fact that children between the ages of 8 and 15 were trained at Camp Naama in Liberia; and Matru Jong and Pendembu and Camp Zogoda in Sierra Leone "demonstrates a consistent pattern of conduct by the RUF of recruiting and training children for military purpose that began as early as 1991 and continued throughout the Indictment period."[2402] Although the Trial Chamber also noted that Kallon was seen at Camp Zogoda with fighters in 1994, its finding on the consistent pattern of conduct related to the RUF rather than Kallon specifically. Moreover, there is no further indication that the Trial Chamber relied on the evidence that Kallon was at Camp Zogoda in 1994 to establish his liability for planning the crimes between 1997 and 2000. There is therefore no violation of Rule 93(B) of the Rules and consequently, no error as alleged. This submission is rejected.

7885. para. 921: With respect to Kallon's submission that the Trial Chamber found that he and Sesay gave orders for "young boys" to be trained, but that those boys were 15 years of age and above, the Appeals Chamber refers to its conclusion above that some of the "young boys" included persons both under and above the age of 15.[2403] The Appeals Chamber recalls its decision concerning the Trial Chamber's assessment of the credibility of Witnesses TF1-141, TF1-263, TF1-366 and Dennis Koker, particularly in relation to the ages of the children with whom they associated Kallon.[2404] The Appeals Chamber also recalls that the Trial Chamber exercised caution in determining the ages of children associated with the rebel factions in its findings.[2405] The Appeals Chamber defers to these findings[2406] and dismisses Kallon's argument regarding the testimonies of Witnesses TF1-141, TF1-263, TF1-366 and Dennis Koker relating to the ages of children.

7886. para. 922: Kallon contends that the Trial Chamber found that he "knew or had reason to know that the persons conscripted 'may have been' under the age of 15" was erroneous given its inconclusive nature, thereby suggesting that it was not the only reasonable inference that could be drawn from the evidence.[2407] Kallon mischaracterises the Trial Chamber's findings. Contrary to his assertion, the Trial Chamber did not find that he "knew or had reason to know that persons conscripted 'may have been' under the age of 15."[2408] Rather, the Trial Chamber identified several factors which it found to be "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."[2409] Accordingly, this part of Kallon's argument must fail.

7887. para. 923: Kallon further submits that the Trial Chamber shifted the burden of proof to him by stating that "where doubt existed as to whether a person abducted or trained was under the age of 15, it was incumbent upon the perpetrator to ascertain the person's age."[2410] The Appeals Chamber has previously held that the prohibition on conscripting or using child soldiers existed in customary international law at the times relevant to the offences in this case, and that violation of this prohibition incurs individual criminal responsibility in customary international law.[2411] In reaching those holdings, the Appeals Chamber observed that a significant body of conventional international law imposes an obligation on parties to "take all feasible measures" to ensure that children are not recruited or used in hostilities.[2412] The accused are under a duty to act with due diligence to ensure that children under the age of 15 are not recruited or used in combat. Failure to exercise such due diligence to ascertain the age of recruits does not relieve an accused of his liability for their recruitment or use.[2413] The Appeals Chamber therefore finds no error in the Trial Chamber's statement that the accused were under a duty to exercise due diligence to ascertain the age of a child.

7888. para. 924: Kallon submits a number of arguments contesting the Trial Chamber's finding that he planned the use of child soldiers.[2414] Kallon argues that the Trial Chamber relied solely on his command role to support that finding,[2415] and argues that there was no evidence that he was involved in the planning of the abduction and training of children.[2416]

7889. para. 925: The Trial Chamber found that Kallon "participated in the design and maintenance of [the RUF] system of forced recruitment and use [of child soldiers] and that his contribution in this regard was substantial."[2417] In reaching this conclusion, the Trial Chamber relied on its findings that: (i) 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; (ii) Kallon gave orders for children to be trained at RUF camps; (iii) Kallon brought a group of children to *Bunumbu* for training in 1998; and (iv) Kallon was the senior RUF Commander on 3 May 2000 at Moria where child soldiers were used in the ambush of UNAMSIL forces.[2418] The Trial Chamber also found that the highly organised character of the process of conscripting and using child soldiers was such as to demand a substantial degree of prior planning by the RUF leadership.[2419]As these findings make clear, the Trial Chamber did not solely rely on Kallon's command role to find that he planned the use of child soldiers.[2420]

7890. para. 926: Kallon fails to show that no reasonable trier of fact could have inferred from these findings and the evidence as a whole that he planned the use of child soldiers.[2421] This submission is rejected.

iii. Gbao – Planning – Child soldiers – Kailahun District

7891. para. 1151: The Prosecution appeals Gbao's acquittal under Count 12, arguing that the Trial Chamber should have found him liable either pursuant to JCE, planning or aiding and abetting. Because the Appeals Chamber, Justices Kamanda and King dissenting, has dismissed the Prosecution's Ground 1 in which it argued that the JCE continued beyond late April 1998, there is no basis for the submission that Gbao is liable under Count 12 pursuant to JCE after that date.[3192] The Appeals Chamber proceeds to consider the remainder of the Prosecution's Ground 2.

7892. para. 1152: The Trial Chamber acquitted Gbao of the charge under Count 12 of conscripting children under the age of 15 into armed forces or groups or using them to participate actively in hostilities.[3193] It found that Gbao loaded former child soldiers onto a truck and removed them from the Interim Care Centre in Makeni in May 2000, but that this was 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.[3194] It found no other evidence that Gbao participated in the design of these crimes.[3195]

7893. para.1169: The present ground of appeal essentially turns on whether, and if so to what extent, Gbao contributed to the crimes charged under Count 12. In this respect, the Appeals Chamber finds, as a preliminary matter, that the Prosecution is incorrect in law to suggest that JCE liability does not require that the accused contribute to the crimes for which he is alleged to be responsible.[3255] The Appeals Chamber has already held that, while JCE liability does not require that the accused performed any part of the *actus reus* of the perpetrated crime,[3256] it does require that the accused by his participation in the common criminal purpose lent "a significant contribution to the crimes for which the accused is to be found responsible."[3257]

7894. para. 1170: Planning and aiding and abetting also require that the accused contribute to the crimes, to an even higher degree. These forms of liability only attach where the accused "substantially" contributed to the crimes.[3258]

7895. para. 1171: The Prosecution's theory as to Gbao's contribution to the crimes is principally the same for all three modes of liability alleged, and can be summarised as follows: (i) the G5 played a role in the system of enslavement in Kailahun by screening captured civilians, including children, and assessing their suitability for different types of labour such as military training; and (ii) Gbao had power and prestige over the RUF in Kailahun and a supervisory role over the G5, to which he sometimes issued orders. The Appeals Chamber stresses that it is not sufficient that this theory could allow for an inference that Gbao significantly or substantially contributed to the

crimes. For the Prosecution to succeed, it must show that no reasonable trier of fact could have arrived at the Trial Chamber's conclusion. As explained earlier, because the Prosecution is appealing against an acquittal, its alternative reading of the facts must eliminate all reasonable doubt of the accused's guilt.[3259]

7896. para. 1172: The Prosecution fails to meet this burden. First, while it is true that the Trial Chamber found that the G5 screened captured civilians to assess their suitability for different types of labour,[3260] and that children were "screened to ascertain their suitability for combat operations,"[3261] the Trial Chamber made no finding that the G5's screening was done for the purpose of conscripting children under the age of 15, or that it resulted in the use of such children in active combat. Moreover, the only link between Gbao and child conscription made in the findings is his relationship as OSC over the G5.[3262] However, this finding was made in respect of the RUF's disciplinary system and not as to whether Gbao contributed to child conscription. The Prosecution refers to the testimony of Witness TF1-141 who stated that the G5 decided whether he was fit for military training,[3263] and that he was told that the first person he met after his abduction and travel to Kailahun was Gbao.[3264] This evidence is insufficient to eliminate all doubt as to whether Gbao "participated in the execution, administration and running of a plan" encompassing child conscription, as argued by the Prosecution.[3265]

7897. para. 1173: The Trial Chamber's scant findings on Gbao's involvement in the child conscription stand in stark contrast to its detailed findings on his involvement in the other types of forced labour in Kailahun District administered by the G5, in particular forced farming,[3266] and also on his co-accused's substantial contribution to the crimes under Count 12.[3267] This disparity in findings reflects a corresponding difference in the amount of reliable evidence. The Prosecution argues no error in the Trial Chamber's assessment of the available evidence.

7898. para. 1174: In this regard, the Appeals Chamber is not persuaded by the Prosecution's attempt to link child conscription and use with the enslavement in Kailahun District. While both were within the JCE, it does not follow that Gbao, simply by contributing to the latter crime also significantly contributed to the former, as the two crimes are distinct both in law and in fact. The Trial Chamber found no evidence that Gbao's participation in the JCE was such that it contributed to both.[3268] By merely reiterating the Trial Chamber's findings, without proffering any evidence that might have been disregarded by the Trial Chamber, the Prosecution's submission is but a bare request that the Appeals Chamber substitute its own conclusion for that of the Trial Chamber. Such a submission fails to meet the Prosecution's burden to eliminate all reasonable doubt as to Gbao's guilt.

7899. para. 1175: The Prosecution makes two additional submissions as to Gbao's alleged responsibility for aiding and abetting child conscription and use outside Kailahun District. The first is that his alleged contribution to planning the execution of the crime in Kailahun District, coupled with his purported failure to interfere in the recruitment of civilians including persons under the age of 15 being sent to training and then used for military purposes, amounted to tacit approval and encouragement of the crime.[3269] The Appeals Chamber recalls that it has rejected the Prosecution's contention that Gbao significantly or substantially contributed to the child conscription and use in Kailahun District. Moreover, assuming *arguendo* that Gbao did so contribute, the Prosecution fails to point to findings or evidence establishing Gbao's alleged failure to interfere beyond Kailahun, or suggest what measures he could have taken in that respect and what effect his failure to do so would have had on the perpetrators. To the contrary, the Prosecution itself refers to evidence that Gbao granted permission for the re-opening of the Interim Care Centre in Makeni in February 2000.[3270]

7900. para. 1176: The Prosecution's second submission is that Gbao aided and abetted "re-recruitment" and use of the children he removed from the Interim Care Centre in May 2000.[3271] The Trial Chamber found that the fact that Gbao loaded former child fighters onto a truck and removed them from the Interim Care Centre in May 2000 was "insufficient to constitute a substantial contribution to the widespread system of child conscription or the consistent pattern of using children to participate actively in hostilities."[3272] The Prosecution challenges this finding,[3273] essentially arguing that some of the removed children were used in combat in the Lunsar area during the RUF attack on the ZAMBATT peacekeepers.[3274]

7901. para. 1177: The Appeals Chamber is not satisfied that the Prosecution succeeds in eliminating all reasonable doubt as to Gbao's guilt in this regard. First, it remains unclear if the persons Gbao removed were under the age of 15 years. The Prosecution seeks to infer from the finding that between 1998 and 2002 "the mean average" of children "in most Centres" was 14 years[3275] that "some of" the children removed by Gbao were under the age of 15.[3276] This submission does not eliminate all reasonable doubt as to the children's age.

7902. para. 1178: Second, the Prosecution also fails to eliminate all reasonable doubt as to whether they were used to participate actively in hostilities. Here, the Prosecution relies on the testimony of TF1-174.[3277] It says the witness testified that he left Makeni on 6 May 2000 and that when he returned to the Interim Care Centre at Makeni the number of children there had decreased drastically.[3278] A day after Gbao removed the children from the Interim Care Centre, "one of the boys" returned to the Interim Care Centre crying and saying that "a good number of his

companions were killed in the attack at Lunsar."[3279] The Prosecution posits that this leads to the only reasonable inference that the children removed by Gbao were used in combat during the RUF attack on the ZAMBATT peacekeepers between 3 and 4 May 2000.[3280] However, the Prosecution fails to eliminate the doubt arising from the fact that, according to the Prosecution's recitation of TF1-174's testimony, Gbao does not appear to have removed the children before 6 May 2000, that is, two days *after* the attack in which the Prosecution says the children he removed were used.

7903. para. 1179: Having found the Prosecution fails to eliminate all doubt as to Gbao's significant or substantial contribution to the crimes charged under Count 12, the Appeals Chamber need not address the additional submissions on Gbao's *mens rea*.

c. Aiding and abetting – Kailahun District

i. Gbao - Aiding and abetting – Planning – Child soldiers - Kailahun District

7904. See above: Chapter 12 - Kailahun District – Planning – Child soldiers – Gbao – paras. 1151, 1152, 1169– 1179 [7891].

(ix) Bo District

a. JCE – Participation in and shared intent - Bo District

i. Sesay - JCE – Participation in and shared intent - Bo District

7905. para. 612: The Trial Chamber found that Sesay actively participated in the furtherance of the Common Criminal Purpose and thereby significantly contributed to the acts of terrorism (Count 1), unlawful killings (Counts 3 to 5), and pillage (Count 14) found to have been committed in Bo District between 1 June 1997 and 30 June 1997.[1517] It held that he shared the intent with the other JCE members to commit these crimes.[1518]

7906. para. 614: Both of Sesay's arguments under his present ground of appeal seek to suggest that the Trial Chamber did not find that he participated in the JCE between 1 June 1997 and 30 June 1997 when the crimes for which he incurred JCE liability were committed in Bo District.[1522] This is incorrect. The Trial Chamber found that Sesay significantly contributed to the JCE, inter alia, through his "close relationship and cooperation with Bockarie" from the outset of the JCE on 25 May 1997.[1523] Bockarie, himself a JCE member,[1524] led the attack on Sembehun in Bo District

in June 1997[1525] during which AFRC/RUF fighters committed unlawful killings, pillage and acts of terrorism.[1526]

7907. para. 615: As to the Trial Chamber's conclusion on Sesay's use of "the levers of State power," the Appeals Chamber notes that this conclusion was supported by evidence, and that Sesay himself recognises the factual findings underpinning it.[1527] Those factual findings were that Sesay, while he was a member of the Supreme Council,[1528] used "his power and authority to compel his subordinates to arrest a suspected Kamajor supporter."[1529] He "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."[1530] On this basis, the Trial Chamber concluded that "Sesay used the levers of State power in an attempt to destroy civilian support for the Kamajors."[1531] Sesay's "use of the levers of State power" accordingly referred to his use of police officers and AFRC/RUF fighters to arrest suspected Kamajor collaborators, sometimes without charges and subjected to serious mistreatment. Thus qualified, the Appeals Chamber is not persuaded that the conclusion on Sesay's "use of the levers of State power" was "hyperbolic." Whether Sesay's mistreatment of the detainees in itself amounted to a crime under the Statute is not determinative of whether his conduct contributed to the JCE.[1532]

ii. Kallon - JCE – Participation in and shared intent - Bo District

7908. para. 791: The Trial Chamber found that Kallon incurred JCE liability for the crimes, including unlawful killings, committed in Bo District between 1 June 1997 and 30 June 1997.[2064] It held that Kallon participated in the furtherance of the Common Criminal Purpose and thereby significantly contributed to the commission of these crimes, and that he shared the intent to commit the crimes with the other JCE members.[2065]

7909. para. 794: The Appeals Chamber notes as a preliminary matter that it was not required that Kallon performed any part of the *actus reus* of the crimes in Bo District for him to incur JCE liability for these crimes.[2069] Rather, as far as his *actus reus* is concerned, it sufficed that Kallon's participation in the JCE, whether or not physically carried out in Bo District, significantly contributed to the crimes there.[2070]

7910. para. 795: The Appeals Chamber finds that Kallon's two arguments lack merit, for the following reasons. His first argument is based on the erroneous assertion that the Trial Chamber found that he did not become a member of the Supreme Council until August 1997. Rather, the Trial Chamber found that he started attending Supreme Council meetings on a reasonably regular

basis from that time onwards.[2071] Contrary to Kallon's claim,[2072] there is no contradiction between this finding and the finding that it "was often" difficult for him to travel to Freetown due to Kamajor attacks.[2073] As noted, the Trial Chamber also relied on evidence that Kallon was a member of the Supreme Council "with effect from" 25 May 1997 in establishing his membership in that body.[2074] Furthermore, the Trial Chamber did not, as Kallon argues, "ignore" that he was not posted in Bo until August 1997;[2075] it explicitly recognised this fact.[2076] However, it was not required that Kallon was physically present in Bo in order to contribute to the crimes there through his participation in the JCE. Kallon fails to explain how his absence precluded a reasonable trier of fact from finding that he incurred JCE liability for the crimes in Bo in June 1997.[2077] This argument is rejected.

7911. para. 796: Kallon's second argument is also unavailing. The fact that he did not personally commit any of the crimes did not, as the Trial Chamber correctly noted, exclude JCE liability on his part.[2078] Contrary to Kallon's claim, the Trial Chamber further specified that the common criminal purpose of the JCE crystallised shortly after the coup on 25 May 1997, and explained how the JCE came into existence.[2079] The fact that Bo District was only partly under joint AFRC/RUF control by June 1997 does not, as previously explained, render unreasonable the finding that the crimes there, namely, those committed during the attacks on Tikonko, Sembehun and Gerihun, formed part of the common criminal purpose.[2080] This argument is rejected.

7912. para. 935: The Trial Chamber found that Kallon incurred JCE liability for the following instances of pillage: (i) the looting of Le 800,000 by Bockarie from Ibrahim Kamara in June 1997 in Sembehun in Bo District;[2447] (ii) the appropriation of a bicycle, Le 500,000 and other items from TF1-197 near Tombodu in Kono District;[2448] (iii) an unknown number of acts of pillage during the February/March 1998 attack on Koidu Town;[2449] and (iv) the looting of funds from Tankoro Bank in Koidu Town.[2450] The Trial Chamber found that Kallon was present at a meeting when Johnny Paul Koroma ordered that all houses in Koidu Town should be burned to the ground, which message Sesay reiterated.[2451] Looting of civilian property was committed during the execution of the order.[2452] Civilians complained to Kallon and Superman, who were Commanders on the ground, about the burning, harassment and looting, but they took no action in response.[2453]

7913. para. 940: Concerning the looting from Ibrahim Kamara, the Trial Chamber also found that Kallon incurred liability because of his significant contribution to the crime by his participation in the JCE.[2467] Kallon's present challenges to that conclusion are without merit, as it was not required that Kallon was either present in Bo at the time the crime was committed[2468] or knew about the specific incident.[2469] Further, given the finding that both Kallon and Bockarie were

members of the JCE,[2470] which finding Kallon does not challenge here, it is irrelevant whether Kallon had control over Bockarie. This argument is rejected.

iii. Gbao - JCE – Participation in and shared intent - Bo District

7914. See above: Chapter 12 – Article 6.1. Liability – RUF – Appellate Judgment – Findings and conclusions – JCE – Categories of JCE and *mens rea* – paras. 480 – 493 [7440].

7915. See above: Chapter 12 – Article 6.1. Liability – RUF – Appellate Judgment – Findings and conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Fisher – paras. 4 – 28 [7454].

7916. See above: Chatper 12 – Article 6.1. Liability – RUF – Appellate Judgment – Findings and conclusions – JCE – Categories of JCE and *mens rea* – Dissent – Justice Winter – para. 5 [7479].

7917. See above: Chapter 12 – Article 6.1. Liability – RUF – Appellate Judgment – Findings and conclusions – JCE – Categories of JCE and *mens rea* – Separate opinion – Justice Ayoola – paras. 22-41, 43– 57 [7480].

7918. See above: Chapter 12 – Article 6.1. Liability – RUF – Appellate Judgment – Findings and conclusions – JCE – Participation in and shared intent – Kenema District – Gbao – paras. 946-948, 951 – 955 [7615].

7919. para. 1061: Second, Gbao argues that he had only a nominal role as OSC outside Kailahun District,[2927] noting that the Trial Chamber found that there was insufficient evidence that he received reports of unlawful killings in Bo, Kenema and Kono Districts or that he failed in his duty to ensure proper investigations were conducted in those areas.[2928] The Appeals Chamber notes that the findings Gbao cites do not show that no reasonable trier of fact could have found that he had a more than nominal role outside Kailahun District, particularly in light of the Trial Chamber's specific findings regarding his practical influence and authority over the RUF security apparatus as a whole. Furthermore, Gbao fails to show that it was not open to a reasonable trier of fact to conclude that he significantly contributed to the JCE on the basis of his contributions in Kailahun District. The Appeals Chamber recalls that the Trial Chamber's findings regarding Gbao's significant role as OSC in Kailahun District,[2929] his supervision of the MP and G5 units in Kailahun District[2930] and the finding that Gbao had considerable prestige and power in the RUF in Kailahun District.[2931] Moreover, the Trial Chamber specifically found that Kailahun District played an important role in the realisation of the Common Criminal Purpose:

> The[] widespread and systematic crimes by the RUF in Kailahun[2932] 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.[2933]

(x) Bombali District

a. Planning – Bombali District

i. Sesay – Planning – Child soldiers - Bombali District

7920. para. 749: The Trial Chamber 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*, *Bombali* and *Kenema Districts*.[1948] The Trial Chamber held 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.[1949]

7921. para. 750: The Trial Chamber also found that Sesay, as one of the most senior RUF Commanders, made a substantial contribution to the planning of this system of conscription.[1950] It, therefore, convicted him under Article 6(1) for planning the "use of persons under the age of 15 to participate actively in hostilities in Kailahun, Kenema, Kono and Bombali Districts between 1997 and September 2000, as charged in Count 12."[1951]

7922. para. 755: The Trial Chamber found that Sesay contributed to the planning of the offence under Count 12 by issuing orders that "young boys" should be trained at Bunumbu.[1971] Sesay contends that the Trial Chamber found that these "young boys" were in fact 15 years of age and above.[1972] However, Sesay misinterprets the Trial Chamber's findings which referred to "young boys" to include persons of at least 15 years of age as well as SBUs comprising children as young as 9 to 11 years of age.[1973]

7923. para. 756: Sesay further submits that "in any event, the Trial Chamber cites only one piece of valid evidence for this finding: the evidence of Witness TF1-366," and that the testimonies of Witnesses TF1-199 and TF1-371, also cited by the Trial Chamber in further support, do not in fact support the finding.[1974] The Trial Chamber provided no citations for its finding that Sesay issued

the orders in June 1998, however, it cited the testimony of TF1-366, TF1-199 and TF1-371 for its findings that SBUs were children tasked with carrying weapons for the RUF. Witness TF1-366's testimony most closely supports both findings of the Trial Chamber, including that Sesay issued orders. He testified directly that Kallon and Superman issued orders and Sesay "sent messages" that young boys should be brought to be trained at Bunumbu.[1975] He stated that some of the "young boys" were 15 years of age, but that many were SBUs comprising children ages 9 to 11 years and smaller boys.[1976] Witness TF1-199 testified that SBUs were "really small boys" and because he was a small boy of 12 years of age, he was called an SBU.[1977] However, he did not mention Sesay in his testimony or testify to anyone giving orders. Witness TF1-371 testified that children between the ages of 12 and 18 years were classified as SBUs, and that Sesay had SBUs, one of whom was around 15 years and the other around the age of 16.[1978] Importantly, of the testimony cited by the Trial Chamber, only TF1-366 supports the finding that Sesay issued orders for "young boys" to be trained at Bunumbu in June 1998.

7924. para. 757: This testimony is consistent with the testimony of TF1-362, relied on by the Trial Chamber to find that civilians captured on the highway to Freetown from 1997 onward, as well as people from Daru and the SLA, were brought to Bunumbu training base at the command of Issa Sesay.[1979] Importantly, although Sesay challenges the Trial Chamber's reliance on TF1-362 in other contexts, he does not impugn these findings.[1980]

7925. para. 758: Trial Chambers enjoy broad discretion in their assessment of evidence and determination of the weight to accord testimony. In general, a Trial Chamber may in the exercise of its discretion rely on a single witness for support of its factual findings. With respect to TF1-366, the Trial Chamber stated that it "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."[1981]

7926. para. 759: The Appeals Chamber considers that the testimony of TF1-366 was corroborated "in some material aspect" by the testimony of TF1-199 and TF1-362, whose evidence was found credible by the Trial Chamber.[1982] The Trial Chamber's failure to explicitly cite TF1-362's testimony for the impugned finding is unfortunate, but in the circumstances caused no error.

7927. para. 760: Sesay contends that the Trial Chamber erred in finding, on the basis of testimony of TF1-362, that he personally communicated reports to Bunumbu and ordered that the training camp be moved from Bunumbu to Yengema.[1983] Sesay, however, fails to demonstrate that the Trial Chamber could not reasonably rely on TF1-362 for these findings. As Sesay does not

show an error in the Trial Chamber's exercise of its discretion to assess the witness's credibility or determine the weight it attached to his testimony, this part of Sesay's argument fails.

7928. para. 761: Sesay further submits that the Trial Chamber unreasonably relied upon Witnesses TF1-114 and TF1-108[1984] to support its finding that children were forcibly trained,[1985] but disregarded their testimony that, Sesay contends, "contradicted TF1-362's account of Sesay's involvement in the training base." However, Sesay fails to demonstrate how the testimony of TF1-114 and TF1-108 contradicts the testimony relied upon by the Trial Chamber, and the Appeals Chamber is unable to infer his argument. The Appeals Chamber recalls 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."[1986] Sesay fails to show error in the Trial Chamber's finding.

7929. para. 762: The Trial Chamber found that Sesay, as one of the most senior RUF commanders, made a substantial contribution to the planning of the RUF system of child use by, *inter alia*, receiving reports on training at Bunumbu and subsequently at Yengema.[1987] Specifically, the Trial Chamber found that the adjutant at the base drew up a list of recruits including their names, ages and other personal data.[1988] Sesay submits that the Trial Chamber erred in finding that receipt of reports substantially contributed to the crime of child conscription or use.[1989] He posits that the alleged planning must be found to have actually led to the commission of specific crimes.[1990]

7930. para. 763: 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 the reports to an advisor.[1991] Next, the reports were either delivered by hand or communicated via radio to Sesay and finally to Bockarie;[1992] and Sesay would confirm delivery of the report back to the base.[1993] The Trial Chamber found that "every such report was either hand-delivered or communicated via radio to Sesay."[1994] The Trial Chamber also found that the training commander at Yengema reported directly through Sesay to Bockarie, until Bockarie left the RUF in December 1999, after which she reported to Sesay only.[1995] According to the Trial Chamber, records were kept of the ages of SBUs and SGUs trained at Bunumbu and Yengema, from which it could be inferred that the fighters who conducted the training knew or had reason to know that certain trainees were under the age of 15.[1996]

7931. para. 764: The Appeals Chamber considers that Sesay's receipt of reports is relevant circumstantial evidence supporting the findings that "the execution of this system of conscription of child soldiers required a substantial degree of planning"[1997] and that "this planning was

conducted at the highest levels of the RUF organization,"[1998] including Sesay.[1999] That reports on the training of child soldiers were transmitted to RUF headquarters signifies that the conscription of child soldiers was highly organised, and that the RUF leadership was responsible for that organisation. Moreover, the creation and transmission of training reports represents a mechanism through which the RUF headquarters could monitor the implementation of the planned conscription of child soldiers. Sesay's receipt of such reports was indicative that he had participated in that planning process. Accordingly, contrary to Sesay's contention, the Trial Chamber did not consider that he substantially contributed to the planning by merely receiving reports, but that his receipt of such reports was part of the evidence taken into consideration in coming to the conclusion that he had participated in the planning at both the preparatory and execution phases.

7932. para. 765: Sesay contends that the Trial Chamber's reliance on TF1-141 to find that he participated in the training bases by giving speeches at Bunumbu training camp, passing and receiving messages and threatening to execute those child soldiers who attempted to leave[2000] is "wholly unreasonable given the witness's frailties" and the numerous and significant contradictions in the witness's testimony.[2001]

7933. para. 766: The Trial Chamber acknowledged the "concerns" raised by the Defence,[2002] and indicated that it was "uneasy with portions of TF1-141's testimony that appeared to be fanciful and thus implausible."[2003] The Trial Chamber noted that the witness was captured by the RUF in 1998 and remained with the group until 2000, when he was demobilised.[2004] The Trial Chamber considered that although the witness was diagnosed with Post-Traumatic Stress Disorder as a result of his experience as a child soldier with the RUF, he was nonetheless able to give truthful testimony.[2005] The Trial Chamber concluded that, after seeing the witness in court, hearing his testimony and observing him under cross-examination, he "came across as a candid witness." The Trial Chamber, therefore, "generally accepted his testimony, especially as it relates to his own experiences as a child combatant."[2006]

7934. para. 767: Sesay contends the witness was "constantly contradicting himself," and that the Trial Chamber disregarded a "significant contradiction" in the witness's testimony, but he only points to one purported contradiction, which, even if a contradiction, was not material to the findings Sesay contests here.[2007] Sesay further fails to show what portions of the witness's testimony contain discrepancies that made the Trial Chamber's assessment of the witness's credibility unreasonable. Seasy thus fails to establish that the Trial Chamber erred in accepting parts of the witness's evidence.

7935. para.768: Taking into account the foregoing discussion, the Appeals Chamber will now consider Sesay's broader claim that the Trial Chamber erred in finding him liable for planning the use of child soldiers.

7936. para. 769: Sesay argues that the Trial Chamber erred in law and in fact in concluding that his acts amounted to "planning."[2008] The Appeals Chamber considers that whether particular acts amount to a substantial contribution to the crime for the purposes of planning liability is to be assessed on a case-by-case basis in light of the evidence as a whole. In concluding that Sesay's cumulative conduct fulfilled the *actus reas* of planning, the Trial Chamber relied on its findings that: (i) Sesay gave orders in June 1998 that "young boys" should be trained at Bunumbu and that he received reports on training in Bunumbu and subsequently at Yengema;[2009] (ii) he visited Camp Lion where he addressed the recruits and told them that they would be sent to the battlefield; and that if they failed to comply with orders they would be executed;[2010] (iii) he visited RUF fighters including children under the age of 15 who were preparing to conduct an attack on Daru and distributed drugs as "morale boosters" for these fighters;[2011] and (iv) he participated in an attack on Koidu in December 1998 together with his bodyguards, including children under the age of 15.[2012]

7937. para. 770: Sesay fails to explain how no reasonable trier of fact could have found that he performed the *actus reus* of planning. His contention appears to be centred on the notion that none of his acts as found by the Trial Chamber constitute the "planning" or "designing" of the crimes *per se*. However, Sesay does not explain why a reasonable trier of fact could not have inferred from these findings and other evidence that he had substantially contributed to designing the criminal conduct. In this regard, the Appeals Chamber notes in particular the Trial Chamber's findings that Sesay ordered the training of child soldiers, received reports on such training and personally visited the Camp Lion training camp, addressing and threatening the child soldier conscripts there. Therefore, in inferring that Sesay contributed to the planning of the crimes, the Trial Chamber did not rely solely on Sesay's command role, as Sesay suggests.[2013] Rather, the Trial Chamber further considered Sesay's personal and direct participation in the conscription and training process. Specifically, the acts relied on by the Trial Chamber evince that Sesay participated in all stages of that process, from ordering the training of child soldiers to monitoring the implementation of the training to monitoring the use of child soldiers. In addition, although not referenced in its reasoning, the Trial Chamber found that Bockarie and Sesay "issued orders to move the RUF training base from Bunumbu to Yengema in Kono District," and that "Sesay personally discussed the creation of the new Yengema base with the training commander."[2014] Finally, as noted above, the Trial Chamber found that the highly organised character of the

conscription process was such as to demand a substantial degree of prior planning by the RUF leadership.[2015] It was on the basis of these findings as a whole that the Trial Chamber found that Sesay substantially contributed to the planning of the crimes. Sesay fails to show that the Trial Chamber's finding, on the basis of the evidence as a whole, was unreasonable. Sesay's submission is dismissed.

7938. para. 771: Sesay further submits a number of related challenges to the scope of his liability as found by the Trial Chamber. Sesay argues first that by failing to identify the victims and by failing to require a specimen count, the Trial Chamber was unable to "identify a representative sample of child soldiers" and therefore could not make proper findings as to whether "the use/conscription of any such child was within the framework of Sesay's design."[2016] Second, Sesay argues that the Trial Chamber erred in fact in convicting him for child conscription and use in Bombali and Kenema Districts, as its findings on his responsibility do not refer to acts outside Kailahun and Kono Districts.[2017] Finally, Sesay contends that the Trial Chamber's failure to approximate the number of child soldiers used pursuant to his plan invalidates any finding that the crimes committed were within the framework of his design.[2018] During the oral hearings, Sesay further argued that the Trial Chamber made no findings as to his criminal liability for planning the use of child soldiers in 1997, and that "from 1997 to February 1998 there is simply no evidence of his involvement in any type of activity which could amount to planning."[2019]

7939. para. 772: However, Sesay again fails to explain how no reasonable trier of fact, on the basis of the Trial Chamber's findings, could have concluded that he substantially contributed to the planning of the crimes for which he was held liable. Although Sesay argues that the Trial Chamber's findings with respect to Bunumbu are "simply insufficient,"[2020] and points to the absence of findings regarding his acts with respect to the conscription and use of child soldiers in Kenema and Bombali Districts[2021] and before February 1998,[2022] he does not explain how the Trial Chamber's conclusion was accordingly unreasonable. In particular, Sesay does not show that no reasonable trier of fact could infer from the Trial Chamber's findings regarding his acts, in combination with other findings such as those concerning the nature of the conscription and use of child soldiers, that he substantially contributed to the planning of crimes committed in other locations as well. In merely submitting that the Trial Chamber's findings with respect to Bunumbu are insufficient to ground his liability for planning the other instances of the crime, Sesay fails to explain why this is so. Sesay further fails to point to other findings or evidence to show that the crimes in Kenema and Bombali Districts were unique or distinct from the crimes in Kailahun and Kono Districts. While Sesay correctly submits that he can only be held liable for those crimes he substantially contributed to the planning of, he does not show how no reasonable trier of fact

could infer, on the basis of his acts with respect to Bunumbu and Yengema in particular, that he substantially contributed as well to the planning of the other crimes for which he was held liable.

7940. para. 773: Sesay further fails to explain why the manner in which the Trial Chamber evaluated the evidence precluded it from finding that he substantially contributed to the planning of the specific crimes for which he was held liable.[2023] Sesay cites no authority for his position that the Trial Chamber could only make such a finding on the basis of the identity of the victims, or that the Trial Chamber was required to demand a specimen count here. In this respect, the Appeals Chamber considers that the Trial Chamber found that the crimes committed were those that Sesay substantially contributed to the planning of on the basis of the identity of the perpetrators and the manner in which the crimes were committed. Sesay fails to address the Trial Chamber's approach and to explain how it was erroneous.

7941. para. 774: Finally, the Appeals Chamber does not consider Sesay's citation to the ICTY Trial Chamber's findings in *Brđanin* to be determinative of the issue here.[2024] That the accused in that proceeding was not found liable for planning crimes is not particularly probative as to whether the Trial Chamber here erred, because the facts of the two cases are too distinct for a meaningful analogy to be made. Moreover, Sesay fails to show that no reasonable trier of fact could have found that he planned the specific crimes for which he was held liable, and he does not argue that the Trial Chamber's reasoning and conclusion evince that it misapplied the law.

7942. para. 775: Sesay's contention that the Trial Chamber erred in law in finding him responsible for the offence in Bombali when it had specifically held that he could not be liable for crimes committed in Bombali District[2025] is misconceived. The Trial Chamber held that Sesay was not liable for crimes in Bombali District in relation to crimes attributable to AFRC forces under the control of Gullit after the cessation of the JCE.[2026] In contrast, Sesay was found to have planned an RUF system of use of child soldiers.[2027]

ii. Kallon – Planning – Child soldiers – Bombali District

7943. para. 909: The Trial Chamber convicted Kallon for planning the crime of using children under the age of 15 by the RUF to participate actively in hostilities in Kailahun, Kenema, Kono and Bombali Districts between 1997 and September 2000.[2373]

7944. para. 917: In finding that Kallon was a senior RUF commander during the attack on Koidu Town in February 1998,[2390] the Trial Chamber found that Kallon held the rank of Major during the retreat to Kono in February 1998[2391] and that he gave orders which were complied with by

troops.2392 Kallon does not challenge these findings or show how no reasonable trier of fact could have reached those findings on the basis of the evidence.[2393] This submission is dismissed.

7945. para. 918: Kallon argues that the Trial Chamber erred in finding that he gave orders that "young boys" be trained, as the Trial Chamber itself found that the boys to be trained were over 15 years of age.[2394] The Appeals Chamber has previously considered this issue in addressing Sesay's Ground 43, and reiterates its conclusion that Kallon misinterprets the Trial Chamber's findings.[2395] Similarly, the Appeals Chamber has previously considered the Trial Chamber's reliance on the testimony of Witness TF1-366 in addressing Sesay's Ground 43, and reiterates its conclusion that the Trial Chamber reliance on that testimony was not erroneous.[2396] Kallon further fails otherwise to establish that the Trial Chamber erred in finding the testimony of Witness TF1-366 credible. This submission is rejected.

7946. para. 919: The Appeals Chamber also rejects Kallon's argument that it is not established beyond reasonable doubt that the boys and girls trained at the RUF training bases were under the age of 15.[2397] Witnesses TF1-141 and TF1-263 testified that they were 12 and 14 years of age respectively at the time they were abducted and sent for military training.[2398] Similarly, Witness Dennis Koker saw Kallon bring juveniles under the age of 15 to *Bunumbu* for training.[2399] The Trial Chamber accepted the testimonies of the Witnesses and found them credible. Kallon has not established that no reasonable trier of fact could rely on their testimonies for a finding of fact. This submission is rejected.

7947. para. 920: Kallon argues that the Trial Chamber relied on the testimony of Witness TF1-045 to establish his guilt for planning use of child soldiers.[2400] However, contrary to Kallon's assertion,[2401] the Trial Chamber did not rely on his presence in Camp Zogoda to demonstrate a consistent pattern of conduct in violation of Rule 93(B) of the Rules. Rather, the Trial Chamber found that the fact that children between the ages of 8 and 15 were trained at Camp Naama in Liberia; and Matru Jong and Pendembu and Camp Zogoda in Sierra Leone "demonstrates a consistent pattern of conduct by the RUF of recruiting and training children for military purpose that began as early as 1991 and continued throughout the Indictment period."[2402] Although the Trial Chamber also noted that Kallon was seen at Camp Zogoda with fighters in 1994, its finding on the consistent pattern of conduct related to the RUF rather than Kallon specifically. Moreover, there is no further indication that the Trial Chamber relied on the evidence that Kallon was at Camp Zogoda in 1994 to establish his liability for planning the crimes between 1997 and 2000. There is therefore no violation of Rule 93(B) of the Rules and consequently, no error as alleged. This submission is rejected.

7948. para. 921: With respect to Kallon's submission that the Trial Chamber found that he and Sesay gave orders for "young boys" to be trained, but that those boys were 15 years of age and above, the Appeals Chamber refers to its conclusion above that some of the "young boys" included persons both under and above the age of 15.[2403] The Appeals Chamber recalls its decision concerning the Trial Chamber's assessment of the credibility of Witnesses TF1-141, TF1-263, TF1-366 and Dennis Koker, particularly in relation to the ages of the children with whom they associated Kallon.[2404] The Appeals Chamber also recalls that the Trial Chamber exercised caution in determining the ages of children associated with the rebel factions in its findings.[2405] The Appeals Chamber defers to these findings[2406] and dismisses Kallon's argument regarding the testimonies of Witnesses TF1-141, TF1-263, TF1-366 and Dennis Koker relating to the ages of children.

7949. para. 922: Kallon contends that the Trial Chamber found that he "knew or had reason to know that the persons conscripted 'may have been' under the age of 15" was erroneous given its inconclusive nature, thereby suggesting that it was not the only reasonable inference that could be drawn from the evidence.[2407] Kallon mischaracterises the Trial Chamber's findings. Contrary to his assertion, the Trial Chamber did not find that he "knew or had reason to know that persons conscripted 'may have been' under the age of 15."[2408] Rather, the Trial Chamber identified several factors which it found to be "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."[2409] Accordingly, this part of Kallon's argument must fail.

7950. para. 923: Kallon further submits that the Trial Chamber shifted the burden of proof to him by stating that "where doubt existed as to whether a person abducted or trained was under the age of 15, it was incumbent upon the perpetrator to ascertain the person's age."[2410] The Appeals Chamber has previously held that the prohibition on conscripting or using child soldiers existed in customary international law at the times relevant to the offences in this case, and that violation of this prohibition incurs individual criminal responsibility in customary international law.[2411] In reaching those holdings, the Appeals Chamber observed that a significant body of conventional international law imposes an obligation on parties to "take all feasible measures" to ensure that children are not recruited or used in hostilities.[2412] The accused are under a duty to act with due diligence to ensure that children under the age of 15 are not recruited or used in combat. Failure to exercise such due diligence to ascertain the age of recruits does not relieve an accused of his liability for their recruitment or use.[2413] The Appeals Chamber therefore finds no error in the Trial Chamber's statement that the accused were under a duty to exercise due diligence to ascertain the age of a child.

7951. para. 924: Kallon submits a number of arguments contesting the Trial Chamber's finding that he planned the use of child soldiers.[2414] Kallon argues that the Trial Chamber relied solely on his command role to support that finding,[2415] and argues that there was no evidence that he was involved in the planning of the abduction and training of children.[2416]

7952. para. 925: The Trial Chamber found that Kallon "participated in the design and maintenance of the RUF system of forced recruitment and use of child soldiers] and that his contribution in this regard was substantial."[2417] In reaching this conclusion, the Trial Chamber relied on its findings that: (i) 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; (ii) Kallon gave orders for children to be trained at RUF camps; (iii) Kallon brought a group of children to Bunumbu for training in 1998; and (iv) Kallon was the senior RUF Commander on 3 May 2000 at Moria where child soldiers were used in the ambush of UNAMSIL forces.[2418] The Trial Chamber also found that the highly organised character of the process of conscripting and using child soldiers was such as to demand a substantial degree of prior planning by the RUF leadership.[2419]As these findings make clear, the Trial Chamber did not solely rely on Kallon's command role to find that he planned the use of child soldiers.[2420]

7953. para. 926: Kallon fails to show that no reasonable trier of fact could have inferred from these findings and the evidence as a whole that he planned the use of child soldiers.[2421] This submission is rejected.

C. AFRC

1. Indictment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-PT, Indictment, 13 May 2004

(a) Individual Criminal Responsibility

7954. Paragraphs 1 through 20 are incorporated by reference.[383]

(i) The Accused

7955. At all times relevant to this Indictment, ALEX TAMBA BRIMA was a senior member of the AFRC, Junta and AFRC/RUF forces.[384]

[383] AFRC Indictment, para. 21.

7956. ALEX TAMBA BRIMA was a member of the group which staged the coup and ousted the government of President Kabbah. JOHNNY PAUL KOROMA, Chairman and leader of the AFRC, appointed ALEX TAMBA BRIMA a Public Liaison Officer (PLO) within the AFRC. In addition, ALEX TAMBA BRIMA was a member of the Junta governing body.[385]

7957. Between mid February 1998 and about 30 April 1998, ALEX TAMBA BRIMA was in direct command of AFRC/RUF forces in the Kono District. In addition, ALEX T AMBA BRIMA was in direct command of AFRC/RUF forces which conducted armed operations throughout the north eastern and central areas of the Republic of Sierra Leone, including, but not limited to, attacks on civilians in Bombali District between about May 1998 and 31 July 1998. As of about 22 December 1998, ALEX T AMBA BRIMA was in command of AFRC/RUF forces which attacked Freetown on 6 January 1999.[386]

7958. At all times relevant to this Indictment, BRIMA BAZZY KAMARA was a senior member of the AFRC, Junta and AFRC/RUF forces.[387]

7959. BRIMA BAZZY KAMARA was a member of the group which staged the coup and ousted the government of President Kabbah. JOHNNY PAUL KOROMA, Chairman and leader of the AFRC, appointed BRIMA BAZZY KAMARA a Public Liaison Officer (PLO) within the AFRC. In addition, BRIMA BAZZY KAMARA was a member of the Junta governing body.[388]

7960. Between about mid-February 1998 and 30 April 1998, BRIMA BAZZY KAMARA was a commander of AFRC/RUF forces based in Kono District. In addition, BRIMA BAZZY KAMARA was a commander of AFRC/RUF forces which conducted armed operations throughout the north, eastern and central areas of the Republic of Sierra Leone, including, but not limited to, attacks on civilians in Koinadugu and Bombali Districts between about mid February 1998 and 31 December 1998. BRIMA BAZZY KAMARA was a commander of AFRC/RUF forces which attacked Freetown on 6 January 1999.[389]

7961. At all times relevant to this Indictment, SANTIGIE BORBOR KANU was a senior member of the AFRC, Junta and AFRC/RUF forces.[390]

[384] AFRC Indictment, para. 22.
[385] AFRC Indictment, para. 23.
[386] AFRC Indictment, para. 24.
[387] AFRC Indictment, para. 25.
[388] AFRC Indictment, para. 26.
[389] AFRC Indictment, para. 27.
[390] AFRC Indictment, para. 28.

7962. SANTIGIE BORBOR KANU was a member of the group of 17 soldiers which staged the coup and ousted the government of President Kabbah. In addition, SANTIGIE BORBOR KANU was a member of the Junta governing body, the AFRC Supreme Council.[391]

7963. Between mid February 1998 and 30 April 1998, SANTIGIE BORBOR KANU was a senior commander of AFRC/RUF forces in Kono District. In addition, SANTIGIE BORBOR KANU was a commander of AFRC/RUF forces which conducted armed operations throughout the north, eastern and central areas of the Republic of Sierra Leone, including, but not limited to, attacks on civilians in Koinadugu and Bombali Districts between about mid February 1998 and 31 December 1998. SANTIGIE BORBOR KANU, along with ALEX TAMBA BRIMA and BRIMA BAZZY KAMARA, was also one of three commanders of AFRC/RUF forces during the attack on Freetown on 6 January 1999.[392]

7964. In their respective positions referred to above, ALEX T AMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, individually, or in concert with each other, JOHNNY PAUL KOROMA aka JPK, FODAY SA YBANA SANKOH, SAM BOCKARIE aka MOSQUITO aka MASKITA, ISSA HASSAN SESA Y aka ISSA SESA Y, MORRIS KALLON aka BILAI KARIM, AUGUSTINE GBAO aka AUGUSTINE BAO and/or other superiors in 6 the AFRC, Junta and AFRC/RUF forces, exercised authority, command and control over all subordinate members of the AFRC, Junta and AFRC/RUF forces.[393]

7965. 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.[394]

7966. The AFRC, including ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, and the RUF, including ISSA HASSAN SESA Y, MORRIS KALLON and AUGUSTINE GBAO, 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

[391] AFRC Indictment, para. 29.
[392] AFRC Indictment, para. 30.
[393] AFRC Indictment, para. 31.
[394] AFRC Indictment, para. 32.

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.[395]

7967. 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.[396]

7968. ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, by their acts or omissions, are individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this 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.[397]

7969. In addition, or alternatively, pursuant to Article 6.3. of the Statute, ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, while holding positions of superior responsibility and exercising effective control over their subordinates, are each 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.[398]

(ii) Charges

7970. Paragraphs 21 through 36 are incorporated by reference.[399]

[395] AFRC Indictment, para. 33.
[396] AFRC Indictment, para. 34.
[397] AFRC Indictment, para. 35.
[398] AFRC Indictment, para. 36.
[399] AFRC Indictment, para. 37.

2. Trial Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-T, Judgement, 20 June 2007

(a) Findings and Conclusions:

(i) Law on the Modes of Liability charged under Article 6.1

7971. para. 759: The Indictment cumulatively charges each of the Accused for the crimes in counts 1 through 14 under different modes of liability. These are:

> 1. Individual criminal responsibility pursuant to Article 6(1) of the Statute in that
>
> a. each of the Accused planned, instigated, ordered, or committed the said crimes, or
>
> b. each Accused otherwise aided and abetted in the planning, preparation, or execution of the said crimes, or
>
> c. the said crimes were within a joint criminal enterprise, or were a reasonably foreseeable consequence of the joint criminal enterprise, in which each Accused participated;
>
> 2. In addition, or in the alternative, individual criminal responsibility pursuant to Article 6(3) of the Statute for the crimes committed by their subordinates whilst each of the Accused was holding a position of authority. [1465]

(ii) Individual Criminal Responsibility Pursuant to Article 6(1) of the Statute

7972. para. 760: Article 6(1) of the Statute lists the forms of criminal conduct which, provided that all other necessary conditions are satisfied, may result in an accused incurring individual criminal responsibility for one or more of the crimes provided for in the Statute. 1466 Article 6(1) of the Statute provides:

> 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.

7973. para. 761: The principle that an individual may be held criminally responsible under one of these modes of responsibility is enshrined in customary international law. [1467] The Trial Chamber in the ICTY case of Kordic[1468] made the following observations on the object of the ICTY equivalent to Article 6(1) (that is, Article 7(1) of the International Statute):

> The principle that an individual may be held criminally responsible for planning, assisting, participating or aiding and abetting in the commission of a crime is firmly based in customary international law. Article 7(1) reflects the principle of criminal law that criminal liability does not attach solely to individuals who physically commit a crime but may also extend to those who participate in and contribute to a crime in various ways, when such participation is sufficiently connected to the crime, following principles of accomplice liability. The various forms of liability listed in Article 7(1) may be divided between principal perpetrators and accomplices. Article7(1) may thus be regarded as intending to ensure that all those who either engage directly in the perpetration of a crime under the Statute, or otherwise contribute to its perpetration, are held accountable.

a. Committing

7974. para. 762: The actus reus of 'committing' primarily covers "the physical perpetration of a crime by the offender himself."[1469] An accused will be held responsible under Article 6(1) of the Statute for having committed a crime charged enumerated in the Statute when he "participated, physically or otherwise directly, in the material elements" of the said crime. [1470] Committing also covers situations where the accused engenders "a culpable omission in violation of a rule of criminal law." [1471] There can be several perpetrators in relation to the same crime where the conduct of each one of them fulfils the requisite elements of the definition of the substantive offence. [1472]

7975. para. 763: In addition, an accused must either possess the relevant mens rea for the crime in question, or be aware that the act or omission will more likely than not result in the commission of a crime in the Statute and accept this risk. [1473]

7976. para. 764: In light of the foregoing, the Trial Chamber rejects the argument of the Brima and Kamara Defence that in the absence of physical perpetration of a crime by an accused, any submission that the accused should be held culpable for 'committing' a crime ought to be dismissed, or at least weakened. [1474]

b. Planning

7977. para. 765: "Planning" implies that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases. [1475] Proof of the existence of a plan may be provided by circumstantial evidence. [1476] Responsibility is incurred when the level of the accused's participation is substantial, even when the crime is actually committed by another person. [1477]

7978. para. 766: The actus reus requires that the accused, alone or together with others, designated the criminal conduct constituting the crimes charged. It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct. [1478] The mens rea requires that the accused acted with direct intent in relation to his or her own planning or with the awareness of the substantial likelihood that a crime would be committed a in the execution of that plan. Planning with such awareness has to be regarded as accepting that crime. [1479]

7979. para. 767: Where an accused is found guilty of having committed a crime, he or she cannot at the same time be convicted of having planned the same crime,[1480] even though his or her involvement in the planning may be considered an aggravating factor. [1481]

7980. para. 768: Both the Brima and the Kamara Defence, relying on the *Braanin* Trial Judgement, contend that responsibility for planning a crime only arises when an accused is "substantially involved at the preparatory stage of the crime in the concrete form it took, which implies that he possessed sufficient knowledge thereof in advance."[1482] The Trial Chamber does not agree with such a narrow construction of the responsibility for planning, although it cannot be denied that there must be a sufficient link between the planning of a crime both at the preparatory and the execution phases. In the opinion of the Trial Chamber, it is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct. [1483]

c. Instigating

7981. para. 769: "Instigating" means prompting another to commit an offence. [1484] This requires more than merely facilitating the commission of the principal offence, which may suffice for aiding and abetting. It requires some kind of "influencing the principal perpetrator by way of inciting, soliciting or otherwise inducing him or her to commit the crime".[1485] Both acts and omissions may constitute instigating, which covers express as well as implied conduct. [1486] A nexus between the instigation and the perpetration must be proved, but it is not necessary to demonstrate that the crime would not have been perpetrated without the involvement of the accused. [1487]

7982. para. 770: The actus reus requires that the accused prompted another person to commit the offence [l488] and that the instigation was a factor substantially contributing to the conduct of the other person(s) committing the crime. [1489] The mens rea requires that the accused acted with direct intent or with the awareness of the substantial likelihood that a crime would be committed in the execution of that instigation. [1490]

7983. para. 771: If a principal perpetrator has definitely decided to commit the crime, further encouragement or moral support may still qualify as aiding and abetting. [1491]

d. Ordering

7984. para. 772: The *actus reus* of 'ordering' requires that a person in a position of authority uses that authority to instruct another to commit an offence. [1492] No formal superior-subordinate relationship between the accused and the perpetrator is necessary; it is sufficient that the accused possessed the authority to order the commission of an offence and that such authority can be reasonably inferred. [1493] The order need not be given in writing or in any particular form, [1494] nor does it have to be given directly to the perpetrator. [1495] The existence of an order may be proven through circumstantial evidence. [1496]

7985. para. 773: The mens rea for ordering requires that the accused acted with direct intent in relation to his own ordering or with the awareness of the substantial likelihood that a crime will be committed in the execution of that order. [1497] The state of mind of an accused may also be inferred from the circumstances, provided that it is the only reasonably inference to be drawn. [1498]

7986. para. 774: The Trial Chamber agrees with the Prosecution that an accused may be responsible for "reissuing illegal orders", i. e., for receiving a criminal order from a superior and, in turn, instructing subordinates to act upon it. [1499]

e. Aiding and abetting

7987. para. 775: The actus reus of 'aiding and abetting' requires that the accused gave practical assistance, encouragement, or moral support which had a substantial effect on the perpetration of a crime. [1500] "Aiding and abetting" may be constituted by contribution to the planning, preparation or execution of a finally completed crime. [1501] Such contribution may be provided directly or through an intermediary [l502] and irrespective of whether the participant was present or removed both in time and place from the actual commission of the crime. [1503] Mere presence at the scene of crime without preventing its occurrence does not per se constitute aiding and abetting. [1504]. However, the presence at a crime scene of a person who is in a position of authority may be regarded as an important indication for encouragement or support. [1505]

7988. para. 776: The mens rea required for aiding and abetting is that the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial, likelihood that his acts would assist the commission of a crime by the perpetrator.

However, it is not necessary that the aider and abettor had knowledge of the precise crime that was intended and which was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually committed. [1506]

7989. para. 777: The Prosecution contends that a "persistent failure to prevent or punish crimes by subordinates over time may also constitute aiding or abetting."[1507] The Trial Chamber agrees that, while such failure entails a superior's responsibility under Article 6(3) of the Statute, it may also be a basis for his liability for aiding and abetting, subject to the mens rea and actus reus requirements being fulfilled. [1508]

f. Participation in a Joint Criminal Enterprise

7990. para. 778: The Trial Chamber has already found that the pleading of common purpose in the Indictment was defective and that joint criminal enterprise as a mode of liability cannot be relied upon by the Prosecution.

(iii) Bo, Kenema and Kailahun Districts

7991. para. 1641: In its factual findings, the Trial Chamber found that in Bo District in June 1997 AFRC/RUF forces unlawfully killed an unknown number of civilians, as charged under Counts 3 through 5, [2847] and terrorised civilians and subjected them to collective punishment, as charged under Count 1 and 2. [2848]

7992. para. 1642: The Trial Chamber also found that in Kenema District between 25 May 1997 - 14 February 1998, AFRC/RUF forces committed a number of crimes including unlawfully killing a number of civilians, as charged under Counts 4 and 5;[2849] inflicting physical violence on an unknown number of civilians as charged under Count 10;[2850] illegally recruiting and using children under the age of 15 years for military purposes, as charged under Count 12;[2851] abducting an unknown number of civilians and using them as forced labour at Cyborg Pit in Tongo Field, as charged under Count 13; [2852] and terrorising civilians and subjecting them to collective punishment, as charged under Count 1 and 2. [2853]

7993. para. 1643: The Trial Chamber further found that in Kailahun District during the Junta period, RUF troops abducted civilians and used them as forced labour, as charged under Count 13.[2854].

a. Responsibility of Accused Brima under Article 6.1 - Bo, Kenema and Kailahun Districts[400]

i. Pleadings - Responsibility of Accused Brima under Article 6.1 - Bo, Kenema and Kailahun Districts

7994. para. 1644: In its Final Trial Brief the Prosecution makes no submissions with regard to the individual criminal responsibility of the Accused Brima pursuant to Article 6(1) of the Statute. The Prosecution only alleges that "For all crimes committed in Kailahun District during the Indictment period, the three Accused are individually criminally responsible under the theory of joint criminal enterprise, in that the crimes were in the contemplation of the common enterprise or were a reasonably foreseeable consequence of its implementation".[2855] The Prosecution further submits that the Accused Brima held a significant position in the AFRC government and that he attended meetings at which crimes were discussed. The Prosecution submits that this is evidence of planning, instigating and aiding and abetting.[2856] The Prosecution makes no submissions as to whether or not the Accused Brima ordered or committed the alleged crimes.

7995. para. 1645: In its Final Trial Brief, the Brima Defence submits that no reliable evidence of instigation, ordering, committing, or aiding or abetting has been adduced by the Prosecution against the Accused Brima in relation to the Districts of Bo, Kenema and Kailahun during the relevant Indictment period.[2857] The Brima Defence further submits that the Prosecution led no evidence of any attack on Bo by the AFRC in general or the Accused Brima in particular;[2858] nor evidence to prove that the Accused Brima had superior control over the perpetrators of the alleged crimes in those districts. The Brima Defence instead relies on Brima's alibi defence for those districts. [2859] The Brima Defence submits that throughout the Indictment period Kailahun District was under the control of the RUF.[2860] In addition, it argues that the Accused was detained by the RUF in Kailahun District during the relevant period and was not in a position of superior commander over the perpetrators of the alleged crimes in Kailahun.[2861]

ii. Committing - Responsibility of Accused Brima under Article 6.1 - Bo, Kenema and Kailahun Districts

7996. para. 1646: The Prosecution has not adduced any evidence that the Accused Brima committed any of the crimes that occurred in Bo, Kenema and Kailahun Districts during the

[400] Note Kailahun District is treated in common with Bo and Kenema but is also dealt with under a separate heading

relevant Indictment period. The Trial Chamber therefore finds pursuant to Article 6(1) of the Statute that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima in respect of the crimes committed in those districts during the relevant Indictment period.

iii. Ordering - Responsibility of Accused Brima under Article 6.1 - Bo, Kenema and Kailahun Districts

7997. para. 1647: The Prosecution has not adduced any evidence that the Accused Brima ordered the commission of any of the crimes committed in Bo, Kenema and Kailahun Districts during the relevant Indictment period. The Trial Chamber therefore finds pursuant to Article 6(1) of the Statute that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima in respect of the crimes committed in those districts during the relevant Indictment period.

iv. Planning - Responsibility of Accused Brima under Article 6.1 - Bo, Kenema and Kailahun Districts

7998. para. 1648: The Trial Chamber recalls its finding that the Accused Brima participated in high-level coordination meetings of the AFRC government during the Junta period but that no evidence was adduced that the crimes committed in Bo, Kenema and Kailahun Districts were planned at these meetings.[2862] The Trial Chamber is therefore not satisfied that the Accused Brima made a substantial contribution to the planning of these crimes and finds pursuant to Article 6(1) of the Statute that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima in respect of the crimes committed in those districts during the relevant Indictment period.

v. Instigating - Responsibility of Accused Brima under Article 6.1 - Bo, Kenema and Kailahun Districts

7999. para. 1649: The Prosecution has not adduced any evidence that the Accused Brima prompted or influenced the perpetrators of the crimes committed in Bo, Kenema and Kai1ahun Districts during the relevant Indictment period. The Trial Chamber therefore finds pursuant to Article 6(1) of the Statute that the Prosecution has not proved this mode of individual criminal

below. This is how the AFRC Trial Chamber dealt with Kailahun in its responsibility section.

responsibility against the Accused Brima in respect of the crimes committed in those districts during the relevant Indictment period.

vi. Otherwise aiding and abetting - Responsibility of Accused Brima under Article 6.1 - Bo, Kenema and Kailahun Districts

8000. para. 1650: The Prosecution has not adduced any evidence that the Accused Brima gave practical assistance, encouragement or moral support which had a substantial effect on the perpetration of crimes in Bo, Kenema and Kai1ahun Districts during the relevant Indictment period. The Trial Chamber therefore finds pursuant to Article 6(1) of the Statute that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima in respect of the crimes committed in those districts during the relevant Indictment period.

b. Responsibility of Accused Kamara under Article 6.1 - Bo, Kenema and Kailahun Districts

8001. para. 1842: In its factual findings, the Trial Chamber has found that an unknown number of civilians were unlawfully killed by AFRC/RUF forces in Bo District in June 1997, as charged under Counts 3 through 5. Civilians were also terrorised and subjected to collective punishment, as charged under Count 1 and 2. [3147]

8002. para. 1843: The Trial Chamber has also found that AFRC/RUF forces committed a number of crimes in Kenema District in this period. Civilians were unlawfully killed, as charged under Counts 4 and 5,[3148] and physical violence was inflicted on an unknown number of civilians as charged under Count 10.[3149] Children were illegally recruited and used for military purposes, as charged under Count 12.[3150] An unknown number of civilians were abducted and used as forced labour at Cyborg Pit in Tongo Field, as charged under Count 13.[3151] Finally, civilians were terrorised and subjected to collective punishment, as charged under Count 1 and 2.

8003. para. 1844: The Trial Chamber has further found that RUF troops abducted civilians and used them as forced labour in Kailahun District during the AFRC Government period, as charged under Count 13.[3152] Finally, civilians were terrorised and subjected to collective punishment, as charged under Count 1 and 2.

i. Pleadings - Responsibility of Accused Kamara under Article 6.1 - Bo, Kenema and Kailahun Districts

8004. para. 1845: In its Final Brief, the Prosecution argues that given his position in the government, the Accused Kamara must have been aware of AFRC government policies which included the use of forced labour in Bo and Kenema Districts. [3153] The Prosecution concludes that Kamara is therefore liable for planning, instigating or otherwise aiding and abetting the crime of enslavement in Kenema and Bo, as well as killings and other crimes committed during the AFRC Government period.[3154]

8005. para. 1846: In its Final Brief, the Kamara Defence submits that the Prosecution failed to prove beyond reasonable doubt that the Accused Kamara planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of the crimes committed in Bo and Kenema Districts.[3155]

ii. Findings - Responsibility of Accused Kamara under Article 6.1 - Bo, Kenema and Kailahun Districts

8006. para. 1847: The Prosecution adduced no evidence that the Accused Kamara committed, ordered, instigated, planned or otherwise aided and abetted any of the crimes that occurred in Bo, Kenema and Kailahun Districts. The Prosecution has not proved beyond reasonable doubt that the Accused Kamara is criminally responsible for crimes committed in the Kono District. The Trial Chamber finds that the Prosecution has not proved any mode: of individual criminal responsibility against the Accused Kamara for the crimes committed in the Bo, Kenema and Kailahun Districts.

c. Responsibility of Accused Kanu under Article 6.1 - Bo, Kenema and Kailahun Districts

8007. para. 1982: In its factual findings, the Trial Chamber found that an unknown number of civilians were unlawfully killed by AFRC/RUF forces in Bo District in June 1997, as charged under Counts 3 through 5. Civilians were also terrorised and subjected to collective punishment, as charged under Counts 1 and 2.[3310]

8008. para. 1983: The Trial Chamber also found that AFRC/RUF forces committed a number of crimes in Kenema District in this period. Civilians were unlawfully killed, as charged under Counts 4 and 5,[3311] and physical violence was inflicted on an unknown number of civilians as charged under Count 10.[3312] Children were illegally recruited and used for military purposes, as

charged under Count 12.[3313] An unknown number of civilians were abducted and used as forced labour at Cyborg Pit in Tongo Field, as charged under Count 13.[3314] Finally, civilians were terrorised and subjected to collective punishment, as charged under Counts 1 and 2.

8009. para. 1984: The Trial Chamber further found that RUF troops abducted civilians and used them as forced labour in Kailahun District during the Junta period, as charged under Count 13.[3315]

i. Pleadings - Responsibility of Accused Kamara under Article 6.1 - Bo, Kenema and Kailahun Districts

8010. para. 1985: In its Final Brief, the Prosecution argues that given his position in the Government, the Accused Kanu was aware of the AFRC Government policies which included the use of forced labour in Bo and Kenema Districts.[3316] It submits that the Accused Kanu is therefore liable for planning, instigating or otherwise aiding and abetting the crime of enslavement in Kenema and Kono, as well as killings and other crimes committed during the AFRC government period. [3317]

8011. para. 1986: In its Final Brief, the Kanu Defence submits that the perpetrators of the crimes in Bo and Kenema Districts were soldiers who were present in the District before the AFRC coup and who were under the command of their local commanders during the Indictment period. [3318] The Defence submits that the SLA brigades based in Bo and Kenema Districts operated independently from the AFRC Government seated in Freetown.[3319]

ii. Committing and Ordering - Responsibility of Accused Kamara under Article 6.1 - Bo, Kenema and Kailahun Districts

8012. para. 1987: The Prosecution has not adduced any evidence that the Accused Kanu committed or ordered any of the crimes that occurred in Bo, Kenema and Kailahun Districts. The Trial Chamber accordingly finds that the Prosecution has not proved either of these modes of individual criminal responsibility against the Accused Kanu for the crimes that occurred in Bo, Kenema and Kailahun Districts.

iii. Planning - Responsibility of Accused Kamara under Article 6.1 - Bo, Kenema and Kailahun Districts

8013. para. 1988: The Trial Chamber recalls its finding that the Accused Kanu participated in high-level coordination meetings of the AFRC government, but that no evidence was adduced that the crimes committed in Bo, Kenema and Kailahun Districts were planned at these meetings.[3320]

8014. para. 1989: The Prosecution has not adduced any evidence that the Accused Kanu made a substantial contribution to the planning of the crimes committed in Bo, Kenema and Kailahun Districts. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for the crimes committed in Bo, Kenema and Kailahun Districts.

iv. Instigating - Responsibility of Accused Kamara under Article 6.1 - Bo, Kenema and Kailahun Districts

8015. para. 1990: The Prosecution has not adduced any evidence that the Accused Kanu prompted or influenced the perpetrators of the crimes committed in Bo, Kenema and Kailahun Districts. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for the crimes committed in Bo, Kenema and Kailahun Districts.

v. Otherwise aiding and abetting - Responsibility of Accused Kamara under Article 6.1 - Bo, Kenema and Kailahun Districts

8016. para. 1991: The Prosecution has not adduced any evidence that the Accused Kanu gave practical assistance, encouragement or moral support which had a substantial effect on the perpetration of crimes in Bo, Kenema and Kailahun Districts. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for crimes committed in Bo, Kenema and Kailahun Districts.

(iv) Kono District

a. Responsibility of Accused Brima under Article 6.1 - Kono District

8017. para. 1665: The Trial Chamber found that in the period mid-February to June 1998, AFRC/RUF troops in Kono District unlawfully killed civilians,[2882] committed sexual slavery and

physical violence against civilian population;[2883] abducted civilians and used them as forced labour,[2884] and illegally recruited and used children under the age of 15 years for military purposes, as charged under the Indictment.[2885] The Trial Chamber also found that AFRC/RUF troops engaged in widespread looting; [2886] and committed various crimes against the civilian population as collective punishments.[2887]

i. JCE - Responsibility of Accused Brima under Article 6.1 - Kono District

8018. para. 1666: The Prosecution in its Final Trial Brief, submits that all three Accused are liable for crimes committed in Kono District under its theory of JCE. The Prosecution then submits that only Kamara bears liability under articles 6(1) and (3) of the Statute.[2888] In its closing arguments the Prosecution asserts that for Kono, during the crimes committed in the Indictment period after the intervention, it is the case of the Prosecution that only Kamara was present when the crimes were committed. Brima and Kanu however can still be held liable for those crimes under the theory of a JCE.[2889]

8019. para. 1667: The Brima Defence submits that the Prosecution failed to establish a nexus linking the Accused Brima to the crimes committed in Kono District. Furthermore the Brima Defence submits that the Accused Brima arrived in Kono around May 1998 only to be arrested and detained by Sam Bockarie in Kailahun.[2890] The Brima Defence also relies on its submissions regarding the Accused Brima's alibi for this period,[2891] which the Trial Chamber has considered above.[2892]

8020. para. 1668: The Trial Chamber has already held above that it will not consider any responsibility under joint criminal enterprise. The Prosecution has not adduced any evidence that the Accused Brima committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes that occurred in Kono District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Brima for the crimes committed in the Koinadugu District.

b. Responsibility of Accused Kamara under Article 6.1 - Kono District

8021. para. 1856: The Trial Chamber has found that in the period February through June 1998, AFRC/RUF troops in Kono District unlawfully killed civilians, as charged under Counts 3 through 5,[3163] and inflicted sexual and physical violence on civilians as charged under Counts 6

through 9 and 10 respectively.[3164] AFRC/RUF troops also abducted civilians and used them as forced labour, as charged under Count 13,[3165] and used illegally recruited children for military purposes, as charged under Count 12[3166] Finally, AFRC/RUF troops engaged in widespread looting, as charged under Count 14, terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2. [3167]

i. Pleadings - Responsibility of Accused Kamara under Article 6.1 - Kono District

8022. para. 1857: In its Final Trial Brief, the Prosecution contends that the Accused Kamara was the second in command to Denis Mingo (RUF) in Kono District and as such was involved in planning and designing the operations and crimes committed in Kono District. [3168] The Prosecution then submits that only Kamara bears liability under articles 6(1) and (3) of the Statute.[3169] Furthermore, the Prosecution submits in its closing arguments that:

> for Kono, during the crimes committed in the Indictment period after the intervention, it is the case of the Prosecution that only Kamara was present when the crimes were committed. Brima and Kanu however can still be held liable for those crimes under the theory of a JCE.[3170] The Prosecution adds given the position of the Accused, his role in planning, and the reports he received, the Accused intended that the crimes would occur, or was aware of the substantial likelihood of the occurrence of all the crimes. It concludes that he is therefore liable for planning and instigating the crimes charged, or in the alternative that he actively encouraged the commission of such acts. [3171]

8023. para. 1858: Finally, the Prosecution alleges that the Accused Kamara gave direct orders to burn houses, and argues that given his position it may be inferred that he gave orders for all the crimes charged in Kono District. [3172]

8024. para. 1859: In its Final Trial Brief, the Kamara Defence submits that the RUF was in complete control of Kono District, and that the Prosecution failed to prove that the Accused Kamara planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of the crimes committed in Kono District. It further argues that numerous witnesses who testified regarding crimes committed in Kono did not mention Kamara.[3173]

ii. Findings – Responsibility of Accusd Kamara under Article 6.1- Kono District

8025. para. 1860: The Trial Chamber has found that in the period February through June 1998, AFRC/RUF troops in Kono District unlawfully killed civilians, as charged under Counts 3

through 5, [3174] and inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respective1y.[3175] AFRC/RUF troops also abducted civilians and used them as forced labour, as charged under Count 13,[3176] and used illegally recruited children for military purposes, as charged under Count 12.[3177] Finally, AFRC/RUF troops engaged in looting, as charged under Count 14, terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2. [3178]

8026. para. 1861: The Prosecution has not adduced any evidence that the Accused Kamara committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes committed in the Kono District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kamara for the crimes committed in the Kono District.

c. Responsibility of Accused Kanu under Article 6.1 - Kono District

8027. para. 1997: The Trial Chamber found that in the period February through June 1998, AFRC/RUF troops in Kono District unlawfully killed civilians, as charged under Counts 3 through 5,[3327] and inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively.[3328] AFRC/RUF troops also abducted civilians and used them as forced labour, as charged under Count l3,[3329] and used illegally recruited children for military purposes, as charged under Count 12.[3330] Finally, AFRC/RUF troops engaged in widespread looting, as charged under Count 14, terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.[3331]

i. Pleadings - Responsibility of Accused Kanu under Article 6.1 - Kono District

8028. para. 1998: In its Final Brief, the Prosecution asserts that the "three Accused are individually criminally responsible under the theory of joint criminal enterprise" and does not refer to other modes of liability. [3332] The Prosecution then submits that only Kamara bears liability under Articles 6(1) and (3) of the Statute. [3333] Furthermore, the Prosecution submits in its Closing Arguments that for Kono, during the crimes committed in the Indictment period after the intervention, it is the case of the Prosecution that only Kamara was present when the crimes were committed. Brima and Kanu however can still be held liable for those crimes under the theory of a JCE. [3334]

8029. para. 1999: In its Final Brief, the Kanu Defence submits that the Prosecution failed to provide evidence that the Accused Kanu was present in Kono District for "more than a few days" and that it failed to show that Kanu had any authority during the Indictment period.[3335]

ii. Findings - Responsibility of Accused Kanu under Article 6.1 - Kono District

8030. para. 2000: The Prosecution has not adduced any evidence that the Accused Kanu committed, ordered, planned, instigated or otherwise aided and abetted any of the crimes committed in Kono District. The Trial Chamber finds that the Prosecution has not proved any of these modes 0f individual criminal responsibility against the Accused Kanu for the crimes committed in Kono District.

(v) Kailahun District

a. Responsibility of Accused Brima under Article 6.1 - Kailahun District

8031. para. 1674: The Trial Chamber found in relation to Kailahun District that an unknown number of civilians were unlawfully killed by RUF forces in or around February 1998, as charged under Counts 3 through 5[2905], and that RUF troops or troops not established beyond a reasonable doubt to be members of the AFRC abducted civilians and used them as forced labour in the period following 14 February 1998.[2906]

i. Pleadings – Responsibility of Brima under Article 6.1 – Kailahun District

8032. para. 1675: In its Final Brief, the Prosecution makes no submissions with regard to the individual criminal responsibility of the Accused Brima pursuant to Article 6(1) of the Statute. The Prosecution only alleges that "For all crimes committed in Kailahun District during the Indictment period, the three Accused are individually criminally responsible under the theory of joint criminal enterprise, in that the crimes were in the contemplation of the common enterprise or were a reasonably foreseeable consequence of its implementation." [2907]

8033. para. 1676: The Brima Defence submits that throughout the Indictment period Kailahun District was under the control of the RUF[2908] In addition, it argues that the Accused was detained by the RUF in Kailahun District during the relevant period and was not in a position of superior commander over the perpetrators of the alleged crimes in Kailahun.[2909]

8034. para. 1677: The Trial Chamber found tha the Prosecution proved beyond reasonable doubt that AFRC/RUF troops unlawfully killed a number of civilians in Kailahun District between February and June 1998, as charged under Counts 3 through 5.[2910] The issue for determination here is whether the Accused Brima bears individual criminal responsibility for those crimes pursuant to Article 6(1) of the Statute.

ii. Findings - Responsibility of Brima under Article 6.1 – Kailahun District

8035. para. 1678: The Prosecution has not adduced any evidence that the Accused Brima committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes that occurred in Kailahun District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Brima for the crimes committed in the Kailahun District.

iii. Otherwise aiding and abetting - Responsibility of Brima under Article 6.1 – Kailahun District

8036. para. 1679: The Prosecution has not adduced any evidence that the Accused Brima gave practical assistance, encouragement or moral support which had a substantial effect on the perpetration of crimes in Kailahun District. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima, for the crimes committed in Kailahun District.

b. Responsibility of Accused Kamara under Article 6.1 - Kailahun District

8037. para. 1894: The Trial Chamber has found that an unknown number of civilians were unlawfully killed by RUF forces in or around February 1998, as charged under Counts 3 through 5[3225] and that RUF troops or troops not established beyond a reasonable doubt to be members of the AFRC abducted civilians and used them as forced labour in Kailahun District in the period following 14 February 1998.[3226]

i. Pleadings – Responsibility of Accused Kamara under Article 6.1 – Kailahun District

8038. para. 1895: In its Final Brief, the Prosecution alleges only that the Accused was a principal in a joint criminal enterprise and is therefore liable for the crimes committed in Kailahun District. [3227]

8039. para. 1896: The Kamara Defence, in its Final Brief, argues that Kailahun District was an RUF stronghold and that the Accused Kamara had no role there. [3228]

ii. Findings – Responsibility of Accused Kamara under Article 6.1 – Kailahun District

8040. para. 1897: The Prosecution has not adduced any evidence that the Accused Kamara committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes committed in the Kailahun District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kamara for the crimes committed in the Kailahun District.

c. Responsibility of Accused Kanu under Article 6.1 - Kailahun District

8041. para. 2006: The Trial Chamber found that an unknown number of civilians were unlawfully killed by RUF forces in or around February 1998, as charged under Counts 3 through 5,[3340] and that RUF troops or troops not established beyond a reasonable doubt to be members of the AFRC abducted civilians and used them as forced labour in Kailahun District in the period following 14 February 1998.[3341]

i. Pleadings – Responsibility of Accused Kanu under Article 6.1 – Kailahun District

8042. para. 2007: In its Final Brief, the Prosecution alleges that the Accused Kanu was liable for crimes committed in Kailahun as a principal in a joint criminal enterprise and does not refer to any other form of liability. [3342]

8043. para. 2008: The Kanu Defence submits that Kailahun District was under the exclusive control of the RUF and that the Accused Kanu was never present there. [3343]

ii. Findings – Responsibility of Accused Kanu under Article 6.1- Kailahun District

8044. para. 2009: The Prosecution has not adduced any evidence that the Accused Kanu committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes committed in the Kailahun District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kanu for the crimes committed in the Kailahun District.

(vi) Koinadugu District

a. Responsibility of Accused Brima under Article 6.1 - Koinadugu District

8045. para. 1686: Trial Chamber found that AFRC/RUF forces unlawfully killed or inflicted sexual or physical violence on an unknown number of civilians in Koinadugu District in the period February through September 1998, as charged under Counts 3 through 5, 6 through 9 and 10 respectively.[2915] In addition, the Trial Chamber found that AFRC/RUF forces abducted an unknown number of civilians and used them as forced labour in that District, as charged under Count 13.[2916] In addition, the Trial Chamber found that AFRC/RUF forces illegally recruited children under the age of 15 years and used them for military purposes in that District, as charged under Count 12.[2917] Finally, the Trial Chamber found that AFRC/RUF forces also engaged in widespread looting of civilian homes, as charged in Count 14.[2918]

i. Pleadings – Responsibility of Accused Brima under Article 6.1 – Koinadugu District

8046. para. 1687: In its Final Brief the Prosecution submits that the three Accused are liable for planning and instigating or otherwise aiding and abetting the crimes committed in Koinadugu District. [2919] It argues that the crimes committed in Koinadugu followed a consistent pattern. This pattern involved repeated attacks by SLA/RUF forces against civilians for either supporting ECOMOG or failing to support the AFRC/RUF.[2920]

8047. para. 1688: The Prosecution emphasises in particular the evidence regarding the attack on Yiffin. [2921] On this submission, the Trial Chamber notes the Prosecution did not plead the location of Yifin/Yiffin under Counts 3 through 6, 8 through 11 or 14 of the Indictment, and thus no findings have been made on evidence adduced in this regard. The Trial Chamber notes further that the Prosecution did not adduce any with respect to YifinlYiffin under Counts 7, 12 or 13.

8048. para. 1689: The Brima Defence submits that the overall commander of the AFRC troops in Koinadugu District was SAJMusa.[2922] It adds that no evidence was adduced that any of the operations in Koinadugu District were associated with the faction the Prosecution alleges was led by the Accused Brima.[2923] Finally, the Brima Defence argues that its own witnesses from Koinadugu District, who were credible and reliable, had never heard the name of the Accused mentioned in connection with the crimes committed in that District. [2924]

ii. Committing – Responsibility of Accused Brima under Article 6.1 – Koinadugu District

8049. para. 1690: The Prosecution has not adduced any evidence that the Accused Brima personally committed any of the crimes found to have been perpetrated in Koinadugu District. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima, for the crimes committed in Koinadugu District.

iii. Ordering/Instigating - Order at Mansofinia to terrorise the civilian population - Responsibility of Accused Brima under Article 6.1 – Koinadugu District

8050. para. 1691: Witness TF1-334 testified that at Mansofinia, Brima gave a strict warning to the civilians that as they headed into Bombali District, any civilian who tried to run away was a betrayer and will be shot on sight. He warned the troops in his own words "minus you, plus you [...] ." The witness further testified that Brima ordered the troops as they moved northwards to capture strong civilians to add to the strength of the troops.[2925]

8051. para. 1692: This evidence was not challenged in cross-examination. The Trial Chamber recalls that although Prosecution witness George Johnson does not mention this instruction in his evidence, he corroborates other details about the relevant muster parade. [2926]

8052. para. 1693: Prosecution witness TF1-033 also gave evidence of an order in similar terms; however he stated that this occurred at Y arya. [2927] The Trial Chamber has found that the Witness was mistaken in his recollection of the location and was in fact referring to the same speech described by Witness TFl-334. Witness TF1-033 stated that he heard Alex Tamba Brima claim that civilians had been involved in attacking the AFRC, AFRC families and AFRC sympathisers when the AFRC was ousted from Freetown and that therefore, the AFRC should now do the same to the civilians. Brima declared "Operation Spare No Soul" and instructed his troops to kill, maim

or amputate any civilian with whom they came into contact. Towns and villages were to be burned and women and girls were "free to satisfy the soldier's sexual desires.[2928]

8053. para. 1694: The Defence disputed this evidence as 'unreliable' on the grounds that Defence witnesses as well as other Prosecution witnesses put Brima elsewhere during the month of March 1998. Prosecution witness TF1-033 recalls 'Gullit' stating, "You all know what befell on us when the ECOMOG forces removed us from power in Freetown. Our colleagues, soldiers, sympathisers, relatives, were killed by civilians as well as ECOMOG soldiers. So for that reason, we are going back to Freetown. We are going back to Freetown and we should all return that fell on us [...] So we are not going to spare any civilian, only those we desire to be with us. [...] Young girls and women are free to satisfy your sexual desire. This is Operation Spare No Soul."[2929] On crossexamination the witness stated that these were 'Gullit's exact words [2930] The witness stated that as a result, "the journey of atrocities destined for Freetown started that evening". [2931]

8054. para. 1695: The Trial Chamber finds that the above orders, insofar as they were targeted at civilians, were intended to spread fear among the civilian population. The Prosecution has proved beyond reasonable doubt that Accused Brima while at Mansofinia, did order the AFRC/RUF forces subordinate to him to commit acts of terror against the civilian population. However, since the Trial Chamber has found that the crimes arising out of this particular order were not committed in Koinadugu District. Therefore the Trial Chamber finds that the Prosecution has not proved these modes of individual criminal responsibility against the Accused Brima in relation to the crimes committed in Koinadugu District.

iv. Planning and otherwise aiding and abetting - Responsibility of Accused Brima under Article 6.1 – Koinadugu District

8055. para. 1696: No evidence was adduced that the Accused Brima planned the commission of crimes or gave practical assistance, encouragement or moral support which had a substantial effect on the commission of crimes in Koinadugu District. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima, for the crimes committed in Koinadugu District.

b. Responsibility of Accused Kamara under Article 6.1- Koinadugu District

8056. para. 1904: The Trial Chamber found that AFRC/RUF forces unlawfully killed or inflicted sexual or physical violence on an unknown number of civilians in Koinadugu District in the

period February through September 1998, as charged under Counts 3 through 5, 6 through 9 and 10 respectively.[3230] In addition, an unknown number of civilians were abducted and used as forced labour, as charged under Count 13.[3231] Children were used for military purposes, as charged under Count 12.[3232] Finally, AFRC/RUF forces also engaged in looting of civilian homes, as charged in Count 14. [3233]

i. Pleadings - Responsibility of Accused Kamara under Article 6.1 – Koinadugu District

8057. para. 1905: In its Final Brief, the Prosecution alleges that the three Accused are liable for planning and instigating or otherwise aiding and abetting the crimes committed in Koinadugu District. It argues that the crimes followed a consistent pattern. [3234]

8058. para. 1906: In its Final Brief, the Kamara Defence contends that those witnesses who testified that the Accused Kamara was present in Koinadugu District during the Indictment period did not allege that he participated in the offences alleged or that he instructed any other persons to do so.[3235]

ii. Findings - Responsibility of Accused Kamara under Article 6.1 – Koinadugu District

8059. The Prosecution has not adduced any evidence that the Accused Kamara committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes committed in the Koinadugu District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kamara for the crimes committed in the Koinadugu District.[401]

c. Responsibility of Accused Kanu under Article 6.1 - Koinadugu District

8060. para. 2015: The Trial Chamber found that AFRC/RUF forces unlawfully killed or inflicted sexual or physical violence on an unknown number of civilians in Koinadugu District in the period February through September 1998, as charged under Counts 3 through 5, 6 through 9 and 10 respectively.[3345] In addition, an unknown number of civilians were abducted and used as forced labour, as charged under Count 13.[3346] Children were used for military purposes, as charged under

[401] Anomaly – no paragraph was assigned to this sentence.

Count 12.[3347] Finally, AFRC/RUF forces also engaged in looting of civilian homes, as charged in Count 14. [3348]

i. Pleadings - Responsibility of Accused Kanu under Article 6.1 - Koinadugu District

8061. para. 2016: In its Final Brief, the Prosecution alleges that the three Accused are liable for planning and instigating or otherwise aiding and abetting the crimes committed in Koinadugu District. It argues that the crimes followed a consistent pattern.[3349]

8062. para. 2017: In its Final Brief, the Kanu Defence submits that several AFRC groups moved from Koinadugu District to Bombali District, and that the Accused Kanu was not part of the group that included Prosecution Witness George Johnson.[3350]

ii. Findings - Responsibility of Accused Kanu under Article 6.1 - Koinadugu District

8063. para. 2018: The Prosecution has not adduced any evidence that the Accused Kanu committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes that occurred in Koinadugu District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kanu for the crimes committed in the Koinadugu District.

(vii) Bombali District

a. Responsibility of Accused Brima under Article 6.1 – Bombali District

8064. para. 1700: The Trial Chamber found that AFRC troops in Bombali District engaged in unlawful killings of civilians[2933] and inflicted sexual violence on civilians[2934] , as charged in the Indictment. AFRC troops also abducted civilians and used them as forced labour and illegally recruited and used children for military purposes.[2935] Finally, the Trial Chamber found that AFRC troops engaged in widespread looting, terrorised and committed crimes of collective punishments against the civilian population. [2936]

i. Pleadings - Responsibility of Accused Brima under Article 6.1 – Bombali District

8065. para. 1701: The Prosecution conceded that with regards to the Accused Brima, it did not adduce evidence of sexual violence in respect of Mandaha.[2937] In its Final Brief, the Prosecution submits that the Accused Brima committed, planned, ordered, instigated and otherwise aided and abetted attacks on Karina, Bornoya, Mateboi and Mandaha and the crimes associated with those locations outlined in the Indictment.[2938] More specifically, it argues that the Accused Brima ordered the attack on Karina in order to demonstrate the power of his forces. Attacks on the surrounding villages were carefully designed and organised by the Accused who intended the commission of all the crimes pleaded in the Indictment. In addition, the Prosecution submits that the Accused prompted others to participate in the unlawful acts.[2939] The Prosecution further submitted that" [...] the three Accused themselves gave orders for, and actively encouraged, killings physical and sexual violence and the burning of villages amounting to a campaign of terrorism" in Bombali District. [2940] The Prosecution further submitted that the First Accused ordered 'Operation Clear the Area' meaning that all villages surrounding Rosos were to be burnt down and looted, and that these orders were in fact carried out.[2941]

8066. para. 1702: The Brima Defence argues that the Prosecution witnesses who testified regarding crimes committed in Bombali District provided contradictory and self-serving accounts of the events. [2942] The Brima Defence refers to the testimony of its own witnesses that they did not hear the Accused's name mentioned in connection with the events that took place in Bombali.[2943] The Brima Defence therefore submits that Defence witnesses have established reasonable doubt regarding the responsibility of the Accused Brima for instigating or aiding and abetting the crimes committed in

ii. Committing - Murder and Extermination at Karina - Responsibility of Accused Brima under Article 6.1 – Bombali District

8067. para. 1703: The Trial Chamber considered the evidence presented by the Prosecution witness TFl-334 on the killing of 12 civilians at a mosque in Karina and found that on 8 May 1998, the Accused Brima participated in a mass killing of 12 civilians at a mosque in Karina. The finding was based on the testimony of eye witness TF1-334 who was with the Accused Brima during the attack on the mosque at Karina. Witness TF1-334 stated that he moved with the Accused Brima to the town of Karina where they found a mosque. While the witness was standing with soldiers at the mosque, Brima questioned the Imam for praying for the people and accused

him of being a relative of 'Pa Kabbah's family.' When the Imam responded, Brima shot dead the Imam, six men and five women, in front of the witness.[2945]

8068. para. 1704: Witness George Johnson also testified that he met and saw "plenty of dead bodies with gun shot wounds" inside and outside the mosque at Karina town. Although the witness did not see what had happened to the dead bodies, he stated that they were attacked by Alhaji Kamanda a.k.a. "Gun Boot"[2946] without giving further information on the means with which he committed the attack. The evidence of Defence witness DBK-094, a relative to the Imam of the mosque, is corroborated by that of DBK-089. Both witnesses claim that during the attack on the mosque in Karina, the Imam's brother was the one actually leading the prayers and that the Imam himself had left the town three days before the attack and could therefore not have been killed during this attack.

8069. para. 1705: The Trial Chamber notes that there are inconsistencies in the evidence of the identity of the person who led the prayers that day, with Prosecution witnesses stating that it was "the Imam" and the defence witnesses stating that the Imam is still alive. The Chamber is of the view that the exact identity of the individual who led the prayers that day is not paramount but rather the fact that the leader of the prayers was indeed killed. This fact is not in dispute. In that regard, the Trial Chamber finds the evidence of eye witness TFl-334 who was present at the mosque and actually saw the Accused Brima shooting civilians including the leader of the prayers at the mosque in Karina is credible and reliable. The fact that several civilians died as a result of the shooting is corroborated by TF1-167. In the Trial Chamber's view, the Prosecution evidence is not challenged by the evidence of DBK-094 and DBK-089 who only testified about the absence of the Imam during the attack on the mosque. They do not dispute the fact that mass killings of civilians including the person who led the prayers that day, took place at the mosque. However, before the Trial Chamber relies on the Prosecution evidence to determine whether the Accused Brima is individually criminally responsible for the Karina killings, it must take the following factors into account.

8070. para. 1706: The Indictment does not plead the material facts of this specific incident with regard to the Accused Brima.[2947] The Prosecution failed to include these particulars in the Indictment and rendered the Indictment defective.

8071. para. 1707: From the outset of its case, the Prosecution was aware of material facts regarding the Karina attack including the means with which the Accused Brima committed this attack on Karina and details of the killings at the mosque in Karina. The Prosecution Supplemental Pre-Trial Brief generally provides information that the Accused Brima ordered that AFRC/RUF

should make its mark on Karina and that no one should be spared. It also alleges that the Accused Brima participated in the shooting on the attack on Karina.[2948] However, it does not specify the details of the attack on the mosque, that is the means and purpose of the attack or a description of the victims. In addition, the OTP Opening Statement does not specify the Accused Brima participation in the killing of civilians at a mosque in Karina. Instead, the Prosecution indicated that when the people of Karina village were assembled at the mosque at 5:00 o'clock for morning prayers, AFRC/RUF forces led by the three Accused descended on them with guns, machetes and axes. They lined them up and one after the other hacked them to death. [2949]

8072. para. 1708: The Trial Chamber notes that the Prosecution disclosure materials of a Witness Statement of TFl-334 dated 6 November 2003, does not mention the shooting of the Imam by the Accused Brima. However, it specifically states that Witness TFl-334 saw 'Gullit' going to a mosque in Karina and questioned the people as morning prayers were going on. Thereafter, the witness saw 'Gullit' remove his pistol and shoot the civilians dead. [2950] Therefore, the Trial Chamber finds that the above constitutes sufficient notice of the material particulars relating to Brima's participation in the Karina killings and that the defect in the Indictment with regard to this crime was cured by clear, timely and consistent notice to the Defence.

8073. para. 1709: In light of the foregoing considerations and the Trial Chamber's finding that the Accused Brima participated in a mass killing of at least 12 civilians at a mosque in Karina, the Trial Chamber finds that the Prosecution has established beyond reasonable doubt the Accused's responsibility by committing on a large scale the massacre of civilians at a mosque in Karina. The Trial Chamber is further satisfied that the Accused Brima was aware that his participation in the killings on such a massive scale amounted to the crime of extermination.

iii. Ordering - Order to terrorise and kill the civilian population at Karina - Responsibility of Accused Brima under Article 6.1 – Bombali District

8074. para. 1710: Around June 1998, at Kamagbengbe and in the presence of Kamara and Kanu, the Accused Brima gave orders to the AFRC troops to attack Karina. Brima referred to Karina as a strategic location because it was the home town of President Ahmed Tejan Kabbah. The witness stated that Brima ordered the troops to burn down Karina, capture strong male civilians, and amputate civilians. Brima concluded that he wanted the attack on Karina to shock "the whole country" and the international community. The Trial Chamber has found that there were no ECOMOG or Kamajor troops in Karina at the time and that all the victims were civilians.[2951] Witness TFl-157 testified that after the attack on Karina, he heard rebels say that the town had

been attacked because it was the home town of President Kabbah.[2952] Witness TF1-033 testified that he heard 'Gullit' order that civilian women should be stripped naked and raped during the attack on Karina, and the neighbouring town of Bornoya.[2953] The Trial Chamber found this evidence detailed, consistent and credible.

8075. para. 1711: The Trial Chamber is therefore satisfied that the Accused Brima ordered his subordinates to perpetrate crimes against the civilian population in Karina and its environs with the specific intent of instilling terror in the civilian population.

iv. Ordering - Order to terrorise the civilian population around Rosos - Responsibility of Accused Brima under Article 6.1 – Bombali District

8076. para. 1712: Witness TF1-334 testified that during the rainy season in 1998, the AFRC/Junta forces established a base at Rosos and remained there for approximately three months. While at Rosos, the witness heard Brima order the troops to occupy the surrounding villages and ensure that no civilians remained within 15 miles of the village.[2954] Brima ordered that any civilians be executed rather than brought back to the camp, and added that he would take disciplinary action against any soldier who brought a civilian to the camp. Brima named this action "Operation Clear the Area". Witness TF1-334 testified that villages surrounding Rosos were burnt down and looted following this order.[2955] Witness TF1-033 corroborated the evidence of Witness TF1-334 testifying that he heard Brima order his soldiers to kill any civilians in the area of Rosos.[2956] Witness TF1-267 also testified that rebels told her that civilians who did not leave a village near Rosos would be killed. [2957]

8077. para. 1713: The Indictment does not charge unlawful killings at Rosos and therefore will not make any findings on the killings perpetrated following Brima's order. However, the evidence shows that the Accused Brima, in issuing such orders to his subordinates specifically intended to terrorise the civilian population in the areas surrounding Rosos. The Trial Chamber concludes that Brima's generalised instruction created a climate of criminality which endured in the months following the order.

v. Ordering- Order for killings at Mateboi and Gbendembu - Responsibility of Accused Brima under Article 6.1 – Bombali District

8078. para. 1714: Witness TF1-334 testified that after the Accused Brima banned civilians from the area surrounding 'Camp Rosos' ,[2958] an AFRC commander executed six civilians, four men and two women, with an AK-47 rifle in a village near Mateboi. [2959]

8079. para. 1715: Witness TF1-033 testified that in or around August 1998 at 'Colonel Eddie Town,' the Accused Brima ordered two AFRC commanders named Salifu Mansaray and 'Arthur' to attack Gbendembu because ECOMOG and "loyal" Sierra Leonean Army troops were present there. [2960] When the Operations Commander returned from the operation he reported to Brima that the troops had captured arms and ammunition and that 25 civilians had been killed. Brima commended his men for "a job well done."[2961]

8080. para. 1716: The Trial Chamber finds that as overall commander in Bombali District the Accused Brima had sufficient authority over his troops to order the commission of the crimes in the expectation that his orders would be implemented. The Trial Chamber is therefore satisfied that the Accused Brima was aware of the substantial likelihood that crimes would be committed in the execution of the order given at 'Colonel Eddie Town.' The Trial Chamber therefore finds that the Accused Brima ordered the murder of civilians in the villages of Mateboi and Gbendembu.

vi. Ordering - Order at Rosos to recruitment children for military purposes - Responsibility of Accused Brima under Article 6.1 – Bombali District

8081. para. 1717: Witness TF1-334 testified that during a three week training program at Rosos [2962] 77 civilian abductees, including children under the age of 15 years, underwent military training. He was able to provide this estimate because he conducted head counts during muster parades. [2963] Witness George Johnson also confirmed this training at Rosos but estimated that 520 civilians were trained at Rosos. The Trial Chamber observes that Witness TF1-334 referred to the number of civilians trained during one three week period, while George Johnson refers to the number of civilians trained overall at Rosos. Therefore the Trial Chamber does not consider the discrepancy in numbers to be significant. Witness TF1-334 testified that following the completion of the training period, the trainees were addressed by both the Accused Kanu and the Accused Brima. Brima then ordered that the male children be distributed to the various company commanders, while the girls and women were to be turned over to "their husbands" meaning the soldiers and commanders.[2964]

8082. para. 1718: Witness TFl-l58, a former child soldier, testified that he was abducted by the AFRC forces and spent one week at Rosos. Upon arrival in Rosos, a commander named 'Staff Alhaji' gave the civilians guns and ordered them to search the town for food. [2965] 'Staff A1haji' told witness TF1-158 and the other civilians that this order came from the Accused Brima.[2966] During the week at Rosos, the witness was given military training together with approximately 300 other civilians. [2967]

8083. para. 1719: The Trial Chamber has found to be credible and is therefore satisfied that the Accused Brima ordered the abduction of children under the age of 15 years for military purposes.

vii. Planning, Instigating and otherwise aiding and abetting - Responsibility of Accused Brima under Article 6.1 – Bombali District

8084. para. 1720: The Prosecution has not adduced any evidence that the Accused Brima planned, instigated or otherwise aided and abetted any of the crimes committed in the Bomba1i District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Brima for the crimes committed in the Bomba1i District.

b. Responsibility of Accused Kamara under Article 6.1 – Bombali District

8085. para. 1911: The Trial Chamber has found that AFRC troops in Bombali District engaged in unlawful killings of civilians as charged under Counts 3 through 5[3238] and inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively.[3239] AFRC troops also abducted civilians and used them as forced labour and used children illegally recruited for military purposes, as charged under Counts 13 and 12 respectively.[3240] Finally, AFRC troops engaged in widespread looting, as charged under Count 14, terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.[3241]

i. Pleadings – Responsibility of Accued Kamara under Article 6.1 – Bombali District

8086. para. 1912: In its Final Trial Brief, the Prosecution submits that the Accused Kamara was present when the order was given to burn down Karina and kill its inhabitants. On this evidence the Prosecution asks the Trial Chamber to infer that Kamara assisted in planning the attack. In addition, the Prosecution contends that Kamara was present in Karina and saw his own security

guard carry out unlawful killings. The Prosecution further argues that given that he was present when the order was given to make Camp Rosos a civilian "no go" area, the systematic nature of crimes committed, and his position within the renegade-SLA hierarchy, the Trial Chamber may be able to infer that the Accused promoted or encouraged the commission of crimes, and that he intended the commission of such crimes or was aware of the substantial likelihood that they would be committed. [3242]

8087. para. 1913: In its Final Brief, the Kamara Defence submits that the command structure during the attacks in Bomba1i District the command structure was not the one described by Prosecution witnesses. [3243] It refers to Prosecution witnesses who testified that the Accused Kamara was detained during a part of the relevant time period.[3244] It further contends that most of the witnesses who testified that the Accused Kamara was present in Bombali District during the Indictment period did not allege that he participated in the offences alleged or that he instructed any other persons to do so. Finally, it argues that those witnesses who did allege such participation – in particular TFl-334 and George Johnson - failed to corroborate each others' testimonies.[3245]

ii. Committing - Responsibility of Accued Kamara under Article 6.1 – Bombali District

8088. para. 1914: The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kamara for the crimes committed in the Bombali District.

iii. Ordering - Responsibility of Accued Kamara under Article 6.1 – Bombali District

8089. para. 1915: The Trial Chamber finds that the Accused Kamara ordered the unlawful killing of five young girls in Karina. Kamara ordered that the girls be locked in a house and that the house then be set on fire. This order was obeyed by AFRC troops.[3246]

8090. para. 1916: The Trial Chamber finds that as the deputy commander in Bomba1i District the Accused Kamara had sufficient authority over the troops to instruct the commission of the crimes. On all the evidence adduced, the Trial Chamber finds that the Accused Kamara was aware of the substantial likelihood that the burning to death of the five young girls in Karina would be carried out.

iv. Planning - Responsibility of Accued Kamara under Article 6.1 – Bombali District

8091. para. 1917: The Trial Chamber recalls its finding that the Accused Brima ordered the attack on Karina in an address to the troops at Kamagbengbe.[3247] In the course of this address, the Accused Brima stated that he wanted to divide the troop and make attacks on both Karina and Kamabai, but that the other commanders suggested to him that keeping the troop together would result in less casualties. The Accused Brima agreed to this.[3248] The Trial Chamber notes that this incident was a strategic discussion between commanders which could constitute planning of the attack on Karina and the crimes committed therein. However, witness TFl-334 does not name the commanders involved in this discussion. The Trial Chamber is not prepared to infer merely by virtue of the Accused Kamara's position as deputy commander that he was one of them.

8092. para. 1918: No evidence was adduced that the Accused Kamara made a substantial contribution to the planning of any crimes under Counts 3 through 6, 10 through 11 and 14 in Bombali District.

8093. para. 1919: In view of the continuing nature of these crimes charged under Counts 12 and 13 and the fact that they span across various districts the Trail Chamber will discuss the Accused Kamara's criminal responsibility for Counts 9, 12 and 13 below. [3249]

v. Instigating and otherwise Aiding and Abetting - Responsibility of Accued Kamara under Article 6.1 – Bombali District

8094. para. 1920: No evidence was adduced that the Accused Kamara prompted or influenced or gave practical assistance, encouragement or moral support to the perpetrators of the crimes committed in Bombali District. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kamara for the crimes committed in the Bombali District.

c. Responsibility of Accued Kanu under Article 6.1– Bombali District

8095. para. 2025: The Trial Chamber found that AFRC troops in Bombali District engaged in unlawful killings of civilians as charged under Counts 3 through 5[3355] and inflicted sexual and physical violence on civilians as charged under Counts 6 to 9 and 10 and 11 respectively.[3356] AFRC troops also abducted civilians and used them as forced labour and used children illegally recruited for military purposes, as charged under Counts 13 and 12 respectively.[3357] Finally,

AFRC troops engaged in widespread looting, as charged under Count 14, terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.[3358]

i. Pleadings – Respsonsiblity of Accused Kanu under Article 6.1 – Bombali District

8096. para. 2026: In its Final Brief, the Prosecution contends that the Accused Kanu was present when the order was given to burn Karina and kill its inhabitants and that he assisted in the planning phase. The Prosecution submits that Kanu also helped to lead the attack on Bomoya where numerous civilians were killed. The Prosecution further argues that it is inferable from the position of the Accused Kanu, coupled with the systematic nature of the crimes committed in Bombali District, that he prompted or encouraged these acts. Additionally, he either intended such acts or was aware of the substantial likelihood that such crimes would be committed. Finally, the Prosecution asserts that at Camp Rosos, the Accused Kanu was in charge of training child soldiers and was in total control of the women at the camp.

8097. para. 2027: In its Final Brief, the Kanu Defence submits that several AFRC groups moved from Koinadugu District to Bombali District, and that the Accused Kanu was not part of the group that included Prosecution Witness George Johnson. The Kanu Defence further contends that the Prosecution has led no evidence regarding the involvement of the Accused Kanu in the illegal recruitment of child soldiers and that the evidence regarding his involvement in training these children for military purposes is vague.

ii. Committing/Ordering – Respsonsiblity of Accused Kanu under Article 6.1 – Bombali District

8098. para. 2028: The Prosecution has not adduced any evidence that the Accused Kanu committed or ordered any of the crimes that occurred in Bombali District. The Trial Chamber finds that the Prosecution has not proved either of these modes of individual criminal responsibility against the Accused Kanu for the crimes committed in the Bombali District.

iii. Planning - – Respsonsiblity of Accused Kanu under Article 6.1 – Bombali District

8099. para. 2029: The Prosecution has not adduced any evidence that the Accused Kanu planned any crimes under Counts 3 to 6, 10 to 11 and 14 in Bombali District. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for the crimes committed under those counts. The Accused Kanu's criminal responsibility for Counts 9, 12 and 13, which are crimes of a continuing nature spanning various districts, will be discussed below.[3364]

iv. Instigating – Respsonsiblity of Accused Kanu under Article 6.1 – Bombali District

8100. para. 2030: The Prosecution has not adduced any evidence that the Accused Kanu prompted or influenced the perpetrators of the crimes committed in Bombali District. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for the crimes committed in the Bombali District.

v. Otherwise aiding and abetting – Respsonsiblity of Accused Kanu under Article 6.1 – Bombali District

8101. para. 2031: The Prosecution has not adduced any evidence that the Accused Kanu gave practical assistance, encouragement or moral support which had a substantial effect on the perpetration of crimes in Bombali District. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for the crimes committed in Bombali District.

(viii) Freetown and Western Area

a. Responsibility of Accused Brima under Article 6.1- Freetown and Western Area

8102. para. 1745: The Trial Chamber found in relation to Freetown and the Western Area that AFRC troops committed unlawful killings of civilians [3000] and inflicted sexual and physical violence on civilians; that AFRC troops also abducted civilians and used them as forced labour; [3003] that AFRC troops illegally recruited and used children under the age of 15 years for military

purposes in the attack on Freetown;[3004] and that AFRC troops engaged in looting,[3005] and committed collective punishments and acts of terror against the civilian population,[3006] as charged in the Indictment.

i. Pleadings – Responsbiltiy of Accued Brima under Article 6.1 – Freetown and Western Area

8103. para. 1746: In its Final Trial Brief, the Prosecution asserts that the Accused Brima together with the Accused Kamara and Kanu planned and led the invasion of Freetown, and that the attack on Freetown was designed and organised by Brima. The Prosecution further asks the Trial Chamber to infer that the Accused, based on his position and participation in the commission of crimes in Freetown, intended the commission of the crimes pleaded in the Indictment in Freetown 1999, or was aware of the substantial likelihood that the crimes would occur.[3007] Alternatively, it submits that the Accused Brima is liable for aiding and abetting all of the crimes charged through his presence on the ground, his position of authority and his active support for operations.

8104. para. 1747: The Prosecution further contends that Freetown was attacked pursuant to the orders of the Accused Brima, and that given his position of authority, it may reasonably be inferred that Brima ordered the commission of all the crimes in Freetown. It adds that the Accused gave specific orders to burn down Police stations and all of Calaba town; issued a general order to execute "collaborators", and ordered specific unlawful killings, and that he also ordered amputations, abductions and looting.

8105. para. 1748: In addition, the Prosecution submits, the Accused Brima committed numerous killings, amputations and burnings and that he further committed, instigated or aided and abetting acts of sexual violence.

8106. para. 1749: The Brima Defence contends that the evidence adduced by the Prosecution is insufficient to support any theory that the Accused was liable by his acts or omissions for the crimes committed in Freetown and the Western Area in 1999. The Brima Defence argues in Brima never came to Freetown during the January 1999 invasion nor was he part of the attack there, a fact supported by various Defence witnesses.

ii. Committing - Killings of three persons at State House – Responsbiltiy of Accued Brima under Article 6.1 – Freetown and Western Area

8107. para. 1750: Prosecution evidence that during the 6 January 1999 invasion of Freetown by the AFRC forces, the Accused Brima personally shot and killed three men whom he believed to be Nigerians at State House, went unchallenged.[3014] Witness TF1-184, who was an AFRC commander at the time, stated that whilst inside the State House, he saw junior soldiers bring four civilians including one woman to State House from the Paramount Hotel. The Accused Kanu took the woman and the three civilians who were accused of being "Nigerians." The witness then saw the Accused Brima shoot and kill them. [3015] The testimony of Witness TF1-184 was corroborated by that of Witness TF1-334. In support of Brima's alibi defence, Defence witness DBK-126 stated that she would take food to the Accused Kamara at the State House but that she did not see the Accused Brima while there. [3016]

8108. para. 1751: The Trial Chamber is of the view that the evidence of DBK-126 does not undermine the evidence of Prosecution witnesses TF1-184 and TF1_334[3017] who were present at State House and saw the Accused Brima commit crimes there. The Trial Chamber will now determine whether the Indictment particularised these crimes.

8109. para. 1752: The Indictment provided not one material fact regarding the specific incident described above. Instead, it alleged that "AFRC/RUF conducted armed attacks throughout the city of Freetown." Given this failure to adequately plead critical material facts the Trial Chamber finds the Indictment defective. The Trial Chamber must therefore determine whether this defect in the Indictment was cured by clear, timely and consistent notice of the material facts to the Brima Defence.

8110. para. 1753: Material facts were not provided in the Prosecution Supplemental Pre-Trial Brief nor its Opening Statement. The only document referring to the incident is a pre-trial statement of Prosecution Witness TF1-184 stating that:

> On the 7 January 1999, a Nigerian Civilian was captured by our soldiers. This man told us that his friends were staying at the Paramount Hotel. After that, the three other Nigerians, two men and one woman, were captured and all of them were brought to State House and presented to Gullit. Gullit said that the men should die. Then he took his pistol and shot one Nigerian in the head, one in the chest and the last one in the side. [3018]

8111. para. 1754: The Trial Chamber notes that among its disclosure materials the Prosecution included a document entitled "Additional Information provided by Witness TF1-184 on 20 May

2005 and 17 June 2005." In that document, the witness said that the Accused Brima murdered three civilians at the State House on 7 January 1999. This document might have put the Defence on notice of the particulars of the charge against Brima, as it details the manner in which the three men were captured and killed. The Trial Chamber, however, observes that this information was not disclosed to the Defence until at least two months after the opening of the trial. Thus, the notice provided cannot be described as 'timely' nor can it qualify as 'consistent.' However, the Brima Defence did not object to the leading of evidence of this incident. The Trial Chamber therefore finds that the failure to give notice did not materially impair the ability of the Brima Defence to prepare its case.

8112. para. 1755: Accordingly, the Trial Chamber finds the Accused Brima criminally responsible for committing the murder of three civilian Nigerian men at the State House as part of a widespread and systematic attack against the civilian population.

iii. Committing - Killing of a soldier's wife at the State House Area - – Responsbiltiy of Accued Brima under Article 6.1 – Freetown and Western Area

8113. para. 1756: The Trial Chamber has found that the Accused Brima personally killed the wife of one of his soldiers outside State House in Freetown in early January 1999.[3019] Witness TF1-184 stated that he heard the husband of the victim assert that "[t]his Papay [the Accused Brima] had been after my woman for quite sometime."[3020]

8114. para. 1757: Yet again this incident is not pleaded in the Indictment, rendering the Indictment defective. The Trial Chamber must therefore determine whether this defect in the Indictment was cured by clear, timely and consistent notice to the Brima Defence. The Prosecution Supplemental Pre-Trial Brief and the Prosecution's Opening Statements do not refer to this incident. The only document that does refer to the incident is a prior statement of Prosecution Witness TF1-334, dated 7 November 2003, which described the killing in the following terms:

> [...] I returned to State House. Surprisingly Gullit started firing soldiers who, according to him, were not members of the troop, who were not cooperating. Also, some Nigerian soldiers we have captured, Gullit fired them. Also, in my presence, he killed a certain lady we had brought from the jungle.[3021]

8115. para. 1758: As the date of disclosure was not provided to the Trial Chamber, it is unable to determine the timeliness of the notice to the Defence.

8116. para. 1759: Prosecution Witness TF1-334 did not ultimately give evidence of this incident in his oral testimony, but Prosecution Witness TF1-184 did. The Trial Chamber is unable to determine the passage of time between the initial disclosure of the Prosecution material and the testimony of Witness TFl-184, and is therefore unable to determine the timeliness of the notice. however, the Brima Defence did not object. The Trial Chamber therefore finds that the failure to give notice did not materially impair the ability of the Brima Defence to prepare its case.

8117. para. 1760: The Trial Chamber accordingly finds that the Accused Brima is criminally responsible for personally killing a soldier's wife at the State House Area.

iv. Committing - Unlawful killings at Kissy Mental Home/Portee area - – Responsbiltiy of Accued Brima under Article 6.1 – Freetown and Western Area

8118. para. 1761: The Trial Chamber heard unchallenged evidence that shortly after the AFRC forces invaded Freetown in early January 1999, on the way from Kissy Mental Home towards the Portee area, the Accused Brima personally shot dead a nun.[3022] Witness TF1-153 stated that he moved together with the AFRC troops to the Portee area by the Cotton Tree where they met nuns and that after 'Gullit' ordered the nuns to walk faster he later took out his pistol and shot dead "a black nun."[3023]

8119. para. 1762: The Trial Chamber finds that once again, the Indictment does not plead the incident on the killing of a black nun by the Accused Brima around the Portee area, the failure of which renders the Indictment defective. The Trial Chamber observes that the Prosecution Supplemental Pre-Trial Brief and its Opening Statement do not mention the killing of a black nun in the Portee area. However, this defect was cured by the information provided in the pre-trial Statement of witness TF1-153 dated 28 February 2003.

8120. para. 1763: Although the pre-trial statement of witness TF1-153 do not provide specific details on the killing of a black nun by the Accused Brima, the information contained therein put the Defence on adequate notice.[3024] Further information was contained in the pre-trial statement of witness TF1-153 on the conduct of the Accused Brima upon the AFRC troops' retreat from Freetown, and that the witness responded to the question put to him in relation to the killing of the black nun. In addition, the Defence cross examined the witness on this incident. [3025]

8121. para. 1764: Taking these statements together, the Trial Chamber finds that adequate notice was given to the Brima Defence of this incident. Accordingly, the Trial Chamber finds the Accused Brima individually criminally liable for committing the murder of a nun around the

Kissy Mental Home/Portee area, as part of a widespread and systematic attack against the civilian population.

v. Committing - Unlawful killings in the Wellington area - – Responsbiltiy of Accued Brima under Article 6.1 – Freetown and Western Area

8122. para. 1765: Witness TFl-334 testified that in early January 1999, AFRC forces along the Wellington area, including the Accused Brima shot at civilians.[3026] The witness stated that all the three Accused participated in the shooting of civilians and that he saw 'Gullit' shooting with his own gun. The witness did not state whether any persons died as a result of the shooting.

8123. para. 1766: Furthermore, the Indictment does not plead the particulars of the incidents that took place around the Wellington area in which the Accused Brima is alleged to have shot at civilians, and the Prosecution Supplemental Pre-Trial Brief, OTP Opening Statement and Witness Statements provide no information on this specific incident with regard to the Accused Brima. The Trial Chamber will therefore make no finding on this incident.

vi. Committing - Amputation of a civilian's hand at Old Road area - – Responsbiltiy of Accued Brima under Article 6.1 – Freetown and Western Area

8124. para. 1767: The Trial Chamber heard unchallenged evidence that 'Gullit' (the Accused Brima) intentionally amputated the hand of a man at Shell Company by Old Road in Freetown in January 1999.[3027] The Indictment does not plead the material facts regarding this specific incident with regard to the Accused Brima and is therefore defective. The Trial Chamber must therefore determine whether this defect was cured by clear, timely and consistent notice to the Brima Defence.

8125. para. 1768: The Prosecution's Pre-Trial Brief and Opening Statement do not refer to this incident. Annex A of the Prosecution Supplemental Pre-Trial Brief states that "Alex Tamba Brima ordered amputations of civilians because they had pointed out the rebel positions to ECOMOG" emphasis added.[3028] This information does not put the Defence on notice of the Prosecution's intent to charge the Accused with the personal commission of an amputation. The Trial Chamber notes however, that the pre-trial statement of witness TFl-184 specifically refers to the commission of the act by the Accused Brima:

> In late January 1999, around the Kissy mental hospital, I saw Kabila telling members of the high command including Gullit that the civilians where showing ECOMOG where we were hiding. I then heard Gullit say 'well those hands that

> point against us, cut them of. After this I saw several victims' amputations. The commander in charge of cutting hands was Lt Col Changabulanga. The amputations were done on the Old Road, Shell Company. Changabulanga, Gullit and 55 were there. I saw Gullit cutting hands of one man with a cutlass. The boys were doing this too. I saw 6 persons whose hands were cut. [3029]

The Trial Chamber cannot determine whether this information was disclosed to the Defence before the start of trial. Therefore the Trial Chamber considers that the Defence was not give timely and consistent notice of critical material facts.

8126. para. 1769: The Trial Chamber notes however that the Defence cross examined the witness with respect to this incident, [3030] and therefore finds that the failure to provide adequate notice did not materially impair the ability of the Brima Defence to prepare its case. Accordingly, the Trial Chamber Pursuant to Article 6(1) of the Statute, finds the Accused Brima individually criminally liable for committing the amputation of one civilian at Shell Company, Old Road, as part of a wide spread and systematic attack against the civilian population in January 1999.

vii. Ordering/Instigating - Order to kill civilians in Fourah Bay area - – Responsbiltiy of Accued Brima under Article 6.1 – Freetown and Western Area

8127. para. 1770: The Trial Chamber has found that the Accused Brima ordered his soldiers to kill civilians in the Fourah Bay area in retaliation for the killing of an AFRC soldier. The Trial Chamber is satisfied that the Accused Brima ordered the commission of these crimes in the awareness that the crimes were likely to be committed.

viii. Ordering/Instigating - Orders to terrorise and collectively punish the civilian population – Responsbiltiy of Accued Brima under Article 6.1 – Freetown and Western Area

8128. para. 1771: The Trial Chamber heard the following unchallenged evidence of Witness TF1-185 who was with the AFRC troops during the Freetown invasion of January 1999. The witness testified that in the presence of the Accused Kanu, 'Gullit' ordered 'Major Mines' to collect cutlasses and to distribute them to the soldiers so that amputations could be carried out. 'Changabulanga' distributed the cutlasses to the soldiers. Describing the manner in which the amputations were carried out, the witness stated that "Civilians were given either "long sleeves" meaning that the hand from the wrist downwards was removed, or "short sleeves" meaning that the entire arm from the bicep or elbow downwards was removed". The witness further stated that a new battalion under the command of 'Changabulanga' was created by 'Kande'. The aim of the

battalion was to create fear among the civilian population. To do this, they amputated civilian's hands.[3031] The trial Chamber also heard that during the retreat, the Accused Brima ordered the hands of all those who were pointing out the AFRC positions to ECOMOG forces to be amputated. As a result, "Mines" came back with full bag of hands and hour and a half later. [3032] From the pattern of the events, the Trial Chamber has no doubt that the hands were amputated from civilians by AFRC forces.

8129. para. 1772: Witness TF1-334 told court that on an unspecified day during the January 1999 invasion of Freetown, AFRC troops occupied the area of Kissy Mental Home in the eastern part of Freetown. In the evening hours and in the presence of senior AFRC commanders, including 'Bazzy' (the Accused Kamara) and 'Five-Five' (the Accused Kanu), 'Gullit' (the Accused Brima) ordered his troops to "clear up" the area by killing civilians as punishment for their support of ECOMOG.[3033] The Accused Brima in presence of the Accused Kamara and Accused Kanu, ordered his troops to attack Kissy Mental hospital and to go to the low-cost area and amputate the arms of civilians, kill civilians and burn property "because the civilians were celebrating the arrival ofECOMOG".[3034]

8130. para. 1773: The orders of the Accused Brima to the perpetrators of the amputations, together with the fact that a battalion was created not for military strategy but specifically to instil fear amongst the civilian population in Freetown clearly indicate an intention to terrorise the civilians. The Trial Chamber also heard the following unchallenged evidence of Witness TF1-084 who stated that during the rebel attack on Freetown in January 1999, civilians were mutilated and killed by ARFC forces because the AFRC believed the people of Freetown supported President Tejan Kabbah.[3035] Witness TF1-334 was present when 'Gullit' announced that it was time to attack Freetown and that the Sierra Leone People's Party government was responsible for denying the success of the rebel troops. He ordered that Freetown should be looted and burnt down, that anyone who opposed the troops should be a considered a collaborator and should be killed. [3036] This testimony is corroborated by Witness TF1-033 who also heard 'Gullit' order the burning of houses and the murder of civilians during the attack on Freetown.[3037] This evidence was unchallenged and is credible.

8131. para. 1774: The Trial Chamber also heard that in early January 1999 during the Freetown invasion, at the State House, the Accused told his fighters to force captured civilians to join the AFRC forces in order to compensate for those fighters killed by ECOMOG. Following the order, civilians who refused to join the AFRC forces were shot in the presence of the Accused Brima, and their dead bodies thrown out of the back of State House.[3038] In addition, witness TF1-334 also

testified that Brima ordered the abduction of civilians from Freetown during the attack "so as to attract the attention of the international community".[3039] During the attack civilians were indeed abducted. Another witness testified that when the ARFC entered Freetown, they ordered the civilians to sing while they were burning their houses.[3040] The Trial Chamber found the above Prosecution evidence which was unchallenged, credible.

8132. para. 1775: The Trial Chamber also heard evidence that soon after the troops lost State House the Accused Brima was informed by a soldier that one of the troops had been hacked to death by civilians at the Fourah Bay crossroad.[3041] In response, the Accused Brima called 'Major Mines', one of his subordinates, and instructed him to collect cutlasses at the SLRA [3042] compound. 'Major Mines' returned with cutlasses, some of which he kept for himself while the remainder he distributed to 'Changabulanga' who was the "battalion commander for amputations". The Accused Brima then ordered his men to go to Upgun roundabout where he ordered the fighters saying, "these people we should teach them a lesson." He ordered his men to amputate and kill civilians and burn the area down. The Trial Chamber has found that the order to commit these crimes was carried out. [3043] On the basis of this evidence the Trial Chamber is satisfied that the Accused Brima ordered the commission of crimes in full awareness that the crimes were likely to be committed. Witnesses TF1-334 and TF1-I04 testified that the amputations and killings of civilians continued during the AFRC retreat from Freetown. When it became clear that Guinean troops had taken over, 'Gullit' saw that the civilian population was celebrating. In the presence of the Accused Kamara and Kanu, 'Gullit' stated that the people of Freetown were ungrateful and ordered the troops to go as far as they could burning and killing people. Attacks on civilians were then carried out by the troops around the area of the Kissy Mental Hospital, Blackhall Road, the Kissy Police Station up to PWD Junction near Shankardass.[3044] Witness TF1-334 testified that he personally saw six civilians whose arms were amputated by 'Changabulanga'. The arms of the civilians were chopped off at the elbow and 'Osman Sesay' told them to "go to Pa Tejan Kabbah to get new hands".[3045]

8133. para. 1776: Prosecution Witness TF1-033 testified that after the AFRC lost the battle in Freetown he remained with the AFRC troops during their retreat for three weeks. During this time the Eastern part of Freetown was occupied by AFRC "fighters" under the command of 'Gullit'. The witness saw and heard Gullit ordering his men to commit atrocities against the civilian population as they were retreating. As a result of the order, girls and women were raped by the fighters. [3046] This evidence was not challenged. The Trial Chamber finds that through the above unchallenged evidence, the Prosecution has proved beyond reasonable doubt that the Accused Brima is individually criminally responsible for ordering his subordinates to commit those crimes,

as part of a widespread attack on the civilian population during the January 1999 invasion of and retreat from Freetown.

ix. Ordering/Instigating - Orders to kill collaborators - – Responsbiltiy of Accued Brima under Article 6.1 – Freetown and Western Area

8134. para. 1777: The Trial Chamber also heard evidence that during the January 1999 attack on Freetown, the Police were specifically targeted and punished by the AFRC troops who saw them as "collaborators" of the Kabbah Government. Witness TF1-334 heard Gullit giving orders to the AFRC troops in Freetown, specifying that "Police stations should be targeted and burnt down" and collaborators killed. [3047] Witness TF1-157 who confirmed the fact that the invading AFRC troops searched Freetown for Police officers and killed them and their "their people" (families). The witness also saw the AFRC troops attack the Eastern Police Station.[3048]

x. Ordering/Instigating - Order to loot UN Vehicles and civilian property – Responsbiltiy of Accued Brima under Article 6.1 – Freetown and Western Area

8135. para. 1778: The Trial Chamber heard the unchallenged evidence of Witness TF1-334 that on 6 January 1999, the Accused Brima ordered the Operations Commander to loot vehicles at United Nations headquarters and to bring them back to State House and that the Operations Commander complied with the order.[3049] Another witness Gibril Massaquoi, testified that soon after the January 1999 Freetown Invasion, he saw the Accused Kanu and other commanders driving UN vehicles in Freetown.[3050] The Trial Chamber is satisfied on the basis of this evidence that the Accused Brima's that he ordered the commission of this crime in full awareness that the crime was likely to be committed and that the order was carried out. The Trial Chamber heard evidence that in Allen Town, on the eve of the invasion of Freetown in January 1999, the Accused Brima gathered his troops and instructed them to execute "collaborators" - a term witness TF1-334 explained was used to refer to any person who did not support the AFRC troops. Brima also informed his troops that as he did not have the means to pay them they were free to loot from the civilian population. Brima also instructed the troops to burn down all police stations.[3051]

xi. Ordering/Instigating - Order to kill 14 captive Nigerian ECOMOG soldiers at State House - – Responsbiltiy of Accued Brima under Article 6.1 – Freetown and Western Area

8136. para. 1779: The Trial Chamber has found that at State House on an unknown date during the Freetown attack, Brima ordered the execution of 14 to 16 captive and unarmed Nigerian ECOMOG soldiers.[3052] Although the Prosecution witnesses TF1-334 and TF1-033 gave varying accounts of why the Nigerians were killed, they were all consistent regarding the fact that the Accused Brima gave the order for the Nigerians to be killed.[3053] The Trial Chamber found that these ECOMOG soldiers, hors de combat, were subsequently killed.[3054] On the basis of this evidence the Trial Chamber is satisfied that the Accused Brima ordered the commission of crimes in full awareness that the crimes were likely to be committed.

xii. Ordering/Instigating - Order to kill eight nuns at Kissy Mental Home – Responsbiltiy of Accued Brima under Article 6.1 – Freetown and Western Area

8137. para. 1780: A number of Prosecution witnesses testified that on an unspecified day in early January 1999, AFRC troops captured two clerics and eight nuns at Kissy Mental Home. After ECOMOG began bombarding the troops there, the two abducted clerics escaped. 'Gullit' ordered his fighters to execute the eight nuns "so as to prevent them escaping and leaking information". Pursuant to this order, Foday Bah Marah a.k.a. 'Bulldoze' executed five nuns. [3055] The witness stated that following the execution of the nuns, the Accused explained to his troops that they were trapped and that it was time "for a complete bulldoze." The entire brigade then began to withdraw towards Wellington killing civilians and burning houses as they went.[3056] Witness George Johnson also testified that the troops had eight abducted nuns at Kissy mental home. However, he stated that when ECOMOG attacked the troops, Foday Bah Marah killed three nuns and the others escaped. The witness did not state whether this was pursuant to any order.[3057] Witness TF1-184 corroborated the evidence that three nuns were killed when the Nigerians attacked the mental home. He does not state who killed the nuns, but he testified that it was 'Gullit' who ordered their execution.[3058] The Trial Chamber is satisfied that the Accused Brima gave the order to kill the nuns and that the killing was carried out. On the basis of this evidence the Trial Chamber is satisfied that the Accused Brima ordered the commission of crimes in full awareness that the crimes were likely to be committed.

xiii. Ordering/Instigating - Order to massacre civilians in Rogbalan Mosque – Responsbiltiy of Accued Brima under Article 6.1 – Freetown and Western Area

8138. para. 1781: The Trial Chamber heard unchallenged evidence that at Kissy Mental Home while the AFRC were retreating from Freetown, the Accused Brima called several senior commanders together and informed them that he had received information that civilians were harbouring ECOMOG troops in a nearby mosque. He told his commanders not to assume that mosques were housing civilians and ordered that all those found in the Mosque be killed. On these instructions, the Accused Kanu set off with the soldiers. Once they reached the Mosque the Accused Kanu ordered the troops to begin firing. The witness observed that the mosque was full of civilians and that many people were killed.[3059] The evidence of this massacre was corroborated by the following evidence.

8139. para. 1782: Witnesses TF1-083 and TF1-021 both testified about a massacre at Rogbalan Mosque in Freetown in January 1999. Towards the end of January 1999,[3060] TF1-083 was told that there was an ongoing fire fight between ECOMOG troops and rebels. He therefore decided to seek refuge in Rogbalan Mosque. When he arrived he found approximately 70 dead bodies inside the mosque.[3061] TF1-021 testified that he was present in Rogbalan Mosque at midday on a Friday in January 1999 when men wearing "mixed clothing" (partly combat uniform and partly civilian clothing) and carrying guns and machetes attacked the mosque. The attackers first robbed the worshippers and then told them that they would all be killed for supporting President Kabbah. The attackers then began shooting. The witness estimated that 71 worshippers were killed in this attack. The witness stressed that the victims were civilian worshippers who had gathered for the traditional 14:00 prayers. [3062] The Trial Chamber is satisfied that the Accused Brima gave the order to kill the civilians at Rogbalan Mosque and that the killing was carried out by his subordinates. On the basis of this evidence the Trial Chamber is satisfied that the Accused Brima ordered the commission of crimes in full awareness that the crimes were likely to be committed.

xiv. Ordering/Instigating - Order to abduct and enslave civilians including child soldiers - – Responsbiltiy of Accued Brima under Article 6.1 – Freetown and Western Area

8140. para. 1783: The Trial Chamber heard evidence that during the retreat of the AFRC fighters from Freetown, the Accused Brima ordered the abduction of civilians "in order to attract the attention of the international community". Civilians were then abducted by the renegade-SLA troops and used to carry loads. On Brima's orders, the young boys under the age of fifteen years

were later trained as Small Boy Units.[3063] The Trial Chamber notes the evidence of Prosecution witness TF1-024 that the Accused Brima ordered the abduction of civilians because he lost so many troops and needed reinforcements from among the civilian population.[3064] On the basis of all the Prosecution evidence narrated above, the Trial Chamber is satisfied that the Accused Brima ordered the commission of these crimes in full awareness that they were likely to be committed. The Trial Chamber finds, pursuant to Article 6(1) of the Statute, that the Prosecution has proved beyond reasonable doubt that the Accused Brima ordered his subordinates to commit crimes against the civilian population in Freetown, in January 1999 as part of a widespread attack on the population.

xv. Planning – Responsbiltiy of Accued Brima under Article 6.1 – Freetown and Western Area

8141. para. 1784: No evidence was adduced that the Accused Brima planned any crimes under Counts 3 through 6, 10 through 11 and 14 in Freetown and the Western Area. The Trial Chamber finds that the Prosecution has not proved this mode of criminal responsibility against the Accused Brima, in relation to Freetown and the western Area.

xvi. Otherwise aiding and abetting – Responsbiltiy of Accued Brima under Article 6.1 – Freetown and Western Area

8142. para. 1785: As stated above with regards to liability for commission of crimes in Fourah Bay, the Trial Chamber has found that there is evidence that the Accused Brima participated in the attack on Fourah Bay in which civilians were killed and houses burnt. The Trial Chamber found that the Accused Brima was present during the commission of the crimes and either himself participated or failed to admonish the troops from committing the crimes.

8143. para. 1786: Given his authority as commander of the troops, the Trial Chamber finds Brima's presence at the scene gave moral support which had a substantial effect on the perpetration of the crime. In addition, given the systematic pattern of crimes committed by the AFRC troops throughout the District, the Trial Chamber is satisfied that the Accused Brima was aware of the substantial likelihood that his presence would assist the commission of the crime by the perpetrators.

b. Responsibilty of Accused Kamara under Article 6.1 – Freetown and Western Area

8144. para. 1929: The Trial Chamber had found that AFRC troops engaged in unlawful killings of civilians as charged under Counts 3 through 5 [3260] and inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively.[3261] AFRC troops also abducted civilians and used them as forced labour and used children illegally recruited for military purposes in the attack on Freetown, as charged under Counts 13 and 12 respectively.[3262] Finally, AFRC troops engaged in widespread looting, as charged under Count 14, terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.[3263]

i. Pleadings – Responsbility of Accued Kamara under Article 6.1 – Freetown and Western Area

8145. para 1930: In its Final Brief, the Prosecution submits that the Accused Kamara was present when the attack on Freetown was planned and that it can be inferred from his position as second in command that he was therefore actively involved in the planning phase. It further contends that Kamara was often present when the Accused Brima issued unlawful orders. [3264]

8146. para. 1931: The Prosecution further asserts that 'Captain Blood' carried out Kamara's order to execute civilians, ordered the burning of houses during the retreat towards Waterloo and was present when the Accused Brima ordered other burnings in Freetown and the Western Area.[3265]

8147. para. 1932: Finally, the Prosecution argues that the Accused Kamara carried out killings in Freetown, participated in burnings during the retreat from Freetown, and committed, instigated or aided and abetted the commission of sexual violence in Freetown.[3266]

8148. para. 1933: In its Final Brief, the Kamara Defence submits that the command structure during the Freetown invasion was not as it was described by Prosecution witnesses and that the Accused Kamara was not in Freetown at any time relevant to the Indictment. Therefore, he did not participate directly or indirectly in any of the crimes committed in Freetown.[3267]

ii. Committing - Killings of civilians in the Fourah Bay Area - Responsbility of Accued Kamara under Article 6.1 – Freetown and Western Area

8149. para. 1934: The Trial Chamber has found that AFRC troops killed an unknown number of civilians at Fourah Bay in retaliation for an alleged murder of an AFRC soldier during the 1999 attack on Freetown.[3268] Although the evidence shows that the Accused Kamara "partook" in the attack, it does not specify the way in which he participated in the incident. The Trial Chamber has found that this evidence does not establish that the Accused Kamara personally killed any civilians. [3269]

8150. para. 1935: The Trial Chamber will assess his responsibility with regard to the mode of aiding and abetting.

iii. Committing – Killing of civilians at Wellington - Responsbility of Accued Kamara under Article 6.1 – Freetown and Western Area

8151. para. 1936: In early January 1999, on the way to Wellington, AFRC forces, including the Accused Kamara, shot at civilians.[3270] In the absence of specific evidence that civilians died as a result of Kamara's actions the Trial Chamber is not satisfied that the Accused Kamara personally killed any civilians.

iv. Ordering, Planing, and Instigating - Responsbility of Accued Kamara under Article 6.1 – Freetown and Western Area

8152. para. 1937: The Trial Chamber finds no evidence that the Accused Kamara ordered, planned or instigated the commission of crimes in Freetown and the Western Area. The Trial Chamber finds that the Prosecution has not proved these modes of individual criminal responsibility against the Accused Kamara for the crimes committed in the Western Area.

8153. para. 1938: In view of the continuing nature of these crimes charged under Counts 9, 12 and 13 and the fact that they span across various districts the Trial Chamber will discuss the Accused Kamara's criminal responsibility for Counts 9, 12 and 13 below.[3271]

v. Otherwise aiding and abetting – Responsibilty of Accused Kamara under Article 6.1 – Freetown and Western Area

8154. para. 1939: As stated above with regards to liability for commission of crimes in Fourah Bay, the Trial Chamber has found that there is evidence that the Accused Kamara "partook" in the attack on Fourah Bay in which civilians were killed and houses. While the precise meaning of "partook" is unclear, the Trial Chamber has found that Kamara was present during the commission of the crimes and either himself participated or failed to admonish the troops from committing the crimes.

8155. para. 1940: Given his authority as deputy commander of the troops, the Trial Chamber finds Kamara's presence at the scene gave moral support which had a substantial effect on the perpetration of the crime. In addition, given the systematic pattern of crimes committed by the AFRC troops throughout the District, the Trial Chamber is satisfied that the Accused Kamara was aware of the substantial likelihood that his presence would assist the commission of the crime by the perpetrators.

vi. Otherwise aiding and abetting – Operation "Cut Hand" in Freetown - Responsibilty of Accused Kamara under Article 6.1 – Freetown and Western Area

8156. para. 1941: The Accused Kamara led an mission to loot machetes from the W orId Food Program warehouse. He later explained to Tina Musa, the late SAJ Musa's wife, that they had been used that day in "Operation Cut Hand," meaning that his troops had used the machetes to amputate civilians. [3272] The Trial Chamber is satisfied that the Accused, in providing weapons to the troops, with knowledge of how these weapons were to be used, the Accused Kamara gave practical assistance which had a substantial effect on the perpetration of unlawful killings and physical violence in Freetown. It further finds that the Accused Kamara was aware of the substantial likelihood that the use of the machetes would assist in the commission of these crimes. The Trial Chamber therefore finds the Accused Kamara liable for aiding and abetting physical violence.

c. Responsibility of Accused Kanu under Article 6.1 – Freetown and Western Area

8157. para. 2045: The Trial Chamber had found that AFRC troops engaged in unlawful killings of civilians as charged under Counts 3 through 5[3381] and inflicted sexual and physical violence on

civilians as charged under Counts 6 through 9 and 10 respectively.[3382] AFRC troops also abducted civilians and used them as forced labour and used children illegally recruited for military purposes in the attack on Freetown, as charged under Counts 13 and 12 respectively.[3383] Finally, AFRC troops engaged in widespread looting, as charged under Count 14, terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2. [3384]

i. Pleadings – Responsibilty of Accused Kanu under Article 6.1 – Freetown and Western Area

8158. para. 2046: In its Final Brief, the Prosecution submits that the Accused Kanu personally executed and amputated civilians, burned property, forced civilians to work and committed or aided and abetted acts of sexual violence in Freetown and the Western Area.[3385] The Prosecution argues that the Accused Kanu ordered amputations and executions of civilians.[3386] The Prosecution contends that the Accused Kanu was present during the planning of the attack on Freetown, and that it can be inferred from his position as third in command that he actively participated in this planning phase.[3387] Finally, the Prosecution submits that based on the Accused Kanu's authority and the widespread nature of the crimes committed, it can be reasonably inferred that he prompted or encouraged these acts, and that he intended the acts or was aware of the substantial likelihood that such acts would be committed.[3388]

8159. para. 2047: In its Final Brief, regarding the role of the Accused Kanu in killings at a mosque at Kissy, the Kanu Defence argues that the victims were ECOMOG soldiers and therefore that the Accused cannot be held liable for any crimes under the Statute.[3389] The Kanu Defence further submits that the evidence of Prosecution witness TF1-282, who testified that she had been raped by the Accused Kanu, was unreliable. [3390] The Kanu Defence contends that the Prosecution wi1'1ess George Johnson's evidence regarding Kanu's order at Kissy Mental Home to amputate civilians is unsafe.[3391] It further contends that Prosecution witness TF1-184' s evidence that the Accused Kanu demonstrated a method for carrying out amputations does not suffice to hold him liable under Counts 10 and 11. Finally, it submits that Prosecution witness TF1-334's testimony as a whole, including his testimony regarding the role of the Accused in amputations committed in Freetown, is unreliable.[3392]

ii. Committing - Fourah Bay: The killing of civilians - Responsibilty of Accused Kanu under Article 6.1 – Freetown and Western Area

8160. para. 2048: The Trial Chamber has found that AFRC troops killed an unknown number of civilians at Fourah Bay in retaliation for the alleged murder of a soldier during the 1999 attack on Freetown.[3393] While witness TF1-334 testified that the Accused Kanu "partook" in the attack, the witness does not further clarify the manner of his participation.[3394]

8161. para. 2049: The Trial Chamber has found that this evidence does not establish that the Accused Kanu personally killed any civilians.[3395]

iii. Committing - Kissy Road: "Demonstration" of an amputation to the troops - Responsibilty of Accused Kanu under Article 6.1 – Freetown and Western Area

8162. para. 2050: The Trial Chamber has found that the Accused Kanu amputated a civilian near Kissy Old Road during the 6 January 1999 invasion in order to "demonstrate" to his troops how best to carry out amputations [3396] He explained that there were two types of amputation possible, one called a long sleeve, meaning an amputation of the arms, and the other a short sleeve, meaning an amputation of the arm up to the bicep.[3397] The Indictment does not provide any of the particulars of the incident and is therefore defective in this regard.

8163. para. 2051: The Trial Chamber must determine whether this defect in the Indictment was cured by clear, timely and consistent notice to the Kanu Defence. The Prosecution Supplemental Pre-Trial Brief and the Prosecution's Opening Statements do not refer to this incident. Nevertheless, the Kanu Defence did not object to the evidence when led and in fact cross-examined the witness on this specific incident during trial. The Trial Chamber therefore finds that the failure to give notice did not materially impair the ability of the Kanu Defence to prepare its case.

8164. para. 2052: The Trial Chamber accordingly finds the Accused Kanu individually criminally responsible for committing an act of physical violence.

iv. Committing - Upgun: "Demonstration" of an amputation on a civilian - Responsibilty of Accused Kanu under Article 6.1 – Freetown and Western Area

8165. para. 2053: The Trial Chamber has found that subsequently the Accused Kanu demonstrated how to perform amputations on two other civilians at Upgun during the retreat from

Freetown in January 1999.[3398] The Trial Chamber is satisfied that this is a separate incident to the act of physical violence described above. The Indictment does not provide any of the particulars of the incident and is therefore defective in this regard.

8166. para. 2054: The Trial Chamber must determine whether this defect in the Indictment was cured by clear, timely and consistent notice to the Brima Defence. The Prosecution Supplemental Pre-Trial Brief and the Prosecution's Opening Statements do not refer to this incident. The Trial Chamber observes that the relevant information did not come into the Prosecution's possession until March or April 2005, and that on 22 April 2005 it disclosed a statement to the defence in which the witness said that

> Whilst we were at Upgun, 55 came with a commander, Major Mines and Captain Kabila and some people were amputated. 55 demonstrated by amputating two people. From then on the amputations started.[3399]

8167. para. 2055: Thus, the Defence was not put on notice of this allegation until over one month after the trial commenced. The Trial Chamber does not consider that this constitutes timely notice. Nevertheless, the Kanu Defence did not object to the evidence when led and in fact cross-examined the witness on this specific incident during trial. The Trial Chamber therefore finds that the failure to give timely notice did not materially impair the ability of the Kanu Defence to prepare its case.

8168. para. 2056: The Trial Chamber accordingly finds the Accused Kanu individually criminally responsible for committing an act of physical violence.

v. Committing - State House: Looting of vehicles - Responsibilty of Accused Kanu under Article 6.1 – Freetown and Western Area

8169. para. 2057: Witness Gibril Massaquoi testified that vehicles were looted by AFRC troops in Freetown and that the Accused Kanu arrived at State House with a stolen vehicle during the 6 January 1999 Freetown invasion. [3400] The Trial Chamber is satisfied beyond a reasonable doubt on this evidence that the Accused Kanu personally looted at least one vehicle in Freetown. The Trial Chamber accordingly finds the Accused Kanu individually criminally responsible for committing an act of pillage.

vi. Ordering – Order at State House to kill captive Nigerian ECOMOG soldiers - Responsibilty of Accused Kanu under Article 6.1 – Freetown and Western Area

8170. para. 2058: The Trial Chamber found that the Accused Brima ordered the execution of fourteen to sixteen captive ECOMOG soldiers at State House, and that the Accused Kanu then tool.. the soldiers outside, killed one ECOMOG soldier himself, and ordered his soldiers to execute the remaining captives. The Trial Chamber is satisfied that the executions were carried out [3401] and that the Accused Kanu ordered the commission of this crime in full awareness that the crime was likely to be committed.

vii. Ordering – Order to kill civilians at a mosque in Kissy - Responsibilty of Accused Kanu under Article 6.1 – Freetown and Western Area

8171. para. 2059: The Trial Chamber found that the Accused Kanu reissued an order given by the Accused Brima on the day after the troops withdrew from Kissy Mental Home that an unknown number of civilians at a mosque were to be killed. The Accused Kanu is not relieved of criminal responsibility for ordering this massacre simply because he was reissuing an order originally made by his commander, the Accused Brima. The Trial Chamber has found that the executions were carried out. [3402] The Trial Chamber is further satisfied that the Accused Kanu ordered the commission of this crime in full awareness that the crime was likely to be committed.

viii. Ordering – Order to commit amputations in Eastern Freetown - Responsibilty of Accused Kanu under Article 6.1 – Freetown and Western Area

8172. para. 2060: The Trial Chamber has found that when AFRC troops arrived at Kissy Mental Home, during the retreat from Freetown, the Accused Kanu ordered his fighters to go to Eastern Freetown and amputate 200 civilians and then send them to Ferry Junction. The witness George Johnson was present when the order was given, and saw the troops leave towards Eastern Freetown and return with severed arms and blood covered machetes.[3403] The Trial Chamber is satisfied that the amputations were carried out and that the Accused Kanu ordered the commission of this crime in full awareness that the crime was likely to be committed.

8173. para. 2061: The Trial Chamber has found that when the troops reached Upgun during the retreat from Freetown, the Accused Kanu told his commanders, including Col. Mines and Kabila, that it was time for amputations to begin, and that he would begin by demonstrating. Later two civilians were captured and the Accused amputated their arms. The Accused explained that he had

begun the amputations as an example to his troops of how to proceed. He then told the victims that they should go to President Kabbah to ask for new hands. Later that day, ten other civilians were captured and amputated by Kabila and Mines in Kanu's presence. Mines repeated Kanu's instruction to the victims to seek new hands from President Kabbah.[3404] The Trial Chamber recalls its finding that the Accused is liable for committing two amputations at Upgun. It additionally finds that he ordered the commission of further amputations which were then carried out. The Trial Chamber is satisfied that the Accused Kanu ordered the commission of this crime in full awareness that the amputations were likely to be committed. The Trial Chamber therefore finds that the Prosecution has proved this particular mode of individual criminal responsibility beyond reasonable doubt.

ix. Planning - Responsibilty of Accused Kanu under Article 6.1 – Freetown and Western Area

8174. para. 2062: The Prosecution has not adduced any evidence that the Accused Kanu planned any crimes under Counts 3 through 6, 10 through 11 and 14 in Freetown and the Western Area. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for any crimes committed under those Counts. The Accused Kanu's criminal responsibility for Counts 9, 12 and 13, which involve crimes of a continuing nature spanning various districts, will be discussed below.[3405]

x. Instigating - Responsibilty of Accused Kanu under Article 6.1 – Freetown and Western Area

8175. para. 2063: The Trial Chamber recalls that on the eve of the 6 January 1999 invasion of Freetown, the Accused Brima chaired a meeting at which the Accused Kanu reminded the AFRC troops present about orders to burn down police stations and kill "targeted persons'' collaborators.[3406] The Trial Chamber has found that a number of civilians were subsequently killed in Freetown. The Trial Chamber is satisfied that the Accused Kanu prompted the perpetrators to kill civilians in Freetown. The Trial Chamber therefore finds that the Prosecution has proved this mode of liability against the Accused Kanu.

xi. Otherwise aiding and abetting - Responsibilty of Accused Kanu under Article 6.1 – Freetown and Western Area

8176. para. 2064: The Prosecution has not adduced any evidence that the Accused Kanu aided and abetted any crimes in Freetown and the Western Area. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for the crimes committed in Freetown and the Western Area.

(ix) Port Loko District

a. Responsibility of Accued Brima under Article 6.1 – Port Loko District

8177. para. 1811: The Trial Chamber has found that AFRC/RUF troops unlawfully killed a number of civilians in Port Loko District as charged under Counts 3 through 5.[3109] In addition, AFRC troops held persons in sexual slavery as charged under Count 9.3110 AFRC/RUF troops used abducted civilians for forced labour, as charged under Count 13.

i. Pleadings - Responsibility of Accued Brima under Article 6.1 – Port Loko District

8178. para. 1812: In its Final Trial Brief, the Prosecution argues only that the Accused Brima is liable for the crimes committed in Port Loko District as a principal in a joint criminal enterprise.[3111]

8179. para. 1813: The Brima Defence invites the Trial Chamber to disregard the testimony of Witness TF1-256 on the grounds that it is unreliable and alternatively submits that as the Accused Brima was under detention at the material time, he had no relationship with the alleged perpetrators of the crimes committed in Port Loko District and then: is no nexus between the events in Nonkoba described by witness TF1-256 and the Accused.[3112]

ii. Findings - Responsibility of Accued Brima under Article 6.1 – Port Loko District

8180. para. 1814: No evidence was adduced that the Accused Brima individually committed, ordered, planned, instigated or aided and abetted the commission of any of the crimes that occurred in Port Loko District. The Trial Chamber finds pursuant to Article 6(1) of the Statute, that the Prosecution has not proved this mode of individual criminal responsibility against the

Accused Brima, for the crimes committed in Port Loko District during the relevant Indictment period.

b. Responsibility of Accued Kamara under Article 6.1– Port Loko District

8181. para. 1951: The Trial Chamber has found that AFRC/RUF troops unlawfully killed a number of civilians in Port Loko District as charged under Counts 3 through 5.[3282] In addition, AFRC troops held persons in sexual slavery as charged under Count 9.3283 AFRC/RUF troops used abducted civilians for forced labour, as charged under Count 13.

8182. para. 1952: The Trial Chamber has found that the unlawful killings committed in Manaarma are attributable to troops working with the Accused Kamara.[3284] The Trial Chamber has found that the unlawful killings committed in Nonkoba and the sexual crimes are not attributable beyond reasonable doubt to any particular group of fighters.

i. Pleadings - Responsibility of Accued Kamara under Article 6.1- Port Loko District

8183. para. 1953: In its Final Brief, the Prosecution asks the Trial Chamber to infer, based on the position of the Accused Kamara and his management of the troops, that he "designed and organised" the attacks on Port Loko District and that he is therefore liable for planning, instigating and/or aiding and abetting the crimes associated with the attacks.[3285] The Prosecution further contends that the Accused Kamara ordered the commission of crimes in Port Loko District. [3286]

8184. para. 1954: Finally, the Prosecution submits that the Accused Kamara committed a killing at Mamamah and a rape at Gberibana.[3287] The Trial Chamber notes that Mamamah and Gberibana were not locations specified in the Indictment under Counts 3-5 and 6 respectively.

8185. para. 1955: In its Final Brief, the Kamara Defence submits that the Accused Kamara was not in Port Loko District at any time relevant to the Indictment and that the command structure in Port Loko District was not as described by Prosecution witnesses.[3288]

ii. Findings - Responsibility of Accued Kamara under Article 6.1– Port Loko District

8186. The Prosecution has not adduced any evidence that the Accused Kamara committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes committed in the

Port Loko District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kamara for the crimes committed in Port Loko District. [402]

c. Responsibilty of Accused Kanu under Article 6.1– Port Loko District

8187. para. 2081: The Trial Chamber has found that AFRC/RUF troops unlawfully killed a number of civilians in Port Loko District as charged under Counts 3 through 5.[3422] In addition, AFRC troops held persons in sexual slavery as charged under Count 9.[3423] AFRC/RUF troops used abducted civilians for forced labour, as charged under Count 13.

i. Pleadings – Responsibility of Accused Kanu under Article 6.1 – Port Loko District

8188. para. 2082: In its Final Trial Brief, the Prosecution argues only that the Accused in Kanu is liable for the crimes committed in Port Loko District as a principal in a joint criminal enterprise. [3424]

8189. para. 2083: The Kanu Defence makes no specific submissions regarding the alleged liability of the Accused for crimes committed in Port Loko District in its Final Brief.

ii. Findings – Responsibility of Accused Kanu under Article 6.1 – Port Loko District

8190. para. 2084: The Prosecution has not adduced any that the Accused Kanu individually committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes that occurred in Port Loko District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kanu for the crimes committed in Port Loko District.

[402] Anomaly – no paragraph was assigned to this sentence.

(x) Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers

a. Responsibility of Accused Brima under Article 6.1 – Responsililty Crimes of Enslavement, Sexual Slavery and Child Soldiers

8191. para. 1820: The Trial Chamber has found that civilians were subjected to sexual slavery as charged under Count 9; that children under the age of 15 were conscripted into the AFRC forces and/or used to participate in active hostilities as charged under Count 12; and that civilians were enslaved as charged under Count 13. Because of the continuing nature of these crimes and the fact that victims were in most cases forced to follow the perpetrators on a journey that spans across a number of districts, the Trial Chamber has deemed it fit to consider these additional findings on responsibility of the Accused Brima for these crimes here. These findings do not detract from the trial Chamber's findings elsewhere in this Judgement with regard to these three crimes.

8192. para. 1821: The evidence demonstrates that abducted civilians were used to perform a multiplicity of critical tasks for the troops. Both in Bombali District and Freetown, abducted civilians were used to carry food, military supplies and ammunition.[3120] At 'Colonel Eddie Town', abductees were used to harvest rice crops, the main source of food. [3121] At Lunsar, civilians were abducted specifically to help guide the troops as they moved at night. [3122] Once brutalised, trained and often forced to ingest illicit substances, child soldiers were forced to perform a number of military functions. More generally, the large number of abducted civilians gave the impression to the local population that the troops enjoyed greater support than they actually did.

8193. para. 1822: Once the AFRC troops had established a base at Camp Rosos in Bombali District, abductees were forced to undergo a three week military training program. Civilians that attempted to escape were executed.[3123] The Prosecution Military Expert, Colonel Iron, stated: "The AFRC had little choice but to run this training: there was a finite number of trained ex-SLA soldiers, and each casualty or loss could not be otherwise replaced." Although the Trial Chamber accepts that the primary purpose of these abductions was to support the military effort, it rejects Colonel Iron's conclusion that the AFRC "little choice" in adopting this strategy.

8194. para. 1823: The Trial Chamber heard that sexual slavery was systemic amongst the perpetrators. Abducted women were distributed to soldiers and commanders who signed for them. There were disciplinary measures regulating the conduct of sexual slaves and their rebel 'husbands'. This system was overseen by commanders who appointed a 'Mammy Queen' to assist them. At Camp Rosos, abducted young women were forced to provide sexual services and to perform domestic tasks. [3124]

8195. para. 1824: The magnitude of commission of the three enslavement crimes by AFRC troops indicates their systemic nature. The Trial Chamber notes that the Brigade included a position in which an individual was appointed specific responsibility for abducted civilians.[3125] Although the Trial Chamber is unable to make a finding on the total number of civilians abducted and forced to undergo military training, the example provided by Colonel Iron that one battalion at 'Colonel Eddie Town' consisted of approximately 150 trained soldiers supplemented by approximately 200 abducted civilians [3126] corroborates the evidence of fact-based witnesses that these crimes were committed on a large scale.[3127]

8196. para. 1825: Indeed, it would appear that once established the modus operandi of enslavement became so deeply entrenched that it was difficult to break. Col. Iron's conclusion about the abduction of civilians during the withdrawal from Freetown is instructive. There can be little military justification for what happened" during the retreat from Freetown [...] The abductions seem particularly self-defeating: at a time when there was benefit in reducing the size of the force to make it faster moving during the escape, the abductees swelled the size of the column, slowed it down, and made it a bigger target. One reason given for the abductions was to make the fighting strength seem larger than it was; but I suspect that the truth is more simply that abductions were now common practice for the AFRC." [3128] [emphasis added] [1826]. Based on the large scale, continuous and organised nature of the enslavement crimes, the Trial Chamber is satisfied that the only reasonable inference is that a substantial degree of planning and preparation were required to commit the crimes.

8197. para. 1827: On the basis of the evidence below, the Trial Chamber is further satisfied that the Accused Brima, alone or with others, designed the commission of the three crimes (enslavement, sexual slavery and recruitment and use of child soldiers) and that although these crimes were largely committed by his subordinates, his contribution was substantial.

8198. para. 1828: The Accused played a substantial role in the system of exploitation and cruelty. The Trial Chamber has found that the Accused Brima was the overall commander of both the AFRC troops that moved from Mansofinia, Koinadugu District to Camp Rosos, Bombali District and of the AFRC troops that later invaded Freetown on 6 January 1999. As the overall commander, the Accused Brima was substantially involved planning the various operations in these Districts.[3129]

8199. para. 1829: The Trial Chamber has found that, on a number of occasions, the Accused Brima publicly addressed the troops and advocated criminal conduct.[3130]

8200. para. 1830: The Accused Brima also directly participated in and made a substantial contribution to the planning and execution of the said crimes. In Mansofinia, at the start of the journey of the AFRC troops through Bombali District, the Accused Brima ordered that any strong civilian encountered by the troops on the journey should be captured and made to join the troops.[3131] Following this order, hundreds of civilians were abducted in Bombali District. [3132] These civilians were used as forced labour. [3133] During the attack on Karina, Bombali District, Brima ordered the distribution of children captured among the commanders.[3134] Upon completion of civilian military training at Camp Rosos, the trainees were addressed by both the Accused Kanu and the Accused Brima. Brima then ordered that the boys should be distributed to the various companies, while the women were sent back to the soldiers and commanders who had taken them as their "wives".[3135]

8201. para. 1831: During the withdrawal from Freetown in January 1999, the Accused Brima held a meeting attended by the Accused Kamara and Kanu, among others. At this meeting, the Accused Brima ordered his troops to begin abducting civilians, saying that this would attract the attention of the international community.[3136] Troops immediately began breaking into houses and capturing civilians, especially young girls, and taking them to headquarters at the PWD.[3137] Witness TF1-334 testified that "Almost everybody" had civilians, including the commanders,[3138] and abducting commanders were formally responsible for ensuring that civilians did not escape.[3139] Several days later, the Accused Brima ordered the further abduction of civilians.[3140] This order was also implemented by the troops.[3141]

8202. para. 1832: As was the pattern with all operations overseen by the Accused Brima, AFRC fighters exhibited a depraved indifference towards human life in abducting and enslaving civilians. Children watched their abductors executing family members [3142] Throughout the conflict women and young girls were treated as war bounty, abducted from their homes and repeatedly raped.[3143] Child soldiers were terrorised, drugged and forced to commit crimes against other civilians.[3144] Given his authority, the Accused was in a position to shut down this system of exploitation entirely, to deter the excesses committed by his troops, and to alleviate the plight of the victims. On the evidence adduced the Trial Chamber finds that he failed to do so.

8203. para. 1833: The Trial Chamber stresses that the above evidence relates entirely to enslavement crimes committed in Bombali and the Western Area. The Trial Chamber has found that the Accused Brima was not involved in the commission of crimes in Bo, Kenema, Kailahun, Kono, Koinadugu and Port Loko Districts.

8204. para. 1834: The Trial Chamber is satisfied that the Accused planned, ordered, organised and implemented the system to abduct and enslave civilians which was in fact committed by AFRC troops in Bombali and Western Area. It is further satisfied that the Accused had the direct intent to set up and implement the system of exploitation involving the three enslavement crimes, namely, sexual slavery, conscription and use of children under the age of 15 for military purposes, and abductions and forced labour.

i. Count 9 (Outrages on Personal Dignity) – Responsibility of the Accused Brima under Article 6.1 – Crimes of Enslavement, Sexual Slavery and Child Soldiers

8205. para. 1835: On the basis of the foregoing, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Brima is individually criminally responsible under Article 6(1) of the Statute for planning the commission of the crime of outrages on personal dignity in Bombali District and Freetown and the Western Area.

ii. Count 12 (Child Soldiers) - Responsibility of the Accused Brima under Article 6.1 – Crimes of Enslavement, Sexual Slavery and Child Soldiers

8206. para. 1836: On the basis of the foregoing, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Brima is individually criminally responsible under Article 6(1) of the Statute for planning the commission of conscription of children under the age of 15 into the armed group or using them to participate actively in hostilities in Bombali District and the Western Area.

iii. Count 13 (Enslavement) - Responsibility of the Accused Brima under Article 6.1– Crimes of Enslavement, Sexual Slavery and Child Soldiers

8207. para. 1837: On the basis of the foregoing, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Brima is individually criminally responsible under Article 6(1) of the Statute for enslavement in Bombali District and the Western Area.

b. Resposibility of Accused Kamara under Article 6.1 - Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers

8208. para. 1970: The Trial Chamber has found that civilians were subjected to outrages upon personal dignity as charged under Count 9; that children under the age of 15 were conscripted into

the AFRC forces and/or used to participate in active hostilities as charged under Count 12; and that civilians were enslaved as charged under Count 13.

8209. para. 1971: As with the Accused Brima, the Trial Chamber will examine the evidence in relation to the responsibility of the Accused Kamara for each of the enslavement crimes as a whole. The Trial Chamber recalls its finding that the only reasonable inference available from the systemic commission of these crimes on a large scale is that these crimes were planned.[3304]

8210. para. 1972: While the Trial Chamber has found that the Accused Kamara was overall commander in Kono District after the departure of Johnny Paul Koroma, the Prosecution has not established that he was involved or substantially contributed in this position to the enslavement crimes in that district.[3305] However the Trial Chamber finds that, in his position as overall commander, he was aware that civilians were abducted and subjected to enslavement in that district.

c. Responsibility of Accused Kanu under Article 6.1 - Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers

8211. para. 2089: The Trial Chamber has found that civilians were subjected to sexual slavery as charged under Count 9; that children under the age of 15 were conscripted into the AFRC forces and/or used to participate in active hostilities as charged under Count 12; and that civilians were enslaved as charged under Count 13.

8212. para. 2090: As with the Accused Brima, the Trial Chamber will examine the evidence in relation to the responsibility of the Accused Kanu for each of the enslavement crimes as a whole. The Trial Chamber recalls its finding that the only reasonable inference available from the systemic commission of these crimes on a large scale is that these crimes were planned.[3426] The Trial Chamber will consider the evidence in order to determine whether the Accused Kanu substantially contributed to the planning of these crimes.

8213. para. 2091: The Trial Chamber has found that the Accused Kanu was Chief of Staff and commander in charge of abducted civilians in Bombali District and the Western Area.[3427] As the AFRC troops depended heavily on these civilians for a multitude of tasks, the Accused Kanu's position was a critical one.

8214. para. 2092: In Bombali District the Accused Kanu designed and implemented a system to control abducted girls and women. All abducted women and girls were placed in the custody of

the Accused. Any soldier who wanted an abducted girl or woman to be his "wife" had to "sign for her". The Accused informed his fighters that any problems with the women were to be immediately reported back to him, and that he would then monitor the situation.[3428] The Accused issued a disciplinary instruction ordering that any woman caught with another woman's husband should be beaten and locked in a box.[3429] In one instance, Witness TF1-334 observed a Staff Sergeant reporting to Kanu that he suspected his "wife" of misbehaving and the Accused Kanu called the woman before him and found her guilty. He ordered that she be sent to the Mammy Queen, be given a dozen lashes and be locked in the box.[3430]

8215. para. 2093: The Trial Chamber has also found that the Accused Kanu was in charge of the forced military training of civilians at Camp Rosos. Among those forced to undergo training were children below the age of 15 years o1d.[3431]

8216. para. 2094: The Trial Chamber has found that the Accused Kanu continued in his positions as Chief of Staff and commander in charge of civilians in Freetown and the Western Area. The Trial Chamber has found that the Accused Kanu had approximately ten child combatants in his charge in Benguema following the retreat from Freetown. [3432]

8217. para. 2095: The Trial Chamber is satisfied that the Accused Kanu planned, organised and implemented the system to abduct and enslave civilians which was committed by AFRC troops in Bombali and Western Area. It is further satisfied that the Accused Kanu had the direct intent to establish and implement the system of exploitation involving the three enslavement crimes, namely, sexual slavery, conscription and use of children under the age of 15 for military purposes, and abductions and forced labour.

i. Responsibility for Count 9 (Sexual Slavery) – Responsibility of Accused Kanu under Article 6.1

8218. para. 2096: On the basis of the foregoing, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Kanu is individually criminally responsible under Article 6(1) of the Statute for planning the commission of the crime of sexual slavery in Bombali District and the Western Area.

ii. Responsibility for Count 12 (Child Soldiers) – Responsibility of Accused Kanu under Article 6.1

8219. para. 2097: On the basis of the foregoing, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Kanu is individually criminally responsible under Article 6(1) of the Statute for planning the commission of conscription of children under the age of 15 into the armed group or using them to participate actively in hostilities in Bombali District and the Western Area.

iii. Responsibility for Count 13 (Enslavement) – Responsibility of Accused Kanu under Article 6.1

8220. para. 2098: On the basis of the foregoing, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Kanu is individually criminally responsible under Article 6(1) of the Statute for enslavement in Bombali District and the Western Area. [3432]

3. Appellate Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-A, Judgement, 22 February 2008

(a) Findings and Conclusions:

(i) Law on relating to pleading of the Indictment.

i. Specificity – Law on relating to pleading of the Indictment

8221. para. 37: In order to guarantee a fair trial the Prosecution is obliged to plead material facts with a sufficient degree of specificity. The question whether material facts are pleaded with the required degree of specificity depends on the context of the particular case.

8222. para. 38: In particular, the required degree of specificity varies according to the form of participation alleged against an accused. Where direct participation is alleged in an indictment, we opine that the Prosecution's obligation to provide particulars in an indictment must be adhered to fully.

8223. para. 39: Where superior responsibility is alleged, the liability of an accused depends on several material factors 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. Therefore, these are material facts that must be pleaded with a sufficient degree of specificity.

8224. para. 40: In considering the extent to which there is compliance with the specificity requirement in an indictment, the term specificity should not be understood to have any special meaning. It is to be understood in its ordinary meaning as being specific in regard to an object or subject matter. An object or subject matter that is particularly named or defined cannot be said to lack specificity.

ii. Exception to Specificity - Law on relating to pleading of the Indictment

8225. para. 41: 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.

(ii) Challenges to an Indictment on Appeal

8226. para. 42: Challenges to the form of an indictment should be made at a relatively early stage of proceedings and usually at the pre-trial stage pursuant to Rule 72(B)(ii) of the Rules of Procedure and Evidence ("Rules") which provides that it should be made by a preliminary motion. An accused, therefore, is in the ordinary course of events expected to challenge the form of an indictment prior to the rendering of judgment or at the very least, challenge the admissibility of evidence of material facts not pleaded in an indictment by interposing a specific objection at the time the evidence is introduced.

8227. para. 43: Failure to challenge the form of an indictment at trial is not, however, an absolute bar to raising such a challenge on appeal. An accused may well choose not to interpose an objection when certain evidence is admitted or object to the form of an indictment, not as a means of exploiting a technical flaw, but rather, because the accused is under the reasonable belief that such evidence is being introduced for purposes other than those that relate to the nature and cause of the charges against him.

8228. para. 44: Where an accused fails to make specific challenges to the form of an indictment during the course of the trial or challenge the admissibility of evidence of material facts not pleaded in the indictment, but instead raises it for the first time on appeal, it is for the Appeals Chamber to decide the appropriate response. Where the Appeals Chamber holds that an indictment is defective, the options open to it are to find that the accused waived his right to challenge the form of an indictment, to reverse the conviction, or to find that no miscarriage of justice had resulted notwithstanding the defect. In this regard the Appeals Chamber may also find that any prejudice that may have been caused by a defective indictment was cured by timely, clear and consistent information provided to the accused by the Prosecution.

8229. para. 45: The Appeals Chamber must ensure that a failure to pose a timely challenge to the form of the indictment did not render the trial unfair. The primary concern at the appeal stage therefore, when faced with a challenge to the form of an indictment, is whether the accused was materially prejudiced.

(iii) Joint Criminal Enterprise

i. Pleadings – Joint Criminal Enterprise

8230. para. 68: In its Fourth Ground of Appeal the Prosecution now challenges the Trial Chamber's finding that the joint criminal enterprise was defectively pleaded. The Prosecution submits that the Trial Chamber committed a procedural and legal error by reconsidering, at the final judgment stage, earlier interlocutory decisions concerning defects in the form of the Indictment without reopening the hearings. It also submits that the Trial Chamber committed a procedural, legal and factual error in finding that joint criminal enterprise liability was defectively pleaded in the Indictment. In the alternative, it submits that even if joint criminal enterprise liability was defectively pleaded, the defects were subsequently cured or were of such a nature that they did not prejudice the Defence so as to justify the Trial Chamber's failure to consider joint criminal enterprise liability.

8231. para. 69: Kanu, in his Tenth Ground of Appeal, submits that once the Trial Chamber found that joint criminal enterprise had been defectively pleaded in the Indictment, it should have quashed the Indictment because the Indictment was predicated in its entirety on the notion of a joint criminal enterprise. He also submits that the defective Indictment substantially prejudiced him in the preparation of his defence because at all material times he was unsure of the exact nature of the case against him.

8232. para. 70: The Prosecution replies that the purpose of the joint criminal enterprise was inherently criminal and that joint criminal enterprise was therefore not defectively pleaded. It argues that "even where the ultimate aim or objective of a common enterprise is not in itself inherently criminal, it is nonetheless a joint criminal enterprise if the participants have a common purpose of committing particular types of crimes in order to achieve that objective." The Prosecution argues that the Trial Chamber erred in treating the "ultimate objective of the joint criminal enterprise as the alleged common criminal purpose itself, and in finding that the Indictment therefore did not plead a joint criminal enterprise that was inherently criminal." In particular, it submits that the Indictment as a whole alleges a common plan to carry out a campaign of terrorising and collectively punishing the civilian population of Sierra Leone through the commission of crimes within the jurisdiction of the Special Court, in order to achieve the ultimate objective of gaining and exercising political power and control over the territory of Sierra Leone.

8233. para. 71: Brima and Kamara in their response submit that by alleging in the Indictment that "the members of the JCE were willing to 'take any actions necessary,' " the Prosecution failed to indicate clearly "the criminal means involved in conducting the JCE . . . ." Kanu submits that "gaining and exercising control over the population of Sierra Leone" is not a crime under international law and that with respect to JCE, an indictment must allege a common purpose which is a crime under international law. Further, that the Prosecution should have pleaded unambiguously the joint criminal enterprise upon which it intended to hold him criminally responsible for the crimes alleged in paragraphs 34, 38, 39, 40, and 41 of the Indictment.

ii. Discussion – Joint Criminal Enterprise

8234. para. 72: Article 6(1) of the Statute which is in the same terms as Article 7(1) of the ICTY Statute prescribes individual criminal responsibility for acts or transactions in which a person has been personally engaged or in some other way participated in one or more of the five ways stated in the Article. As was said by the ICTY Appeals Chamber in *Tadić*:

> "[t]he basic assumption must be that in international law as much as in national systems, the foundation of criminal responsibility is the principle of personal culpability: nobody may be held criminally responsible for acts or transactions in which he has not personally engaged or in some other way participated (nulla poena sine culpa)."

8235. para. 73: Article 6(1) does not expressly prescribe individual criminal responsibility through participation in the realisation of a common design or purpose. It was in these

circumstances that the Appeals Chamber of ICTY in *Tadić* developed a doctrine of individual criminal responsibility for participation in a JCE.

8236. para. 74: The ICTY Appeals Chamber reasoned thus:

> An interpretation of the Statute based on its object and purpose leads to the conclusion that the Statute intends to extend the jurisdiction of the International Tribunal to all those 'responsible for serious violations of international humanitarian law' committed in the former Yugoslavia (Article 1). As is apparent from the wording of both Article 7(1) and the provisions setting forth the crimes over which the International Tribunal has jurisdiction (Articles 2 to 5), such responsibility for serious violations of international humanitarian law is not limited merely to those who actually carry out the actus reus of the enumerated crimes but appears to extend also to other offenders (see in particular Article 2, which refers to committing or ordering to be committed grave breaches of the Geneva Conventions and Article 4 which sets forth various types of offences in relation to genocide, including conspiracy, incitement, attempt and complicity) . . .
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> Thus, all those who have engaged in serious violations of international humanitarian law, whatever the manner in which they may have perpetrated, or participated in the perpetration of those violations, must be brought to justice. If this is so, it is fair to conclude that the Statute does not confine itself to providing for jurisdiction over those persons who plan, instigate, order, physically perpetrate a crime or otherwise aid and abet in its planning, preparation or execution. The Statute does not stop there. It does not exclude those modes of participating in the commission of crimes which occur where several persons having a common purpose embark on criminal activity that is then carried out either jointly or by some members of this plurality of persons. Whoever 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, subject to certain conditions, which are specified below . . .
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> Under these circumstances, to hold criminally liable as a perpetrator only the person who materially performs the criminal act would disregard the role as co-perpetrators of all those who in some way made it possible for the perpetrator physically to carry out that criminal act. At the same time, depending upon the circumstances, to hold the latter liable only as aiders and abettors might understate the degree of their criminal responsibility . . .
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> This interpretation, based on the Statute and the inherent characteristics of many crimes perpetrated in wartime, warrants the conclusion that international criminal responsibility embraces actions perpetrated by a collectivity of persons in furtherance of a common criminal design. It may also be noted that - as will be mentioned below - international criminal rules on common purpose are substantially rooted in, and to a large extent reflect, the position taken by many States of the world in their national legal systems.

8237. para. 75: The actus reus for all forms of joint criminal enterprise liability consists of the following three elements:

(i) a plurality of persons;

(ii) the existence of a common plan, design or purpose which amounts to or involves the commission of a crime provided for in the Statute;

(iii) participation of the accused in the common design involving the perpetration of one of the crimes provided for in the Statute.

8238. para. 76: The question for determination in this appeal pertains to the requisite nature of the common plan, design or purpose. It can be seen from a review of the jurisprudence of the international criminal tribunals that the criminal purpose underlying the JCE can derive not only from its ultimate objective, but also from the means contemplated to achieve that objective. The objective and the means to achieve the objective constitute the common design or plan.

8239. para. 77: In *Kvočka et al*. the ICTY Appeals Chamber was of the opinion that "the common design that united the accused was the creation of a Serbian state within the former Yugoslavia, and that they worked to achieve this goal by participating in the persecution of Muslims and Croats." Whereas creation of a Serbian State within the former Yugoslavia is not a crime within the Statute of the ICTY, the means to achieve the goal, such as persecution, constitute crimes within that statute.

8240. para. 78: Reference to the indictments in cases of *Martić* and *Haradinaj* et al., cited by the Prosecution, is similarly instructive. In *Haradinaj* et al. for example, it would appear that the Trial Chamber accepted that the pleading of joint criminal enterprise was proper notwithstanding the Prosecution pleading a common purpose (namely "consolidate[ing] the total control of the Kosovo Liberation Army over the KLA operational zone of *Dukagjin*") which itself does not amount to any crime within the Statute of the ICTY. However, the *Haradinaj* Indictment clearly alleges that the joint criminal enterprise involved the commission of crimes such as intimidation, abduction, imprisonment, beating, torture and murder of targeted civilians in violation of Articles 3 and 5 of the ICTY Statute.

8241. para. 79: Furthermore, the Appeals Chamber notes that the Rome Statute of the International Criminal Court ("Rome Statute" and "ICC," respectively) does not require that the joint criminal enterprise has a common purpose that amounts to a crime within the ICC's jurisdiction. Indeed, the Rome Statute departs altogether from the use of the phrase "amounts to" and instead requires that the "criminal activity or criminal purpose … involves the commission of a crime within the jurisdiction of the Court." This formulation reflects the consensus reached by all of the States negotiating the Statute of the ICC at the Rome Conference, and therefore is a

valuable indication of the views of States and the international community generally on the question of what constitutes a common purpose.

8242. para. 80: In view of the foregoing, the Appeals Chamber concludes 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.

8243. para. 81: Turning to the present Indictment, in order to determine whether the Prosecution properly pleaded a joint criminal enterprise, the Indictment should be read as a whole. In particular, the most relevant paragraphs of the Indictment to the pleading of JCE are paragraphs 33-35, which state:

> 33. The AFRC, including ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, and the RUF, including ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO, 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.
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> 34. 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.
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> 35. ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, by their acts or omissions, are individually criminally responsible pursuant to Article 6(1). of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this 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.

8244. para. 82: The ultimate objective alleged in paragraph 33 of the Indictment, namely: 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," may not of itself amount to a crime within the Statute of the Special Court, nonetheless, paragraph 33 of the Indictment read together with

paragraphs 34 and 35 demonstrates the Prosecution's allegation that the parties to the common enterprise shared a common plan and design to achieve the objective by conduct constituting crimes within the Statute.

8245. para. 83: Paragraph 33 of the Indictment states that the plan was to "take any actions necessary" to gain territorial control and political power. Paragraph 34 of the Indictment states that the actions "included": controlling the population of Sierra Leone; using members of the population to support the JCE; and specifically enumerated crimes such as "unlawful killings, abductions, forced labour, physical and sexual violence." Paragraph 35 of the Indictment also indicates that crimes "referred to in Articles 2, 3, and 4 of the Statute . . . were within the joint criminal enterprise," or that those crimes were a reasonably foreseeable consequence of the JCE.

8246. para. 84: The Appeals Chamber holds that the common purpose of the joint criminal enterprise was not defectively pleaded. 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. The Trial Chamber took an erroneously narrow view by confining its consideration to paragraph 33 and reading that paragraph in isolation. Furthermore, the Trial Chamber erred in its consideration of "evidence" adduced at trial to determine whether the Indictment was properly pleaded. The error arose because determination of whether the Prosecution properly pleaded a crime must be determined on the basis of whether the Prosecution pleaded all the material facts in the Indictment, not whether it had adduced evidence to support the allegations.

8247. para. 85: Several other issues arose in the context of JCE for which the Appeals Chamber wishes to express itself. The Trial Chamber erred in concluding that the Prosecution could not plead the basic and extended forms of joint criminal enterprise liability in the alternative on the grounds that the two forms, as pleaded, logically exclude each other. Pleading the basic and extended forms of JCE in the alternative is now a well-established practice in the international criminal tribunals. The Trial Chamber erred in finding that the Indictment failed to specify the period covered by the JCE. That period is that covered by all of the alleged crimes, which in this case is between 25 May 1997 and January 2000.

8248. para. 86: The Appeals Chamber having concluded that joint criminal enterprise was not defectively pleaded in the Indictment, need not address the Trial Chamber's finding that the Prosecution failed to cure the defective pleading of JCE. Similarly, Kanu's Tenth Ground of Appeal, that the Trial Chamber erred in law by failing to quash the entire Indictment after finding that joint criminal enterprise was defectively pleaded, must fail.

iii. Disposition – Joint Criminal Enterprise

8249. para. 87: The Appeals Chamber has found that the Trial Chamber erred in law when it concluded that JCE was not properly pleaded in the Indictment. Consequently, the Prosecution's Fourth Ground of Appeal succeeds, however we see no need to make further factual findings or to remit the case to the Trial Chamber for that purpose, having regard to the interest of justice.

(iv) Waiver of indictment defects

i. Pleadings – Waiver of indictment defects

8250. para. 111: In his Second Ground of Appeal, Kanu alleges that the Trial Chamber erred in law in finding him guilty, under Article 6(1) of the Statute of committing three crimes in Freetown and other parts of the Western Area. Due to the Prosecution's failure to plead material facts with the required degree of specificity, the Trial Chamber found the Indictment defective as regards the crimes relating to an amputation carried out near Kissy Old Road and another carried out at Upgun. It nonetheless concluded that Kanu's ability to prepare his defence was not materially impaired, having regard to Kanu's failure to object in a timely manner to evidence being led in respect of these crimes and his cross-examination of witnesses in respect of the same. With respect to the remaining crime of looting vehicles at State House in Freetown, although the Trial Chamber did not expressly find the Indictment defective, it appears that it adopted a similar approach.

8251. para. 112: Kanu submits that the Trial Chamber ought to have dismissed all charges that alleged his personal commission after it established that those counts of the Indictment were defective. In support of this submission he argues that in his Pre-Defence Motion he raised several challenges to the validity of the Indictment including lack of specificity regarding different forms of individual criminal responsibility and lack of specificity regarding various Counts. He further argues that the Trial Chamber erred in law, in finding that his failure to object to evidence led by the Prosecution, during the course of the trial automatically amounted to a waiver. Such evidence, Kanu argues, could have been relevant for purposes other than establishing individual liability. Thus, according to Kanu, the Trial Chamber ought not to have concluded that his failure to object amounted to waiver "without firstly satisfying itself that the failure by the Defence to challenge the extraneous evidence was a deliberate defence tactic, in which case the Defence would have been held to have taken a gamble to its detriment."

8252. para. 113: In response, the Prosecution submitted that contrary to Kanu's claims, Kanu had not previously challenged the manner in which the Indictment pleaded crimes that alleged his personal commission. Further, in instances where evidence was adduced that tended to show that Kanu personally committed specific crimes, the Prosecution contends that it was clear to Kanu that such evidence would be relied upon to establish his individual responsibility for "committing" crimes. The Prosecution finally submits that in any event, it is Kanu who bears the burden of showing that he was prejudiced by the Trial Chamber's approach and that he has failed to discharge this burden.

ii. Discussion – Waiver of indictment defects

8253. para. 114: Whether or not the Appellant raised a timely objection at trial will affect the question on appeal whether he was in fact prejudiced by the defective Indictment. Perusing the Record on Appeal and Kanu's "Preliminary Motion On Defects In The Indictment," it is clear that Kanu did not previously complain that the Indictment was defective in respect of his personal commission of the criminal acts alleged. This, therefore being the first time Kanu has raised this complaint, he must show that he was prejudiced.

8254. para. 115: The Appeals Chamber finds no merit in Kanu's Second Ground of Appeal and finds that he has manifestly failed in discharging this burden. Neither in his Appeal Brief nor during oral argument did he say that he had no notice of the crimes he was alleged to have personally committed. Further, he neither demonstrated that he was prejudiced, nor that the preparation of his defence was materially impaired by the defect in the Indictment. On the contrary, counsel for Kanu cross-examined witnesses as to specific incidents, and when asked during the appeal hearing why no objection was raised when evidence was being led in respect of the aforementioned crimes, he replied that it was "a question of strategy" at trial.

8255. para. 116: The Appeals Chamber accordingly rejects Kanu's Second Ground.

(v) The "Bombali-Freetown Campaign" and Kamara's Alleged Responsibility under Article 6(1) for Crimes Committed in Port Loko District

i. Pleadings - The "Bombali-Freetown Campaign" and Kamara's Alleged Responsibility under Article 6(1) for Crimes Committed in Port Loko District

8256. para. 165: In its First Ground of Appeal, the Prosecution alleges the Trial Chamber made numerous legal and factual errors in failing to find the Appellants individually responsible,

pursuant to Article 6(1) of the Statute for planning, instigating, ordering, or otherwise aiding and abetting, and pursuant to Article 6(3), for all crimes committed in Bombali District, Freetown and other parts of the Western Area during the so-called "Bombali-Freetown Campaign." It submits that the "Bombali-Freetown Campaign" constituted a "single planned and systematic campaign" that originated at a planning meeting in Koinadugu District in April or May 1998 and continued in Freetown and the subsequent retreat and regrouping of the AFRC combatants in the Western Area.

8257. para. 166: The Prosecution alleges the Trial Chamber erred in law in that:

(i) The Trial Chamber adopted a compartmentalized or "myopic" approach to the evidence;

(ii) It relied upon direct evidence and discounted circumstantial evidence;

(iii) It failed to consider that a single act could cause multiple crimes;

(iv) It failed to appreciate the legal significance of conduct of the Appellants;

(v) It erroneously withheld findings on multiple modes of responsibility under Article 6(1) for each crime; and

(vi) It failed to consider whether the three Appellants bear Article 6(3) responsibility for the crimes for which they were convicted under Article 6(1).

(vii) The Appeals Chamber will consider each of these arguments in turn.

8258. para. 167: The Third Ground of the Prosecution's Appeal alleges both a legal and a factual error on the part of the Trial Chamber in finding that the Prosecution did not adduce any evidence and consequently did not prove that Kamara was individually responsible under Article 6(1) of the Statute for any of the crimes committed in Port Loko District. Most of the arguments presented by the Prosecution concern the Trial Chamber's factual findings in respect of the following crimes that were committed in Port Loko District (hereinafter the "Port Loko District crimes"):

(i) Unlawful killings in Manaarma for which Kamara was found individually responsible under Article 6(3) of the Statute;

(ii) Sexual slavery; and

(iii) Acts of terror and collective punishment in respect of (i) and (ii) above.

8259. para. 168: Grounds One and Three of the Prosecution's Grounds of Appeal address certain legal and factual issues, namely:

(i) that the Trial Chamber erred in law and in fact in not finding the Appellant individually responsible under both Articles 6(1) and 6(3) of the Statute for all crimes that the Trial Chamber found to have been committed in Bombali District, Freetown and other parts of the Western Area; and

(ii) that it erred in law and in fact in finding that the Prosecution did not adduce any evidence that Kamara committed, ordered, planned, instigated or otherwise aided and abetted any other crimes committed in the Port Loko District and that the Prosecution did not prove any of the modes of individual responsibility against Kamara for the crimes committed in Port Loko District.

8260. para. 169: However, as the Appellants have been convicted and sentenced to terms of imprisonment of fifty (50) years and forty-five (45) years for crimes committed under Article 6(1) or Article 6(3) of the Statute in Bombali District and in the Western Area, the Appeals Chamber is of the opinion, taking all the circumstances into consideration, particularly having regard to the length of the sentences imposed, that it becomes an academic exercise and also pointless to adjudicate further on minute details raised in Grounds One and Three of the Prosecution's Appeal.

(vi) The "Enslavement Crimes" as Acts of Terror and Collective Punishment

8261. para. 171: In its Fifth Ground of Appeal the Prosecution complains in substance that in the particular factual context of the case the Trial Chamber erred in law in holding that the three enslavement crimes were not acts of terrorism and also were not collective punishments.

8262. para. 172: The Appeals Chamber is of the opinion that the Prosecution's attempt to search for further acts of terrorism by adding the three enslavement crimes to this list is an unnecessary exercise since the Appellants have already been convicted of acts of terrorism and an adequate sentence has been imposed.

8263. para. 173: The Appeals Chamber further finds the Prosecution's submissions regarding the crime of collective punishments to be imprecise and without merit. The Prosecution failed to demonstrate adequately how the Trial Chamber either erred in law, invalidating a decision or erred in fact, occasioning a miscarriage of justice.

8264. para. 174: The Appeals Chamber exercises its discretion not to entertain the Prosecution's Fifth Ground of Appeal and therefore it is dismissed in its entirety.

(vii) Article 6(1) Responsibility for Murder and Extermination in Bombali District

8265. para. 231: In respect of Brima's Fifth Ground of Appeal, the Appeals Chamber repeats its opinion in regard to Grounds Four and Six, as Ground Five of Brima's Appeal has the same defects as those other two Grounds.

8266. para. 232: For the reasons stated in respect of those Grounds, Ground Five of Brima's Appeal must also fail.

(viii) Findings of Responsibility Pursuant to Article 6.1 of the Statute

i. Pleadings – Findings of Responsibility Pursuant to Article 6.1 of the Statute

8267. para. 298: In his Ninth Ground of Appeal, Kanu submits that the Trial Chamber erred in convicting him under Article 6(1) for planning the commission of sexual slavery (Count 9), the conscription and use of children for military purposes (Count 12), and abductions and forced labour (Count 13). The Trial Chamber held that Kanu "planned, organised and implemented the system to abduct and enslave civilians which was committed by AFRC troops in Bombali and Western Area." It further held that Kanu "had the direct intent to establish and implement the system of exploitation involving the three enslavement crimes, namely, sexual slavery, conscription and use of children under the age of 15 for military purposes, and abductions and forced labour." The Trial Chamber was, therefore, satisfied beyond reasonable doubt that Kanu bore individual criminal responsibility under Article 6(1) for planning the commission of the above crimes in the Bombali District and the Western Area.

8268. para. 299: Kanu argues that while the evidence shows that it fell upon him, as Chief of Staff, to manage the system of slavery within the AFRC faction, he could not be convicted on that basis for planning the crimes of sexual slavery, conscription and use of children for military purposes, and abductions and forced labour. He further argues that at best, the evidence implicates him at the execution stage in the military training of children and the exploitation of women for sexual purposes.

8269. para. 300: The Prosecution responds that Kanu's position of influence in the AFRC and his admission that he managed this system of slavery amply justify a reasonable inference that he was involved in planning the above crimes.

ii. Discussion - Findings of Responsibility Pursuant to Article 6.1 of the Statute

8270. para. 301: The Appeals Chamber concurs with the Trial Chamber's definition of planning under Article 6(1). The Trial Chamber stated that " 'planning' implies that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases." Circumstantial evidence may provide proof of the existence of a plan, and an individual may incur responsibility for planning when his level of participation is substantial even though the crime may have actually been committed by another person. According to the Trial Chamber, the actus reus for planning requires that "the accused, alone or together with others, designated [sic] the criminal conduct constituting the crimes charged." While "there must be a sufficient link between the planning of a crime both at the preparatory and the execution phases," it is "sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct." The Trial Chamber further stated that the mens rea "requires that the accused acted with direct intent in relation to his or her own planning or with the awareness of the substantial likelihood that a crime would be committed … in the execution of that plan."

8271. para. 302: With regard to sexual slavery, the Trial Chamber found that:

> "In Bombali District the Accused Kanu designed and implemented a system to control abducted girls and women. All abducted women and girls were placed in the custody of the Accused. Any soldier who wanted an abducted girl or woman to be his "wife" had to 'sign for her'. The Accused informed his fighters that any problems with the women were to be immediately reported back to him, and that he would then monitor the situation. The Accused issued a disciplinary instruction ordering that any woman caught with another woman's husband should be beaten and locked in a box."

On the basis of this evidence, the Trial Chamber was satisfied beyond reasonable doubt that Kanu was responsible for planning the commission of the crime of sexual slavery in the Bombali District and the Western Area. The Appeals Chamber agrees.

8272. para. 303: The Appeals Chamber now turns to the Trial Chamber's findings regarding the conscription and use of children for military purposes, as well as abductions and forced labour in the Bombali District and the Western Area. In the case of Bombali District, the Trial Chamber found that Kanu was in charge of forced military training of civilians at Camp Rosos and that children below the age of 15 years were among those forced to undergo training. On the basis of this evidence, the Trial Chamber was satisfied beyond reasonable doubt that in the Bombali District Kanu was not only responsible for planning the conscription of children under the age of

15 into an armed group, but also for using such children to participate actively in hostilities, as well as for the crime of enslavement.

8273. para. 304: Regarding the Western Area, the Trial Chamber also found that Kanu "continued in his positions as Chief of Staff and commander in charge of civilians in Freetown and the Western Area" and that he had "approximately ten child combatants in his charge in Benguema following the retreat from Freetown." On the basis of this evidence, the Trial Chamber found that Kanu was responsible for planning the conscription of children under the age of 15 into an armed group, or the use of such children to participate actively in hostilities, and enslavement in the Western Area.

8274. para. 305: Finally, the Appeals Chamber finds that the evidence led before the Trial Chamber warrants an examination of Kanu's responsibility for aiding and abetting the commission of sexual slavery and forced labour in Newton in the Western Area. The Appeals Chamber notes that witness TF1-334, whom the Trial Chamber found to be credible and reliable, stated that Kanu was responsible for the women and girls in the camp at Newton. AFRC soldiers reported to Kanu if they had any problems with the women and girls. The Trial Chamber found that while the women were helping with the cooking, "the 'girls' were sleeping with the 'commanders.' " The Appeals Chamber is satisfied that in this position of responsibility regarding the women and girls at Newton, Kanu provided practical assistance to a system of sexual slavery and forced labour. The Appeals Chamber is further satisfied that Kanu was aware that his acts would assist in the implementation of this system of sexual slavery and forced labour. In light of the above evidence, the Appeals Chamber is satisfied that Kanu aided and abetted the commission of sexual slavery and forced labour in the Western Area. Thus, the Appeals Chamber finds that the Trial Chamber erred in failing to convict Kanu for aiding and abetting the commission of sexual slavery and forced labour in the Western Area.

8275. para. 306: The Appeals Chamber upholds the conviction of Kanu for planning the commission of sexual slavery in the Bombali District and upholds the conviction of Kanu for planning the commission of sexual slavery in the Western Area and further upholds the Trial Chamber's convictions for planning the conscription and use of children for military purposes as well as abductions and forced labour in the Bombali District and the Western Area. The Appeals Chamber furthermore finds that there is sufficient evidence that Kanu aided and abetted the commission of the said crimes. However, as he has already been convicted of planning those crimes the question of convicting him on the basis of aiding and abetting does not arise.

D. CDF

1. Indictment

The Prosecutor v. Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa, SCSL-03-14-I, Indictment, 4 February 2004

(a) General Allegations

8276. At all times relevant to this Indictment, a state of armed conflict existed in Sierra Leone. For the purposes of this Indictment the organized armed factions involved in this conf1ict included the Civil Defence Forces (CDF) fighting against the combined forces of the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC).[403]

8277. 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.[404]

8278. The CDF was an organized armed force comprising various tribally-based traditional hunters. The Kamajors were comprised mainly of persons from the Mende tribe resident in the South and East of Sierra Leone, and were the predominant group within the CDF. Other groups playing a less dominant role were the Gbethis and the Kapras, both comprising mainly of Temnes from the north; the Tamaboros, comprising mainly of Korankos also from the north; and the Donsos, comprising mainly of Konos from the east.[405]

8279. The RUF was founded about 1988 or 1989 in Libya and began organized armed operations in Sierra Leone in or about March 1991. The AFRC was founded by members of the Armed Forces of Sierra Leone who seized power from the elected government of Sierra Leone via a coup d'etat on 25 May 1997. Soldiers of the Sierra Leone Army comprised the majority of the AFRC membership. Shortly after the AFRC seized power, the RUF joined with the AFRC.[406]

8280. The ACCUSED and all members of the CDF were required to abide by International Humanitarian Law and the laws and customs governing the conduct of armed conflicts, including

[403] CDF Indictment, para. 4.
[404] CDF Indictment, para. 5.
[405] CDF Indictment, para. 6.
[406] CDF Indictment, para. 7.

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.[407]

8281. All offences charged herein were committed within the territory of Sierra Leone after 30 November 1996.[408]

8282. All acts or 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.[409]

8283. The words civilian or civilian population used in this indictment refer to persons who took no active part in the hostilities, or were no longer taking an active part in the hostilities.[410]

(b) Individual Criminal Responsibility

8284. Paragraphs 4 through 11 are incorporated by reference.[411]

8285. At all times relevant to this Indictment, SAMUEL HINGA NORMAN was the National Coordinator of the CDF. As such he was the principal force in establishing, organizing, supporting, providing logistical support, and promoting the CDF. He was also the Leader and Commander of the Kamajors and as such had de jure and de facto command and control over the activities and operations of the Kamajors.[412]

8286. At all times relevant to this Indictment, MOININA FOFANA was the National Director of War of the CDF and ALLIEU KONDEWA was the High Priest of the CDF. As such, together with SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA were seen and known as the top leaders of the CDF. MOININA FOFANA and ALLIEU KONDEWA took directions from and were directly answerable to SAMUEL HINGA NORMAN. They took part in policy, planning and operational decisions of the CDF.[413]

8287. MOININA FOFANA acted as leader of the CDF in the absence of SAMUEL HINGA NORMAN and was regarded as the second in command. As National Director of War, he had direct responsibility for implementing policy and strategy for prosecuting the war. He liaised with field commanders, supervised and monitored operations. He gave orders to and received reports

[407] CDF Indictment, para. 8.
[408] CDF Indictment, para. 9.
[409] CDF Indictment, para. 10.
[410] CDF Indictment, para. 11.
[411] CDF Indictment, para. 12.
[412] CDF Indictment, para. 13.
[413] CDF Indictment, para. 14.

about operations from subordinate commanders, and he provided them with logistics including supply of arms and ammunition. In addition to the duties listed above at the national CDF level, MOININA FOFANA commanded one battalion of Kamajors.[414]

8288. ALLIEU KONDEWA, as High Priest had supervision and control over all initiators within the CDF and was responsible for all initiations within the CDF, including the initiation of children under the age of 15 years. Furthermore, he frequently led or directed operations and had direct command authority over units within the CDF responsible for carrying out special missions.[415]

8289. SAMUEL HINGA NORMAN, as National Coordinator of the CDF and Commander of the Kamajors knew and approved the recruiting, enlisting, conscription, initiation, and training of Kamajors, including children below the age of 15 years. SAMUEL HINGA NORMAN; MOININA FOFANA, as the National Director of War of the CDF; and ALLIEU KONDEWA, as the High Priest of the CDF, knew and approved the use of children to participate actively in hostilities.[416]

8290. In the positions referred to in the aforementioned paragraphs, SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA, individually or in concert, exercised authority, command and control over all subordinate members of the CDF.[417]

8291. The plan, purpose or design of SAMUEL HINGA NORMAN, MOININA FOFANA, ALLIEU KONDEWA and subordinate members of the CDF was to use any means necessary to defeat the RUF/AFRC forces and to gain and exercise control over the territory of Sierra Leone. This included gaining complete control over the population of Sierra Leone and the complete elimination of the RUF I AFRC, its supporters, sympathizers, and anyone who did not actively resist the RUF/AFRC occupation of Sierra Leone. Each Accused acted individually and in concert with subordinates, to carry out the said plan, purpose or design.[418]

8292. SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA, 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 common

[414] CDF Indictment, para. 15.
[415] CDF Indictment, para. 16.
[416] CDF Indictment, para. 17.
[417] CDF Indictment, para. 18.
[418] CDF Indictment, para. 19.

purpose, plan or design in which each Accused participated or were a reasonably foreseeable consequence of the common purpose, plan or design in which each Accused participated.[419]

(c) Charges

8293. Paragraphs 4 through 21 are incorporated by reference.[420]

2. Trial Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-T, Judgement, 2 August 2007

(a) Findings and Conclusions

(i) Law on the Modes of Liability charged under Article 6.1.

a. Committing – Law on the Modes of Liability charged under Article 6.1.

8294. para. 204: The Chamber notes that the Prosecution charges the Accused pursuant to Article 6(1) of the Statute with committing the crimes referred to in the Indictment. [247]

8295. para. 205: 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". [248] 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 positiveacts or culpable omissions, whether individually or jointly with others.[249] 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 reasonable knowledge that the crime would likely occur as a consequence of his conduct.

b. Committing through Participation in a Joint Criminal Enterprise – Law on the Modes of Liability charged under Article 6.1.

8296. para. 206: The Indictment charges the Accused with participating in a common purpose, plan or design. The Chamber notes that the phrases "common purpose doctrine" on the one hand, and "joint criminal enterprises" on the other have been used interchangeably in the international jurisprudence and they refer to one and the same thing. The latter term, which this Chamber

[419] CDF Indictment, para. 20.
[420] CDF Indictment, para. 22.

adopts, refers to the same form of liability as that known as the common purpose doctrine or liability.[250]

8297. para. 207: For the Court to exercise its jurisdiction on the basis of this form of liability, it must conclude that, even though Article 6(1) does not make a specific reference to joint criminal enterprise, it is indeed included in Article 6(1) as a means of "committing".[251]

8298. para. 208: The Chamber adopts the position that, although "committing" in Article 6(1) of the Statute "covers first and foremost the physical perpetration of a crime by the offender himself, or the culpable omission of an act that was mandated by a rule of criminal law,"[252] the verb "commit" is sufficiently protean in nature as to include participation in a joint criminal enterprise to commit the crime.[253] The view that "committing" also describes participation in a joint criminal enterprise is reinforced "to the extent that, insofar as a participant shares the purpose of the joint criminal enterprise (as he or she must do) as opposed to merely knowing about it, he or she cannot be regarded as a mere aider and abettor to the crime which is contemplated".[254] The Chamber also recalls that this mode of liability has been routinely applied in the jurisprudence of the Ad Hoc Tribunals.[255] The Chamber is therefore satisfied that individual criminal responsibility for participation in a joint criminal enterprise to commit a crime over which the Court has jurisdiction is included with in Article 6(1) of the Statute.[256]

8299. para. 209: 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".[257] The Chamber concurs with this position and finds as a result that joint criminal enterprise existed under customary international law at the time of the acts charged in the Indictment.

8300. para. 210: 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.
>
> 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 was nevertheless foreseeable that the forcible removal of civilians at gunpoint might well result in the deaths of one or more of those civilians. [258]

8301. para. 211: In the present case, however, the pleading in the Indictment is limited to an alternative pleading of the first and third categories of joint criminal enterprise.

8302. para. 212: 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.[259]

8303. para. 213: First, a plurality of persons is required. They need not be organised in a military, political or administrative structure.[260] However, it needs to be shown that this plurality of persons acted in concert with each other.[261]

8304. para. 214: Second, the existence of a common purpose which amounts to or involves the commission of a crime provided for in the Statute is required. [262] There is no need for this purpose to have been previously arranged or formulated. It may materialise extemporaneously and be inferred from the facts.[263]

8305. para. 215: Third, the participation of the Accused in the common purpose is required.[264] "This participation need not involve the commission of a specific crime under one of the provisions (for example murder, extermination, torture or rape), but may take the form of assistance in, or contribution to, the execution of the common purpose."[265] It must be shown that the plurality of persons acted in concert with each other in the implementation of a common purpose.[266] 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. [267]

8306. para. 216: 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 et al*., 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". [268]

8307. para. 217: The *mens rea* requirements for liability under the first and third categories of joint criminal enterprise, which are pleaded in the Indictment, are different.

8308. para. 218: 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.[269] The intent to commit the crime must be shared by all participants in the joint criminal enterprise. [270]

8309. para. 219: 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 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.[271] 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).[272] The Accused must willingly take the risk that the crime might occur by joining or continuing to participate in the enterprise.[273] The Chamber can only find that the Accused has the requisite intent "if this is the only reasonable inference on the evidence". [274]

8310. Separate and Partially Dissenting Opinion of Justice Thompson, paras 23-31. See CDF Judgment, Annex C.

c. Planning – Law on the Modes of Liability charged under Article 6.1.

8311. para. 220: The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with planning the crimes referred to in the Indictment.[275]

8312. para. 221: The Chamber adopts the view of the various Chambers of the Ad Hoc Tribunals which have consistently stated that "planning" a crime implies that one or several persons plan or design the commission of a crime at both the preparatory and execution phases.[276] The Chamber agrees with the ICTY Appeals Chamber in the *Kordic and Cerkez* case that the *actus reus* of

planning a crime requires that one or more persons design the criminal conduct constituting one or more crimes provided for in the Statute, which are later perpetrated.[277] "It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct."[278] 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 reasonable knowledge that the crime would likely be committed in the execution of that plan.

d. Instigating – Law on the Modes of Liability charged under Article 6.1.

8313. para. 222: The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with instigating the crimes referred to in the Indictment.[279]

8314. para. 223: The Chamber is of the view that "instigating" a crime means urging, encouraging or "prompting another to commit an offence".[280] The *actus reus* required for instigating a crime is an act or omission, covering both express and implied conduct of the Accused, [281] which is shown to be a factor substantially contributing to the conduct of another person committing the crime.[282] A causal relationship between the instigation and the perpetration of the crime must be demonstrated; although it is not necessary to prove that the crime would not have occurred without the Accused's involvement.[283] 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 had reasonable knowledge that a crime would likely be committed as a result of that instigation.

e. Ordering – Law on the Modes of Liability charged under Article 6.1.

8315. para. 224: The Chamber notes that the Prosecution charges the Accused pursuant to Article 6(1) of the Statute with ordering the crimes referred to in the Indictment.[284]

8316. para. 225: The Chamber takes the view that the *actus reus* of "ordering" a crime requires that a person who is in a position of authority orders a person in a subordinate position to commit an offence.[285] It is our 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.[286] Such authority can be de jure or de facto and can be reasonably implied.[287] 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."[288]

8317. para. 226: 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 had reasonable knowledge that the crime would likely be committed as a consequence of the execution or implementation of that order.

f. Aiding and Abetting – Law on the Modes of Liability charged under Article 6.1.

8318. para. 227: 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.[289]

8319. para. 228: It is the view of the Chamber that "aiding and abetting" consists of the act of rendering practical assistance, encouragement or moral support, which has a substantial effect on the perpetration of a certain crime.[290] "Aiding and abetting" can include providing assistance, helping, encouraging, advising, or being sympathetic to the commission of a particular act by the principal offender.[291]

8320. para. 229: The Chamber is of the opinion that the *actus reus* of aiding and abetting requires that the Accused carries out an act specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime and that this act of the aider and abettor must have a substantial effect upon the perpetration of the crime.[292] "Proof 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."[293] 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.[294] The Chamber reiterates, however, that the act of the aider and abettor must have a substantial effect upon the perpetration of the crime.

8321. para. 230: Mere presence at the scene of a crime will not usually constitute aiding and abetting. Where, however, such presence provides encouragement or support to the principal offender, that may be sufficient. For example, the presence of a person with superior authority at the scene of a principal crime may be probative to determining whether such person encouraged or supported the principal perpetrator.[295] The Chamber also notes that a superior's failure to punish for past crimes might result in acts that would constitute instigation or aiding and abetting for *further* crimes.[296]

8322. para. 231: 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.[297] Such knowledge may be inferred from all relevant circumstances. [298] The Accused need not share the *mens rea* of the principal offender, but he must be aware of the principal offender's intention.[299] In the case of specific intent offences, the aider and abettor must have knowledge that the principal offender possessed the specific intent required.[300] 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.[301]

g. Conviction under Article 6.1. and Article 6.3. of the Statute – Law on the Modes of Liability charged under Article 6.1.

8323. para. 251: The Chamber takes the view that where the Indictment charges the Accused with both Article 6(1) and Article 6(3) responsibility under the same count, and where the legal requirements pertaining to both of these heads of responsibility are met, a Trial Chamber may only enter a conviction on the basis of Article 6(1).[347]

(ii) President Kabbah's Role in the Conflict

8324. para. 705: As has been briefly mentioned in the introduction of this Judgement, persistent references and allusions were made by the Defence Team in the course of the proceedings that have preceded this Judgement, to President Kabbah and his alleged involvement in the conflict on the side of the CDF.

8325. para. 706: In this regard, and again as well mentioned in passing in the introduction of this Judgement, the Chamber recalls that the three Accused Persons all along in the course of these proceedings, raised a veiled Defence that all they did and stand charged for was as a result of their

struggle to restore to power, President Kabbah's democratically elected government that had been ousted in a *coup d'Etat* by the Armed Forces Revolutionary Council (AFRC) on the 25th of May 1997.

8326. para. 707: In view of the fact that the exigencies of justice require that a defence whether directly or indirectly raised by an accused in a criminal matter needs to be examined, we will proceed to determine, whether the President's alleged role, viewed in the light of his political status and that of his government-in-exile, constitutes a legal defence that is available to the Accused Persons.

8327. para. 708: In the light of the evidence adduced We have no doubt in Our minds that President Kabbah occupied and played a central role in this conflict because it was his overthrown Government that was waiting in the wings to be restored after the bitter wrangling and struggle that preceded it and continued after the Kabbah Government was ousted.

8328. para. 709: In February/March 1997, the then Vice President, Albert Joe Demby, organised two meetings to address military dissatisfaction over rice distributions because while senior officers were receiving only one bag for every two officers. A plan to reduce the rice rations provoked discontent and unrest in the Army.[1536]

8329. para. 710: In a meeting between President Kabbah, the vice President Demby and the Army Officers, the late Accused Norman accused two army officials, Hassan Conteh and Col Marx Kanga of planning a coup; an accusation which they denied.[1537]

8330. para. 711: Peter Penfold the British High Commissioner to Sierra Leone, the American Ambassador John Hirsh and the UN Special Representative, Ambassador Berhanu Dinka, in a meeting with President Kabbah, warned him of a possible *coup* against his government. He told them that he had already heard about that coup and that he would be talking to the Military.[1538]

8331. para. 712: Meantime, late Norman, on April 1997, had seen President Kabbah and handed over to him the strategic keys, a bag with working parts of dangerous weapons for safe keeping.

8332. para. 713: Like the Ambassadors who preceded him, Norman told President Kabbah that there was an imminent plot to overthrow him but that the *coup d'Etat* may not be deadly or destructive without those parts of the weapons. On the 5th of May 1997, President Kabbah told Norman that he returned the contents of the bag to the Chief of Defence Staff and the Army Chief, late Brigadier Hassan Conteh and late Max Kanga. Norman then told President Kabbah that the *coup d'Etat* against his government could not be averted.

8333. para. 714: After the *coup d'Etat* of the 25th of May 1997, President Kabbah went into exile in Guinea. His government-in-exile was still recognised and from Conakry he encouraged late Norman and his Kamajor collaborators like the Accused, Moinina Fofana and Allieu Kondewa and other CDF personnel who were engaged in this struggle to restore him to power.

8334. para. 715: He bought a satellite phone for Norman's use to report to him regularly on the progress of the war. He continued to provide logistics support to the Kamajors and their leaders. Samuel Hinga Norman, Moinina Fofana and Allieu Kondewa who were involved in the delegation from Bonthe, went to Freetown to see President Kabbah amongst others to complain about lootings and killings by Kamajors. The President sent 100 bags of rice to the Kamajors in Bonthe Town.[1539]

8335. para. 716: In view of the international recognition accorded to his Government, President Kabbah made it possible for the Economic Community of West African States through ECOMOG to provide military assistance to the CDF to enable it attain the objective of restoring his ousted Government to power. Indeed ECOMOG fought alongside the CDF Kamajor forces against the combined forces of the RUF and of the AFRC as the war raged inside the country for control of areas occupied by enemy forces.

8336. para. 717: It is also on record that Lady Patricia Kabbah gave the sum of $10,000US to Hon. Meme Momoh Pujoh to be conveyed to late Norman for use as part of logistical support to the fighters particularly the amphibious Kassilla battalion in Bonthe. She said that she was very proud of them. She even promised them that she was communicating by a letter and that she would give further offers.[1540]

8337. para. 718: The President's wife, Lady Patricia Kabbah was particularly very concerned about that part of Sierra Leone she came from and she was always asking about Bonthe, about Borhoi, her birth Village.[1541]

8338. para. 719: Defence Witness, Osman Vandi, testified that a meeting which President Kabbah held in Bo, he thanked the Kamajors for dislodging the junta and restoring him as President and that he promised the Kamajors more rice which he later did.[1542]

8339. para. 720: In a second meeting held in Bo and at which prominent dignitaries were in attendance, President Kabbah told the Kamajors he would return and give them all medals. He left two sample medals at the Hall.[1543]

(iii) Towns of Tongo Field

8340. para. 721: The Chamber outlines below, the facts as found in Sections V.2.2 and V.2.3.2 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa:

(i) Base Zero existed as the headquarters for the CDF High Command from about 15 September 1997 to 10 March 1998. Norman, as the National Coordinator, Fofana, as the National Director of War, and Kondewa, as the High Priest, were the key and essential components of the leadership structure of the organisation. They were the executives of the CDF actually taking the decisions, while nobody else could take a decision in their absence. They were the leaders of the CDF and all the Kamajors looked up to them.

(ii) Base Zero was a central storage and distribution site for all of the CDF's logistics. Commanders came to Base Zero from every group and location in the country to take instructions from the High Command or Norman and to receive logistics. Reports were being delivered to Base Zero from the frontlines. Thousands of civilians and Kamajors travened to Base Zero for initiation and military training. Although the COF was a cohesive force under one central command, there were some fighters who acted on their own without the knowledge of central command. Commanders' authority to discipline their men on the ground was entirely their own.

(iii) Norman, Fofana, Kondewa, Mohamed Orinco Moosa, Joseph Koroma, Lamin Ngobeh, Albert J Nallo and die battalion commanders made strategic war decisions of determining when and where to go to war.

(iv) Fofana in his capacity as Director of War at Base Zero planned and executed the war strategies and received frontline reports from the commanders. In executing these functions he was largely assisted by Albert J Nallo and on occasion Fofana passed on his responsibilities to Nallo. These war strategies did not include the commission of criminal acts, such as killing of civilians or looting.

(v) Fofana selected commanders to go to battle and could, on occasion, issue direct orders to these commanders. For example, he issued the order to Joe Tamidey not to release captured vehicles and other items to any other person until they are registered with the CDF Headquarters. Fofana was responsible for the receipt and provision of ammunitions at Base Zero to the commanders upon the instruction of Norman.

(vi) Fofana was seen as having power and authority at Base Zero and was the overall boss of the commanders at Base Zero.

(vii) Kondewa in his capacity as High Priest was in charge of the initiations at Base Zero and was the head of all the CDF initiators in the country. The Kamajors believed in mystical powers of the initiators, especially Kondewa, and that the process of the initiation and immunisation would make them

"bullet-proof'. The Kamajors looked up to Kondewa and admired the man with such powers. They believed that he was capable of transferring his powers to them to protect them. By virtue of these powers Kondewa had command over the Kamajors in the country. He never went to the war front himself, but whenever a Kamajor was going to war, Kondewa would give his advice and blessings, as well as the medicine which the Kamajors believed would protect them against bullets. No Kamajor would go to war without Kondewa's blessings.

(viii) Kondewa attended passing out parades at Base Zero, which signified that the Kamajors had passed their training and could present their skills. He, along with Norman and Mbogba, signed a training certificate, which each trainee received after the training.

(ix) On 16 November 1997 TF2-079 prepared a situation report on events occurring between 19 September and 13 November 1997 in Zone II Operational Frontline which included Lower Bambara and Dodo Chiefdoms. It requested arms and ammunitions and described attacks which had been launched in the area. It also narrated crimes which were committed by Kamajors in that area. The report was endorsed by Musa Junisa, the then Commander-in-chief of Zone II Operational Frontline and Mohamed Orinco Moosa, his deputy. TF2-079, Junisa and Moosa with 100 other Kamajors then travelled to Base Zero. At Base Zero they gave the report first to Fofana and then to Norman. Norman commended their efforts and told them that a good number of that group should return to the area with another senior commander to keep the area strong and only a few of them should remain at Base Zero to await ammunitions. Seven people, including Moosa and TF2-079 stayed at Base Zero.

(x) At a passing out parade at Base Zero between 10 and 12 December 1997 Norman gave instructions for the Tongo and Black December operations. Norman said that the attack on T ongo would determine who wins the war. He also said that there was no place to keep captured prisoners like the juntas, let alone their collaborators. He directed the Kamajors that instead of wasting their bullets, to chop off the left hand of any captured junta as a signal to any group that would want to seize power through the barrels of the gun and not the ballot paper. He also told the fighters not to spare the houses of the juntas. After hearing Norman's instructions, Fofana addressed the Kamajors saying that any commander failing to perform accordingly and "losing your own ground", should kill himself and not come to report to Base Zero. Then all the fighters looked at Kondewa, admiring him as a man with a mystic power, and he gave the last comment saying that the time for the surrender of rebels had long been exhausted and that they did not need any surrendered rebels. He then gave his blessings.

(xi) A subsequent meeting was held by Norman at Base Zero, which was attended by, among others, Fofana, Kondewa, Mohamed Orinco Moosa and some commanders from the Tongo area, such as, Musa Junisa, TF2-079 and Vandi Songo. Norman repeated that whoever took Tongo would win the war and therefore it should be taken "at all costs". He ordered them not to spare anyone working with the juntas or mining for them. He also said that all collaborators should forfeit their properties and be killed. Everyone in

the meeting contributed to the discussion, including Fofana and Kondewa. Norman then ordered Fofana to provide logistics for the operation.

a. Responsibility of Fofana – Towns of Tongo Field

8341. para. 722: Based on the above evidence the Chamber finds that Fofana's speech at the passing out parade in December 1997 when the attack on Tongo was discussed was clearly an encouragement and support of Norman's instructions to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses. At this parade Fofana, as Director of War, addressed the fighters immediately after the National Coordinator for the CDF had given his instructions about Tongo. Fofana not only encouraged the Kamajors to follow Norman's unlawful orders to commit criminal acts but also told them that if they failed to perform accordingly, they should not come back to Base Zero to report but to kill themselves rather than losing their own ground. As found by the Chamber above, those Kamajors who then proceeded to attack Tongo not only received a direction from Norman to commit specific criminal acts, they also had a clear encouragement and support from Fofana, as one of their leaders, to commit such acts.

8342. para. 723: The Chamber is satisfied that Fofana's speech had a substantial effect on the perpetration of those criminal acts. Although this speech was given by Fofana at Base Zero in December 1997, prior to the commission of the criminal acts by Kamajors in Tongo in January 1998, the Chamber finds that the Accused is liable for aiding and abetting even when his conduct occurred before the principal crime had been perpetrated and at a location geographically removed from that of the principal crime.[1544]

8343. para. 724: The Chamber observes that in order to make a finding that Fofana aided and abetted in the commission of the alleged crimes it is irrelevant whether he shared the intent of the perpetrators. Similarly, the Chamber need not examine whether Fofana knew of the precise crime that was intended by the principal perpetrator. However, the Chamber is satisfied that Fofana was aware that one of a number of crimes would probably be committed by the Kamajors and that one of those crimes was in fact committed. The Chamber finds that Fofana knew of Norman's orders that the Kamajors were to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses. The Chamber finds that, based on his awareness that the Kamajors who operated in the towns of Tongo Field had previously engaged in criminal conduct, which had been reported to Base Zero,[1545] Fofana knew that it was probable that the Kamajors would commit at least one of these acts in compliance with the instructions issued. With this knowledge and his knowledge of the orders given by Norman, the National Coordinator,

Fofana encouraged and supported the Kamajors in their actions, in consequence of which they committed acts of killing and infliction of physical suffering or injury in Tongo, as found by the Chamber above.

8344. para. 725: The Chamber further finds that Fofana was present and contributed to the discussion at the subsequent commanders' meeting in December 1997 at Base Zero where plans to attack Tongo were discussed. At this meeting Norman further reiterated, clarified and expanded his unlawful orders, which now included looting, to the Kamajor commanders from Tongo. In the absence of any evidence showing how Fofana contributed to the discussion and decision at this meeting the Chamber finds that in the circumstances there is no evidence to prove beyond reasonable doubt that Fofana either planned the commission of this additional crime of looting or that he aided and abetted in the planning, preparation or execution of this additional crime in Tongo.

8345. para. 726: The Chamber notes that Fofana was ordered by Norman to provide logistics to the commanders from Tongo following this meeting. The Chamber observes that no specifications have been provided as to what these logistics consisted of. Although at this stage Fofana knew that the order to attack Tongo included not only instructions to kill, inflict physical suffering or injury or destroy houses, but also to loot, it is not the only reasonable inference that the logistics provided by Fofana were used to commit those specific crimes in Tongo or that such provision of logistics had a substantial effect upon the perpetration of these specific crimes in Tongo. The Chamber finds that this action by Fofana did not constitute further aiding and abetting in the planning, preparation or execution of the criminal acts committed by Kamajors in Tongo subsequently.

8346. para. 727: The Chamber finds, however, that Fofana's speech at the passing out parade constitutes aiding and abetting only of the preparation of those criminal acts which were explicitly ordered by Norman, namely, killing of captured enemy combatants and "collaborators", infliction of physical suffering or injury upon them and destruction of their houses,[1546] which the Chamber found were committed by the Kamajors in the towns of Tongo Field during the second and third attacks.

8347. para. 728: With respect to Count 7, the Chamber recalls that for specific intent crimes, the aider and abettor must have knowledge of the specific intent of the perpetrator to commit such crimes. The Chamber finds that the specific intent to impose a punishment on persons for acts or omissions they have not committed can reasonably be inferred from the circumstances that existed at the time and in particular from Norman's order. The Chamber therefore finds that it has been

established beyond reasonable doubt that Fofana was aware of the required specific intent to punish collectively.

8348. para. 729: The Chamber recognises that other criminal acts alleged in the Indictment were in fact committed in the towns of Tongo Field. However, the Chamber finds that such acts were not included in Norman's order. Therefore, the Chamber finds that it has not been established beyond reasonable doubt that Fofana aided and abetted in the preparation of all the other criminal acts, such as infliction of mental harm or suffering and looting, which we found were committed by the Kamajors in the towns of Tongo Field during the second and third attacks.

8349. para. 730: Under the sub-heading "Counts - Tongo Field", the Chamber will therefore examine only those particular criminal acts that were explicitly included in Norman's order.

8350. para. 731: With respect to Count 6, the Chamber recalls that for specific intent crimes, the aider and abettor must have knowledge of the specific intent of the perpetrator to commit such crimes. The Chamber finds that while spreading terror may have been Norman's primary purpose in issuing the order to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses, this is not the only reasonable inference that can be drawn from the evidence. As such the Chamber finds that it has not been proved beyond reasonable doubt that Fofana had the requisite knowledge, an essential element of the crime of acts of terrorism.

8351. para. 732: In addition, the Chamber finds that no evidence has been adduced that Fofana planned, instigated, ordered or committed any of the other criminal acts which the Chamber found were committed in the towns of Tongo Field during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

b. Responsibility of Kondewa – Towns of Tongo Field

8352. para. 735: The Chamber finds that at the passing out parade in December 1997 when the attack on Tongo was discussed Kondewa addressed the fighters as the High Priest after the National Coordinator and the Director of War had made their comments. All the fighters looked at Kondewa, admiring him as a man with mystic powers, and he made the last comment saying that

the time for the surrender of rebels had long been exhausted and that they did not need any surrendered rebels. The Chamber finds that in uttering these words Kondewa effectively supported Norman's instructions and encouraged the Kamajors to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses. Kondewa then gave his blessings for these criminal acts as the High Priest. The Chamber notes that no fighter would go to war without Kondewa's blessings because they believed that Kondewa transferred his mystical powers to them and made them immune to bullets.

8353. para. 736: As found by the Chamber above, the Kamajors who then proceeded to attack Tongo not only received a direction from Norman to commit specific criminal acts, they also had encouragement and support from Kondewa through his blessing, as one of their leaders with mystical powers, to commit such acts. The Chamber is satisfied that Kondewa's words had a substantial effect on the perpetration of those criminal acts. Although Kondewa's speech was given at Base Zero in December 1997 prior to the commission of the criminal acts by Kamajors in Tongo in January 1998, the Chamber finds that the Accused is liable for aiding and abetting even when his conduct occurred before the principal crime had been perpetrated and at a location geographically removed from that of the principal crime.

8354. para. 737: The Chamber observes that in order to make a finding that Kondewa aided and abetted in the commission of the alleged crimes it is irrelevant whether he shared the intent of the perpetrators. Similarly, the Chamber need not examine whether Kondewa knew of the precise crime that was intended by the principal perpetrator. However, the Chamber should be satisfied that Kondewa was aware that one of a number of crimes would probably be committed by the Kamajors and that one of those crimes was in fact committed. The Chamber finds that Kondewa knew of Norman's orders that the Kamajors were to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses. The Chamber finds that, based on his awareness that the Kamajors who operated in the towns of Tongo Field had previously engaged in criminal conduct, which had been reported to Base Zero,[1547] Kondewa knew that it was probable that the Kamajors would commit at least one of these acts in compliance with the instructions issued. With this knowledge and his knowledge of the orders given by the National Coordinator, Kondewa encouraged and supported the Kamajors in their actions, in consequence of which they committed acts of killing and infliction of physical suffering or injury in the towns of Tongo Field, as was found by the Chamber above.

8355. para. 738: We further find that Kondewa was present and contributed to the discussion at the subsequent commanders' meeting in December 1997 at Base Zero where plans to attack

Tongo were discussed. At this meeting Norman further reiterated, clarified and expanded his unlawful orders, which now included looting, to the Kamajor commanders from Tongo. In the absence of any evidence showing how Kondewa contributed to the discussion and decision at this meeting, the Chamber finds that in the circumstances there is no evidence to prove beyond reasonable doubt that Kondewa either planned the commission of this additional crime of looting or that he aided and abetted in the planning, preparation or execution of this additional crime in Tongo.

8356. para. 739: The Chamber finds, however, that the speech by Kondewa at the passing out parade constitutes aiding and abetting in the preparation of those criminal acts which were explicitly ordered by Norman, namely, killing of captured enemy combatants and "collaborators", infliction of physical suffering or injury upon them and destruction of their houses,1548 which the Chamber found were committed by the Kamajors in the towns of T ongo Field during the second and third attacks.

8357. para. 740: With respect to Count 7, the Chamber recalls that for specific intent crimes, the aider and abettor must have knowledge of the specific intent of the perpetrator to commit such crimes. The Chamber finds that the specific intent to impose a punishment on persons for acts or omissions they have not committed can reasonably be inferred from the circumstances that existed at the time and in particular from Norman's order. The Chamber therefore finds that it has been established beyond reasonable doubt that Kondewa was aware of the required specific intent to punish collectively.

8358. para. 741: The Chamber recognises that other criminal acts alleged in the Indictment were in fact committed in the towns of Tongo Field. However, the Chamber finds that such acts were not included in Norman's order. Therefore, the Chamber finds that it has not been established beyond reasonable doubt that Kondewa aided and abetted in the preparation of all the other criminal acts, such as infliction of mental harm or suffering and looting, which we found were committed by the Kamajors in the towns of T ongo Field during the second and third attacks.

8359. para. 742: Under the sub-heading "Counts - towns of Tongo Field", the Chamber will therefore examine only those particular criminal acts that were explicitly included in Norman's order.

8360. para. 743: With respect to Count 6, the Chamber recalls that for specific intent crimes, the aider and abettor must have knowledge of the specific intent of the perpetrator to commit such crimes. The Chamber finds that while spreading terror may have been Norman's primary purpose

in issuing the order to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses, this is not the only reasonable inference that can be drawn from the evidence. As such the Chamber finds that it has not been proved beyond reasonable doubt that Kondewa had the requisite knowledge, an essential element of the crime of acts of terrorism.

8361. para. 744: In addition, the Chamber finds that no evidence has been adduced that Kondewa planned, instigated, ordered or committed any of the other criminal acts which the Chamber found were committed in the towns of Tongo Field during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

c. Counts – Towns of Tongo Field

8362. para. 747: The Chamber recognises that other criminal acts have been committed by Kamajors in the towns of Tongo Field during the time frame relevant to the Indictment. In the Chamber's opinion, having regard to all the evidence adduced, these criminal acts were either not charged in the Indictment or fall outside the time frame of the Indictment or there is no indication that the accused were involved in the commission of these crimes through any of the modes of liability alleged in the Indictment. Therefore, the Chamber will not examine these criminal acts for the purposes of making legal findings on the responsibility of each Accused.

8363. para. 748: The Chamber observes that the allegations against Fofana and Kondewa for criminal acts alleged to have been committed by the Kamajors in the towns of Tongo Field are identical. The evidence relied on by the Chamber to make its factual findings on the criminal acts committed by Kamajors in these locations are also identical. While the Chamber has dealt with the factual findings underlying each count together, it has considered the individual criminal liability of each Accused, with respect to each count, separately.

i. Count 2: Murder – Counts – Towns of Tongo Field

8364. para. 749: The Prosecution alleges that Fofana and Kondewa are individually criminally responsible, pursuant to Article 6(1), for the unlawful killing of an unknown number of civilians

and captured enemy combatants at or near Tongo Field and at or near the towns of Lalehun, Kamboma, Konia, Talama, Panguma and Sembehun, between about 1 November 1997 and 30 April 1998.1549

8365. para. 750: As set out above in Sections V.2.3.3 – V.2.3.7 of the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 2, Murder:

(i) In early January 1998, a 12 year-old boy named Foday Koroma was killed in Talama because he was related to a rebel from Tonga.

(ii) In early January 1998, 150 Loko, Limba and Temne tribe members were separated from members of other tribes and were killed in Talama.

(iii) On 14 January 1998, two men identified as rebels were killed by Kamabote at the NDMC Headquarters in Tonga.

(iv) On 14 January 1998, Kamabote killed a man named "Dr. Blood" and a woman named Fatrnata Kamara at the NDMC Headquarters in Tonga. Both were considered to be collaborators.

(v) On 14 January 1998, at the NDMC Headquarters in Tonga, two women identified more than 10 men as collaborators. These men were led by armed Kamajors to a place behind the Headquarters where cows were slaughtered. Two hundred others who had been identified as rebels were also led in the same direction.

(vi) On 14 January 1998, Kamajors took TF2-048's uncle, an unidentified woman and an unidentified child behind a house at the NDMC Headquarters in Tongo. The Kamajors returned with blood on their machetes. These people have not been seen again.

(vii) On 15 January 1998, 20 men who had been accused of being rebels were hacked to death with machetes at the NDMC Headquarters in Tongo.

(viii) Around noon on 15 January 1998, Kamajors shot at a crowd of civilians at the NDMC Headquarters in Tongo. Many civilians were hit by stray bullets and at least one died.

(ix) On 15 January 1998, at an intersection near the NDMC Headquarters in Tongo, TF2-048' s brother was killed by a Kamajor.

(x) On 15 January 1998, Kamajors at a checkpoint hacked one man to death for carrying a photograph of a rebel.

(xi) On 15 January 1998, Kamajors at another checkpoint hacked a boy named Sule to death for carrying a wallet that resembled SLA fatigues.

(xii) Kamajors separated men and women in Bumie and killed five men after making them stare at the sun.

(xiii) Shortly after the third attack on Tongo, a group of 65 civilians was separated into two lines in Kamboma; the Kamajors shot the first 57 people and rolled the bodies into a swamp behind a house. The last eight people were hacked in the neck with machetes and rolled into the swamp with the other bodies. Only one man survived.

(xiv) In mid-February 1998, Aruna Konowa was killed in Lalehun, on the order of a Kamajor boss named Chief Baimba Aruna, because he was considered to be a collaborator.

(xv) A few days after the killing of Aruna Konowa, Brima Conteh was killed in Lalehun by Kamajors who accused him of being "the chief of the rebels".

8366. para. 751: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i) through (xv) and concludes that all of the perpetrators were Kamajors. We find that individuals were killed intentionally; in the majority of cases they were specifically targeted because of the perpetrator's belief that they were "collaborators" or rebels. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 750(i) - 750(iv) and 750(vi) - 750(xv) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 750, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that they were killed and, furthermore, that the perpetrator knew that the victims were not taking an active part in the hostilities.

8367. para. 752: In light of the findings set out above, the Chamber is satisfied that the general requirements of war crimes have been established beyond reasonable doubt with respect to each incident described in paragraph 750.

8368. para. 753: With respect to those incidents described in paragraph 750(i)750(iv) - 750(iv) and 750(vi) - 750(xv), above, the Chamber is satisfied not only that the general requirements of war crimes have been established but also that the specific elements of murder have been met with respect to each incident. However, the Chamber finds that the specific elements of the crime of murder have not been established with respect to paragraph 750*, as the conclusion that these people were killed is not the only reasonable inference to be drawn from the evidence. (*Note: this should probably read: paragraph 750(v))

ii. Count 4: Cruel Treatment – Counts – Towns of Tongo Field

8369. para. 754: The Prosecution alleges that Fofana and Kondewa are individually criminally responsible, pursuant to Article 6(1), for the intentional infliction of serious physical harm and serious physical suffering on an unknown number of civilians in Tongo Field and the surrounding areas, between 1 November 1997 and 30 April 1998.[1550]

8370. para. 755: Additionally, the Prosecution alleges that Fofana and Kondewa are individually criminally responsible, pursuant to Article 6(1), for the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians in Tongo Field and the surrounding areas, between November 1997 and December 1999, through the following acts:

- screening for collaborators;
- unlawfully killing suspected collaborators, often in plain view of friends and relatives;
- illegal arrest and unlawful imprisonment of collaborators;
- the destruction of homes and other buildings;
- looting and threats to unlawfully kill, destroy or loot.[1551]

8371. para. 756: As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 4, Cruel Treatment:

(i) On 14 January 1998, at the NDMC Headquarters in Tongo, a Kamajor hacked at three people with a cutlass.

(ii) On 15 January 1998, at a checkpoint in Dodo, Kamajors hacked the right hand of a man they thought was a rebel.

(iii) Shortly after the third attack on Tongo, a group of 65 civilians was separated into two lines in Kamboma; 64 were killed. One man was hacked in the neck with a machete but survived.

(iv) Some time after escaping from a checkpoint in Panguma, Kamabote found TF2-035 in Ngiehun. On discovering that TF2-035 was a Limba, Kamabote ordered a child soldier named "Small Hunter" to kill TF2-035. Small Hunter shot TF2-035 five times; one bullet is still in his body.

8372. para. 757: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i)-(iv) and concludes that all these acts were committed by Kamajors. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all the evidence adduced, the Chamber is

satisfied that each of the acts described in paragraph 756 (i) - (iv) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 756, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that the acts described above occurred and, furthermore, that the perpetrators knew that they were not taking an active part in the hostilities.

8373. para. 758: In light of the findings set out above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of cruel treatment have been established with respect to each incident described in paragraph 756.

iii. Count 7: Collective Punishments – Counts – Towns of Tongo Field

8374. para. 759: The Prosecution alleges that Fofana and Kondewa are individually criminally responsible, pursuant to Article 6(0, for committing the crimes charged in Counts 1 through 5 of the Indictment as part of a campaign to punish the civilian population of the relevant geographical areas.1552

8375. para. 760: The Chamber recalls that only those acts for which the Accused have been found to bear criminal responsibility under another count of the Indictment may form the basis of criminal responsibility for collective punishments. In this regard, the Chamber recalls that it has found that Fofana bears criminal responsibility as a superior under Counts 2, 4 and 7 in the towns of Tongo Field.

8376. para. 761: The Chamber finds that the evidence adduced proves beyond reasonable doubt that the acts described in paragraph 750(i)750(iv) - 750(iv) and 750(vi) - 750(xv) [Count 2] and in paragraph 756 [Count 4] were perpetrated with the specific intent to punish the civilian population in Tongo Field and the surrounding areas.

8377. para. 762: The Chamber is therefore satisfied, in relation to those acts described in paragraph 750(i)750(iv) - 750(iv) and 750(vi) - 750(xv)and in paragraph 756, that both the general requirements of war crimes and the specific elements of collective punishments have been proved beyond reasonable doubt with respect to each incident.

d. Conclusion – Towns of Tongo Field

i. Responsibility of Fofana – Conclusion – Towns of Tongo Field

8378. para. 763: On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for aiding and abetting in the preparation of the crimes committed in the towns of Tongo Field as found under Counts 2, 4 and 7 above.

ii. Responsibility of Kondewa – Conclusion – Towns of Tongo Field

8379. para. 764: On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) for aiding and abetting in the preparation of the crimes committed in the towns of Tongo Field as found under Counts 2, 4 and 7 above.

(iv) Koribondo

8380. para. 765: In addition to the facts listed above in paragraph 721 (i) to (viii), the Chamber outlines below the facts as found in Sections V.2.2, V.2,4.2, V.2,4.3, V.2,4,4 and V.2,4.6 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa with respect to Koribondo:

(i) At a passing out parade at Base Zero in early January 1998 Norman gave orders to the Kamajors to launch an "all-out offensive" in all the areas occupied by the Juntas and laid-down military instructions on how to conduct this operation.

(ii) Fofana addressed the Kamajors at this parade, confirming Norman's order to attack various junta-held territories. During this speech Fofana told the fighters to attack the villages where the juntas were located and "to destroy the soldiers from where they were [...] settled". He also said that the failure to take Koribondo was a disgrace to the Kamajors and that this time he wanted them to go and capture Koribondo.

(iii) Kondewa gave his blessings and the medicines which would make the fighters fearless if they did not spoil the law. He also said that all of his powers had been transferred to them to protect them, so that no cutlass would strike them and that they should not be afraid.

(iv) A subsequent commanders' meeting for Koribondo was held by Norman at Base Zero on the same day as the passing out parade, which had in

attendance, among others, Fofana, Kondewa, Lamin Ngobeh, Joe Tamidey, Bobor Tucker and other commanders. Norman chose Joe Tamidey to lead the attack on Koribondo. Norman ordered that Koribondo should be taken "at all costs" because they had already spent a lot on Koribondo. Norman gave specific orders to the commanders to destroy or burn everything in Koribondo, except for a mosque, church, the Bani and the school. He also said that anyone left in town should be termed an enemy or a rebel since they had been forewarned and should be killed.

(v) At the same meeting Bobor Tucker's group was specifically ordered to reinforce the Bo-Koribondo Highway so that no one could come from Bo to help the juntas.

(vi) At the request of Joe Tamidey, Norman ordered Lumeh to provide Tamidey with ammunition, food and money. Bobor Tucker had reserve ammunitions from before that he used for the attack.

(vii) Norman met with NaIlo before the Koribondo and Bo attacks at Base Zero and gave him specific insttuctions for these two attacks, while Fofana was present. Norman told Nallo that the Kamajors had tried to capture Koribondo many times and that they had failed because the civilians had given their children to the juntas in marriage and thus they were all "spies and collaborators". Therefore, when he goes to Koribondo "anybody that was met there should be killed" and nothing should be left "not even a farm" or "a fowl". All houses were to be burnt, and he was given petrol for the job. Some specific names were mentioned. Shekou Gbao, the driver, should be killed and his compound be burnt because he was giving his vehicle to the juntas. The house of Mike Lamin's father was also to be burnt, because Mike Lamin was a RUF. Mr Biyo, a driver, should have his compound burnt as well. Although Joe Tamidey was appointed by Norman to lead the attack on Koribondo, he and the other commanders involved in that attack were all under Nallo's overall command.

(viii) Fofana as Director of War and one of the leaders at Base Zero was the superior of Nallo by virtue of Nallo's positions in the hierarchical structure of the organisation that existed at Base Zero. Nallo was the Deputy National Director of Operations and the Regional Director of Operations for the Southern Region, which included Districts of Bo, Moyamba, Pujehun and Bonthe. In his capacity as Deputy National Director of Operations, Nallo was responsible for transmitting general and specific insttuctions from Norman to the warfront commanders, for collecting reports he received from the frontline upon his visits and transmitting them to Fofana before presenting them to Norman, and bringing arms and ammunitions to the fighters.

(ix) As Regional Director of Operations Nallo was responsible for implementing commands he received from Base Zero with his commanders. In implementing those commands he did not distinguish between the lawful and unlawful orders and did not recognise that he had discretion to implement them or not.

(x) The local operational planning for the attack on Koribondo was done at Kpetewoma. Nallo was the intermediary between Norman at Base Zero and Joe Tamidey. During the first meeting local manpower was provided to assist the Kamajors. At the third meeting, Nallo supplied cartridges, bombs, G3s and AK-47s to Joe Tamidey, which he had said were given by Norman for the attack on Koribondo. Thereafter plans were made, fighters were organized and the arms and ammunition were distributed to the various groups by Joe Tamidey. The following commanders were to lead the battle from three flanks: Bobor Tucker from the Bo-Koribondo Highway; Lahai George from the Sumbuya-Koribondo Highway; and Joe Tamidey from Blama. Joe Tamidey then informed Nallo for further report to Norman that the attack was planned for the 13th of February 1998.

(xi) The attack started from Jombohun and was commanded by Joe Tamidey, Bobor Tucker and Lamin Ngobeh. Although the commanders were operating with different groups, they were all under Nallo's command. Around 700 Kamajors that attacked Koribondo were predominantly, but not exclusively, from the Jaiama-Bongor Chiefdom. Others came from the Districts of Pujehun, Bonthe and Bo.

(xii) Four days after the capture of Bo, Joe Tamidey met with Fofana, Kondewa and Norman in Koribondo. He was taken to Bo where he was questioned by Fofana as to his reasons for not killing Shekou Gbao.

(xiii) At the end of March 1998, Norman addressed approximately 200 civilians and 400 Kamajors at the Court Barri in Koribondo. Norman scolded the Kamajors for not having done the work he had told them to do, in particular to destroy all the houses, except for three. On this visit Fofana and Kondewa accompanied Norman but they did not attend this meeting.

a. Responsibility of Fofana – Koribondo

8381. para. 766: The Chamber takes the view that Fofana's speech at the passing out parade in early January 1998, when Norman gave orders to the Kamajors to launch an "all-out offensive" in all the areas occupied by the Juntas and laid-down military instructions on how to conduct this operation, was words of encouragement to the Kamajor fighters who were about to conduct those military operations. The Chamber finds, however, that this speech does not amount to urging, encouraging or prompting the Kamajors to commit criminal acts. Although this speech contained an instruction to "attack the villages", "destroy the soldiers" and "capture Koribondo" and was given by Fofana in his position as Director of War to his subordinates, it did not include the instruction to commit criminal acts. This evidence does not demonstrate beyond reasonable doubt that Fofana intended to provoke or induce or bring about the commission of the criminal acts which the Chamber found were committed by Kamajors subsequently during the attack on Koribondo or that Fofana had reasonable knowledge that criminal acts would likely be committed as a result of this speech.

8382. para. 767: Furthermore, the Chamber finds that uttering these words of encouragement to the Kamajor fighters who were about to conduct military operations against the junta-held territories, does not constitute aiding and abetting in the planning, preparation of execution of the criminal acts alleged. We find that there is no evidence to conclude beyond reasonable doubt that at the time of giving of his speech Fofana was aware of the Kamajors' intention to commit any of the criminal acts, which the Chamber found were committed in Koribondo by the Kamajors during the attack.

8383. para. 768: Although Fofana was present at the subsequent commanders' meeting where the attack on Koribondo was planned, we find that this evidence together with the evidence of his speech at the passing out parade does not establish beyond reasonable doubt that Fofana planned the commission of any of the criminal acts in Koribondo.

8384. para. 769: We further find that the mere presence of Fofana at this commanders' meeting as well at the private meeting with Nallo, at which Norman gave orders to Nallo, Joe Tamidey, Bobor Tucker, Lamin Ngobeh and other Kamajor commanders to commit criminal acts does not establish beyond reasonable doubt that Fofana aided and abetted in the planning, preparation or execution of these criminal acts.

8385. para. 770: The Chamber further finds that no evidence has been adduced of Fofana physically or otherwise directly perpetrating any of the criminal acts which we found were committed in Koribondo during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

8386. para. 771: On the basis of the foregoing the Chamber now finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment.

b. Responsibility of Kondewa – Koribondo

8387. para. 799: The Chamber takes the view that Kondewa's speech at the passing out parade in early January 1998 was words of moral support and encouragement to the Kamajor ftghters who were about to conduct military operations on the junta-held territories. The Chamber finds, however, that this speech does not amount to urging, encouraging or prompting the Kamajors to commit criminal acts. This evidence does not demonstrate beyond reasonable doubt that Kondewa intended to provoke or induce the commission of the criminal acts which the Chamber found were committed by Kamajors subsequently during the attack on Koribondo or that Kondewa had reasonable knowledge that criminal acts would likely be committed as a result of his speech.

8388. para. 800: Furthermore, the Chamber finds that giving moral support or blessing as well as providing medicine which the Kamajors believed would protect them against the bullets does not constitute aiding and abetting in the planning, preparation of execution of the criminal acts. We find that there is no evidence to conclude beyond reasonable doubt that at the time of giving his speech and providing his medicine Kondewa was aware of the Kamajors' intention to commit any criminal acts, which the Chamber found were committed by the Kamajors in Koribondo during the attack.

8389. para. 801: Although Kondewa was present at the subsequent commanders' meeting where the attack on Koribondo was planned, we find that this evidence together with the evidence of his speech at the passing out parade does not establish beyond reasonable doubt that Kondewa planned the commission of any of the criminal acts in Koribondo.

8390. para. 802: The Chamber finds that the mere presence by Kondewa at this subsequent commanders' meeting, at which Norman gave orders to Joe Tamidey, Bobor Tucker, Lamin Ngobeh and other Kamajor commanders to commit criminal acts does not establish beyond reasonable doubt that Kondewa aided and abetted in the planning, preparation or execution of these criminal acts.

8391. para. 803: The Chamber further finds that no evidence has been adduced of Kondewa ordering or physically or otherwise directly perpetrating any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose,

plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

8392. para. 804: On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment.

8393. para. 808: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment

(v) Bo District

8394. para. 809: In addition to the facts, listed in paragraphs 721 (i) to (viii) and 765 (i) to (iii), (viii) and (ix) above, the Chamber outlines below the facts as found in Sections Y.2.2, V.2.5.2 and V.2.5.3, V.2.5.6 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa:

(i) After a passing out parade at Base Zero in early January 1998 a subsequent commanders' meeting was held on the same day at the back of the field at Base Zero. At this meeting Norman ordered the Kamajor commanders James Kaillie, Joseph Lappia and TF2-017 to attack Kebi and Bo Towns. Norman gave specific orders to these commanders to kill enemy combatants and "collaborators", to burn down their houses and loot big shops, especially pharmacies. Fofana and Kondewa were both present at this meeting.

(ii) After the commanders' meeting Fofana provided arms, ammunitions and a vehicle to James Kaillie, Joseph Lappia and TF2-017.

(iii) In Dar-es-Salam TF2-017 presented a verbal situation report on the Kebi attack and handed over a captured soldier and two solar panels to Norman, in the presence of Fofana and Kondewa. Norman handed over the captured soldier to Kondewa who took him to Base Zero.

(iv) The order to attack Bo was reiterated by Norman to TF2-017 in Bumpeh, in the presence of the Director of War Fofana and the High Priest Kondewa. Kondewa renewed the initiation of certain Kamajors to prepare them for the attack.

(v) Norman met with Nallo before the Koribondo and Bo attacks at Base Zero and gave him specific instructions for these two attacks, while Fofana was present. Norman gave specific orders to Nallo to kill certain identified civilians in Bo who he labelled as "collaborators", loot and burn their houses, loot the Southern Pharmacy and bring the medicines to Norman. Specifically the name of MB Sesay was mentioned. Norman also ordered Nallo to kill the police officers.

(vi) The attack on Bo proceeded from four flanks. James Kaillie was the Battalion Commander and the commander of the group coming from the Tikonko road (Mattru). Joseph Lappia was his deputy. TF2-017 was part of this group with his 38 Kapras. Nallo, in his capacity as the Regional Director of Operations, was in charge of the commanders below him but could not exercise full or strict control over all of them because of their large numbers. In Bo operation specifically, he was regarded by TF2-017 as his "operational" or "division" commander.

(vii) In addition to the James Kaillie's group, there were at least three other groups of Kamajors who attacked Bo from Gerihun, Dambara and Moyamba-Bo Highway. At least 270 Kamajors participated in this attack. The tactical planning for the Bo' attack was done in Bumpeh, which was considered by Norman as a focal point for this attack. Nallo knew about the local planning in Bumpeh.

(viii) In April 1998, Norman, Fofana and Kondewa with other Kamajor leaders and initiators visited the New Police barracks in Bo Town. Norman complained that the Kamajor chiefs, in particular Fofana, had lied to him about the burnt down police barracks and policemen killed in Bo Town. Norman said that he felt deceived after having seen the barracks intact and the police at the parade.

(ix) Sometime after the attack on Bo in February 1998, a CDF office was set up in Bo. It was initially run by Alhaji Daramy Rogers, the Regional Coordinator for the Southern Region. Around June 1998, the position of Regional Coordinator was replaced by that of the District Administrator. Kosseh Hindowa occupied the latter position in Bo.

(x) After the dissolution of Base Zero, Fofana retained his position of Director of War. However, he was no longer responsible for the conduct of the war and the fighting forces. His duties included distribution of logistics to the various parts of the country. In mid-1999 he became the Director of the Peace Office in Bo.

a. Responsibility of Fofana – Bo District

8395. para. 810: The Chamber reiterates that Fofana's speech at the passing out parade in early January 1998 does not constitute instigating or ordering the commission of the criminal acts, or aiding and abetting in the planning, preparation or execution of the criminal acts, which the Chamber found were subsequently committed by Kamajors in Bo District.

8396. para. 811: The Chamber finds that although Fofana was present at the subsequent commanders' meeting where the attack on Bo was planned, this evidence does not establish beyond reasonable doubt that Fofana planned the commission of any of the criminal acts in Bo.

8397. para. 812: The Chamber finds that the mere presence by Fofana at this commanders' meeting as well at the private meeting with Nallo, at which Norman gave orders to Nallo, James Kaillie, Joseph Lappia and TF2-017 to commit criminal acts does not establish beyond reasonable doubt that Fofana aided and abetted in the planning, preparation or execution of these criminal acts.

8398. para. 813: We found that although Fofana was responsible at Base Zero for the receipt and the provision of ammunitions to the commanders, he could only perform these acts, if and when directed to do so by Norman. Furthermore, the Chamber finds that Fofana provided logistics to launch military attacks on Kebi and Bo Towns. Although at this stage Fofana knew that the plan to attack Bo Town included the commission of criminal acts, it is not the only reasonable inference that the logistics provided by Fofana were used to commit specific criminal acts in Bo Town or that such provision had a substantial effect upon the perpetration of these specific criminal acts in Bo. Therefore, these actions by Fofana do not constitute aiding and abetting in the planning, preparation or execution of the criminal acts committed by Kamajors subsequently in Bo.

8399. para. 814: The Chamber further finds that no evidence has been adduced of Fofana physically or otherwise directly perpetrating any of the criminal acts which we found were committed in Bo District during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

8400. para. 815: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Bo District during the time frame charged in the Indictment.

b. Responsibility of Kondewa – Bo District

8401. para. 847: The Chamber reiterates that Kondewa's speech at the passing out parade in early January 1998 does not constitute instigating the commission of the criminal acts by Kamajors which the Chamber found were committed in Bo District during the time frame charged in the Indictment. The Chamber also reiterates that this speech as well as the provision of the medicine by Kondewa, does not establish beyond reasonable doubt that Kondewa aided and abetted in the planning, preparation or execution of those criminal acts.

8402. para. 848: The Chamber finds that although Kondewa was present at the subsequent commanders' meeting where the attack on Bo was planned, this evidence does not establish beyond reasonable doubt that Kondewa planned the commission of any of the criminal acts in Bo.

8403. para. 849: The Chamber finds that mere presence by Kondewa at this commanders' meeting at which Norman gave orders to Nallo, James Kaillie, Joseph Lappia and TF2-017 to commit criminal acts in Bo does not establish beyond reasonable doubt that Kondewa aided and abetted in the planning, preparation or execution of these criminal acts.

8404. para. 850: The Chamber further finds that no evidence has been adduced of Kondewa ordering or physically or otherwise directly perpetrating any of the criminal acts which we found were committed in Bo District during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

8405. para. 851: On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Bo District during the time frame charged in the Indictment.

8406. para. 855: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Bo District during the time frame charged in the Indictment.

(vi) Bonthe District

8407. para. 856: In addition to the facts, listed in in paragraphs 72 (i) to (viii) and 765 (i) to (iii) above, the Chamber outlines below the facts as found in Sections V.2.2, V.2.6.2 and V.2.6.3 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa:

(i) On 16 August 1997, a delegation from Bonthe Town was sent to Kondewa at the Kamajor base at Tihun Sogbini to discuss the continuing harassment of civilians by soldiers and the security of the island. Kondewa was considered the supreme head of Kamajors.

(ii) At Momaya Kamajors were shooting all around the delegation and threatening them. Kamajor Commander Sheku Kaillie ("Bombowai") pleaded on the delegation's behalf and led them, under his protection, to Kondewa, who by then was no longer in Tihun but in Talia. From Mattru Jong the delegation was led to Talia by Ngobeh, the district grand Kamajor commander.

(iii) The delegation arrived at Kondewa's house in Talia on 24 August 1997. A boy was playing guitar and percussion and singing about the greatness of Kondewa and the Kamajor society. Kamajors armed with rifles and guns were guarding the house. The delegation explained to Kondewa the dreadful effects of the war. In response Kondewa stated: "war means to know that you will die; to know that you have no control over your life; to know that you have no dignity; to know that your property is not yours". Kondewa then called a meeting at the Court Barri that was attended by all of the elders of the region, the paramount chiefs and Kamajor commanders. Kondewa said at the meeting that he was not going to give any of the areas under his control to a military government but to the democratically elected Government of President Ahmad Tejan Kabbah. Kondewa agreed on the cessation of hostilities between the Kamajors and the Soldiers, the stopping of the harassment of civilians and the free movement of boats, and wrote a letter to this effect to all Kamajor commanders around Bonthe. The agreement did not work.

(iv) The delegation accompanied by Ngobeh was stopped in Tihun by a Kamajor who presented a letter, which he demanded to be read in the presence of Kondewa. The letter was written by a commander from Gambia and was accusing the delegation of bringing the soldiers to Bonthe. When the letter was read to Kondewa in Talia, he declared that if the information was true, all of the delegation would be killed; if it was not true, those responsible for the lie would experience a terrible death. In Gambia Kondewa ordered a court sitting and placed Pa Lewis, Ngobeh and Bombowai in charge of the investigation. Those responsible for the letter pleaded guilty. They were supposed to be killed, but the delegation pleaded with Kondewa to spare their lives and he agreed.

(v) The Kamajors operating in Bonthe were of the Shebro tribe and were referred to as the Kassilla Battalion. Baigeh was the Battalion Commander of the Kassilla Battalion.

(vi) On 15 February 1998 a group of approximately 300 to 500 Kamajors entered Bonthe. The Kamajors came from three chiefdoms, including Sittia and Nongoba Bullom.

(vii) From 15 February 1998, Bonthe Town was under the control of the Kamajors, headed by the District Battalion Commander, Morie Jusu Kamara. Commander Julius Squire was the second in command to Morie Jusu Kamara and was from Bendu Cha.

(viii) On 16 February 1998 Kamajors announced a meeting at the St. Patrick Parish's Compound. Morie Jusu Kamara, was present at the meeting together with Commander Julius Squire, the secretary and spokesman for the meeting.

(ix) Although Morie Jusu was a disciplinarian "in his own right", he did not punish his Kamajors. He promised that that no one else would be killed in Bonthe but demanded money from the civilians.

(x) On 15 February, Kamajors looked for Lahai Ndokoi Koroma, a Chiefdom Speaker, in the Catholic mission who was accused of being a junta collaborator. They threatened to kill everyone if they did not produce this person. Two delegations were sent to Bonthe from Base Zero under Kondewa's instructions. On 1 March 1998, a third group of Kamajors came to Bonthe under the leadership of Kondewa. At a public meeting Kondewa said that he had not allowed his men to enter Bonthe, but that they had not listened to his advice and had done what they had done. Kondewa apologized on their behalf. Kondewa also told those assembled that they should forget about ECOMOG, as they were not responsible for Bonthe. Kondewa said that it was the Kamajors who were responsible for security in the area. He told Father Garrick that he was aware of the atrocities committed by the Kamajors and for this reason he wanted to get Lahai Ndokoi Koroma out of the country. After getting paid 600,000 leones Kondewa took Lahai Ndokoi Koroma to Talia and later to Bo. Only Kondewa had authority to release Lahai Koroma and claimed to kill without restraint and to send people to Mecca.

(xi) Around 23 February 1998, Norman, accompanied by two ECOMOG officials, came to Bonthe. At a public meeting at the Bonthe town hall Norman said that any complaint against the Kamajors was useless as they had fought and saved the nation and that working with the Kamajors was like "working with the cutlass".

(xii) In March 1998 a letter from Soloman Berewa addressed to the Kamajors in Bonthe requesting them to stop looting and killing, was given to Commander Morie Jusu Kamara, who passed it on to his second in command, Julius Squire. Julius Squire said that he did not recognise the authority of the Attorney-General; he refused to accept the instructions in

the letter, unless they came from Norman or Kondewa. Morie Jusu Kamara told Father Garrick that he was not able to control the Kamajors.

a. Responsibility of Fofana – Bonthe District

8408. para. 857: The Chamber finds that it is a reasonable inference that the order to attack Bonthe Town was included in the instructions given by Norman at the passing out parade held at Base Zero in early January 1998, when he ordered to launch an "all-out offensive" in all the areas occupied by the juntas. This inference can be drawn on the basis of the fact that at the time of the parade Bonthe Town was one of those areas and furthermore because according to the evidence the attack on Bonthe Town took place on the same day as the attack on Bo and Kenema Towns, *i.e.* the 15th of February 1998. However, the Chamber reiterates its earlier finding that Fofana's speech at this particular parade did not constitute instigating or ordering the commission of the criminal acts, or aiding and abetting in the planning, preparation or execution of the criminal acts, which the Chamber found were subsequently committed by Kamajors in Bonthe District.

8409. para. 858: The Chamber further finds that there is no evidence beyond reasonable doubt that Fofana was involved, either directly or otherwise, in the attack on Bonthe Town or in any of the criminal acts, which the Chamber found were committed by Kamajors in Bonthe District during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

8410. para. 859: On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Bonthe District during the time frame charged in the Indictment.

b. Conclusion – Responsibility of Fofana – Bonthe District

8411. para. 863: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible

pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Bonthe District during the time frame charged in the Indictment.

c. Responsibility of Kondewa – Bonthe District

8412. para. 864: The Chamber reiterates its earlier finding that Kondewa's conduct at the passing out parade at Base Zero in early January 1998 does not constitute instigating the commission of the criminal acts, or aiding and abetting in the planning, preparation or execution of the criminal acts, which the Chamber found were committed by Kamajors subsequently in Bonthe District.

8413. para. 865: Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

8414. para. 866: On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Bonthe District during the time frame charged in the Indictment.

(vii) Kenema District

8415. para. 904: In addition to the facts, listed in paragraphs 721 (i) to (viii) and 765 (i) to (iii) above, the Chamber outlines below the facts as found in Sections V.2.2, V.2.7.2, V.2.7.3 and 2.7.8 of the Factual Findings, which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa:

(i) Mohamed Bhonie Koroma, a Battalion Commander, led the attack on SS Camp. Other Kamajors that participated in this attack included Mohamed Swaray, a Battalion Commander from Kenema, Fallah Bindi, a Commander, CO Sahr, a Section CO and Stephen Lahai Fassay. SS Camp was taken approximately one week before Kenema.

(ii) Mohamed Bhonie Koroma left SS Camp to attack Kenema on 15 February 1998. When he left, Stephen Lahai Fassay replaced him as the Kamajor boss and maintained this position at least until May 1998.

(iii) Kamajors entered Blama on Sunday, 15 February 1998. Key commanders in this attack included Alhaji Bockarie, Sau Vibbie and Foday Saidu.

(iv) Kamajors took control of Kenema Town on Sunday, 15 February 1998. Mohamed Bhonie Koroma led the first battalion of Kamajors, which entered Kenema from the direction of SS Camp. Twenty to thirty units from different sections, comprising at least one thousand Kamajors, entered Kenema on the same day.

(v) ECOMOG arrived in Kenema approximately on 18 February 1998.

(vi) While at Base Zero Musa Junisa was the Director of Operations for the Eastern Region.

(vii) In mid-February 1998, TFUl79 and TF2-201 traveled from Base Zero to Bo and Kenema on the orders of Norman to set up a CDF office. At that time the CDF commanders in Kenema were KBK Magonna, Eddie Massallay and Arthur Koroma. George Jambawai, the Regional Coordinator for the Eastern Region became the head of the new administration; TF2-079 was also part of the executive. Jambawai's administration lasted until June 1998. He was succeeded by the District Administrator, Arthur Koroma. During the administration of Arthur Koroma a base was opened at SS Camp where civilians were taken for detention.

a. Responsibility of Fofana – Kenema District

8416. para. 905: The Chamber finds that it is a reasonable inference that the order to attack Kenema Town was included in the instructions given by Norman at the passing out parade held at Base Zero in early January 1998, when he ordered to launch an "all-out offensive" in all the areas occupied by the juntas. This inference can be drawn on the basis of the fact that at the time of the parade Kenema Town was one of those areas and also because according to the evidence the attack on Kenema Town took place on the same day as the attack on Bo and Bonthe Towns, i.e. 15 February 1998. However, the Chamber reiterates its earlier finding that Fofana's speech at this particular parade did not constitute instigating or ordering the commission of the criminal acts, or aiding and abetting in the planning, preparation or execution of the criminal acts, which the Chamber found were subsequently committed by Kamajors in Kenema District.

8417. para. 906: The Chamber further finds that there is no evidence beyond reasonable doubt that Fofana was involved, either directly or otherwise, in the attacks on Kenema Town, SS Camp and Blama or in any of the criminal acts, which the Chamber found were committed by Kamajors during and after the attacks on those locations. The evidence shows that the existence of the plan to capture Kenema was known at Base Zero because Norman then ordered the War Council members to open the CDF office there but this evidence, even considered with the evidence as a

whole, is not sufficient to conclude to any individual criminal liability of the accused beyond reasonable doubt.

8418. para. 907: Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

8419. para. 908: On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Kenema District during the time frame charged in the Indictment.

b. Conclusion – Responsibility of Fofana – Kenema District

8420. para. 911: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Kenema District during the time frame charged in the Indictment.

c. Responsibility of Kondewa – Kenema District

8421. para. 912: The Chamber reiterates its earlier finding that Kondewa's conduct at the passing out parade at Base Zero in early January 1998 does not constitute instigating the commission of the criminal acts, or aiding and abetting in the planning, preparation or execution of the criminal acts, which the Chamber found were subsequently committed by Kamajors in Kenema District.

8422. para. 913: The Chamber further finds that there is no evidence beyond reasonable doubt that Kondewa was possibly involved, directly or otherwise, in the attacks on Kenema Town, SS Camp and Blama or in any of the criminal acts, which the Chamber found were committed by Kamajors during and after the attacks on those locations. The evidence shows that the existence of the plan to capture Kenema Town was known at Base Zero because Norman then ordered the War Council members to open the CDF office there but this evidence alone is not sufficient to attach individual criminal liability to the accused beyond reasonable doubt.

8423. para. 914: Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

8424. para. 915: On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is indiVidually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Kenema District during the time frame charged in the Indictment.

d. Conclusion – Responsibility of Kondewa – Kenema District

8425. para. 918: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Kenema District during the time frame charged in the Indictment.

e. Counts – Kenema District

8426. para. 919: The Chamber recognises that criminal acts have been committed by Kamajors in Kenema District during the time frame relevant to the Indictment. In the Chamber's opinion, having regard to all the evidence adduced, these criminal acts were either not charged in the Indictment or fall outside the time frame of the Indictment or there is no indication that the accused were involved in the commission of these crimes through any of the modes of liability alleged in the Indictment. Therefore, the Chamber did not examine these criminal acts for the purposes of making legal findings on the responsibility of each Accused.

(viii) Talia / Base Zero

8427. para. 920: In addition to the facts, listed in paragraphs 721 (i) to (viii) and 765 (i) to (iii) above, the Chamber outlines below the facts as found in Sections V.2.2 and V.2.8 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa:

(i) By late 1996 or early 1997 the Kamajors had taken over Talia from the rebels. The first Kamajor leaders who came to Talia were Ngobeh and Joe Tamidey. Kondewa, who was a herbalist, came two weeks later with his priests and was performing initiations in Mokusi. By the time of the coup the Kamajors were also in control of the surrounding villages around Talia.

(ii) After the coup and before the arrival of Norman to Talia around 15 September 1997, Fofana and Kondewa were both in Talia. Around July-August 1997 Kondewa was in Tihun performing initiations. At that time Kondewa was considered the supreme head of Kamajors in Bonthe District.

(iii) Fofana and Kondewa stayed in Talia for the entire period of time of the existence of Base Zero.

8428. para. 921: As set out above in the Factual Findings, the Chamber found that the following criminal acts have been committed in Talia / Base Zero, which the Chamber will consider for the purposes of making its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa in this area:

(i) TF2-134 was captured by Kamajors and forcefully brought to Talia. She was tied with FM rope and beaten until she vomited blood. She was then kept in a guardroom and released later in the day.

(ii) TF2-109 was captured by Kamajors along with other women and three men in her village of Mattru Jong and was taken to Talia by Kamajor Kamoh Bonnie. She was held in Talia for three days. The Kamajors also looted her property in Mattru, including furniture, household items and clothing.

(iii) Sometime towards the end of 1997, two "Town Commanders" were brought to Talia. Kondewa took a gun from Kamoh Bonnie, Kondewa's priest, shot and killed one of the town commanders. The next morning witness saw two graves where the bodies of the two town commanders were buried.

(iv) TF2-133 was captured and taken to Talia, where she stayed for one month. During that time, TF2-133 saw Kamajors kill her mother in the palm oil plantation.

(v) TF2-188 and her mother were captured and made to carry loads to Talia. In Talia, Kondewa told his boys to capture TF2-188's mother and kill her. TF2-188 saw the Kamajors kill her mother.

(vi) During the rainy season of 1997, TF2-189 was captured by Kamajors and taken to Talia. While in Talia, TF2-189's husband was captured, his throat was cut by Kamajors and he was decapitated.

(vii) Jusu Shalley, Baggie Vaiey and Lahai Lebbie were captured together and brought to Talia. They were killed in front of a large group of Kamajors and civilians. All three men were civilians. Next morning the Kamajors summoned civilians to a parade, which had Norman and Kondewa in attendance.

(viii) Sometime after 13 February 1998, a surrendered soldier, named Sgt. Kamanda was brought to Talia from Koribondo. Sgt. Kamanda was killed.

(ix) Kondewa's bodyguards Kafi Jini, Jahman, Junisa and Bokindeh accused TF2-096's friend, who was selling cassava, to be a rebel. Jahman reported TF2-096's friend to Kondewa and she was arrested and taken to Nyandehun. She was held in a cage and was not released until 40,000 leones were paid to Kondewa.

(x) Sometime between January and March 1998, Mustafa Fallon was killed at the Poro Bush in Talia as part of a Kamajor ritual. Mustafa Fallon was a fighting Kamajor who had been enlisted by Bobor Tucker. Norman, Fofana and Kondewa and many other Kamajors were present.

(xi) Sometime between December 1997 and January 1998, Alpha Dauda Kanu was killed in the palm oil plantation near Talia as part of a Kamajor ritual. Kanu was one of about 40 Kapras from Gbonkolenken Chiefdom in Tonkolili District who had come to Talia for training. Norman, Fofana and Kondewa approved the killing.

(xii) A truck carrying cocoa and coffee arrived in T alia. It was unloaded and the contents were given to the Director of War, Fofana and the High Priest, Kondewa. The truck was detained in Talia.

8429. para. 922: The Chamber notes that the allegations advanced by the Prosecution in relation to the alleged crimes in Talia / Base Zero include the following time frames: for Count 2 – between about October 1997 and December 1999, for Count 4 - between November 1997 and December 1999, for Count 5 - between about 1 November 1997 and about 1 April 1998 and for Counts 6 and 7 - as charged in the previous counts. These allegations are particularised in paragraphs 882, 889, 895, 899 above.[1570]

8430. para. 923: The Chamber finds that based upon the evidence adduced in support of the acts listed above under paragraph 921 (i), (iv), (v) and (ix) it cannot conclude beyond reasonable doubt what the timing of the occurrence of these incidents was. The incident described in paragraph 921 (vi) may have occurred any time during "the rainy season of 1997" which could have been between the months of June through September 1997. The Chamber also recalls that Kondewa arrived at Talia by late 1996 or early 1997. Both Kondewa and Fofana were in Talia before the arrival of Norman and the establishment of Base Zero around 15 September 1997. Therefore, the Chamber concludes that the evidence has not established beyond reasonable doubt that the incidents listed under paragraph 921 (i), (iv), (v), (vi) and (ix) had taken place within the time frame charged in the Indictment.

8431. para. 924: We find that the incident listed under paragraph 921 (viii) involves the killing of "a surrendered soldier" from Koribondo. While the Chamber recognises that this act may have

constituted an unlawful killing, it holds that the Prosecution has limited the allegations in Count 2 for Talia / Base Zero to the unlawful killing of "an unknown number of civilians" only and not that of "captured enemy combatants".[1571]

8432. para. 925: The Chamber further finds that the incidents listed under paragraph 921 (x) and (xi) do not constitute a war crime since both Fallon and Kanu fighters and members of the CDF. Here the Chamber particularly recalls the final position of the Prosecution in respect of these two killings made during their closing arguments as follows:

> [Tlhe best approach is simply to see these two men's deaths as examples of where the three accused stood in the hierarchy, their ability to do acts without sanction from anyone else. In fact, it demonstrates that they were in absolute control of the CDF. That is, we would say, how the deaths of those two men fit into the Prosecution case.[1572]

a. Responsibility of Fofana – Talia / Base Zero

8433. para. 926: The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) or 6(3) for the acts listed by the Chamber above under paragraph 921 (ii), (iii), (vii) and (xii).

8434. para. 927: In relation to the acts described under paragraph 921 (ii), (iii) and (vii) above the Chamber finds that the presence of Fofana at Base Zero when these incidents took place is not sufficient by itself to establish beyond reasonable doubt that Fofana had any involvement in the commission of these criminal acts under any of the modes of liability charged in the Indictment.

8435. para. 928: In relation to the incident described under paragraph 921 (xii) the Chamber finds that the fact that a truck was brought to Talia and the contents of it was given to Fofana is not sufficient to establish beyond reasonable doubt that either the truck might have been looted or that Fofana knew or had reasons to know that the truck might have been looted.

8436. para. 929: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Talia / Base Zero during the time frame charged in the Indictment.

b. Responsibility of Kondewa – Talia / Base Zero

8437. para. 931: The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) or 6(3) for the incidents listed by the Chamber above under paragraph 921 (ii), (iii), (vii) and (xii).

8438. para. 932: In relation to the incidents described under paragraph 921 (ii) and (vii) above the Chamber finds that the presence of Kondewa at Base Zero when these incidents took place is not in itself sufficient to establish beyond reasonable doubt that Kondewa had any involvement in the commission of these criminal acts under any of the modes of liability charged in the Indictment. On the basis of the evidence adduced it cannot be established beyond reasonable doubt that there existed a superior-subordinate relatiobship between Kondewa as High Priest and the said Bonnie who was said to be a "Kondewa's priest".[1573]

8439. para. 933: In relation to the incident described under paragraph 921 (xii) the Chamber finds that the fact that a truck was brought to T alia and the contents of it was given to Kondewa is not sufficient to establish beyond reasonable doubt that either the truck might have been looted or that Fofana knew or had reasons to know that the truck might have been looted.

8440. para. 934: The Chamber finds that the incident listed under paragraph 921 (iii) constitutes an intentional killing perpetrated by Kondewa. The Chamber further finds that these two men were killed because they were considered to be "collaborators", after having been appointed to the position of "Town Commanders" by the rebels, these men organized civilians from their town to assist the rebels. In the context of the widely-held Kamajor belief that anyone who assisted the rebels was a "collaborator", the Chamber finds that the unlawful killing of the two "Town Commanders" was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes.

8441. para. 935: In light of the particular facts and circumstances of each of the events referred to above, the Chamber is also satisfied both that neither of the victims was taking an active part in the hostilities at the time that they were killed and, furthermore, finds that Kondewa knew that the victims were not taking an active part in the hostilities.

8442. para. 936: In light of the above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of murder have been established with respect to each incident described in paragraph 921 (iii).

8443. para. 937: On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) for committing murder as a war crime as charged under above.

(ix) Moyamba District

8444. para. 938: In addition to the facts, listed in paragraphs 721 (i) to (viii) and 765 (i) to (iii), (viii) and (ix) and 809 (vi) above, the Chamber outlines below the facts as found in Sections V.2.2 and V.2.9 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(0 and 6(3) of Fofana and Kondewa:

(i) Sometime after August 1997, the Kamajors returned to Moyamba in full strength under the leadership of Mustapha Ngobeh. Kenei Torma was the second-in-command to Mustapha Ngobeh. Sometime after Ngobeh's death, Torma became the first in command. In late 1997 and early 1998, Kenei Torma and Chuck Norris were in control of the Kamajors in Moyamba town.

(ii) Albert J Nallo in late 1997 was the Director of Operations for the Southern Province, which included Moyamba District. In this capacity Albert J Nallo had control over Moyamba District. When Albert J Nallo went to Moyamba Town he learned from Mustapha Ngobeh that four days earlier Abu Bawote, the Commander in the Ribbi area, had killed the Chiefdom Speaker. Mustapha Ngobeh related that he had seen Abu Bawote in Bradford with the severed hand of the Chiefdom Speaker; Bawote had dried the hand and tied to his neck as a necklace. Albert J Nallo reported this incident to Fofana and Norman and told Norman that this Chiefdom Speaker was a collaborator. Norman responded: "Well, a Collaborator deserves that. That was the standing order. You know that was the standing order I passed long ago."

a. Responsibility of Fofana – Moyamba District

8445. para. 939: The Chamber finds that there is no evidence beyond reasonable doubt that Fofana was possibly involved, directly or otherwise, in the attack on Moyamba town by Kamajors or in any of the criminal acts, which the Chamber found were committed by Kamajors in Moyamba District during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

8446. para. 940: On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Moyamba District during the time frame charged in the Indictment.

b. Conclusion – Responsibility of Fofana – Moyamba District

8447. para. 948: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Moyamba District during the time frame charged in the Indictment.

c. Responsibility of Kondewa – Moyamba District

8448. para. 949: The Chamber finds that there is no evidence beyond reasonable doubt that Kondewa was possibly involved, directly or otherwise, in the attack on Moyamba town by Kamajors or in any of the criminal acts, which the Chamber found were committed by Kamajors in Moyamba District during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

8449. para. 950: On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Moyamba District during the time frame charged in the Indictment.

d. Counts – Moyamba District

8450. para. 956: The Chamber recognises that other criminal acts have been committed by Kamajors in Moyamba District during the time frame relevant to the Indictment. In the Chamber's opinion, having regard to all the evidence adduced, these criminal acts were either not charged in the Indictment or fall outside the time frame of the Indictment or there is no indication that the accused were involved in the commission of these crimes through any of the modes of liability alleged in the Indictment. Therefore, the Chamber did not examine these criminal acts for the purposes of making legal findings on the responsibility of each Accused.

(x) Count 8 – Child Soldiers

8451. para. 957: The Prosecution alleges that Fofana and Kondewa are individually criminally responsible, pursuant to Article 6(1) or 6(3), for enlisting children under the age of 15 years ("child soldiers") into armed forces or groups or using them to participate actively in hostilities at all times relevant to the Indictment throughout the Republic of Sierra Leone.[1575]

8452. para. 958: In addition to the facts, listed in paragraph 721 (i) to (viii) and 809(i) (iii) above, the Chamber outlines below the facts as found in Sections V.2.2 and V.2.10 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa with respect to Count 8.

(i) A commanders' meeting was held by Norman after the passing out parade at Base Zero in early January 1998, which had in attendance, among others, Fofana, Kondewa and commanders for the Bo attack. Norman added that the adult fighters were doing less than the children, and just eating and looting.

(ii) Child fighters were present at various times at Base Zero.

a. Responsibility of Fofana – Count 8 – Child Soldiers

8453. para. 959: The Chamber finds that the evidence adduced has not proved beyond reasonable doubt that Fofana planned, ordered or committed the crime of enlisting child soldiers into an armed group, or using them to participate actively in hostilities.

8454. para. 960: Specifically regarding the commanders' meeting, the Chamber finds that Fofana's mere presence does not demonstrate beyond reasonable doubt that he encouraged anyone to make use of child soldiers. Neither does it demonstrate beyond reasonable doubt that he aided and abetted in the planning, preparation or execution of either the enlistment of child soldiers into

the armed forces or the use of child soldiers to participate actively in hostilities anywhere in the Republic of Sierra Leone during the time frame specified in the Indictment.

8455. para. 961: The Chamber further finds that the presence of Fofana at Base Zero where child soldiers were also seen is not sufficient by itself to establish beyond reasonable doubt that Fofana had any involvement in the commission of these criminal acts under any of the modes of liability charged in the Indictment.

8456. para. 962: The trial record contains ample evidence that the CDF as an organisation was involved in the recruitment of children under the age of 15 to an armed group, and used them to participate actively in hostilities, however this does not demonstrate beyond a reasonable doubt that Fofana was personally involved in such crimes.

8457. para. 963: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of enlistment of child soldiers into armed forces or groups or use of child soldiers to participate actively in hostilities.

b. Conclusion – Responsibility of Fofana – Count 8 – Child Soldiers

8458. para. 967: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to either Article 6(1) or 6(3) for Count 8.

c. Responsibility of Kondewa – Count 8 – Child Soldiers

8459. para. 968: In addition to the facts, listed in paragraph 958 above, the Chamber outlines below the fact upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) of Kondewa with respect to Count 8:

(i) TF2-021 was nine years old when he was abducted by rebels. In 1997, when the witness was eleven years old he was captured by Kamajors and forced to carry looted property. The Kamajors subsequently took him to Base Zero for initiation.

(ii) At Base Zero, the witness was initiated along with around 20 other young boys. Kondewa performed the initiation and told the boys that they would

be made powerful for fighting. He gave them a potion to rub on their bodies before going into battle.

(iii) After receiving training, TF2-021 was sent on his first mission to Masiaka, where he shot a woman in the stomach and left her there on the ground. On subsequent missions, he fought with the Kamajors at Kenema, SS Camp, Joru and Daru. In 1999 TF2-021 was flown by helicopter into Freetown with three other small boys and their commanders where they were given guns and sent to support ECOMOG who were fighting the rebels at Congo Cross.

(iv) In 1999, when TF2-021 was thirteen years old, he was initiated into the Avondo Society, a group of Kamajors led by Kondewa. He received a certificate (Exhibit 18) which proved his membership in this group. The certificate bears details showing the place of initiation (Bumpeh), the initiate's name, photograph and age. It also bears Kondewa's name, signature and stamp.

8460. para. 969: The Chamber understands from the evidence that initiation into the Kamajor Society does not necessarily amount to enlistment in an armed force or group.[1576] Some parents put their children through initiation for other reasons. Thus, the Chamber has looked at the details of the actual initiation ceremony, the circumstances surrounding initiation, as well as the subsequent events, to determine whether in fact a child could be said to have been enlisted in an armed force or group.

8461. para. 970: Having considered the evidence outlined above, that during the first initiation of TF2-021 initiates were given potions to rub on their bodies before going into battle, were told that they would be made strong for fighting, were, subsequently given military training, and soon afterwards were sent into battle, the evidence is absolutely clear that on this occasion, the initiates had taken the first step in becoming fighters. It is beyond reasonable doubt that Kondewa, in these circumstances, when initiating the boys, was also performing an act analogous to enlisting them for active military service. TF2-021 was eleven years old when Kondewa enlisted him. In the Chamber's view, there can be no mistaking a boy of eleven years old for a boy of fifteen years or older, especially for a man such as Kondewa who regularly performed initiation ceremonies. Kondewa knew or had reason to know that the boy was under fifteen years of age, and too young to be enlisted for military service. Although the Chamber found this evidence entirely sufficient to establish enlistment beyond a reasonable doubt, TF2-021 was given a second initiation, into the Avondo Society, headed by Kondewa himself, when he was thirteen years old. Exhibit 18, dated 10 June 1999, bears Kondewa's signature and stamp of approval and lists the boy's age (incorrectly) as twelve.

8462. para. 971: Thus, the Chamber concludes that this evidence has established beyond reasonable doubt that Kondewa committed the crime of enlisting a child under the age of 15 into an armed force or group.

8463. para. 972: The Indictment charges use of child soldiers as an alternative to enlistment. Therefore, having found that Kondewa is individually criminally responsible for enlisting child soldiers, the Chamber need not consider the evidence in relation to their use actively participating in armed hostilities.

3. Appellate Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-A, Judgment, 28 May 2008

(a) Findings and Conclusions

(i) Tongo Town

a. Fofana –Tongo Town

i. Instigation – Fofana – Tongo Town

8464. para. 51: The Trial Chamber held that the *actus reus* of instigating requires "an act or omission, covering both express and implied conduct of the Accused, which is shown to be a factor substantially contributing to the conduct of another person committing the crime,"[117] and that there must be a "causal relationship between the instigation and the perpetration of the crime ... although it is not necessary to prove that the crime would not have occurred without the Accused's involvement."[118] The Trial Chamber also held that the *mens rea* of instigating is an intention "to provoke or induce the commission of the crime," or a "reasonable knowledge that a crime would likely be committed as a result of that instigation.,,[119] Neither of the parties takes issue with the Trial Chamber's definition of instigation.

8465. para. 52: The Trial Chamber found that Fofana's speech at the First Passing Out Parade substantially contributed to the commission of crimes by the Kamajors in Tongo Town and thereby satisfied the *actus reus* of aiding and abetting. The parties have not challenged this finding. Both aiding and abetting and instigating require the *actus reus* to have a substantial effect on the perpetration of the crime.

8466. para. 53: The Trial Chamber concluded that Fofana's actions had a substantial effect on the perpetration of these crimes.120 The Trial Chamber found that "Fofana's speech at the [first] passing out parade constitutes aiding and abetting only of the *preparation* [sic][121] of those criminal acts which were explicitly ordered by Norman, namely, killing of captured enemy combatants and 'collaborators', infliction of physical suffering or injury upon them and destruction of their houses.'"[122]

8467. para. 54: The Prosecution argues that because the *actus reus* of aiding and abetting is satisfied, the *actus reus* is also satisfied for instigating. However, the Trial Chamber found, relying on ICTY Appeals Chamber jurisprudence, that unlike the *actus reus* of instigating, the *actus reus* of aiding and abetting does not require a causal link between the act of aiding and abetting and the commission of the crime.[123] The Appeals Chamber holds that the *actus reus* of instigating requires a causal link which aiding and abetting does not and accordingly disagrees with the Prosecution's proposition.

8468. para. 55: Fofana's speech at the First Passing Out Parade at Base Zero was removed both temporally and geographically from the unlawful acts committed by the Kamajors in Tongo Town in January 1998 This alone would not be enough to deny a causal link between the speech and the crimes alleged. However, in this case the Appeals Chamber is of the view that there is insufficient evidence to show how Fofana's words influenced the perpetration of crimes which took place at a significantly different place and time. Fofana's speech may have substantially contributed to the military effort, but not to the crimes as such. Therefore, the Appeals Chamber is satisfied that the Trial Chamber was not in error in finding that Fofana's speech did not have a substantial effect on the perpetration of the crimes or that a causal relationship did not exist and that the *actus reus* for instigating was, consequently, not satisfied.

8469. para. 56: With regard to the *mens rea* required for "instigating," the Prosecution submits that Fofana's intent or knowledge that crimes would likely be committed may be inferred from his substantial contribution to the planning, which was done with knowledge of the crimes which Norman had ordered in the execution of the plan. Fofana's words "now you've heard the National Coordinator [...] any commander failing to perform accordingly and losing your own ground, just decide to kill yourself there and don't come to report to us" are ambiguous and may be interpreted not as approving Norman's unlawful orders, but rather as an appeal to each of the commanders to fight hard and not loose his ground. Further, Fofana's call "to destroy the soldiers finally from where they were [...] settled"[124] was directed at the military campaign and does not include any incitement to perpetrate unlawful acts. This leads the Appeals Chamber to conclude that there

were other possible interpretations of the evidence than the one suggested by the Prosecution. The Appeals Chamber, therefore, finds that a reasonable trier of fact could have found that Fofana did not have the requisite *mens rea*.

8470. para. 57: Consequently, the Appeals Chamber finds that the Trial Chamber did not err in failing to convict Fofana for instigating the commission of crimes in Tongo Town. The Prosecution's Fourth Ground of Appeal, therefore, fails in this respect.

ii. Planning – Fofana – Tongo Town

8471. para. 61: Regarding the requisite *actus reus*, given the absence of factual findings by the Trial Chamber concerning the nature of Fofana's participation in the commanders' meetings in December 1997, the Appeals Chamber finds that it was open to a reasonable trier of fact to conclude that evidence of Fofana's presence did not by itself amount to planning. Although Fofana participated in these commanders' meetings and held H position of responsibility as Director of War, it was open to a reasonable trier of fact to conch; de that this evidence alone did not prove beyond reasonable doubt that he participated in the planning of the criminal conduct which took place in Tongo Town.

8472. para. 62: Regarding the requisite *mens rea*, the Trial Chamber found that Fofana participated in the commanders' meetings. However, the Appeals Chamber notes that the findings did not indicate that he participated at those meetings in the planning of unlawful acts rather than in the successful completion of military operations.

8473. para. 63: The Appeals Chamber therefore, concludes that the evidence did not disclose beyond reasonable doubt that Fofana possessed the requisite *mens rea* for planning violence to life, health and physical or mental well-being of persons, in particular murder, punishable under Article 3.a. of the Statute, violence to life, health and physical or mental well-being of persons, in particular cruel treatment, punishable under Article 3.a. of the Statute as well as 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.

8474. para. 64: The Appeals Chamber finds that in this respect, the Prosecution's Fourth Ground of Appeal must fail.

b. Kondewa – Tongo Town

i. Aiding and Abetting – Kondewa – Tongo Town

8475. para. 70: Kondewa submits that the Trial Chamber committed an error of law. However, he states that he agrees with the legal requirements of aiding and abetting found by the Trial Chamber. Further, he agrees that the applicable standard for *actus reus* is that of "substantial effect." His challenge is therefore not directed at the legal standard as such but rather at the Trial Chamber's application of the facts.[153] The Appeals Chamber, therefore, is of the view that Kondewa raises an error of fact rather than law, and his arguments will be considered in this context.

8476. para. 71: Although not specifically raised in this appeal, the Appeals Chamber is of the view that it is necessary to determine whether, as a matter of law, words of encouragement and support may have a "substantial effect" even though they were spoken at a time and place that are temporally and geographically removed from the commission of the crimes. The Trial Chamber held that the *actus reus* of aiding and abetting may occur before, during, or after the perpetration of the crime and at a location geographically removed from the place where the crime is committed, if the act of the aider and abetter has a substantial effect on the perpetration of the crime.[154] In this regard, the Trial Chamber relied on the ICTY Appeals Chamber decision in *Blaskic* which found that the acts of aiding and abetting "may occur before, during, or after the principal crime has been perpetrated, and that the location at which the *actus reus* takes place may be removed from the location of the principal crime."[155] Further, it is recognized in the jurisprudence of other *ad hoc* Tribunals that "encouragement" and "moral support" are two forms of conduct which may lead to criminal responsibility for aiding and abetting a crime.[156]

8477. para. 72: The Appeals Chamber agrees that "encouragement" and "moral support" may constitute the *actus reus* and that acts of aiding and abetting can be made at a time and place removed from the actual crime.

8478. para. 73: In regard to the *actus reus* for aiding and abetting, the Trial Chamber found that Kondewa's speech at the First Passing Out Parade had a substantial effect on the perpetration of the crimes in Tongo. [157] The Appeals Chamber recalls that the Trial Clamber found that at the First Passing Out Parade Norman instructed the Kamajors "to kill captured enemy combatants and 'collaborators' to inflict physical suffering or injury upon them and to destroy their houses."[158] After Norman and Fofana spoke "all the fighters looked at Kondewa, admiring him as a man with mystic powers, and he made the last comment saying that the time for surrender of the rebels had

long been exhausted and that they did not need any surrendered rebels."[159] The Trial Chamber then found that in uttering these words Kondewa effectively supported Norman's instructions and encouraged the Kamajors to execute Norman's unlawful orders.[160] The Trial Chamber also noted that no fighter would go to war without Kondewa's blessing because they believed that Kondewa transferred his mystical powers to commit such acts.[161]

8479. para. 74: In addition to his spiritual responsibilities, Kondewa was, together with Norman and Fofana, the three people regarded as what was referred to as the "Holy Trinity" at Base Zero; the three of them were the key and essential components of the leadership structure [162] and were the three people who according to the Trial Chamber actually made the decisions and nobody could make a decision in their absence.[163]

8480. para. 75: Even though the First Passing Out Parade in December 1997 was temporally and geographically removed from the second and third attacks on Tongo Town, the Appeals Chamber observes that one of the purposes of the Passing Out Parade was for Norman to give instructions to the Kamajors for the second and third attacks on Tongo Town,[164] not just instructions concerning unlawful acts. For this reason temporal and geographic remoteness is not of significance to the question of whether Kondewa's speech substantially contributed to the perpetration of the crimes. Thus, in the light of all the circumstances of this case, a reasonable trier of fact could have concluded that the only inference available on the evidence was that through his blessings and speech at the First Passing Out Parade Kondewa substantially contributed to the perpetration of the crimes in Tongo Town.

8481. para. 76: Regarding the requisite *mens rea*, the Appeals Chamber agrees with Kondewa that the Trial Chamber erroneously relied on the fact that he had received the report to Base Zero of the Kamajors' previous crimes in Tongo. On the contrary, the Trial Chamber found that Norman and Fofana received this report, not Kondewa.[165] Thus, the Appeals Chamber finds that the Trial Chamber erred in fact in relying on this report.[166]

8482. para. 77: It is the unchallenged finding of the Trial Chamber, that Norman at the Passing Out Parade ordered the Kamajors to commit criminal acts in Tongo, and that Kondewa who spoke after Norman, knew of the orders of Norman when he said: "a rebel is a rebel; surrendered, not surrendered, they're all rebels ... the time for their surrender had long since been exhausted, so we don't need any surrendered rebel ... I give you my blessings; go my boys, go."[167] The Trial Chamber further found that "no fighter would go to war without Kondewa's blessings because they believed that Kondewa transferred his mystical powers to them and made them immune to bullets."[168]

8483. para. 78: On these findings the Appeals Chamber is satisfied that it was reasonable for the Trial Chamber to conclude that Kondewa by his words of encouragement aided and abetted the commission of criminal acts ordered by Norman in Tongo.

8484. para. 79: The Appeals Chamber therefore concludes, Justice King dissenting, that the Trial Chamber did not err in finding Kondewa responsible for aiding and abetting the commission of crimes in Tongo Town. The Appeals Chamber accordingly finds, Justice King dissenting, that Kondewa's Fourth Ground of Appeal must fail and upholds his conviction in relation to violence to life, health and physical or mental well-being of persons, in particular murder and cruel treatment punishable under Article 3.a. of the Statute (Counts 2 and 4, respectively).

ii. Dissents – Justice King - Aiding and abetting – Kondewa – Tongo Town

8485. para. 81: The Trial Chamber found Kondewa criminally responsible under Article 6(1) for aiding and abetting war crimes in Tongo, in particular murder under Count 2 and cruel treatment under Count 4.[1173] It is not disputed that Kondewa himself did not commit the crimes. The Kamajors attacked Tongo Town at least three times, from late November or early December 1997 to late January 1998.[1174] The Trial Chamber also found that Kondewa's speech at the December 1997 Passing Out Parade had a substantial effect, (wrongly, in my opinion), on the perpetration of crimes by Kamajors in Tongo.[1175] It held that Kondewa was liable for adding and abetting crimes in Tongo, despite the fact that his statements were made more than a month before the crimes were committed and when Kondewa spoke in Talia.[1176] The Trial Chamber found that Kondewa had the requisite *mens rea* for aiding and abetting because he was aware that Kamajors would commit crimes such as murder and cruel treatment, based on his knowledge of Norman's orders and his knowledge that Kamajors had committed crimes in Tongo in the past.[1177]

8486. para. 82: I disagree with the Majority Opinion that a reasonable tribunal of fact could have found that Kondewa's conduct had a substantial effect on the crimes committed by Kamajors during their attack on Tongo, for the following reasons: From the evidence accepted by the Trial Chamber, Kondewa made a speech at a passing out parade sometime between 10 December and 12 December 1997 at Base Zero (Talia). The passing out parade was witnessed by many civilians and Kamajors. Kondewa spoke after Norman and Fofana and, according to the Trial Chamber:

> "Then all the fighters looked at Kondewa, admiring him as a man with mystical power, and he gave the last comment saying 'a rebel is a rebel; surrendered, not surrendered, they're all rebels [... t]he time for their surrender had long since been

> exhausted, so we don't need any surrendered rebel.' He then said, 'I give you my blessings; go my boys go."[1178]

8487. para. 83: The Trial Chamber's paraphrasing of TF2-222's evidence does not accurately accord with what was actually said on reading the transcript. The transcript mentions "command", but in fact what Kondewa said was not a command, but a rallying cry and a statement of fact: "a rebel is a rebel; surrendered, not surrendered, they're all rebels …" That, in my opinion, is an innocuous statement of fact. How can those words be reasonably said to aid and abet the crimes alleged to have been committed in Tongo? The opinion evidence of "admiring" and "a man who had mystical powers" is of no evidentiary value and confirms that both the Trial Chamber and my learned colleagues misdirected themselves by drawing the wrong inference.

8488. para. 84: The Trial Chamber relied entirely upon these comments made by Kondewa as his *actus reus* for aiding and abetting the crimes later committed in Tongo, finding that this statement had a substantial effect on the crimes committed.

8489. para. 85: There are, I opine, at least two errors in the Trial Chamber's evaluation of this evidence. First, the Trial Chamber made no finding whatsoever that any of the Kamajors that committed the crimes in Tongo (i.e., the physical perpetrators) were actually present at the passing out parade to hear Kondewa's statements in Talia in mid-December 1997. The passing out parade was witnessed by "many civilians and Kamajors"[1179] but it does not say that those who committed the crimes - whose names are known, who have never been charged or prosecuted - were present.

8490. para. 86: Approximately a month later, another group of Kamajors met in Panguma and planned the second attack on Tongo with BJK Sei. [1180] Kondewa was not present, and there is no evidence that his previous statements were mentioned at the planning. On a morning in early January 1998, a group of approximately 47 Kamajors, led by one Kamabote, attacked Tongo and, in the course of the attack against rebels, they killed some civilians. In the circumstances, I opine that it would be unreasonable to suggest that anyone hearing Kondewa's words, which were clearly directed against the rebels, and not the civilians, could be taken as encouragement to murder civilians.

8491. para. 87: This error is compounded by the fact that Trial Chamber's paraphrasing does not portray the import of the words and the meaning of Kondewa's statement. The relevant portion of the transcript states:

> A. That a rebel is a rebel; surrendered, not surrendered, they're all rebels. The time for their surrender"

Q. Apart from Moinina Fofana did anyone else speak at the meeting again?

A. The only person who spoke was the high priest. He at that time [inaudible] give the last command.

Q. Sorry, I didn't get that.

A. He, after all other command had been given, we all looked at him to admire the man who had a mystic power, that he will be the one to give the last command.

Q. The last command?

A. Yes, My Lord.

Q. Was that last command given?

A. He did, yes, My Lord.

Q. What was the last command?

The time for surrender had

long been since exhausted, so we don't need any

surrendered rebel.

Q. Is that all?

A. Finally, "I give you my blessings; go my boys, go."

Q. Finally gave his blessings?

A. Yes, My Lord."[1181]

The words speak for themselves and do not support my learned colleagues' conclusion. In any event, there is no evidence that those who actually and personally committed the crimes were present when Kondewa made his speech. How can Kondewa, by his words, aid and abet those who did not hear his speech?

8492. para. 88: I repeat that the names of those who committed atrocities were given in evidence and Kondewa was not one of them. If he was, I would have not the slightest hesitation to hold him accountable.

8493. para. 89: For the reasons I have given, I have come to the conclusion that no reasonable tribunal of fact could have found that Kondewa's statements had a substantial effect on the crimes in Tongo.

8494. para. 90: Accordingly, I would reverse the convictions under Article 6(1) for aiding and abetting murder under Count 2 and cruel treatment under Count 4, and enter a finding of Not Guilty under Counts 2 and 4. Let me end up by asking the question: having regard to the Historical Facts in this case, could it also be said that those of the International Community, as Great Britain, the United States and Nigeria, who mandated Kondewa, ECOMOG, the Civil Defence Forces and their allies to fight for the restoration of the democratically elected Government and are, apparently, in a superior/subordinate relationship with Kondewa and the others, are guilty of War Crimes?

8495. para. 91: Likewise, did the ICTY investigate allegations made by Western academics and Serb politicians, who accused NATO officials of War Crimes during the 1999 bombing of a Serb TV station killing journalists, and the lethal bombing of a railway bridge whilst a train was passing over it? If it is a question of victor's justice, then, in my opinion, it must first be experimented with, or practised in a developed State like Kosovo and not in a developing and young Country as Sierra Leone. Otherwise, it is a sure and certain recipe to undermine the stability and security of Sierra Leone. And accusations of double standards might arise!

8496. para. 92: As Charles Margai, counsel for Kondewa eruditely put it in his plea for leniency to the Trial Chamber:

> "We thank God, My Lords, that the war is over, but this war was described and has been described as the most brutal known to mankind. We should not lose sight of that. If it were not for the sacrifice of the CDF, God knows whether some of us, including my learned friend Kamara, would be here today. That I submit, My Lords, is a factor to be considered, because otherwise, if a sentence is l:evere and there occurs a rebel war, whether in Sierra Leone or elsewhere. Government militias are going to ask themselves the question: Is it advisable for us to intervene? If we do, might we not be treated in the same manner as Allieu Kondewa and others"[1182]

8497. para. 93: I understand and appreciate his concerns, not only for his client, but a fortiori, for the overriding interests of his Country, Sierra Leone. As the Trial Chamber Judges put it, also eruditely: "The contlribution of the two Accused Persons to the establishment of the much desired peace in Sierra Leone and the difficult, risky, selfless and for a very sizeable number of their CDF/Kamajors, the supreme sacrifices that they made to achieve this through a bloody conflict, is in itself a factor that stands significantly in mitigation in their favour. In fact, the medal awarded to Moinina Fofana, after the restoration, by the reinstated President Kabbah, is a testimony of gratitude and appreciation of Sierra Leonean Society which the President incarnates"[1183]. I agree, without any reservation whatsoever. The learned Trial Chamber Judges made it abundantly clear that the mitigating factor was the fight for the restoration of the democratically elected

Government, and not any far-fetched thesis about an unwarranted allegation of a so-called "just war"!

8498. para. 94: I would grant Kondewa's Appeal in its entirety and enter a finding of Not Guilty on all the Counts for which my colleagues have him Guilty and acquit him on Counts 1, 2, 3 and 4.

iii. Instigation – Kondewa – Tongo Town

8499. para. 83: The Trial Chamber's statement of the elements of the *actus reus* and the *mens rea* of instigating has already been noted in paragraph 51.

8500. para. 84: The Trial Chamber found Kondewa's speech at the First Passing Out Parade to have had a substantial effect on the perpetration of crimes in Tonglo Town and thereby satisfied the *actus reus* of aiding and abetting. Both aiding and abetting and instigating require the *actus reus* to have a substantial effect on the perpetration of the crime. A finding that an accused's conduct had a "substantial effect" for the purpose of aiding and abetting will therefore normally also satisfy the "substantial effect" requirement for the purpose of instigating.

8501. para. 85: In this case, in order to show a causal link between Kondewa's speech and the crimes committed in Tongo Town, the Prosecution must lead evidence to show that the Kamajors who were present at the First Passing Out Parade at which Kondewa's speech was made were the same Kamajors who subsequently committed the crimes in Tongo Town. There was no such evidence before the Trial Chamber. For this reason the Appeals Chamber finds that "instigation" for the crimes charged in Tongo Town was not proved.

8502. para. 86: Consequently, the Prosecution's Fourth Ground of Appeal fails in this respect.

(ii) Koribondo, Bo District and Kenema District

a. Fofana – Koribondo, Bo District and Kenema District

i. Planning – Fofana – Koribondo, Bo District and Kenema District

8503. para. 97: Given the absence of factual findings by the Trial Chamber concerning the nature of Fofana's participation in the January 1998 commanders' meetings, the Appeals Chamber finds that it was open to a reasonable trier of fact to conclude that evidence of Fofana's presence at these meetings does not amount to planning.[213] Although Fofana attended these meetings and held

a position of responsibility as Director of War, it was reasonable for the Trial Chamber to conclude that this evidence alone does not prove beyond reasonable doubt that Fofana designed the criminal conduct which took place in Koribondo, Bo District and Kenema District, or that his involvement in the planning process substantially contributed to the criminal conduct which occurred. Furthermore, despite the Trial Chamber's finding that Fofana provided commanders with arms, ammunition and a vehicle which were used by the Kamajors during their attack on Kebi Town, the Appeals Chamber finds that it was open to the Trial Chanber to conclude that Fofana's provision of logistics for attacks in Bo District did not substantially contribute to the commission of criminal acts in Bo District.[214]

8504. para. 98: Thus, the Appeals Chamber finds that the Trial Chamber did not err in finding Fofana not liable for planning the commission of crimes in Korlbondo, Bo District and Kenema District. Therefore, the Appeals Chamber finds that in this respect, the Prosecution's Third and Fourth Grounds of Appeal must fail.

ii. Aiding and Abetting – Fofana – Koribondo, Bo District and Kenema District

8505. para. 101: In view of the Trial Chamber's findings that Fofana's speech at the January 1998 passing out parade did not amount to urging, encouraging or prompting the Kamajors to commit criminal acts, the Appeals Chamber holds that Fofana's speech did not constitute aiding and abetting the commission of crimes in Koribondo, Bo District and Kenema District.[218]

8506. para. 102: Furthermore, although Fofana was present at the January 1998 commanders' meeting the Trial Chamber did not make any factual findings as to the nature of Fofana's participation during these meetings. The Appeals Chamber opines that Fofana's mere presence at these meetings did not amount to aiding and abetting the criminal conduct which took place in Koribondo, Bo District and Kenema District. Furthermore, in regard to the Trial Chamber's finding that Fofana provided commanders with arms, ammunition and a vehicle prior to their attack on Kebi Town, the Appeals Chamber holds that Fofana's provision of logistics is not sufficient to establish beyond reasonable doubt that he contributed as an aider and abetter to the commission of specific criminal acts in Bo District.[219]

8507. para. 103: Thus, The Appeals Chamber concludes that the Trial Chamber was correct in finding Fofana not liable for aiding and abetting the commission of crimes in Koribondo, Bo District and Kenema District. Consequently, the Prosecution's Third and Fourth Grounds of Appeal must fail.

b. Kondewa – Koribondo, Bo District and Kenema District

i. Aiding and Abetting – Kondewa – Koribondo, Bo District and Kenema District

8508. para. 109: The Trial Chamber found that Kondewa's speech at the Second Passing Out Parade did not amount to urging, encouraging or prompting the Kamajors to commit criminal acts.[230] In addition, there was an absence of a finding by the Trial Chamber concerning the nature of Kondewa's participation in the January 1998 commanders' meetings at which Norman gave orders for the commission of unlawful acts during the "all-out offensive."[231] The fact that Kondewa held a position of responsibility as High Priest and that he spoke at the Second Passing Out Parade and attended Commanders' meetings is not sufficient to conclude that this evidence alone does prove beyond reasonable doubt that Kondewa encouraged or supported the criminal conduct which took place in Koribondo, Bo District and Kenema District.

8509. para. 110: The Appeals Chamber agrees with the findings of the Trial Chamber that giving "words of moral support and encouragement to the Kamajor fighters who were about to conduct military operations on the junta-held territories"[232] or blessings, as well as providing medicine which the Kamajors believed would protect them against the bullets does not constitute aiding and abetting in the planning, preparation or execution of the criminal acts in Bo District.[233]

8510. para. 111: The Appeals Chamber finds that the Trial Chamber was correct in finding Kondewa not liable for aiding and abetting the commission of crimes in Koribondo, Bo District and Kenema District. Consequently, the Prosecution's Third and Fourth Grounds of Appeal fail in this respect.

(iii) Summary of the Findings – Tongo, Koribondo, Bo District and Kenema District

8511. para. 112: In relation to the attacks on Tongo, the Appeals Chamber, Justice King dissenting, upholds the Trial Chamber's convictions of Kondewa and Fofana, pursuant to Article 6(1), of aiding and abetting violence to life, health and physical or mental well-being of persons, in particular murder and cruel treatment punishable under Article 3.a. of the Statute (Counts 2 and 4 respectively).

8512. para. 113: In relation to the attacks on Koribondo, Bo District and Kenema District, the Appeals Chamber upholds the Trial Chamber's acquittals of Kondewa and Fofana, pursuant to Article 6(1), of violence to life, health and physical or mental well-·being of persons, in particular

murder and cruel treatment, punishable under Article 3.a. of the Statute (Counts 2 and 4, respectively) as well as pillage, a violation of Article 3.a. common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.f. of the Statute (Count 5).

8513. para. 114: The Appeals Chamber dismisses the Prosecution's Third and Fourth Grounds of Appeal and dismisses, Justice King dissenting, Kondewa's Fourth Ground of Appeal.

(iv) Child Soldiers

a. Fofana – Child Soldiers

i. Aiding and Abetting – Fofana – Child Soldiers

8514. para. 152: The Appeals Chamber notes that the Trial Chamber accepted and considered the foregoing evidence in determining Fofana's criminal responsibility but found that it did not establish beyond reasonable doubt that Fofana is responsible for child enlistment or use pursuant to any of the modes of liability under Article 6(1), including aiding and abetting.[313] The Prosecution merely proffers arguments based on evidence which the Trial Chamber considered and rejected, but does not point to any error in the reasoning of the Trial Chamber. The Appeals Chamber emphasises that on appeal, a party cannot merely repeat arguments which did not succeed at trial in the hope that the Appeals Chamber will consider them afresh, unless that party can demonstrate that rejecting them constituted an error which warrants the intervention of the Appeals Chamber.[314]

8515. para. 153: The Appeals Chamber finds, Justice Winter dissenting, that the Prosecution has failed to demonstrate that no reasonable trier of fact could have found that Fofana was not responsible for aiding and abetting child enlistment and their use to participate actively in hostilities.

b. Kondewa – Child Soldiers

8516. para. 124: The Prosecution submits that although the Trial Chamber found Kondewa responsible for enlisting Witness TF2-021, it was in error in not finding him responsible for enlisting and/or using other children.

8517. para. 125: The Appeals Chamber is of the view that the crime of enlisting children under the age of 15 years into armed forces or groups and of using them to participate actively in

hostilities may be committed irrespective of the number of children enlisted by the accused person.

i. Committing or Aiding and Abetting – Kondewa – Child Soldiers

8518. para. 126: The Appeals Chamber will now determine whether the Trial Chamber erred in failing to find Kondewa responsible for committing and/or aiding and abetting the enlistment of children other than Witness TF2-021.

8519. para. 127: The Trial Chamber accepted and considered evidence of several witnesses including three former child soldiers in determining Kondewa's responsibility for child enlistment;[260] but relied solely on the evidence of Witness TF2-021 in arriving at its conclusion. The Trial Chamber found that the evidence of Witness TF2-021 was "pivotal in making its factual findings,"[261] and noted that "the events in question occurred when he was very young and [that] his testimony comes many years after the events in question."[262] Nevertheless, the Trial Chamber found the testimony of Witness TF2-021 "highly credible and largely reliable."[263]

8520. para. 128: The Appeals Chamber notes the Trial Chamber's finding that at the age of 11 years,[264] Witness TF2-021 was initiated by Kondewa, his "sowe" or initiator, into the Kamajor society at Base Zero.[265] According to the Witness there were approximately 400 initiates, 20 of whom the Witness estimated to be almost the same age group as him.[266] The Trial Chamber found that these other young boys were also initiated by Kondewa.267 As part of the initiation ceremony, the boys "were told that they would be made powerful for fighting and were given a potion to rub on their bodies as protection ... before going into war."[268]

8521. para. 129: In the absence of evidence concerning the ages of the other boys, the Appeals Chamber finds that no reasonable trier of fact could have found that the testimony of Witness TF2-021 sufficiently establishes the age of the 20 young boys who were initiated with him.

8522. para. 130: The Trial Chamber accepted the evidence provided by two other former child soldiers who underwent initiation.[269] The Trial Chamber found that Witness TF2-140 was initiated into the Kamajor society at the age of 14 years along with adults, as well as other children who were 10 or 11 years old.[270] Initiation fees were paid to the district initiator who then sent the fees to Kondewa, the High Priest of the Kamajors.[271] The Trial Chamber also found that Witness TF2-004 was initiated at Liya by Muniro Sherif along with many others, including children as young as 10 years old.[272]

8523. para. 131: The Trial Chamber reached its conclusion about Kondewa's responsibility for the enlistment of children by relying solely on the evidence of Witness TF2-021.[273] The Trial Chamber did not find that Kondewa was involved in the initiation process of Witnesses TF2-140 and TF2-004.

8524. para. 132: In view of the lack of evidence of the ages oj' the boys who were initiated along with Witness TF2-021, as well as the absence of evidence indicating that Kondewa was involved in the initiations of Witness TF2-140 and Witness TF2-004, he Appeals Chamber finds, Justice Winter dissenting, that the Trial Chamber was correct in not finding Kondewa liable for committing or aiding and abetting the crime of enlistment of children other than Witness TF2-021. The Prosecution's Fifth Ground of Appeal therefore fails in this respect.

8525. para. 133: Although the Prosecution has charged Kondewa in Count 8 with the use of children below the age of 15 years in hostilities, as an alternative to the charge of enlisting them as child soldiers, the Trial Chamber held that having found him individually criminally responsible for enlisting children as child soldiers, it did not need to consider the evidence in relation to the alternative charge. The Appeals Chamber holds, in the circumstances, that it cannot consider any evidence or pronounce a verdict on the alternative charge.[274] Even if the Appeals Chamber were to consider the evidence, it would still have come to the conclusion as it earlier did [275] that there was absence of evidence concerning the ages of the alleged children.

8526. para. 134: The Appeals Chamber opines that the Trial Chamber should have considered any evidence on the alternative charged and made findings upon such evidence even though, at the end, a verdict would be pronounced on only one of the alternative charges.

8527. para. 135: The Prosecution's Fifth Ground of Appeal therefore fails in this respect.

ii. Committing the Crime of Enlistment of Children – Kondewa – Child Soldiers

8528. para. 139: The Appeals Chamber affirms that the crime of recruitment 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 entailing individual criminal responsibility.[286] Pursuant to Article 4.c. of the Statute, the crime of conscripting or enlisting children or using them to participate actively in hostilities, constitutes an other serious violation of international humanitarian law.[287] The *actus reus* requires that the accused recruited children by way of conscripting or enlisting them or that the accused used

children to participate actively in hostilities.[288] These modes of recruiting children are distinct from each other and liability for one form does not necessarily preclude liability for the other.

8529. para. 140: According to the Trial Chamber in the AFRC Trial Judgment, enlistment means "accepting and enrolling individuals when they volunteer to join an armed force or group."[289] The act of enlisting presupposes that the individual in question voluntarily consented to be part of the armed force or group. However, where a child under the age c f 15 years is allowed to voluntarily join an armed force or group, his or her consent is not a valid defence.[290]

8530. para. 141: It is apparent to the Appeals Chamber that there is a paucity of jurisprudence on the question of how direct an act must be to constitute "enlistment" under Article 4.c., as well as the possible modes of enlistment. The Appeals Chamber holds that for enlistment there must be a nexus between the act of the accused and the child joining the armed force or group. There must also be knowledge on the part of the accused that the child is older the age of 15 years and that he or she may be trained for combat.[291] Whether such a nexus exists is a question of fact which must be determined on a case-by-case basis.

8531. para. 142: On the particular facts of this case, it is clear that the enlistment of Witness TF2-021 had taken place before he was initiated by Kondewa. The evidence shows that the Witness had first been captured by the rebels in 1995 and was later captured by the CDF in 1997.[292] Upon his capture by the CDF, Witness TF2-021 was forced to carry looted property by the CDF.[293] This act, in the opinion of the Appeals Chamber constituted enlistment. For this conclusion, the Appeals Chamber draws support from paragraph 4557 of the ICRC Commentary to Article 4(3)(c) of Additional Protocol II referred to by the Trial Chamber itself.[294]

8532. para. 143: Paragraph 4557 of the Commentary states:

> "The principle of non-recruitment also prohibits accepting voluntary enlistment. Not only can a child not be recruited, or enlist himself, but furthermore he will not be 'allowed to take part in hostilities', i.e. to participate in military operations such as gathering information, transmitting orders, transporting ammunition and foodstuffs, or acts of sabotage."[295]

8533. para. 144: In the context of this case, III which the armed group is not a conventional military organisation, "enlistment" cannot narrowly be defined as a formal process. The Appeals Chamber regards "enlistment" in the broad sense as including any conduct accepting the child as a part of the militia. Such conduct would include making him participate in military operations.

8534. para. 145: In these circumstances, the Appeals Chamber, Justice Winter dissenting, holds the view that Witness TF2-021 had already been enlisted before Kondewa initiated him into the Kamajors.

8535. para. 146: For the above reasons, the Appeals Chamber, Justice Winter dissenting, grants Kondewa's Fifth Ground of Appeal and reverses the verdict of guilt and substitutes a verdict of not guilty on Count 8.

c. Conclusion – Child Soldiers

8536. para. 154: For the reasons stated, the Appeals Chamber, Justice Winter dissenting, dismisses the Prosecution's Fifth Ground of Appeal in its entirety, grants Kondewa's Fifth Ground of Appeal, reverses the verdict of guilt on Count 8 and substitutes the verdict of not guilty.

d. Dissents - Justice Winter – Child Soldiers

8537. para. 7: I do not agree with the Majority's decisions first, to acquit Kondewa for liability under Article 6(1) of the Statute for "committing" the crime of enlisting Witness TF2-021, a child under the age of 15 into an armed force or group;[1203] second, in finding that "it cannot consider any evidence or pronounce a verdict on whether Kondewa aided and abetted the 'use' of child solders;" and third, in finding Fofana not guilty of aiding and abetting the use and enlistment of child soldiers.

i. Kondewa – Enlistment and Use of Child Soldiers – Dissents – Justice Winter – Child Soldiers

8538. para. 8: In this Judgment, the Majority overturns the Trial Chamber's finding that Kondewa was guilty of enlisting Witness TF2-021 into the CDF. In overturning the Trial Chamber's decision, the Majority finds that:

> "[I]t is clear that the enlistment of Witness TF2-C21 had taken place before he was initiated by Kondewa. The evidence shows that the Witness had first been captured by the rebels in 1995 and was later captured by the CDF in 1997. Upon his capture by the CDF, Witness TF2-021 was forced to carry looted property by the CDF."[1204]

8539. para. 9: I do not agree with this interpretation and analysis on the facts of this particular case. In finding that the act of forcing Witness TF2-021 to carry looted property constituted enlistment, the Majority misapplies the concept of enlistment as it relates to the circumstances

surrounding the CDF's recruitment of children under the age of fifteen.[1205] While I agree that in certain circumstances the "use" of a child soldier may constitute enlistment, based on the Trial Chamber's findings of facts in relation to Witness TF2-021, this particular "use" could not have constituted enlistment.

8540. para. 10: Artic1e 4.c. of the Statute punishes "*conscripting or enlisting* children under the age of 15 years into armed forces or groups or *using* them to participate actively in hostilities" (emphasis added). Our earlier interlocutory decision in this case held that conscripting and enlisting children under the age of fifteen into an armed force or group and/or using children to participate actively in hostilities is prohibited under customary international law.[1206]

8541. para. 11: Enlistment entails "accepting and enrolling individuals when they volunteer to join an armed force or group."[1207] As the Majority points out, it includes any conduct accepting the child as part of an armed force or group. In my opinion, the key test to determine whether an act in question constitutes enlistment is whether the act substantially furthers the process of a child's enrolment and acceptance into an armed force or group.

8542. para. 12: In finding that Kondewa's initiation of Witness TF2-021 did not constitute enlistment, the Majority implicitly considers that only one act could constitute enlistment. I disagree with this proposition and find that enlistment may in some circumstances be a process involving several acts which may substantially further the enrolment and acceptance of a child under the age of fifteen into an armed force or group. Religious initiation, military training and the signing of a certificate declaring a child fit for combat may all be acts that substantially further a child's enlistment. In other circumstances, enlistment may be a very short process and may constitute a single act, such as abducting a child and giving him/her a gun. In certain arnled forces or groups there may be no clear record of a child's enlistment, but there may be several imtances of the "use" of a child.

8543. para. 13: In the situation where there are no formal or informal processes for enlisting individuals, especially children, the "use" of a child to participate actively hostilities may amount to enlistment. However, where the evidence demonstrates the existence of a process that contributes to the enrolment and acceptance of a child into an armed force or group, logic dictates that "use" of a child cannot constitute enlistment. Accordingly, the types of acts which constitute the crime of enlistment must necessarily depend on the particular circumstances of each case.

8544. para. 14: In the CDF, as opposed to AFRC, the Trial Chamber findings demonstrate a clearly defined enlistment process which consisted of a child receiving ritualized initiation and

military training. Although the purpose of this procedure changed as the war evolved, initiation and military training remained the cornerstones of enlistment in the CDF at all times during the conflict.1208

8545. para. 15: The Trial Chamber's findings and the evidence in the trial record reveal that the initiation of Witness TF2-021 and the other twenty boys was a major part of the process of enrolling them and accepting them into the CDF. Witness TF2-014 testified that Kamajors went to war at an early age provided that they had been initiated.[1209] Expert Witness TF2-EW2 testified that initiation was a stepping stone to recruitment as a soldier because it was used as a means to prepare men and young boys to participate m the fighting groups. The Trial Chamber, nonetheless, acknowledged that initiation into the Kamajor society alone did not always amount to enlistment,[1211] and therefore, was very careful to evaluate whether a particular instance of initiation amounted to enlistment.[1212]

8546. para. 16: In the circumstances of Kondewa's initiation of Witness TF2-021 and the twenty boys around his age, the Trial Chamber considered the following evidence:

> In 1997, when the witness was eleven years old he was captured by Kamajors and forced to carry looted property. The Kamajors subsequently took him to Base Zero for initiation.
>
> At Base Zero, the witness was initiated along with around 20 other young boys. Kondewa performed the initiation and told the boys that they would be made powerful for fighting. He gave them a potion to rub on their bodies before going into battle.
>
> After receiving training, TF2-02l was sent on his first mission to Masiaka, where he shot a woman in the stomach and left her there on the ground. On subsequent missions, he fought with the Kamajors at Kenema, SS Camp, Joru and Daru. In 1999 TF2-021 was flown by helicopter into Freetown with three other small boys and their commanders where they were given guns and sent to support ECOMOG who were fighting the rebels at Congo Cross.[1213]

8547. para. 17: The Trial Chamber concluded that the evidence clearly showed that on this occasion, the initiates had become fighters."[1214] The Trial Chamber also found Witness TF2-021 was eleven years old when he was initiated by Kondewa.

8548. para. 18: The Trial Chamber also found that Kondewa knew or had reason to know he was initiating an eleven year old boy into the CDP because Kondewa regularly performed initiation ceremonies, issued certificates confirming e.g. the age of eleven [1215] and would have known the difference between an eleven year old boy and a fifteen year old hoy.[1216] On the basis of these findings, it is clear that Kondewa's initiation of Witness TF2-021 if 1997 was the *condition sine*

qua non for Witness TF2-021 ‘s enrolment and acceptance into the CDF. Therefore, it was reasonable for the Trial Chamber to conclude that given these circumstances, when Kondewa was initiating the boys “he was also performing an act analogous to enlisting them for active military service.”[1217]

8549. para. 19: Furthermore, the act of carrying looted property that the Majority of the Appeals Chamber finds constituted enlistment, cannot be deemed as conduct accepting a child into an armed group or force. When Witness TF2-021, upon his capture in 1997, was forced to carry looted property by the CDF, he was not participating in active hostilities or in any activity that involves the CDF as a military organization, but was instead being forced to assist CDF soldiers in the illegal appropriation of property for the soldiers’ private use. Nothing in the evidence indicates he (or the soldiers for whom he was carrying looted property) was participating actively in hostilities. Looting is a term of art used by international courts to denote the appropriation of property for private purposes rather than military necessity.[1218] The Trial Chamber understood looting to refer to the appropriation of property for private purposes.[1219] This act of carrying loot, therefore, could not have constituted enlistment into an armed force or group or the use of a child to participate actively in hostilities because it was done for private purposes.

8550. para. 20: I, therefore, dismiss Kondewa’s Fifth Ground of Appeal and affirm the Trial Chamber’s conviction of Kondewa for committing the crime of enlistment of Witness TF2-021 into the CDF, punishable under Articles 4.c. and 6(1) of the Statute.

8551. para. 21: Having concluded that the evidence established beyond a reasonable doubt that Kondewa committed the crime of enlisting a child under the age of 15 into an armed force or group,[1220] I am of the opinion that the Trial Chamber should also have found Kondewa guilty of committing the crime of enlisting more than one child. The Trial Chamber found that Kondewa initiated Witness TF2-02l along with around twenty other young boys. Witness TF2-021 testified that he estimated the boys to be in *almost* the same age group as him, that means slightly younger than him.[1221] The Trial Chamber also found “beyond a reasonable doubt that Kondewa, in these circumstances, when initiating the *boys*, was also performing an act analogous to enlisting them for active military service.[1222]

8552. para. 22: On the basis of these findings alone, the Trial Chamber was required to enter a conviction against Kondewa for enlisting children rather than only Witness TF2-021.

8553. para. 23: The Majority of the Appeals Chamber concluded as well that in the absence of evidence concerning the age of the other boys, no reasonable trier of fact could have found the

testimony of Witness TF2-021 sufficient to establish the age of the twenty young boys. However, as mentioned before, Witness TF2-021 testified that he estimated the boys to be in *almost* the same age group as him.[1223] Given that Witness TF2-021 was eleven when Kondewa initiated him, it is therefore logical and reasonable to conclude that the other twenty boys were younger than fifteen. The Trial Chamber found no reason to doubt his testimony. On the contrary, the Trial Chamber found that his testimony was "highly credible and largely reliable," and that the "intensity of his experience has left him with an indelible recollection of the events in question."[1224] In light of the fundamental principle that a Trial Chamber is in the best position to evaluate and assess the evidence, I find that the Majority's conclusion is without merit.

8554. para. 24: Other Trial Chamber findings circumstantially show that Kondewa initiated many more than 20 boys under the age of 15 and that these initiations qualified as enlistments into armed forces. In addition to the testimony given by Witness TF2-021, that Trial Chamber also accepted the evidence provided by two other former child soldiers who underwent initiation before participating in active military service.[1225] The Trial Chamber found that Witness TF2-140 was initiated into the Kamajor society at the age of 14 along with adults as well as other children who were 10 or 11 years old.[1226] Initiation fees were paid to the district initiator who then sent the fees to Kondewa, the High Priest of the Kamajors who was responsible for all of the initiators.[1227] The Trial Chamber also found that Witness TF2-004 was initiated at Liya by Muniro Sherif along with many others, including children as young as 10 years old.[1228] On the same day that he was initiated, TF2-004 left Liya to go fight in Zimmi.[1229] The purpose of the initiation was to fight the war.[1230]

8555. para. 25: Furthermore, the Trial Chamber found that the CDF as an organization was involved in the recruitment of children under the age of 15 into an armed force or group.[1231] In particular, in 1999, the CDF registered over 300 children under the age of 14 in a disarmament, demobilization and reintegration program in the Southern Province in Sierra Leone.[1232]

8556. para. 26: The Trial Chamber found that Kondewa performed initiations at Base Zero where he was present during its entire existence and where numerous child soldiers were also present.[1233] The Trial Chamber also found that Kondewa used child soldiers as body guards at Base Zero.[1234]

8557. para. 27: Given that Kondewa, as the High Priest of the entire CDF organisation, accepted initiation fees of children under the age of 15 years,[1235] was the head of all CDF initiators, performed initiations at Base Zero and the fact that no Kamajor would go to war without his blessings,[1236] Kondewa must have either personally, or through an initiator subordinate to him, enlisted many children under the age of 15 years into the CDF. In light of this evidence, I find that

no reasonable trier of fact could have failed to conclude that the only reasonable inference from the evidence was that Kondewa enlisted many children under the age of 15 years into the armed forces.

8558. para. 28: I, therefore, hold that the Trial Chamber erred in failing to find that Kondewa enlisted children into the CDF and grant the Prosecution's Fifth Ground of Appeal in this respect and enter a conviction for Kondewa for enlisting many children into the CDF.

ii. Kondewa – Aiding and Abetting the Use of Child Soldiers – Dissents – Justice Winter – Child Soldiers

8559. para. 29: In relation to Kondewa's liability for aiding and abetting the "use" of child soldiers, the Majority finds that it cannot consider any evidence or pronounce a verdict on whether Kondewa was liable tor the "use" of child soldiers because the Trial Chamber declined to examine this issue. The Appeals Chamber corrected the Trial Chamber's error of law in considering that the Trial Chamber should have considered the evidence on the alternative charge. In light of the standard of appellate review, the Appeals Chamber was in a position to consider existing evidence concerning Kondewa's "use" of child soldiers, especially where the Trial Chamber had made findings demonstrating Kondewa's aiding and abetting the "use" of child soldiers.[1237] Therefore, I find the Majority's statement misplaced. I now turn to the merits of the Prosecution's appeal.

8560. para. 30: As demonstrated above, Kondewa initiated many children under the age of fifteen into the CDF. The Trial Chamber findings show that Kondewa was aware in performing these initiations for children that the purpose of initiation of many of the children was to prepare them to become fighters. Initiations were of paramount importance in Kamajor society as a prerequisite to participation in active military service. No Kamajor would go to war without Kondewa's blessings.[1238] Moreover, Kondewa's job included the preparation of herbs which the initiates smeared onto their bodies to protect themselves from bullets.[1239] He himself told initiates that the initiation would make them powerful for fighting.[1240] Furthermore, he also knew or had reason to know as demonstrated already that the children were under the age of fifteen years.[1241] On the basis of this evidence, I am also satisfied that Kondewa's initiation of these children offered practical assistance to the CDF's "use" of children under the age of fifteen to participate in active hostilities and that it had a substantial effect on the commission of this crime.

8561. para. 31: Therefore, I find that the Trial Chamber and the Majority of the Appeals Chamber erred in failing to find Kondewa liable for aiding and abetting the use of children under

the age of 15 to participate actively in hostilities. I grant the Prosecution's Fifth Ground of Appeal in this respect and I enter a conviction accordingly.

iii. Fofana – Enlistment and Use of Child Soldiers – Dissents – Justice Winter – Child Soldiers

8562. para. 32: The Majority declines to address the merits of the Prosecution's argument under this subground of appeal because the Prosecution "merely proffers arguments based on evidence which the Trial Chamber considered and rejected, but does not point to any error in the reasoning of the Trial Chamber."[1242] I cannot agree with the Majority's position.

8563. para. 33: In paragraphs 4.5 to 4.26 of the Prosecution's Appeal Brief, the Prosecution sets forth in great detail the Trial Chamber's factual findings and other evidence in the trial record and more importantly demonstrates that these findings indicate that the Trial Chamber erred in fact in finding that Fofana was not guilty of aiding and abetting the enlistment and use of children under the age of fifteen to participate actively in hostilities.[1243] I now turn to the merits of the Prosecution's appeal.

8564. para. 34: Based on the Trial Chamber's findings, in my opinion, no reasonable trier of fact could have come to any conclusion other than that Fofana was aware that children were both enlisted in the CDF and "used" to participate actively in hostilities. Fofana was present at the passing out parade in early January 1998, where children involved in operations were present.[1244] At a subsequent commander's meeting held on the same day, where Fofana was present,[1245] Norman commented that "adult fighters were doing less than children, just eating and meeting."[1246] Children were present at this meeting.[1247] Fofana also was one of the architects of the Black December Operation,[1248] an operation where children were present everywhere on the frontlines and in support roles,[1249] The Trial Chamber also found that Fofana was present at Base Zero for its entire existence, and was the overall boss of Base Zero and that child soldiers were present at various times at Base Zero,[l250] At Base Zero, Kondewa also initiated children into the CDF, and the child initiates were trained for war there.[1251]

8565. para. 35: Moreover, child soldiers were present throughout CDF operations. Children who appeared to be under the age of fifteen years were conscripted, enlisted, or used to participate actively in hostilities in the following locations: Kenema, Base Zero, Bo, Darn, Masiaka, Port Loko, Yele, and Ngiehun.[1252] They participated directly in combat, often leading the Kamajors into combat, and they served at monitoring checkpoints.[1253] Thus, the only conclusion available to any reasonable Trial Chamber is that Fofana knew that children under the age of fifteen were

being enlisted and used to participate actively in hostilities because Fofana, was the 'Director of War' for the CDF. He was part of the High Command and actually made many decisions along with Norman and Kondewa and was the overall boss of the Commanders at Base Zero.[1254] Significantly, he was also the one responsible for the receipt and provision of logistics to the frontline, including the provision of manpower.[1255] Given that he had to have known that the CDF was enlisting and "using" children in active military service, his provision of logistics, manpower, and strategic directions provided practical assistance and had a substantial effect on the commission of the crime of enlisting and using children under the age of fifteen to participate actively hostilities.

8566. para. 36: Therefore, no reasonable trier of fact could have found that Fofana aided and abetted the commission of this crime.

8567. para. 37: Furthermore, there is ample evidence in the trial record that Fofana, as a leader in the High Command of the CDF, did not take a stand in public or at any of the commanders' meetings against the enlistment or use of children under the age of 15 in military activities. Although Fofana did not enlist or use child soldiers personally, I am satisfied that his high position within the CDF command structure and his physical presence at meetings where child soldiers were either present or were discussed, constituted tacit approval, encouragement and moral support to the commanders and Kamajors to continue to enlist and use children under the age of 15 to participate actively in hostilities.[1256] Fofana's tacit approval served to leave no doubt in the minds of the Kamajors that they enjoyed his full support in their enlistment and use of child soldiers. I am thus satisfied that Fofana's conduct had a substantial effect on the commission of this crime.

8568. para. 38: I, therefore, grant the Prosecution's Fifth Ground of Appeal in this respect as well and find Fofana responsible under Article 6(1) for aiding and abetting the crimes of enlistment of children under the age of 15 into armed forces or groups and the use of children under the age of 15 to participate actively in hostilities, crimes punishable under Article 4.c. of the Statute.

8569. para. 39: For the foregoing reasons I dismiss Kondewa's Fifth Ground of Appeal and grant the Prosecution's Fifth Ground of Appeal in its entirety.

(v) Talia / Base Zero

a. Kondewa – Talia / Base Zero

i. Committing Murder – Kondewa – Talia / Base Zero

8570. para. 195: The main issue under this ground of appeal concerns the Trial Chamber's evaluation of Witness TF2-096's testimony. The Trial Chamber found that Witness TF2-096 saw Kondewa shoot one of the town commanders.[380] The next morning, Witness TF2-096 also saw two graves and was told that the town commanders were buried in them. In response to the Prosecution's question, "do you know what eventually happened to this man you saw being shot?" Witness TF2-096 responded that the next day she was told by the Kamajors that "the two people dancing yesterday were in those graves."

8571. para. 196: First, Kondewa submits that the evidence relied on by the Trial Chamber in finding that the Town Commander actually died was "skeletal at best" and did not establish that the Town Commander was dead. Second, Kondewa argues that the Trial Chamber erred in relying solely on this uncorroborated hearsay evidence of Witness TF2-096 in finding Kondewa guilty for committing the murder of the town commander, as the Trial Chamber failed to exercise the appropriate caution in reviewing the hearsay evidence. Third, Kondewa submits that the Trial Chamber erred in its reliance on circumstantial evidence to convict him of murder because "inferences reasonably to be drawn from the evidence must not only be consistent with Kondewa's guilt but inconsistent with every reasonable hypothesis of Kondewa's innocence." He asserts that a number of alternative explanations exist, such as that the Town Commander could have been murdered by someone else.

8572. para.197: In response, the Prosecution argues that the Trial Chamber took into account the hearsay evidence only as corroborating the eyewitness testimony of Witness TF2-096. Therefore, the Prosecution submits that this evidence and the inferences to be drawn from all of the relevant evidence in the case as a whole were not only consistent with Kondewa's individual responsibility for shooting and killing one of the town commanders, but were inconsistent with any reasonable hypothesis of Kondewa' s innocence. The Prosecution argues that Witness TF2-096' s testimony that the Town Commander "fell" should naturally be understood as a statement that the victim was shot dead. The Prosecution argues that this was the understanding of everyone in the courtroom including the Defence Counsel, as there was no objection to the Prosecution's subsequent question about how the witness knew the person who killed the town commander.

8573. para. 198: Before assessing whether the Trial Chamber erred in its application of the law to the facts, the Appeals Chamber considers it necessary to set out the applicable law. The Appeals Chamber considers that as a matter of law it is permissible to base a conviction on circumstantial evidence and/or hearsay evidence. Because hearsay evidence is admissible as substantive evidence in order to prove the truth of its contents, the Appeals Chamber considers that establishing the reliability of hearsay evidence is of paramount importance.

8574. para. 199: Kondewa's reliance on ICTY and ICTR case law for the proposition that the ad hoc Tribunals "have disregarded uncorroborated hearsay evidence related to an accused's participation in murder because such evidence is seen as unreliable" is noted. However, although the jurisprudence from other Courts is of great assistance in determining a question of law, whether a particular Trial Chamber erred in its application of the law to the facts, should be determined on the facts of each case. Further, the Appeals Chamber notes that, as a matter of law, a Trial Chamber may convict an accused on the basis of a single witness, although such evidence must be assessed with the appropriate caution, and care must be taken to guard against the exercise of an underlying motive on the part of the witness. Corroboration of evidence is not a legal requirement, but rather concerns the weight to be attached to the evidence. Any appeal based on the absence of corroboration must be against the weight which a Trial Chamber attaches to the evidence in question.

8575. para. 200: It is common place that a criminal tribunal may convict on circumstantial evidence provided that the only reasonable inference to be drawn from such evidence leads only to the guilt of the accused. When such evidence is capable of any other reasonable inference it is not reliable for the purposes of convicting an accused.

8576. para. 201: Witness TF2-096 testified that she saw Kondewa shoot one of the town commanders and that he fell. Immediately after witnessing this incident, the witness ran away. The Appeals Chamber finds that the fact that she did not herself witness that the town commander was dead, leaves the possibility open that someone else may have killed the town commander. The Trial Record does not contain any evidence corroborating the veracity of Witness TF2-096's testimony that the Kamajors identified the graves of the two people dancing. Furthermore, no evidence indicates the identity of the Kamajors or whether they were present during the incident during which Witness TF2-096 saw Kondewa shoot the town commander. In addition, no further evidence concerned whether the town commander died. No nexus exists between Kondewa's act and the death of the town commander. The evidence that the town commander died is insufficient and, therefore, the offence of murder has not been proved.

8577. para. 202: Therefore, because Witness TF2-096's testimony did not establish that the town commander died, no reasonable trier of fact could have found that the only reasonable inference was that Kondewa killed the town commander. Further, even if it had been established that the Town Commander died, someone else could have killed the town commander after Witness TF2-096 ran away, given that it has not been established that the town commander died because of Kondewa's shot.

8578. para. 203: Having found that the death of the Town Commander was not proved beyond reasonable doubt, the Appeals Chamber comes to the conclusion that the Trial Chamber was in error in finding that the Town Commander was killed by the Kamajors as alleged in the Indictment.

8579. para. 204: The Appeals Chamber grants Kondewa's Second Ground of Appeal.

(vi) Acts of Terrorism

a. Aiding and Abetting – Acts of Terrorism

8580. para. 331: The Prosecution argues that the Trial Chamber erred in law and fact in failing to find Fofana and Kondewa criminally responsible for acts of terrorism under Article 6(1) of the Statute for aiding and abetting "acts of terrorism" in the town of Tongo. It submits that on the findings of the Trial Chamber and the evidence it accepted, the only conclusion open to any reasonable tribunal of fact is that first, the perpetrators of crimes committed in Tongo had the specific intent of terrorizing the population and second, that Fofana and Kondewa as aiders and abetters had the requisite knowledge of the specific intent to spread terror.

8581. para. 332: In support of its argument, it claims that the Trial Chamber's evaluation of the evidence exclusively relied on the instructions given by Norman at the December 1997 Passing Out Parade. It submits that the instructions given by Norman was but one of a number of factors that should have been considered by the Trial Chamber.

8582. para. 333: The Prosecution further challenges the Trial Chamber's finding that "while spreading terror may have been Norman's primary purpose in issuing the order to kill captured enemy combatants and 'collaborators,' . . . this is not the only reasonable inference that can be drawn from the evidence." It argues that orders given by Norman demonstrate an intent to spread terror. Statements such as "any junta you capture, instead of wasting your bullet, chop of his left

[hand] as an *indelible* mark [...] to be a signal," can only be reasonably interpreted as demonstrating the specific intent to spread terror amongst the civilian population.

8583. para. 334: The Prosecution lists several proven acts of violence committed in Tongo and argues that becausle of the "gruesomeness and cruelty of these acts, the fact that it targeted civilians according to their ethnicity, the modus operandi of the Kamajors, and the fact that the entrails of one victim were displayed in front of the remaining civilians" no reasonable tribunal of fact could have concluded that these acts did not show the specific intent to spread terror.

8584. para. 335: In submitting that both Fofana and Kondewa had knowledge of the physical perpetrators' specific intent to spread terror, the Prosecution contends that first, the contents of the orders given by Norman indicate an intention to spread terror and second, that they had knowledge that civilians had in the past been terrorized by the CDF.

8585. para. 336: In response, Fofana submits that knowledge of the specific intent to spread terror cannot be imputed to him from the orders given by Norman. He proffers alternative inferences that may be drawn from Norman's comments and argues that at best, Norman's comments contained an intent to commit criminal acts but that it "cannot be interpreted ... in its meaning to transfer knowledge on Fofana of a specific intent of the Kamajors to spread terror."

8586. para. 337: Kondewa similarly submits that the "decision by the Trial Chamber to rely on the instruction at the Passing Out Parade was within its discretion" and that even if it is established that the specific intent of the perpetrators of acts of violence committed in Tongo was to spread terror" there is no evidence to suggest that he had the requisite knowledge that such was the case.

8587. para. 366: The Appeals Chamber has previously endorsed the following statement of the *mens rea* for aiding and abetting:

> "The *mens rea* required for aiding and abetting is that the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator. However, it is not necessary that the aider and abettor had knowledge of the precise crime that was intended and which was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually committed."

8588. para. 367: The person aiding and abetting a specific intent crime need not possess the principal's intent to commit the crime, but must at least have knowledge of the principal's specific intent.

8589. para. 368: In regard to the acts of terrorism committed in Tongo, the Appeals Chamber is not persuaded by the Prosecution's submission that no reasonable tribunal of fact could have found that Fofana and Kondewa may not have been aware of the specific intent to commit acts of terrorism in Tongo. The Prosecution argues that the Trial Chamber's error resulted from its "exclusive reliance on the instruction given by Norman at the December 1997 Passing Out Parade to determine whether the perpetrators of the proven acts of violence had the specific intent to terrorise the civilian population." Contrary to the Prosecution's assertion, the Trial Chamber used evidence of Norman's statements at the December 1997 Passing Out Parade to determine whether Fofana and Kondewa were aware of his specific intent to spread terror. While the instructions given by Norman are inherently illegal, they are ambiguous with respect to his intent to spread terror, and therefore a reasonable tribunal of fact could have determined that Fofana and Kondewa were not aware of the specific intent with respect to any acts of terrorism in Tongo.

8590. para.369: The Prosecution further argued that Fofana must have known of the specific intent to commit acts of terrorism because he was aware "that the Kamajors who operated in the towns of Tongo Field had previously engaged in criminal conduct." A similar argument was advanced in relation to Kondewa.[729] However, the Prosecution makes no submission as to how knowledge of past general intent crimes would provide Fofana or Kondewa with knowledge of the principal's specific intent to spread terror.

8591. para. 370: The Prosecution's argument with respect to Fofana's and Kondewa's liability for aiding and abetting acts of terrorism in Tongo must be rejected.

8592. para. 379: The Appeals Chamber, therefore, finds no reason to disturb the Trial Chamber's findings with respect to the criminal responsibility of Fofana and Kondewa for acts of terrorism under Article 6(1) and/or Article 6(3) of the Statute. The Appeals Chamber rejects the Prosecution's Sixth Ground of Appeal in its entirety.

CHAPTER 13 - ARTICLE 6.3 LIABILITY

A. CHARLES TAYLOR

1. Indictment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-I, Indictment, 7 March 2003

(a) Individual Criminal Responsibility

(i) The Accused

8593. CHARLES GHANKAY TAYLOR aka DANKPANNAH CHARLES GHANKAY TAYLOR aka GHANKAY TAYLOR aka DANKPANNAH CHARLES GHANKAY MACARTHUR TAYLOR (the ACCUSED) was born on 27 or 28 January 1948 at Arthington in the Republic of Liberia.[421]

8594. From the late 1980's the ACCUSED was the Leader or Head of the National Patriotic Front of Liberia (NPFL), an organized armed group.[422]

8595. From 2 August 1997 until about 11 August 2003, the ACCUSED was the President of the Republic of Liberia.[423]

8596. Paragraphs 1 through 3 are incorporated by reference in CHARGES below.[424]

(ii) Charges

8597. By his acts or omissions in relation to the below described events, the ACCUSED, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below.[425]

(iii) Individual Criminal Responsibility

8598. In addition, or alternatively, pursuant to Article 6.3. of the Statute, the ACCUSED, while holding positions of superior responsibility and exercising command and control over subordinate members of the RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, is individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute as

[421] Taylor Indictment, para. 1.
[422] Taylor Indictment, para. 2.
[423] Taylor Indictment, para. 3.
[424] Taylor Indictment, para. 4.

alleged in this Amended Indictment. The 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 the ACCUSED failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.[426]

2. Trial Judgement

The Prosecutor v. *Charles Ghankay Taylor*, SCSL-03-01-T, Judgement, 18 May 2012

(a) Law on Responsibility Pursuant to Article 6.3 of the Statute

(i) General - Law on Responsibility Pursuant to Article 6.1 of the Statute

8599. para. 488: Article 6(3) of the Statute provides:

> 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.

(ii) Elements of Superior Responsibility - Law on Responsibility Pursuant to Article 6.3 of the Statute

8600. para. 490: In order to establish criminal liability under Article 6(3) of the Statute, three requirements must be proved beyond reasonable doubt:

i. The existence of a superior-subordinate relationship between the Accused as superior and the perpetrator of the crime;

ii. The Accused knew or had reason to know that the crime was about to be or had been committed; and

iii. The Accused failed to take necessary and reasonable measures to prevent the crime or punish the perpetrators thereof. [1154]

8601. para. 491: The principle that an individual may be held responsible as a superior in the course of an armed conflict is established in customary international law. [1155] The scope of Article 6(3) does not only include military commanders, but also political leaders and other civilian superiors in possession of authority. [1156]

[425] Taylor Indictment, at p. 2.

8602. para. 492: The responsibility of a superior is not limited to crimes committed by subordinates in person, but encompasses any mode of criminal liability proscribed in Article 6(1) of the Statute. It follows that a superior can be held responsible for failure to prevent or punish a crime which was planned, ordered, instigated or aided and abetted by subordinates. [1157]

(iii) Existence of a Superior-Subordinate Relationship - Law on Responsibility Pursuant to Article 6.3 of the Statute

8603. para. 493: In order to establish the existence of a superior-subordinate relationship, it must be demonstrated that the superior had "effective control" [1158] over his subordinates – i.e. the material ability to prevent or punish the commission of the offence. [1159] However, it is immaterial whether the power of the superior over the subordinates is based on *de jure* or on *de facto* authority. [1160] Possession of *de jure* authority is neither necessary nor sufficient to prove effective control, although it may be evidentially relevant to determining whether there is effective control. 1161 Substantial influence over the conduct of others falls short of effective control. [1162]

8604. para. 494: A superior may be held responsible for crimes committed by individuals temporarily subordinated to him, provided he exercises effective control over them. [1163] Further, superior responsibility is not excluded by the concurrent responsibility of other superiors in a chain of command. [1164]

8605. para. 495: Identification of the principal perpetrator, particularly by name, is not required to establish a superior-subordinate relationship. It is sufficient to identify the subordinates as belonging to a unit or group controlled by the superior. [1165]

(iv) Actual or Imputed Knowledge - Law on Responsibility Pursuant to Article 6.3 of the Statute

8606. para. 496: For a superior to be held responsible pursuant to Article 6(3) of the Statute, it must be established that he knew or had reason to know that the subordinate was about to commit or had committed such crimes. [1166]

[426] Taylor Indictment, para. 34.

a. Actual Knowledge - Actual or Imputed Knowledge - Law on Responsibility Pursuant to Article 6.3 of the Statute

8607. para. 497: Actual knowledge may be defined as the awareness that the relevant crimes were committed or about to be committed. [1167] There is no presumption of such knowledge but, in the absence of direct evidence, it may be established through circumstantial evidence. [1168] Factors indicative of actual knowledge include, first of all, an individual's superior position and the superior's geographical and temporal proximity to the crimes; [1169] also, the type and scope of crimes, the time during which they occurred, the number and type of troops and logistics involved, the widespread occurrence of crimes, the tactical tempo of operations, the *modus operandi* of similar illegal acts and the officers and staff involved. [1170]

b. Imputed Knowledge - Actual or Imputed Knowledge - Law on Responsibility Pursuant to Article 6.3 of the Statute

8608. para. 498: In determining whether a superior "had reason to know", or imputed knowledge, that his or her subordinates were committing or about to commit a crime, it must be shown that specific information was available which would have put the superior on notice of crimes committed or about to be committed. [1171] The superior may not be held liable for failing to acquire such information in the first place. [1172] However, it suffices for the superior to be in possession of sufficient information, even general in nature, written or oral, of the likelihood of illegal acts by subordinates. [1173] 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. [1174]

8609. para. 499: It is clear from the case law referred to above that negligence is insufficient to attribute imputed knowledge, and that a superior cannot be held liable for having failed in his duty to obtain information in the first place. [1175] What is required is the superior's awareness of information which should have prompted him or her to acquire further knowledge. [1176] Responsibility pursuant to Article 6(3) of the Statute will attach when the superior remains wilfully blind to the information that is available to him. [1177]

(v) Failure to Prevent or Punish - Law on Responsibility Pursuant to Article 6.3 of the Statute

8610. para. 500: It must be established that the superior failed to take the necessary and reasonable measures to prevent or punish the crimes of his or her subordinates. These are two

distinct duties: it is the superior's primary duty to intervene as soon as he or she becomes aware of crimes about to be committed, while taking measures to punish will only suffice if the superior did not become aware of these crimes until after they were committed. [1178]

8611. para. 501: As regards the duty to prevent the crimes of subordinates, the type of necessary and reasonable measures a superior must take is a matter of evidence rather than one of substantive law. [1179] Generally, it can be said that the measures required of the superior are limited to those within his or her material ability under the circumstances, [1180] including those that may lie beyond his or her formal powers. [1181] The type and extent of measures to be taken depend on the degree of effective control exercised by the superior at the relevant time, and on the severity and imminence of the crimes that are about to be committed. [1182]

8612. para. 502: The duty to punish only arises once a crime under the Statute has been committed. [1183] A superior is bound to conduct a meaningful investigation with a view to establish the facts, order or execute appropriate sanctions, or report the perpetrators to the competent authorities in case the superior lacks sanctioning powers. [1184] According to the ICTY Appeals Chamber, there is no support in customary international law for the proposition that a commander can be held responsible for crimes committed by a subordinate prior to the commander's assumption of command over that subordinate. [1185]

(b) Legal Findings on Responsibility Pursuant to Article 6.3 of the Statute

(i) Superior Responsibility- Legal Findings on Responsibility Pursuant to Article 6.3 of the Statute

8613. para. 6977: Article 6(3) of the Statute provides for criminal responsibility if a superior knew or had reason to know that his or her subordinate was about to commit crimes prohibited by the Statute or had done so, and the superior failed to take the necessary and reasonable measures to prevent or punish the perpetrators of such crimes. [15605]

8614. para. 6978: The Trial Chamber notes that in order to establish criminal liability under Article 6(3) of the Statute the existence of a superior-subordinate relationship between the Accused as superior and the perpetrators of the crimes as his subordinates must be established. It must be demonstrated that the superior had "effective control" over his subordinates i.e. the material ability to prevent or punish the commission of the offence.

8615. para. 6979: The Trial Chamber has considered whether the Accused had "effective control" over the RUF and the AFRC. The Accused had substantial influence over the

leadership of the RUF, and to a lesser extent that of the AFRC. However, the Trial Chamber notes that substantial influence over the conduct of others falls short of effective control. In considering whether the Accused exercised effective control over the RUF and the AFRC, it has examined his interactions with the leaders of these groups closely.

8616. para. 6980: The Trial Chamber first considered the relationship of the Accused and Sankoh in the pre-Indictment period. The evidence on record establishes that from 1990 to March 1997 Sankoh was the sole leader of the RUF and that he did not take orders from the Accused. When Foday Sankoh was arrested in March 1997 he instructed Bockarie to take direction from the Accused, but the evidence showed that Sankoh was not handing over his command to the Accused. Instead, the evidence indicated that Sankoh maintained control of the RUF leadership. Moreover, had the Accused been effectively in control of the RUF, such an order would not have come from Sankoh. On the basis of the evidence, the Trial Chamber found that Sankoh was not a subordinate to the Accused. [15606]

8617. para. 6981: With regard to the relationship between the Accused and Sam Bockarie, the Trial Chamber found that, in accordance with Sankoh's instruction of March 1997, the Accused gave guidance, advice, instruction and direction to Bockarie. While the evidence demonstrates that Bockarie was deferential to the Accused and generally followed his advice and instruction, it did not establish that he was a subordinate of the Accused and that the Accused had effective control over the RUF during Bockarie's tenure of RUF leadership, [15607] i.e. that the Accused was in a position to take the necessary and reasonable measures to prevent or punish Bockarie for the commission of crimes.

8618. para. 6982: With regard to Issa Sesay, who was appointed as Interim Leader of the RUF in 2000, the Trial Chamber notes that Sesay refused to accept the appointment from the Accused and others without the approval of the RUF and Sankoh, [15608] indicating that Sesay was not initially a subordinate of the Accused and that the Accused did not have effective control over the RUF during Sesay's tenure as Interim Leader of the RUF.

8619. para. 6983: Similarly, the Trial Chamber notes that the Accused gave guidance, advice, instruction and direction to Johnny Paul Koroma when he was leader of the AFRC/RUF Junta, but the evidence does not establish that Koroma was a subordinate of the Accused, nor that the Accused had effective control over the AFRC/RUF Junta, i.e. that the Accused was in a position to take the necessary and reasonable measures to prevent or punish Koroma for the commission of crimes.

8620. para. 6984: With regard to Liberian fighters who were found to have participated in the commission of crimes in Sierra Leone, the Trial Chamber notes that even if they were sent to Sierra Leone by the Accused, there is insufficient evidence to find beyond a reasonable doubt that they remained under the authority or effective control of the Accused once in Sierra Leone. Similarly, the Trial Chamber notes that the evidence is insufficient to establish that repatriated Sierra Leoneans who were sent by the Accused to Sierra Leone were under the authority or effective control of the Accused upon their return to Sierra Leone

8621. para. 6985: As the RUF and AFRC leaders were not subordinates of the Accused, and the RUF and AFRC/RUF Junta were not under the effective control of the Accused, the Trial Chamber need not consider the other elements of superior responsibility.

8622. para. 6986: In light of the foregoing, the Trial Chamber finds that the Prosecution failed to prove beyond reasonable doubt that the Accused is individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute, as alleged in the Indictment by virtue of holding positions of superior responsibility and exercising command and control over subordinate members of the RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters.

3. Appellate Judgment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-A, Judgment, 26 September 2013

8623. Not applicable.

B. RUF

1. Indictment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-2004-15-PT, Indictment, 13 May 2004

(a) Individual Criminal Responsibility

(i) The Accused

8624. Paragraphs 1 through 18 are incorporated by reference.[427]

[427] RUF Indictment, para. 19.

8625. At all times relevant to this Indictment, **ISSA HASSAN SESAY** was a senior officer and commander in the RUF, Junta and AFRC/RUF forces.[428]

8626. 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.[429]

8627. 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.[430]

8628. 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.[431]

8629. At all times relevant to this Indictment, **MORRIS KALLON** was a senior officer and commander in the RUF, Junta and AFRC/RUF forces.[432]

8630. 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.[433]

8631. During the Junta regime, **MORRIS KALLON** was a member of the Junta governing body.[434]

8632. 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

[428] RUF Indictment, para. 20.
[429] RUF Indictment, para. 21.
[430] RUF Indictment, para. 22.
[431] RUF Indictment, para. 23.
[432] RUF Indictment, para. 24.
[433] RUF Indictment, para. 25.
[434] RUF Indictment, para. 26.

RUF, FODAY SAYBANA SANKOH, and the leader of the AFRC, JOHNNY PAUL KOROMA.[435]

8633. About June 2001, **MORRIS KALLON** became RUF Battle Field Commander, subordinate only to the leader of the RUF, FODAY SAYBANA SANKOH, ISSAHASSAN SESA Y, to whom FODA Y SA YBANA SANKOH had given direct control over all RUF operations, and to the leader of the AFRC, JOHNNY PAUL KOROMA.[436]

8634. At all times relevant to this Indictment, **AUGUSTINE GBAO** was a senior officer and commander in the RUF and AFRCIRUF forces.[437]

8635. **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.[438]

8636. 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.[439]

8637. 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.[440]

8638. 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

[435] RUF Indictment, para. 27.
[436] RUF Indictment, para. 28.
[437] RUF Indictment, para. 29.
[438] RUF Indictment, para. 30.
[439] RUF Indictment, para. 31.
[440] RUF Indictment, para. 32.

Battle Field Commander, the leader ofthe RUF, FODAY SAYBANA SANKOH, and the leader of the AFRC, JOHNNY PAUL KOROMA.[441]

8639. 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, FODA Y SA YBANA SANKOH, SAM BOCKARIE aka MOSQUITO aka MASKITA, ALEX T AMBA 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.[442]

8640. 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.**[443]

8641. In addition, or alternatively [to responsibility under Article 6.1. of the Statute], 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.[444]

(ii) Charges

8642. Paragraphs 19 through 39 are incorporated by reference.[445]

[441] RUF Indictment, para. 33.
[442] RUF Indictment, para. 34.
[443] RUF Indictment, para. 35.
[444] RUF Indictment, para. 39.
[445] RUF Indictment, para. 40.

2. Trial Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-T, Judgement, 2 March 2009

(a) Findings and Conclusions

(i) Law on the Modes of Liability charged under Article 6.3

8643. See above: Chapter 12 – Article 6.1. Liability – RUF – Trial Judgment – Findings and conclusions - Law on the Modes of Liability charged under Article 6.1. – paras. 244-247 [6725].

8644. para. 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 positions of superior responsibility and exercising command and control over their subordinates.[506]

8645. para. 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]

8646. para. 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 case may be.[514]

8647. para. 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]

8648. para. 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]

8649. para. 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]

8650. para. 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.

8651. para. 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).

a. Superior-subordinate relationship - Law on the Modes of Liability charged under Article 6.3.

8652. para. 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]

8653. para. 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 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]

8654. para. 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]

8655. para. 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]

8656. para. 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 nature for a Commander to be found liable for the acts of his subordinate."[532]

8657. para. 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 fact*o authority establishes effective control over subordinates must be determined on a case-by-case basis.

8658. para. 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 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]

8659. para. 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.[54]

8660. para. 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.

8661. para. 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 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]

8662. para. 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.

8663. para. 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.

8664. para. 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 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]

8665. para. 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.

8666. para. 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 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]

8667. para. 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]

8668. para. 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.

8669. para. 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.

8670. para. 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 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]

8671. para. 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]

8672. para. 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 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.

8673. para. 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.

b. Knowledge - Law on the Modes of Liability charged under Article 6.3

8674. para. 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]

8675. para. 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, 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]

8676. para. 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]

8677. para. 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]

8678. para. 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]

c. Necessary and reasonable measures - Law on the Modes of Liability charged under Article 6.3

8679. para. 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 case-by-case basis and is not a matter of substantive law, but of evidence.[582]

8680. para. 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]

8681. para. 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.

8682. para. 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 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]

8683. para. 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]

(ii) Pleading

8684. para. 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]

8685. para. 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]

8686. para. 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 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]

8687. para. 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]

8688. para. 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]

8689. para. 409: The Chamber observes that the mens rea of the Accused for liability as a superior is 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.

8690. para. 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.

8691. Separate Concurring Opinion – Justice B.Thompson – para. 10 (p. 700): 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.

(iii) Kono District

a. Crimes committed – Kono District

8692. para. 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.

8693. para. 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:

1. Unlawful Killings (Counts 1 to 5) (…)
2. Sexual Violence (Counts 1 and 6 to 9) (…)
3. Physical Violence (Counts 1 to 2 and 10 to 11) (…)
4. Enslavement (Count 13) (…)
5. Pillage (Count 14) (…)
6. Acts of Terrorism and Collective Punishments (Counts 1 to 2) (…)

8694. para. 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:

1. Unlawful Killings (Counts 1 and 4 to 5) (…)
2. Sexual Violence (Counts 1 and 6 to 9) (…)
3. Physical Violence (Counts 1 and 10 to 11) (…)
4. Enslavement (Count 13) (…)

b. Sesay – Superior responsibility – Kono District

8695. para. 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.

i. Superior-subordinate relationship – Sesay – Superior responsibility – Kono District

ii. May 1998 to November 1998 – Superior-subordinate relationship – Sesay – Superior responsibility – Kono District

8696. para. 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.

8697. para. 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 is no evidence to establish any command or superior-subordinate relationship by Sesay for that period.

8698. para. 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.

iii. December 1998 to January 2000 – Superior-subordinate relationship – Sesay – Superior responsibility – Kono District

8699. para. 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]

8700. para. 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.

8701. para. 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 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]

8702. para. 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.

8703. para. 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.

iv. Knowledge – Sesay – Superior responsibility – Kono District

8704. para. 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 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.

v. Failure to prevent / punish – Sesay – Superior responsibility – Kono District

8705. para. 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.

8706. para. 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.

c. Kallon – Superior responsibility – Kono District

8707. para. 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.

i. Superior-subordinate relationship – Kallon - Superior responsibility – Kono District

ii. April 1998 to November 1998 – Superior-subordinate relationship – Superior responsibility – Kallon – Kono District

8708. para. 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]

8709. para. 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]

8710. para. 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.

8711. para. 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 Mongor3844 and RUF Rambo.[3845]

8712. para. 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 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.

8713. para. 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.

8714. para. 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.

iii. December 1998 to January 2000 – Superior-subordinate relationship – Superior responsibility – Kallon – Kono District

8715. para. 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]

8716. para. 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]

8717. para. 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]

8718. para. 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.

8719. para. 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.

8720. para. 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.

iv. Knowledge – Kallon – Superior responsibility - Kono District

8721. para. 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.

8722. para. 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.

v. Failure to prevent / punish – Kallon – Superior responsibility - Kono District

8723. para. 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.

8724. para. 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.

d. Gbao – Superior responsibility – Kono District

8725. para. 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.

8726. para. 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]

8727. para.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.

8728. para.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.

(iv) Bombali District

8729. para. 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 (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.

8730. para. 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]

8731. para. 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.

(v) Freetown and Western Area

a. Crimes committed – Freetown and Western Area District

8732. para. 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]

b. Superior Responsibility of the Accused – Freetown and Western Area District

8733. para. 2127: The Prosecution has not established that Sesay, Kallon or Gbao were in a superiorsubordinate 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.

(vi) Port Loko District

8734. para. 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.

8735. para. 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.

(vii) Koinadugu District

8736. para. 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.

8737. para. 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]

8738. para. 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.

8739. para. 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.

8740. para. 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.

(viii) Conscription, Enlistment and Use of Child soldiers

a. Crimes committed

8741. para. 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.

b. Superior Responsibility of the Accused – Conscription, Enlistment and Use of Child soldiers

8742. para. 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.

3. Appellate Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-A, Judgment, 26 October 2009

(a) Findings and Conclusions

(i) Pleading liability for superior responsibility

8743. para. 64: The Trial Chamber, relying on the Appeals Chamber's statement of the law in the *Brima et al.* Appeal Judgment, considered the following material facts concerning liability pursuant to Article 6(3) of the Statute were required to be pleaded in the Indictment: (i) the relationship of the accused to his subordinates, (ii) his knowledge of the crimes [142] and (iii) the necessary and reasonable measures that he failed to take to prevent the crimes or to punish his subordinates.[143]

8744. para. 65: In relation to pleading *mens rea* for superior responsibility, the Trial Chamber found that because the "*mens rea* of the Accused for the liability as a superior is pleaded explicitly in paragraph 39 of the Indictment and incorporated into each Count by paragraph 40, ... the

Accused's knowledge of the crimes and his failure to prevent or punish those crimes, therefore, is adequately pleaded in the Indictment."[144]

8745. para. 66: Sesay challenges the pleading of (i) his relationship with his alleged subordinates, (ii) his *mens rea* with respect to the alleged crimes, and (iii) the necessary and reasonable measures that he failed to take. As a preliminary matter, the Appeals Chamber notes that Sesay was convicted of the following crimes pursuant to Article 6(3) of the Statute:

(i) Enslavement (Count 13) in relation to events in Yengema in Kono District;

(ii) Intentionally directing attacks against the UNAMSIL peacekeeping operations (Count 15) in relation to events in Bombali, Port Loko, Kono and Tonkolili Districts;

(iii) Violence to life, health and physical or mental well-being of persons, in particular murder, (Count 17) in relation to events involving UNAMSIL peacekeepers in Bombali and Tonkolili Districts.[145]

In the circumstances, the Appeals Chamber will only consider Sesay's submissions in relation to the pleading of crimes for which Sesay was convicted.

8746. para. 67: In relation to enslavement at Yengema in Kono District, the Trial Chamber found 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 to its operation. The Chamber therefore found that Sesay knew that an unknown number of civilians were enslaved there between December 1998 and January 2000."[146]

8747. para. 69: The Trial Chamber found that Sesay's *mens rea* as a superior with respect to these crimes was "pleaded explicitly in paragraph 39 of the Indictment and incorporated into each Count by paragraph 40 and therefore Sesay's knowledge of the crimes and his failure to prevent or punish those crimes ... is adequately pleaded in the Indictment."[151] Paragraph 39 of the Indictment states:

> 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.[152]

8748. para. 70: The case law of the ICTY Appeals Chamber suggests that there are at least two ways in which the *mens rea* for superior responsibility can be adequately pleaded in an indictment.[153] In the *Blaškić* Appeal Judgment, the ICTY Appeals Chamber summarized these possible approaches as follows:

> With respect to the mens rea, there are two ways in which the relevant state of mind may be pleaded: (i) either the specific state of mind itself should be pleaded as a material fact, in which case, the facts by which that material fact is to be established are ordinarily matters of evidence, and need not be pleaded; or (ii) the evidentiary facts from which the state of mind is to be inferred, should be pleaded.[154]

8749. para. 71: The Appeals Chamber notes that the form of pleading in the Indictment is consistent with the first formulation, and endorses the view that this is sufficient in the circumstances of some cases. Sesay has not offered any argument that specific acts or conduct relied upon by the Trial Chamber to infer his *mens rea* constituted material facts that should have been pleaded in the Indictment. The facts relied upon by the Trial Chamber are related to the functions of the RUF command, the nature of which was sufficiently pleaded in the Indictment.[155] The Appeals Chamber therefore dismisses this part of Sesay's submissions.

8750. para. 72: In relation to enslavement of civilians at the military base at *Yengema*, Sesay argues that he lacked notice of the identity of his alleged subordinates and what measures he was alleged to have failed to take to prevent or punish them.[156] The Trial Chamber found that (i) "RUF rebels enslaved an unknown number of civilians at the military training base at *Yengema* between December 1998 and January 2000";[157] (ii) Sesay was a RUF superior Commander during this period, and that he exercised effective control over RUF subordinates at Yengema;[158] (iii) the training Commander at *Yengema* reported to Sesay;[159] (iv) 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 to its operation;"[160] (v) Sesay actively monitored the prolongation of the commission of enslavement; and (vi) there was no evidence that he attempted to prevent or punish it.[161]

8751. para. 73: Paragraphs 20-23 of the Indictment specify the command positions held by Sesay at the relevant times as follows:

> 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.

8752. para. 74: The above paragraphs, in addition to paragraphs 34, 39 and 44 of the Indictment indicate the subordinates subject to Sesay's command were fighters of the RUF and AFRC/RUF forces. Paragraph 34 provides that Sesay "exercised authority, command and control over all subordinate members of the RUF, Junta and AFRC/RUF forces." Paragraph 39 alleges that "while holding positions of superior responsibility and exercising effective control over his subordinates," Sesay is "individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute." It further alleges that he "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." Paragraph 44 provides that "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."

8753. para. 75: In relation to the specific crimes at the military training camp at *Yengema*, paragraph 40 incorporates the previous paragraphs. Paragraph 71 particularises the charge of enslavement in relation to Kono District, and states:

> 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;

> 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.

8754. para. 76: These paragraphs demonstrate that Sesay's command position and his relationship with his subordinates were pleaded at all the relevant times. They further show that he was alleged not to have taken the necessary and reasonable measures to prevent or to punish the crimes alleged. The manner in which these material facts were to be proven was a matter of evidence and thus not for pleading. The Appeals Chamber, therefore, dismisses Sesay's sub-ground of appeal concerning the pleading of his relationship to his subordinates.

8755. para. 77: Sesay's contention that the failure of notice caused the Trial Chamber to commit an "error of law" such that it found, allegedly inconsistently, "that recruits who had been captured in Kono District were trained at *Yengema* base" and "that recruits from Kono and Bunumbu base were trained at Yengema"[162] appears to be an alleged error of fact rather than of law. Even so, his argument is misplaced. The Trial Chamber found that the RUF training base was moved in December 1998 from Bunumbu, Kailahun District to Yengema, Kono District and that civilians from both *Bunumbu* in Kailahun and from Kono were trained at Yengema.[163]

8756. para. 78: In relation to the attacks against UNAMSIL peacekeepers, Sesay did not state which were the material facts that should have been pleaded in the Indictment. In the absence of such clarification, the Appeals Chamber is unable to address Sesay's submission on the merits.

8757. para. 132: Kallon challenges the pleading of his liability as a superior for crimes in Kono District. The Appeals Chamber notes that he was convicted pursuant to Article 6(3) of the Statute of the following crimes in Kono District:

> (...) (v) Enslavement (Count 13) in relation to events in unspecified locations in Kono District;

8758. para. 133: Kallon makes general submissions that he lacked notice that he was alleged to have superior responsibility for crimes committed in Kono District, but he fails to provide substantiating arguments.[257] His submissions are at odds with a plain reading of the Indictment. It charges that Kallon "was a senior officer and Commander in the RUF, Junta and AFRC/RUF forces,"[258] and that when he was a "Battle Field Inspector, … he was subordinate only to the RUF Battle Group Commander, the Battlefield Commander, the leader of the RUF … and the leader of the AFRC."[259] Kallon was BFI at the times relevant to his convictions for crimes in Kono.[260] The Indictment further charges that in his position, Kallon "exercised authority, command and control

over all subordinate members of the RUF, Junta and AFRC/RUF forces"[261] and that he "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 … failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof."[262] The Indictment expressly lists locations in Kono District as those at which the crimes charged under Counts 6-9 and 13 were committed [263] and states that by his "acts or omissions in relation to these events, … MORRIS KALLON …, pursuant to … Article 6.3. of the Statute, is individually criminally responsible for" the crimes charged under Counts 6-9 and 13.[264]

8759. para. 134: In relation to sexual violence, forced marriages and acts of terrorism at Kissi Town in Kono District, Kallon additionally argues that his subordinates at *Kissi Town* "were never sufficiently or at all particularized."[265] The Appeals Chamber notes, however, that in addition to the pleading of Kallon's superior position, discussed above, the Indictment states that the crimes were committed by "members of AFRC/RUF" at "*Kissi-town* (or *Kissi Town*)… and AFRC/RUF camps such as … *Kissi-town* (or *Kissi Town*) camp."[266] The Indictment, therefore, puts Kallon on notice of the charge that ARFC/RUF members who were his subordinates at *Kissi Town* committed the crimes charged in Counts 6-9. Kallon fails to argue how this pleading did not sufficiently identify his subordinates.

(ii) Kono District – Superior responsibility

a. Sesay – Kono District– Superior responsibility - Enslavement

8760. para. 706: The Trial Chamber found Sesay liable under superior responsibility for the enslavement of an unknown number of civilians at Yengema training base in Kono District between December 1998 and about 30 January 2000.[1823]

8761. para. 709: Sesay complains about a lack of sufficiently specific findings.[1832] The Appeals Chamber recalls that the Trial Chamber was required only to make findings on those facts which were essential to the determination of guilt on a particular count.[1833] In the present instance, Sesay does not explain how the Trial Chamber's identification of his culpable subordinates as "RUF rebels" at the Yengema base,[1834] the victims as "civilians who had been captured in Kono,"[1835] or the duration of their captivity as "from 1998 until disarmament"[1836] were insufficiently reasoned so as to undermine the Trial Chamber's determination of Sesay's guilt under superior responsibility.

8762. para. 710: However, the Appeals Chamber notes *proprio motu* that the Trial Chamber's findings are insufficient in another respect, namely, in that the Trial Chamber never made a legal finding on whether the forced military training at the Yengema base between December 1998 and January 2000 met the legal elements of enslavement. Whereas the Trial Chamber made factual findings on the events at the Yengema base,[1837] the Trial Judgment is silent on whether these events amounted to the crime of enslavement.[1838] The forced military training at the Yengema base is not mentioned among the underlying acts that the Trial Chamber found constituted enslavement in Kono District. Rather, those underlying acts are limited to: (i) forced labour of civilians, including carrying loads, food-finding missions and domestic labour;[1839] (ii) various forms of forced labour of civilians detained in RUF camps (as distinct from camps for forced military training);[1840] and (iii) forced mining.[1841]

8763. para. 711: The Trial Chamber's failure to make a finding on the fundamental issue whether the events at the Yengema base fulfil the legal elements of the crime charged cannot reasonably be deemed to have resulted from mere oversight. This is buttressed by the fact that, when considering whether the enslavement in Kono District amounted to acts of terrorism, the Trial Chamber recalled its prior legal findings on which acts constituted enslavement, without making any reference to forced military training.[1842]

8764. para. 712: In the absence of a finding as to whether the forced military training at the Yengema base amounted to the crime of enslavement, there was no legal basis on which the Trial Chamber could find that Sesay incurred superior responsibility for this crime at the Yengema base. The Trial Chamber therefore erred in law in so finding.[1843] This error invalidates Sesay's conviction under Article 6.3 of the Statute insofar as it relates to enslavement at the Yengema training base between December 1998 and about 30 January 2000.[1844] Any implications of this finding will be considered in sentence. Having thus found, the Appeals Chamber need not consider the remainder of Sesay's present ground of appeal.

b. Kallon - Kono District– Superior responsibility

8765. para. 811: Kallon's second submission is that the Trial Chamber contradicted itself as to his authority. The Trial Chamber found that, after the February/March 1998 attack on Koidu, Kallon remained in Kono District "and reported to Superman."[2120] He was one of several RUF Commanders who were "not directly within the control hierarchy of Superman and did not have discrete combat units or forces assigned to their command."[2121] The Appeals Chamber fails to see how these findings prevented any reasonable trier of fact from finding that Kallon nonetheless

"was an operational Commander who gave orders which were complied with by troops" and entrusted with the assignments given to Kallon.[2122] The finding that Kallon "did not occupy a formal position within the operational command structure of the RUF" and that "it is therefore unclear to what extent he received reports on the actions of troops throughout Kono District"[2123] pertains to Kallon's superior responsibility for mutilations in Tomandu in Kono in May 1998, that is, after the JCE had ended as found by the Trial Chamber,[2124] and so do not detract from the Appeals Chamber's conclusion. This argument is rejected.

c. Kallon – Kono District – Superior responsibility - Enslavement

8766. para. 863: The Trial Chamber found that "civilians were forced to work by AFRC/RUF fighters and to carry loads to and from different areas of Kono District" between February and March 1998, and that these acts satisfied the elements of enslavement under Count 13.[2250] The Trial Chamber further found that the detention of hundreds of civilians in RUF camps throughout Kono District between February and December 1998 satisfied the elements of enslavement under Count 13.2251

8767. para. 864: The Trial Chamber found Kallon liable under Article 6(3) of the Statute for the enslavement of hundreds of civilians in camps throughout Kono District between February and December 1998.[2252] The Trial Chamber found, however, that Kallon was in a superior-subordinate relationship with RUF fighters in Kono District only until August 1998, because it considered that the Prosecution had failed to establish his position in Kono District after the failed "Fiti-Fata" mission which was found to have occurred in August 1998.[2253] It further found that because the crime of enslavement was "of a continuous nature" it considered it "immaterial to Kallon's responsibility for its commission that he departed Kono District in August 1998."[2254]

i. Superior- subordinate relationship – Effective control - Kallon – Kono District – Enslavement

8768. para. 868: In reaching its findings on the existence of a superior-subordinate relationship between Kallon and RUF fighters in Kono District, the Trial Chamber relied in part on its findings on Kallon's command role within the RUF organisation in Kono District from February 1998.[2261] With respect to his authority in civilian camps in particular, the Trial Chamber further found that: (i) Kallon visited Kaidu and Wendedu several times and that he was superior to Rocky who was the Commander of these camps;[2262] (ii) 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;[2263] (iii) Kallon gave orders to move the civilians when the camps became too close to the frontlines;[2264] and (iv) Kallon assigned Rocky on one occasion to lead a mission to Bumpeh.[2265] The Trial Chamber found that Kallon had a supervisory role over the civilian camps in Kono district even though their Commanders were directly subordinate to Superman, and that it was established beyond reasonable doubt that Kallon was able to exercise effective control over Rocky as the Commander of the camps.[2266] Based on his relationship to Rocky together with his status as a Vanguard, and Senior Commander in Kono, the Trial Chamber consequently found that Kallon was also able to exercise effective control over the RUF fighters who enslaved hundreds of civilians in camps throughout Kono District between February and December 1998.[2267]

8769. para. 869: Kallon argues that the Trial Chamber failed to properly consider evidence that others besides him exercised control over the troops in Kono District.[2268] The Appeals Chamber reiterates that the Trial Chamber found that even though RUF Commanders in Kono District reported to Superman who was the overall commander in Kono District, as Bockarie remained in Buedu, Kallon nonetheless exercised effective control over Rocky as the Commander of the civilian camps. The Appeals Chamber considers that the indications that Bockarie exercised control over the RUF troops in Kono District at the relevant time do not exclude the conclusion that Kallon exercised effective control over Rocky and the RUF fighters who enslaved civilians in camps in Kono District. The Appeals Chamber has repeatedly maintained that the concurrent authority of other superiors does not diminish the criminal liability of an Accused under Article 6(3) when the accused is found to have possessed effective control over the same subordinates.[2269]

8770. para. 870: The Appeals Chamber concludes that Kallon has not established that, based on the evidence, no reasonable trier of fact could have concluded that a superior-subordinate relationship existed and that he exercised effective control over Rocky as the Commander of the civilian camps, and the RUF fighters who enslaved civilians in those camps in 1998.

8771. para. 872: The Appeals Chamber considers that the Trial Chamber reasonably found that Kallon exercised effective control for the period between February and the end of August 1998. Thereafter, the Trial Chamber found that there was insufficient evidence to establish Kallon's position and command role in Kono District after the failed "Fiti-Fata" mission.[2271] The Trial Chamber accordingly found that "Kallon was in a superior-subordinate relationship with RUF fighters in Kono District until August 1998 only."[2272] However, it nonetheless held that because of the "continuous nature" of the crime of enslavement "throughout Kono District between February and December 1998," Kallon was liable for its commission for the entire period under Article 6(3) of the Statute.[2273]

8772. para. 873: The Appeals Chamber agrees with Kallon's contention that the findings are insufficient as a matter of law to find him liable under Article 6(3) for enslavement in Kono District after August 1998. The Trial Chamber decided that the evidence failed to establish that he had effective control over RUF forces after that date. The Appeals Chamber recalls that customary international law recognises three essential elements in order for a superior to be found guilty for a crime under command responsibility.[2274] One of those elements is the existence of a superior-subordinate relationship, by virtue of which the superior exercises effective control over the subordinate. During the existence of that relationship, superiors can be found guilty of the underlying crime of the subordinate if they knew or had reason to know of the crime and if they failed to prevent the crime or punish the perpetrator.

8773. para. 874: The Trial Chamber recognised the need for the coextensive existence of these three elements.[2275] In addition, the Trial Chamber reasoned in *obiter dicta* that if the crime is committed prior to the formation of the superior-subordinate relationship, but a superior subsequently gains effective control over the subordinate who committed the crime and the superior has notice of the previously committed crime and fails to punish the subordinate, the superior is still, in the opinion of the Trial Chamber, liable for the crime inasmuch as his duty to punish under responsible command existed simultaneously with effective control and notice.[2276] However, such situation described by the Trial Chamber did not arise at all on the facts as found by it in this case. More particularly, it is not the situation presented by the facts on which the Trial Chamber found Kallon liable, under Article 6(3), for the months the Trial Chamber found there was no evidence that he continued in a superior-subordinate relationship with the principal perpetrators of the enslavement in Kono District. Beyond the statement that enslavement was a "continuing crime" the Trial Chamber did not reason any facts that permitted a conclusion that Kallon had criminal liability under Article 6(3) for crimes committed by subordinates after he ceased to have effective control and the ability to prevent or punish. Neither did the Trial Chamber offer any explanation as to why this apparent extension of liability under command responsibility was consistent with customary international law in effect at the time of the commission of the crimes.

8774. para. 875: Kallon is responsible for his failure to prevent the crime of enslavement up to and including the last day on which he was found to have exercised effective control over Rocky and the RUF troops who detained civilians in camps in Kono District. Thereafter, the consequent harm caused by the continuation of the crime of enslavement, which he is found to have failed to prevent at the time when he had the ability to do so, continues to be relevant to sentencing and properly reflected in findings on the gravity of his offence.[2277] However, the Trial Chamber has

failed to support, either by findings of facts or reasoning of applicable law, its conclusion that Kallon is criminally liable under Article 6(3) for the crimes of enslavement in Kono District found to have been committed, after August 1998.

ii. Knowledge - Kallon – Kono District – Enslavement

8775. para. 871: Kallon submits that the Trial Chamber erred in failing to distinguish "between general knowledge and specific knowledge that sufficiently identified subordinates had committed crimes."[2270] He avers that the Trial Chamber "simply concludes that since he occupied a supervisory role with respect to the civilian camps, he had *actual knowledge of the enslavement of civilians there.*" The alleged error of law on the part of the Trial Chamber, he asserts, is in finding that his knowledge was sufficient, without finding that he possessed the knowledge of specific crimes perpetrated by specifically identified persons. Kallon overlooks the Trial Chamber's findings regarding Kallon's actual presence in the camps and the manner in which he exercised his supervisory role. In addition, he gives neither reasoning nor authority for his position that "actual knowledge" requires a greater degree of specificity than that set out by the Trial Chamber in its findings. Those findings are consistent with its pronouncement of the applicable law, with which Kallon does not disagree. His argument fails.

d. Kallon - Kono District– Superior responsibility – Forced marriages

8776. para. 838: The Trial Chamber found that approximately three months after the Intervention in February 1998, TF1-016 and her eleven year old daughter were captured together with twelve other civilians in Tomandu, Kono District, by fighters who identified themselves as belonging to the RUF.2189 It found that TF1-016 and her daughter were among those given as "wives" to the rebels, with TF1-016 given to "Kotor" a member of the RUF, and that she was forced to reside with him in the house of the armed rebel leader Alpha.[2190] It consequently found that RUF members forcibly married TF1-016 and her daughter in Kissi Town, Kono District between May and June 1998.[2191]

8777. para. 839: The Trial Chamber further found that a superior-subordinate relationship existed between Kallon and the RUF members who forcibly married TF1-016 and her eleven year old daughter in Kissi Town, Kono District and that he had effective control over them.[2192] It also found that Kallon had "reason to know of the fighters who committed this crime at *Kissi Town*" due to the widespread nature of the crime in Kono District and throughout Sierra Leone.[2193] It further found that Kallon failed to prevent or punish the commission of the crime by his

subordinates in Kono District. The Trial Chamber consequently held Kallon liable under Article 6(3) of the Statute for the forced marriage of TF1-016 and her daughter in Kissi Town, Kono District between May and June 1998.[2194]

8778. para. 841: Addressing Kallon's second argument first, the Appeals Chamber concludes that Kallon's submission that the Trial Chamber "ignored vital exculpatory evidence during cross-examination of Prosecution witness TF1-016"[2200] is without merit. The Trial Chamber was able to determine from the testimony and other undisputed evidence that the crime began in April/May 1998, a fact with which Kallon does not disagree.[2201] In addition, the Trial Chamber considered the fact that Kortor did not personally carry a gun;[2202] explained its findings on the relationship between Kortor and Witness TF1-016 in light of all the evidence, including the fact that Kotor took her out of Kissi Town to "Njagbema, where she continued working for him and he continued to force her to have intercourse with him";[2203] and accepted that she was ultimately released on the orders of the rebel Commander who announced the cease fire.[2204] As the Trial Chamber in fact considered the evidence referred to by Kallon he must demonstrate that no reasonable trier of fact could have assessed the evidence as the Trial Chamber did. Kallon fails to do so, but instead only offers an alternative interpretation of the evidence, thereby seeking to substitute his own evaluation of the evidence for that of the Trial Chamber.

8779. para. 842: To establish Kallon's liability under the principle of command responsibility, Article 6(3) of the Statute, the Trial Chamber properly recalled that the following three elements must be shown: (i) the existence of a superior-subordinate relationship between the superior and the offender of the criminal act; (ii) that the superior knew or had reason to know that his subordinate was about to commit a crime or had done so; and (iii) that the superior failed to take the necessary and reasonable measures to prevent his subordinate's criminal act or punish his subordinate.[2205] Kallon does not dispute the correctness of the Trial Chamber's formulation of the law. Rather Kallon's argument is that the Trial Chamber erred in finding that: (1) he had a superior-subordinate relationship with the principal perpetrators of these crimes; and (2) that he had reason to know of the commission of the crimes.

i. Superior-subordinate relationship – Effective control - Kallon – Kono District – Forced Marriages

8780. para. 843: Kallon submits that the Trial Chamber failed to establish the existence of a superior-subordinate relationship between him and the perpetrators of the crimes against TF1-016 and her daughter, and that there is nothing in the evidence to show that he had effective control of

RUF troops in Kissi Town.[2206] He argues that the Trial Chamber's findings to the contrary are inconsistent with its findings that during the relevant timeframe he was based at the Guinea Highway "on the military mission of laying ambushes … to impede ECOMOG's movement;" that he "did not have discrete combat units or forces assigned to his command;" and that he was subordinate to Superman in Kono District and was either equal to or lesser in rank and authority to other commanders in Kono District.[2207]

8781. para. 844: The Appeals Chamber disagrees that these findings directly contradict the Trial Chamber's conclusion that he exercised the requisite effective control over the principal perpetrators in Kissi Town in Kono District. First, as to the geographic scope of his authority, his duties during this time on the Guinea Highway did not preclude him from exercising effective control throughout Kono District between February and May 1998. The trial Judgment attests to the fact that he travelled throughout Kono District. The Trial Chamber found that during this time, in addition to being present on the Guinea Highway,[2208] he was also expressly found to be present in Koidu Town, at the Sunna Mosque,[2209] and the Kaidu and Wendudu camps.[2210] That he "did not have discreet combat units or forces assigned to his command" in fact reinforces the Trial Chamber's findings that his authority was District-wide, as evidenced by his role as an intermediary between the Battalion Commanders throughout Kono District, and Superman. Kallon was one of those very few senior commanders who were connected by radio contact with both field officers and those in the highest positions of the RUF Command.

8782. para. 845: The Trial Chamber found that Kallon, as a Vanguard, was "recognised as senior officer,"[2211] and that "Vanguards, due to their status, were accorded at all times respect and authority within the RUF organisation, particularly by the Junior Commanders."[2212] As a Vanguard and Senior Commander in Kono, Kallon "had personal bodyguards, access to a radio set and subordinates who forced civilians to mine for him personally."[2213] Kallon's position in Kono was sufficiently senior that he was even able to give orders to CO Rocky, a fellow Vanguard, on issues concerning the treatment of civilians.

8783. para. 846: Second, as to the level of his authority in Kono at the operative time, the Trial Chamber found, *inter alia*, that he was "an operational commander"[2214] and that he "was able to give orders to troops that were obeyed."[2215] Specifically, he is found to have commanded troops who were laying ambushes;[2216] gave orders to fighters at muster parades "about the daily missions to be undertaken and appointed Commanders to lead various patrols pursuant to his instructions."[2217] Most importantly the Trial Chamber found that Kallon "enjoyed a high profile among the troops" and "was known to be a strict disciplinarian" who was feared by RUF fighters

in Kono District and that he "killed both AFRC and RUF fighters whom he deemed to be acting contrary to orders."[2218]

8784. para. 847: With respect to the oversight over RUF fighters responsible for civilians in Kono District the Trial Chamber's findings establish that Kallon had a "supervisory role."[2219] The Trial Chamber found that only Kallon could issue permission to civilians to travel outside designated civilian camp areas;[2220] and that it was Kallon who ordered the RUF forces to move the civilians when the camps became too close to the frontlines.[2221] That Kallon had authority to order the manner of treatment of the civilians, and have that order followed, was demonstrated by his order to Captain Rocky that the rebels at one particular time "should not be 'hostile' to the civilians" in the Kaidu camp.[2222] This order was implemented the following day by Rocky who assembled civilians to explain the "rules" of the camp which, if followed, would offer some personal security for the civilians, but if broken would result in execution of the rule breaker.[2223]

8785. para. 848: The Appeals Chamber considers that these findings of the Trial Chamber which Kallon does not address in his present ground of appeal, allowed a reasonable trier of fact to conclude that he had the material ability to prevent or punish criminal conduct by the perpetrators in Kono District. That he personally could and did administer punishment to fighters in the most extreme ways was found by the Trial Chamber, which noted that "he was referred to as Bilai Karim, which referred to his ability to punish people for committing crimes."[2224] That in addition he was in a position to report misconduct of troops to superiors for punishment was remarked upon by the Trial Chamber which found that he acted as an intermediary between Superman and Battalion Commanders in Kono District.[2225] The Trial Chamber reasonably concluded, based on its findings, that not only was Kallon able to issue orders to RUF troops and Commanders, but that those orders were actually followed and that he had the power to punish RUF perpetrators of alleged criminal conduct in Kono District.[2226] This is the essence of effective control.

8786. para. 849: The Appeals Chamber further determines that, based on these general findings on Kallon's authority over RUF troops in Kono District, it was reasonable for the Trial Chamber to find that Kallon also had effective control over the specific perpetrators who committed the crime of forced marriage against witness TF1-016 and her daughter. The Appeals Chamber recalls that the necessity of proving that the principal perpetrator was the subordinate of the Accused "does not require direct or formal subordination" as long as the Accused is "by virtue of his position, senior in some sort of formal or informal hierarchy to the perpetrators."[2227] The Trial Chamber's description of Kotor and his RUF local leader, Alpha, and other RUF rebels in Kissi Town who committed the crimes against Witness TF1-016 and her eleven year old daughter, is

sufficient to establish that Kallon held a senior position to them in Kono at the operative time. The Appeals Chamber considers that it was reasonable for the Trial Chamber to conclude that a superior-subordinate relationship existed between Kallon and the RUF members who committed forced marriage against TF1-016 and her daughter in Kissi Town, Kono District.

ii. Knowledge – Kallon – Kono District – Forced Marriages

8787. para. 850: The Trial Chamber found that Kallon had "reason to know of the fighters who committed" the crime of forced marriage in Kissi Town due to the widespread nature of this crime in Kono District.[2228] Kallon submits that the Trial Chamber erred in reaching this finding; that its reasoning, is "vague, baseless and fails to meet the requisite standard for knowledge by a superior;" and that it contradicts the Trial Chamber's own articulation of the applicable law on superior responsibility.[2229]

8788. para. 851: Kallon relies on the Trial Chamber's articulation of the *mens rea* for superior responsibility set out in paragraphs 308 to 312 of the Trial Judgment. He submits that by failing to require that Kallon must have knowledge of the specific identity of the principal perpetrators, the Trial Chamber disregarded its own earlier statement that "the superior must have knowledge of the alleged criminal conduct of his subordinates and not simply knowledge of the occurrence of the crimes themselves."[2230] Kallon both misunderstands and misuses this statement from the Trial Chamber's findings. First, this statement stands for the proposition that the superior must know that persons subordinate to him were involved in the commission of the crimes, and that mere knowledge that the crimes were committed is not sufficient. It does not, as the Appellant suggests, require that the actual identity of the subordinates be known to the superior. Second, this statement appears in the Trial Chamber's explanation of actual knowledge which expressly is not the standard which the Trial Chamber applied to Kallon in finding that he had "reason to know."

8789. para. 852: Kallon further submits that the Trial Chamber erred by failing to find that Kallon was "put on notice of the crimes by his alleged subordinates in Kissi Town" or that he knew of the criminal conduct and intent of sufficiently identified subordinates, as opposed to mere knowledge of crimes by RUF fighters generally.[2231]

8790. para. 853: The Trial Chamber correctly articulated the requirements for establishing that the superior had reason to know. Neither Party takes issue with this articulation of the law. Of particular note is the requirement that this "standard will only be satisfied if information was available to the superior which would have put him on notice of the offences committed by his subordinates or about to be committed by his subordinates."[2232] The Trial Chamber was therefore

required to consider whether in fact Kallon had information which put him on notice of crimes involving those who were subordinate to him in Kono District.

8791. para. 854: As recited above, the scope of Kallon's effective control in Kono, which he exercised during the timeframe relevant to this incident, extended to the RUF members of lower status than himself. Kallon was a Vanguard and a Senior Commander in Kono District, with particular responsibility for overseeing the treatment of civilians. There is no question that Kotor and his local RUF commander Alpha, were of lower status than Kallon and within the RUF in the Kono District.

8792. para. 855: Where a commander receives information of the alleged commission of crimes by his subordinates, he may not remain wilfully blind to those reports.[2233] Had Kallon exercised responsible command and investigated the crime of forced marriage in Kono District which the Trial Chamber found he had reason to know was being committed by his subordinates, he could have had actual knowledge of the identity of the perpetrators. The Trial Chamber found that he took no action to prevent or punish these crimes.[2234] He cannot now claim that it was not proven that he had knowledge of the identities of the subordinates or the victims involved in these specific crimes.

8793. para. 856: The Appeals Chamber notes that in reaching its conclusion that Kallon had reason to know of the commission of the crimes by RUF subordinates, in *Kissi Town*, the Trial Chamber relied on the facts that established "that the commission of the crime of 'forced marriage' was widespread in Kono District and indeed throughout Sierra Leone."[2235] The failure of the Trial Chamber to repeat each of the findings that supported that conclusion does not render the conclusion either unsupported by the over all findings or unreasonable. The Appeals Chamber recalls in this regard, the Trial Chamber's findings that there was "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."[2236] From the very first stage, November 1996 to May 1997, the Trial Chamber found that mistreatment of civilians by RUF forces was "endemic in Kailhun District" and included subjecting "women and young girls to rapes and 'forced marriages'."[2237] By the third stage, (beginning in February 1998) the Trial Chamber further found:

> 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.[2238]

8794. para. 857: With particular regard to Kono District, the Trial Chamber also found that an unknown number of women were taken as "wives" by AFRC/RUF fighters in Koidu in February and March 1998.[2239]

8795. para. 858: Kallon was present in Kono during this time, and particularly in Koidu and on the Guinea Highway in February and March.[2240] The Trial Chamber found that on the Highway in February and March 1998 "women and girls from villages along the road were forcibly abducted by fighters. Some women were forced into marriage, used as domestics to do cooking or housework, and others were raped."[2241] In Koidu, also in February and March, the Trial Chamber found that women were forcibly taken from their husbands and families: "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 the rebels used the women for sexual purposes."[2242]

8796. para. 859: In Wendedu camp, which Kallon was found to have frequently visited after its establishment in April,[2243] this crime was found to have continued on a widespread basis and "an unknown number of women were forcibly kept as 'wives' by RUF fighters in the civilian camp."[2244] This was not done secretly or surreptitiously and was obvious to the witnesses who testified at trial.[2245] Also obvious was the screaming of women at night at the Wendedu camp. The Trial Chamber found women were heard by witnesses to be screaming "leave me, leave me, leave me alone. You did not bring me for this. I'm not your wife."[2246]

8797. para. 860: In order to demonstrate that a superior had reason to know of crimes committed or about to be committed by his subordinates, for purposes of establishing liability under Article 6(3) of the Statute, it must be established whether, in the circumstances of the case,[2247] he possessed information sufficiently alarming to justify further inquiry.[2248] From the continuous and pervasive nature of the crime of forced marriage found to have been committed by RUF members coupled with the obvious commission of the crime in Kono District in places where the Trial Chamber found Kallon to have been specifically present at the time these crimes were occurring, the Trial Chamber was reasonable in concluding that Kallon, had he intended to exercise responsible command, had "information sufficiently alarming to justify further inquiry" into whether his subordinates in Kono, including Kissi Town, were committing these crimes against civilians.

8798. para. 861: Having reasonably found that RUF fighters throughout Sierra Leone and specifically in Kono District were committing the crime of forced marriage the Trial Chamber was correct in concluding that the commission of the crime was so widespread and obvious, that

Kallon was on notice of the risk that similar crimes would be carried out by RUF members over whom he exercised effective control in Kono District, including Kissi Town.[2249] The Appeals Chamber holds therefore, that Kallon has not demonstrated an error of law invalidating the Trial Chamber's conclusions on the *mens rea* for his superior responsibility for the crime of forced marriage committed in Kissi Town, Kono District.

C. AFRC

1. Indictment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-PT, Indictment, 13 May 2004

(a) Individual Criminal Responsibility

8799. Paragraphs 1 through 20 are incorporated by reference. [446]

(i) The Accused

8800. At all times relevant to this Indictment, ALEX TAMBA BRIMA was a senior member of the AFRC, Junta and AFRC/RUF forces. [447]

8801. ALEX T AMBA BRIMA was a member of the group which staged the coup and ousted the government of President Kabbah. JOHNNY PAUL KOROMA, Chairman and leader of the AFRC, appointed ALEX T AMBA BRIMA a Public Liaison Officer (PLO) within the AFRC. In addition, ALEX TAMBA BRIMA was a member of the Junta governing body. [448]

8802. Between mid February 1998 and about 30 April 1998, ALEX TAMBA BRIMA was in direct command of AFRC/RUF forces in the Kono District. In addition, ALEX T AMBA BRIMA was in direct command of AFRC/RUF forces which conducted armed operations throughout the north eastern and central areas of the Republic of Sierra Leone, including, but not limited to, attacks on civilians in Bombali District between about May 1998 and 31 July 1998. As of about 22 December 1998, ALEX T AMBA BRIMA was in command of AFRC/RUF forces which attacked Freetown on 6 January 1999. [449]

[446] AFRC Indictment, para. 21.
[447] AFRC Indictment, para. 22.
[448] AFRC Indictment, para. 23.
[449] AFRC Indictment, para. 24.

8803. At all times relevant to this Indictment, BRIMA BAZZY KAMARA was a senior member of the AFRC, Junta and AFRC/RUF forces. [450]

8804. BRIMA BAZZY KAMARA was a member of the group which staged the coup and ousted the government of President Kabbah. JOHNNY PAUL KOROMA, Chairman and leader of the AFRC, appointed BRIMA BAZZY KAMARA a Public Liaison Officer (PLO) within the AFRC. In addition, BRIMA BAZZY KAMARA was a member of the Junta governing body. [451]

8805. Between about mid-February 1998 and 30 April 1998, BRIMA BAZZY KAMARA was a commander of AFRC/RUF forces based in Kono District. In addition, BRIMA BAZZY KAMARA was a commander of AFRC/RUF forces which conducted armed operations throughout the north, eastern and central areas of the Republic of Sierra Leone, including, but not limited to, attacks on civilians in Koinadugu and Bombali Districts between about mid February 1998 and 31 December 1998. BRIMA BAZZY KAMARA was a commander of AFRC/RUF forces which attacked Freetown on 6 January 1999. [452]

8806. At all times relevant to this Indictment, SANTIGIE BORBOR KANU was a senior member of the AFRC, Junta and AFRC/RUF forces. [453]

8807. SANTIGIE BORBOR KANU was a member of the group of 17 soldiers which staged the coup and ousted the government of President Kabbah. In addition, SANTIGIE BORBOR KANU was a member of the Junta governing body, the AFRC Supreme Council. [454]

8808. Between mid February 1998 and 30 April 1998, SANTIGIE BORBOR KANU was a senior commander of AFRC/RUF forces in Kono District. In addition, SANTIGIE BORBOR KANU was a commander of AFRC/RUF forces which conducted armed operations throughout the north, eastern and central areas of the Republic of Sierra Leone, including, but not limited to, attacks on civilians in Koinadugu and Bombali Districts between about mid February 1998 and 31 December 1998. SANTIGIE BORBOR KANU, along with ALEX TAMBA BRIMA and BRIMA BAZZY KAMARA, was also one of three commanders of AFRC/RUF forces during the attack on Freetown on 6 January 1999. [455]

[450] AFRC Indictment, para. 25.
[451] AFRC Indictment, para. 26.
[452] AFRC Indictment, para. 27.
[453] AFRC Indictment, para. 28.
[454] AFRC Indictment, para. 29.
[455] AFRC Indictment, para. 30.

8809. In their respective positions referred to above, ALEX T AMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, individually, or in concert with each other, JOHNNY PAUL KOROMA aka JPK, FODAY SA YBANA SANKOH, SAM BOCKARIE aka MOSQUITO aka MASKITA, ISSA HASSAN SESA Y aka ISSA SESA Y, MORRIS KALLON aka BILAI KARIM, AUGUSTINE GBAO aka AUGUSTINE BAO and/or other superiors in 6 the AFRC, Junta and AFRC/RUF forces, exercised authority, command and control over all subordinate members of the AFRC, Junta and AFRC/RUF forces. [456]

8810. 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. [457]

8811. The AFRC, including ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, and the RUF, including ISSA HASSAN SESA Y, MORRIS KALLON and AUGUSTINE GBAO, shared a common plan, purpose or design Goint 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. [458]

8812. 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. [459]

8813. ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, by their acts or omissions, are individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Indictment, which crimes each of them planned, instigated, ordered, committed or in whose planning,

[456] AFRC Indictment, para. 31.
[457] AFRC Indictment, para. 32.
[458] AFRC Indictment, para. 33.
[459] AFRC Indictment, para. 34.

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. [460]

8814. In addition, or alternatively, pursuant to Article 6.3. of the Statute, ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, while holding positions of superior responsibility and exercising effective control over their subordinates, are each 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. [461]

(ii) Charges

8815. Paragraphs 21 through 36 are incorporated by reference. [462]

2. Trial Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-T, Judgement, 20 June 2007

(a) Findings and Conclusions

(i) Law on the Modes of Liability charged under Article 6.3

8816. para. 779: In addition, or alternatively, the Indictment charges pursuant to Article 6(3) of the Statute that the Accused, while holding positions of superior responsibility and exercising effective control over their subordinates, are each individually criminally responsible for the said crimes in that each Accused is responsible for the criminal acts of his subordinates which he knew or had reason to know that the subordinate was about to commit or had done so and which each Accused failed to take the necessary and reasonable measures to prevent or to punish the perpetrators thereof. [1509]

8817. para. 780: Article 6(3) of the Statute provides:

[460] AFRC Indictment, para. 35.

> 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.

a. Elements of Superior Responsibility – Law on the Modes of Liability charged under Article 6.3

8818. para. 781: As is evident from its terms, Article 6(3) of the Statute requires a three-pronged test for criminal liability to attach:

1. The existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime;

2. The accused knew or had reason to know that the crime was about to be or had been committed; and

3. The Accused failed to take necessary and reasonable measures to prevent the crime or punish the perpetrators thereof. [1510]

8819. para. 782: The principle that an individual may be held responsible as a superior in the course of an armed conflict is enshrined in customary international law. [1511] The scope of Article 6(3) does not only include military commanders, but also political leaders and other civilian superiors in possession of authority. [1512]

8820. para. 783: Under Article 6(3) of the Statute, a superior is held responsible for an omission, i.e., for the failure to perform an act required by international law. [1513] The culpable omission of a superior consists of his or her failure to prevent or punish crimes under the Statute committed by subordinates. Hence, a superior is responsible not for the principal crimes, but rather for what has been described as a 'dereliction' or 'neglect of duty' to prevent or punish the perpetrators of serious crimes. [1514] Responsibility of a superior is not limited to crimes committed by subordinates in person, but encompasses any modes of criminal liability proscribed in Article 6(1) of the Statute. It follows that a superior can be held responsible for failure to prevent or punish a crime which was planned, ordered, instigated or aided and abetted by subordinates. [1515]

[461] AFRC Indictment, para. 36.
[462] AFRC Indictment, para. 37.

b. Existence of a Superior-Subordinate Relationship - Law on the Modes of Liability charged under Article 6.3

8821. para. 784: The doctrine of command responsibility is "ultimately predicated upon the power of the superior to control the acts of his subordinates."[1516] It is immaterial whether the power of the superior over the subordinates is based on de jure or on de facto authority,[1517] as long as the superior possessed the material ability to prevent or punish the commission of the offence. [1515] This requirement has been widely referred to as the exercise of 'effective control'. [1519] It may be presumed that the existence of de jure authority prima facie results in effective control unless proof to the contrary is produced. [1520] Substantial influence over the conduct of others falls short of effective control. [1521]

8822. para. 785: Indications for effective control include the formality of the procedure used for appointment of a superior,[1522] the power of the superior to issue orders [1523] or take disciplinary action,[1524] the fact that subordinates show greater discipline in the superior's presence,[1525] the level of profile, manifested through public appearances and statements,[1526] or the capacity to transmit reports to competent authorities for the taking of proper measures. [1527]

8823. para. 786: A superior may be held responsible for crimes committed by individuals temporarily subordinated to him, provided he exercises effective control over them. [1528] Further, superior responsibility is not excluded by the concurrent responsibility of other superiors in a chain of command. [1529] If a superior has functioned as a member of a collegiate body with authority shared among various members, the power or authority actually devolved on an accused may be assessed on a case-by-case basis, taking into account the cumulative effect of the accused's various functions. [1530]

8824. para. 787: However, in a conflict characterised by the participation of irregular armies or rebel groups, the traditional indicia of effective control provided in the jurisprudence may not be appropriate or useful. As the Trial Chamber has observed, the formality of an organisation's structure is relevant to, but not determinative of, the question of the effective control of its leaders. The less developed the structure, the more important it becomes to focus on the nature of the superior's authority rather than his or her formal designation.

8825. para. 788: The Trial Chamber considers that indicia which may be useful to assess the ability of superiors in such irregular armies to exercise effective control over their subordinates, include that the superior had first entitlement to the profits of war, such as looted property and natural resources; exercised control over the fate of vulnerable persons such as women and

children; the superior had independent access to and/or control of the means to wage war, including arms and ammunition and communications equipment; the superior rewarded himself or herself with positions of power and influence; the superior had the capacity to intimidate subordinates into compliance and was willing to do so; the superior was protected by personal security guards, loyal to him or her, akin to a modern praetorian guard; the superior fuels or represents the ideology of the movement to which the subordinates adhere; and the superior interacts with external bodies or individuals on behalf of the group.

8826. para. 789: Nonetheless, the key traditional indicia of effective control remain central, although they may be more loosely defined. For example, the power of the superior to issue orders is crucial, although these orders may be criminal in nature. Similarly, the superior must be capable of taking disciplinary action, even though the measures taken may be more brutal and arbitrarily utilised.

8827. para. 790: Identification of the principal perpetrator, particularly by name, is not required to establish a superior-subordinate relationship. It is sufficient to identify the subordinates as belonging to a unit or group controlled by the superior. [1531]

c. Actual or Imputed Knowledge - Law on the Modes of Liability charged under Article 6.3

8828. para. 791: For a superior to be held responsible pursuant to Article 6(3) of the Statute, it must be established that he knew or had reason to know that the subordinate was about to commit or had committed such crimes.

d. Actual Knowledge - Law on the Modes of Liability charged under Article 6.3

8829. para. 792: Actual knowledge may be defined as the awareness that the relevant crimes were committed or about to be committed. [1532] There is no presumption of such knowledge but, in the absence of direct evidence, it may be established through circumstantial evidence. [1533] Factors indicative of actual knowledge include, first of all, an individual's superior position and the superior's geographical and temporal proximity to the crimes;[1534] also, the type and scope of crimes, the time during which they occurred, the number and type of troops and logistics involved, the widespread occurrence of crimes, the tactical tempo of operations, the modus operandi of similar illegal acts and the officers and staff involved. [1535]

8830. para. 793: The evidence required to demonstrate actual knowledge may differ depending on the position of authority held by a superior and the level of responsibility in the chain of command. The membership of the accused in an organised and disciplined structure with reporting and monitoring mechanisms has been found to facilitate proof of actual knowledge. Conversely, the standard of proof of the actual knowledge of a superior exercising a more informal type of authority will be higher. [1536]

e. Imputed Knowledge - Law on the Modes of Liability charged under Article 6.3

8831. para. 794: In determining whether a superior "had reason to know", or imputed knowledge, that his or her subordinates were committing or about to commit a crime, it must be shown that specific information was available which would have put the superior on notice of crimes committed or about to be committed. [1537] The superior may not be held liable for failing to acquire such information in the first place. [1538] However, it suffices for the superior to be in possession of sufficient information, even general in nature, written or oral, of the likelihood of illegal acts by subordinates. [1539] In other words: failure to conclude, or conduct additional inquiry, in spite of alarming information amounts to imputed knowledge. [1540] It is not necessary that the information would compel the conclusion of the existence of concrete crimes. [1541] Rather, the information must have put the accused on notice of the 'present and real risk' that crimes under the Statute were committed, or about to be committed. [1542] Examples of such information include that a subordinate has a violent or unstable character and that a subordinate has been drinking prior to being sent on a mission. [1543] Furthermore, reports addressed to the superior, the level of training and instruction of subordinate officers are factors to be taken into account when determining imputed knowledge. [1544]

8832. para. 795: The Brima Defence objects to an expansive interpretation of the imputed knowledge standard, especially to hold "a commander [...] liable for the most serious of crimes under a mere negligence standard."[1545] Similarly, the Kamara and Kanu Defences oppose the application of strict liability.[1546] The Kamara Defence says that superiors are not under a duty to know, and are only liable when they had "information which should have enabled them to conclude in the circumstances at the time, that the perpetrator was committing or was going to commit such a breach and if they did not take feasible measures within their power to prevent or repress the breach". [1547]

8833. para. 796: It is clear from the case law referred to above that solely negligent ignorance is insufficient to attribute imputed knowledge. What is required is the superior's factual awareness of information which should have prompted him or her to acquire further knowledge. [1548] Responsibility pursuant to Article 6(3) of the Statute will attach when the superior remains wilfully blind to the criminal acts of his or her subordinates. [1549]

f. Failure to Prevent or Punish - Law on the Modes of Liability charged under Article 6.3

8834. para. 797: It must be established that the superior failed to take the necessary and reasonable measures to prevent or punish the crimes of his or her subordinates. These are two distinct duties: it is the superior's primary duty to intervene as soon as he or she becomes aware of crimes about to be committed, while taking measures to punish will only suffice if the superior did not become aware of these crimes until after they were committed. [1550]

8835. para. 798: As regards the duty to prevent the crimes of subordinates, the type of necessary and reasonable measures a superior must take is a matter of evidence rather than one of substantive law. [1551] Generally, it can be said that the measures required of the superior are limited to those within his or her material ability under the circumstances,[1552] including those that may lie beyond his or her formal powers. [1553] The kind and extent of measures to be taken depend on the degree of effective control exercised by the superior at the relevant time, and on the severity and imminence of the crimes that are about to be committed. [1554] A superior must prevent not only the execution and completion of a subordinate's crimes, but also their earlier planning and preparation. The superior must intervene as soon as he becomes aware of the planning or preparation of crimes to be committed by his subordinates and as long as he has the effective ability to prevent them from starting or continuing. [1555]

8836. para. 799: The duty to punish only arises once a crime under the Statute has been committed. [1556] A superior is bound to conduct a meaningful investigation with a view to establish the facts, order or execute appropriate sanctions, or report the perpetrators to the competent authorities in case the superior lacks sanctioning powers. [1557] According to the ICTY Appeals Chamber, there is no support in customary international law for the proposition that a commander can be held responsible for crimes committed by a subordinate prior to the commander's assumption of command over that subordinate. [1558]

g. Relationship Between Article 6(1) and 6(3) of the Statute - Law on the Modes of Liability charged under Article 6.3

8837. para. 800: Article 6(1) and 6(3) of the Statute denote different categories of individual criminal responsibility. Where both Article 6(1) and Article 6(3) responsibility are alleged under the same count, and where the legal requirements pertaining to both of these heads of responsibility are met, it would constitute a legal error invalidating a judgement to enter a concurrent conviction under both provisions. [1559] Where a Trial Chamber enters a conviction on the basis of Article 6(1) only, an accused's superior position may be considered as an aggravating factor in sentencing. [1560]

(ii) Bo, Kenema and Kailahun Districts

8838. See above: Chapter 12 – AFRC – Trial Judgment – Bo, Kenema and Kailahun Districts - Brima - Crimes committed – Bo, Kenema and Kailahun Districts – paras. 1641 - 1643 [7991].

a. Responsibility of the Accused Brima under Article 6.3 – Bo, Kenema and Kailahun Districts

i. Pleadings - Responsibility of the Accused Brima under Article 6.3 - Bo, Kenema and Kailahun Districts

8839. para. 1651: In its Final Brief, the Prosecution submits that the Accused Brima is individually criminally responsible under Article 6(3) of the Statute for crimes committed by his subordinates during the AFRC Government period by virtue of his membership of the Supreme Council, which had control over the police and political authority over the military.[2863] The Prosecution points to evidence establishing that the Accused regularly attended Supreme Council meetings and held an important position in the mining industry. The Prosecution further contends that that he had power and authority over soldiers and officers of higher rank during the AFRC/RUF Government period.[2864]

8840. para. 1652: The Brima Defence submits that the Accused Brima possessed no military authority and played 'at best' a political role within the AFRC Government. [2865]

ii. Existence of a superior-subordinate relationship - Responsibility of the Accused Brima under Article 6.3 - Bo, Kenema and Kailahun Districts

8841. para. 1653: It is well established that relationships of effective control exist in civilian organisational structures. [2866] The Trial Chamber reiterates that the existence of a superior-subordinate relationship is a question of fact, to be determined in light of all the available evidence. In each case what is required is proof beyond reasonable doubt that the Accused possessed the actual or material ability to effectively control his or her [subordinates2867] Before turning to the crimes committed in each District, the Trial Chamber will set out the evidence relating to the Accused Brima's superior position in general.

8842. para. 1654: The Trial Chamber found that the Accused Brima was a member of the AFRC Supreme Council and was appointed Principal Liaison Officer 2, in which capacity he supervised and monitored various Government ministries. [2868] The Prosecution in its Supplementary Pre-Trial Brief stated that the Accused Brima "held a position, individually or in concert with other AFRC/RUF superiors, superior to the AFRC/RUF subordinates."[2869] The Prosecution therefore relies on the Accused Brima's de jure position as a senior member of the AFRC Government to prove that he was in a superior-subordinate relationship with the AFRC/RUF members who committed crimes in the various Districts. The Trial Chamber is not persuaded by this reasoning for three reasons.

8843. para. 1655: Firstly, the Prosecution's general characterisation of both RUF and AFRC members as "the Accused Brima's subordinates" is untenable for the following reasons. Although the two groups were allied in one Government and worked closely together during the AFRC Government period, the available evidence suggests that individuals continued to identify themselves as either RUF or SLA and that at an organisational level separate commanders for each group co-existed in the Districts. [2870] The Trial Chamber is therefore not satisfied that the Accused Brima exercised effective control over members of the RUF merely by virtue of his de jure position within the AFRC Government administration in Freetown.

8844. para. 1656: Secondly, the Trial Chamber found that the Prosecution did not establish that the members of the Supreme Council had the collective ability to effectively control the military, as the military retained its own distinct chain of command and organisational structure. In this regard the Trial Chamber recalls the following evidence. Witness TFl-184 stated in cross-examination that the top army officers during the AFRC period were the Army Chief SO Williams, the Defence Deputy Avivavo, the Chief of Defence Staff Koroma, the battalion commanders and from then on down the ranks of the military. He stated that the military

headquarters at Cockerill were distinct from the Council members and that in some cases the military had complete control over military operations, in other cases the civil authorities would 'interfere' with the military and vice versa.[2871] There was definite overlap between the two institutions, as Witness Gibril Massaquoi testified that Chief of Army Staff Colonel SO Williams and Chief of Defence Staff SFY Koroma were members of Supreme Council,[2872] as was SAJ Musa and lower ranking soldiers like the three Accused. However, the Supreme Council was the body that oversaw law-making and decision-making in the country. It met once a month, apart from emergency meetings.[2873] The Trial Chamber is not satisfied in light of the above evidence, that the Supreme Council was involved in or responsible for planning the day-to-day operations of the military throughout the country.

8845. para. 1657: Thirdly, the Trial Chamber notes that very little evidence has been adduced relating to the Accused Brima's de facto position and functions as a senior member of the AFRC so as to enable the Trial Chamber to reach any conclusion regarding his relationship with alleged subordinates based on that position alone. Membership of the Supreme Council and attendance at meetings per se, does not suffice to prove beyond reasonable doubt that Brima was in a superior-subordinate relationship with the perpetrators of the offences committed in Bo, Kenema and Kailahun Districts during the relevant Indictment period. As stated above in the Trial Chamber's discussion of the applicable law, the authority of members of a power-sharing collegiate body like the Supreme Council must be assessed on a case-by-case basis and requires an analysis of the functions of the particular Accused.[2874] The Trial Chamber finds that there is no evidence that within the Supreme Council the Accused Brima possessed any individual decision-making capability.

8846. para. 1658: The only evidence before the Trial Chamber relating to his actual functions as PLO 2 is that he was nominally in charge of several Government ministries.[2875] It is assumed that the Accused Brima would have had the power to give orders in relation to work carried out under his Ministries. However, there is no evidence regarding the type of issues that came within his portfolios or to whom he would have been entitled to issue orders, even apart from the question of whether such orders were issued and obeyed.

8847. para. 1659: The Prosecution submits that the Accused's position as "an Honourable" gave him authority over soldiers and officers of higher rank, on the basis that position precedes rank in the military. The Prosecution consequently submits that the Accused Brima was subordinate only to Johnny Paul Koroma, Foday Sankoh and Abu Sankoh. The Trial Chamber is thus invited to accept that the Accused was capable of exercising control over any other person in the AFRC. The

Trial Chamber is not persuaded by this theory. Proof of superior responsibility requires conclusive evidence of the actual exercise of command and control over an identifiable group of subordinates. The Trial Chamber agrees that the Accused Brima enjoyed a privileged position on the Supreme Council as one of the original coup-plotters, as an 'Honourable' and as PLO 2. However, the Prosecution evidence adduced regarding his de jure position is insufficient to persuade the Trial Chamber to draw a conclusion, based on that position alone, that Brima had effective control over subordinate perpetrators of the crimes in the said districts, during the AFRC Government period.

8848. para. 1660: The evidentiary burden required to establish 'effective control' is high. For example in Kordic, the court failed to find 'control' despite the fact that the defendant, a civilian, wore a military uniform, held the title of 'colonel,' issued orders for military equipment and supplies, managed personnel, represented the Croatian forces in UN negotiations, exercised control over roads, roadblocks, and prisoners, participated in planning, was physically present during military operations, and provided "political authorization" for ethnic cleansing campaigns.[2816] The Trial Chamber will now examine the evidence adduced by the Prosecution regarding Brima's alleged superior responsibility in relation to the Districts of Bo, Kenema and Kailahun in which crimes were found to have been committed by AFRC/RUF troops during the Junta period.

iii. Bo District (1 - 30 June 1997) - Responsibility of the Accused Brima under Article 6.3 - Bo, Kenema and Kailahun Districts

8849. para. 1661: The Prosecution evidence showed that administratively, Bo District fell within the responsibility of AFRC Secretary of State East Eddie Kanneh.[2877] Although superior responsibility is not precluded by the existence of other superiors in relation to the same subordinates, there is no evidence that the Accused Brima's responsibilities as PLO 2 overseeing Eddie Kanneh, entailed command of AFRC/RUF forces stationed in Bo District.

iv. Kenema District (25 May 1997 - 19 February 1998) - Responsibility of the Accused Brima under Article 6.3 - Bo, Kenema and Kailahun Districts

8850. para. 1662: Evidence before the Trial Chamber shows that AFRC forces in Kenema District were under the command of Secretary of State East Eddie Kanneh, who reported directly to Johnny Paul Koroma.[2878] The Trial Chamber heard evidence that the Accused Brima was involved in mining activities in Kono District but that he did not have any executive powers in

relation to these activities.[2879] The Trial Chamber notes that the three Accused have not been charged with enslavement in Kono District during the Junta period. The Accused Brima's involvement in Kono District is insufficient to prove that he possessed the material ability to prevent of punish the persons responsible for the use of civilians as forced labour in Kenema District during the Junta period.

v. Kailahun District (27 May 1997 - 14 February 1998) - Responsibility of the Accused Brima under Article 6.3 - Bo, Kenema and Kailahun Districts

8851. para. 1663: It has not been established beyond reasonable doubt that AFRC troops were present in Kailahun during this period. Indeed, Prosecution witness TF1-334 testified that there were no SLA troops in Kailahun during the Junta period.[2880] The area was controlled by Sam Bockarie of the RUF and his deputy Issa Sesay.[2881] In the absence of evidence that the Accused Brima exercised any superior authority or control over the RUF troops in Kailahun District, the Trial Chamber finds that the Prosecution has not established beyond reasonable doubt that the Accused Brima is individually criminally responsible pursuant to Article 6(3) of the Statute for the crimes committed in Kailahun District during the Junta period.

vi. Findings - Responsibility of the Accused Brima under Article 6.3 - Bo, Kenema and Kailahun Districts

8852. para. 1664: The Trial Chamber finds that the Prosecution has not established beyond reasonable doubt that the Accused Brima was in a superior-subordinate relationship with the perpetrators of any of the crimes committed in Bo, Kenema and Kailahun Districts during the Junta period. As the absence this first element of superior responsibility is fatal to proof of liability under Article 6(3), the Trial Chamber will not consider the evidence relating to the Accused Brima's actual or imputed knowledge of crimes committed and his ability to prevent or punish the perpetrators.

b. Responsibility of Accused Kamara under Article 6.3 - Bo, Kenema and Kailahun Districts

8853. See above: Chapter 12 – AFRC – Trial Judgment – Bo, Kenema and Kailahun Districts - Kamara - Crimes committed – Bo, Kenema and Kailahun Districts – paras. 1842 - 1884 [8001].

i. Pleadings - Responsibility of Accused Kamara under Article 6.3 – Bo, Kenema and Kailahun Districts

8854. para. 1848: The Prosecution submits m its Final Brief that the Accused Kamara bears superior responsibility for crimes committed during the period 25 May 1997 to 14 February 1998 by virtue of his position as Principal Liaison Officer 3 and membership of the Supreme Council, which had control over the police and political authority over the military.[3156]

8855. para. 1849: The Kamara Defence submits that the Accused Kamara possessed no military authority and played "at best" a political role within the AFRC Government.[3157] The Kamara Defence further submits that the Prosecution failed to show that the Accused Kamara had command and control over Sam Bockarie, Eddie Kanneh or any of the soldiers in Kenema.[3158] The Kamara Defence further submitted that Sam Bockarie was in command of Kailahun District and no evidence was led to prove that persons under the command of the Accused Kamara took part in the crimes committed there. [3159] No submissions were made specific to Bo District.

ii. Existence of a superior-subordinate relationship - Responsibility of Accused Kamara under Article 6.3 - Bo, Kenema and Kailahun Districts

8856. para. 1850: The Trial Chamber finds that the Prosecution has not established beyond reasonable doubt that the Accused Kamara was in a superior-subordinate relationship with the perpetrators of any of the crimes committed in Bo, Kenema and Kailahun Districts during period 25 May 1997 to 14 February 1998.

8857. para. 1851: As preliminary observation, the Trial Chamber reiterates that that the existence of a superior-subordinate relationship is not precluded by the superior's civilian status.[3160]

8858. para. 1852: The Trial Chamber refers to its findings above in relation to the Accused Brima, where it was found that membership of the Supreme Council and proof of a de jure position of authority as a Principal Liaison Officer within the AFRC government is insufficient per se to prove the existence of a superior subordinate relationship. The Prosecution must prove that the Accused Kamara's individual functions as PLO 3 and/or member of the Supreme Council enabled him to exercise effective control over the perpetrators of the crimes committed in Bo, Kenema and Kailahun Districts.

8859. para. 1853: The Trial Chamber notes that there is little evidence on the Accused Kamara's activities during the AFRC Government period, apart from his attendance at Supreme Council

meetings.[3161] It has not been established that the Accused Kamara possessed any individual decision making capacity within the Council. Witnesses testified that 'Bazzy' had people working under him in the ministries he supervised, but did not specify what the work of these people involved.[3162] The Trial Chamber has found that there is no evidence that the Accused Kamara had any particular responsibility for internal or external security.

8860. para. 1854: The Trial Chamber therefore accepts the Kamara Defence's submissions that the Prosecution has failed to prove that the Accused Kamara was in a superior-subordinate relationship with the perpetrators of the crimes in Kenema and Kailahun Districts. It has similarly not been established that the Accused Kamara was in a superior-subordinate relationship with the perpetrators of crimes committed in Bo District. As the absence this first element of superior responsibility is fatal to proof of liability under Article 6(3), the Trial Chamber will not consider the evidence relating to the Accused Kamara's actual or imputed knowledge of crimes committed and his ability to prevent or punish the perpetrators.

iii. Findings - Responsibility of Accused Kamara under Article 6.3 - Bo, Kenema and Kailahun Districts

8861. para. 1855: The Trial Chamber finds that it has not been established beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed in Bo, Kenema and Kailahun Districts between 25 May 1997 and 14 February 1998.

c. Responsibility of Accused Kanu under Article 6.3 – Bo, Kenema and Kailahun Districts

8862. See above: Chapter 12 – AFRC – Trial Judgment – Bo, Kenema and Kailahun Districts - Kanu - Crimes committed – Bo, Kenema and Kailahun Districts – paras. 1982 – 1984 [6843].

i. Pleadings – Responsibilty of Accused Kanu under Article 6.3 – Bo, Kenema and Kailahun Districts

8863. para. 1992: The Prosecution submits in its Final Brief that the Accused Kanu bears superior responsibility for crimes committed during the AFRC Government period by virtue of his position as a member of the Supreme Counci1.[3321] The Prosecution also submits that the Accused Kanu was "only beneath Johnny Paul Koroma, SAJ Musa and the 3 PLOs in the Junta hierarchy".[3322]

8864. para. 1993: The Kanu Defence submits that superior responsibility cannot be based on the Accused Kanu's mere participation in or membership of the AFRC, as this would be "tantamount to strict liability on the basis of organizational responsibility".[3323]

ii. Findings - Responsibilty of Accused Kanu under Article 6.3 - Bo, Kenema and Kailahun Districts

8865. para. 1994: The Trial Chamber reiterates its earlier observations that asserting de jure seniority does not suffice to prove liability under Article 6(3).[3324] The Trial Chamber emphasises that in evaluating the evidence, the first element of the test for superior responsibility is whether the Accused Kanu was personally able to exercise effective control over subordinates. Membership of the Supreme Council alone does not satisfy the evidentiary burden on the Prosecution.

8866. para. 1995: Little evidence was adduced with respect to the role of the Accused Kanu during the AFRC Government period. It has been established that the Accused Kanu was a member of the Supreme Council and attended Council meetings. [3325] There is no evidence that he possessed any particular responsibility or performed any individual functions at such meetings. The Trial Chamber has found that it was not established whether the Accused Kanu made any real practical contributions to the policies or running of the AFRC govermnent.[3326] Beyond his position in the AFRC Government, there is no evidence which links the Accused Kanu as a superior to crimes perpetrated by the troops in Bo, Kenema and Kailahun Districts.

8867. para. 1996: The Trial Chamber therefore finds that the Prosecution has not proved beyond reasonable doubt that a superior-subordinate relationship existed between the Accused Kanu and these troops. In the absence of this first element of superior responsibility, it is unnecessary to consider whether the Accused Kanu had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators thereof.

(iii) Kono District

a. Responsibility of Accused Brima under Article 6.3 – Kono District

8868. See above: Chapter 12 – AFRC – Trial Judgment – Kono District - Brima - Crimes committed – Kono District – para. 1665 [8017].

i. Pleadings - Responsibility of Accused under Article 6.3 – Kono District

8869. para. 1669: The Prosecution, in its Final Brief, concedes that the Accused Brima left Kono for Kailahun during the ECOMOG Intervention in Freetown of February 1998, but argues that he returned to Kono by late April or early May 1998.[2893] It contends that while the Accused may have had some disagreement with the RUF faction under Sam Bockarie in Kailahun, this only lasted a few days after which the Accused was "back on good terms with Sam Bockarie and other RUF commanders in Kailahun." [2894] In other words, the Prosecution contends that despite his physical absence the Accused continued to play an influential role in the events that took place in Kono District and in the joint criminal enterprise with the RUF.

8870. para. 1670: The Prosecution in its Final Brief makes no submissions on the superior responsibility of the Accused Brima in relation to Kono District during the period mid-February 1998 to the end of April 1998. The Prosecution concedes that the Accused Brima arrived in Kono District only at the end of April or beginning of May.

8871. para. 1671: The Brima Defence submits that the Prosecution has failed to provide clear evidence on the command and control structure of the SLAs in Kono District.[2895] The Brima Defence also submits that 'Savage' was in command of Tombodu and was not controlled by his SLA superiors.[2896] The Accused Brima argues that he cannot be held responsible for the activities of persons over whom he exercised no control. [2897]

8872. para. 1672: The Trial Chamber has found that the Accused Brima arrived in Kono District from Kailahun District at the end of April or beginning of May 1998. [2898] Upon his arrival, the Accused Brima assumed command of the AFRC troops from the Accused Kamara.[2899] There are a number of indicia from the evidence that demonstrate that upon assuming command of the SLA troops, the Accused Brima exercised effective control over the SLA troops in Kono District. The Accused Brima immediately summoned the Accused Kamara, the Operations Commander and other senior SLA soldiers including Leather Boot aka Idrissa Kamara, Adams, Colonel Ibrahim Bioh Sesay, Coachy Borno, Colonel Momoh Dorty, and Junior Lion to a meeting at Five-Five Spot.[2900] Both witness TFl-334 and witness George Johnson attended this meeting. The Accused Brima ordered the commanders to regroup with their soldiers at Tombodu in preparation for the withdrawal to join SAJ Musa in Koinadugu.[2901] Upon arrival at Tombodu, the commanders reported to the Accused Brima.[2902] He ordered them to withdraw their troops to Mansofinia in Koinadugu District and this occurred.[2903]

8873. para. 1673: The crimes detailed in the factual findings were committed prior to the Accused Brima's assumption of command. The ICTY Appeals Chamber in *Hadzihasanovic*: held that there is no support in customary international law for the proposition that a commander can be held responsible for crimes committed by a subordinate prior to his or her assumption of command.[2904] and June 1998, as charged under Counts 3 through 5.[2910] The issue for determination here is whether the Accused Brima bears individual criminal responsibility for those crimes pursuant to Article 6(1) of the Statute.

b. Responsibility of Accused Kamara under Article 6.3– Kono District

8874. See above: Chapter 12 – AFRC – Trial Judgment – Kono District - Kamara - Crimes committed – Kono District – para. 1856 [8021].

i. Pleadings – Responsibility of Accused Kamara under Article 6.3 – Kono District

8875. para. 1862: The Prosecution submits that the evidence 'coupled with the high level of authority possessed by the Second Accused' proves that there was a superior-subordinate relationship between the Second Accused and the perpetrators of crimes committed in Kono District in this period. [3179]

8876. para. 1863: The Kamara Defence submits that the evidence of both Prosecution and Defence witnesses alike proves that Kono District after February 1998 was completely controlled by the RUF, to whom the AFRC troops were subordinate.[3180]

ii. Existence of a superior-subordinate relationship - Responsibility of Accused Kamara under Article 6.3 - Kono District

8877. para. 1864: The Prosecution has not demonstrated beyond a reasonable doubt that crimes were committed by members of the AFRC/RUF during the initial attack on Koidu Town in early March 1998 as troops advanced together into Kono District. Thus there can be no findings of liability pursuant to Article 6(3) during this attack.

8878. para. 1865: The Trial Chamber recalls its finding that after the departure of Johnny Paul Koroma from Kono District, the AFRC was subordinated to the RUF and the Accused Kamara became the highest ranking AFRC soldier in the District. The Trial Chamber further found that the

AFRC and RUF worked closely together in Kono District. AFRC and RUF commanders each supervised mixed battalions of AFRC and RUF troops.[3181]

8879. para. 1866: The Trial Chamber is satisfied, on the basis of the evidence that follows, that the Prosecution has proved beyond reasonable doubt that the Accused Kamara exercised effective control over some mixed battalions of AFRC/RUF troops in Kono District.

8880. para. 1867: Witness TFl-334 testified in cross-examination that while Kamara was subordinate to Denis Mingo, the AFRC maintained their own command. He stated that Kamara received orders from Denis Mingo and was answerable to him in terms of operations, but that the AFRC operated under their command and were answerable to the AFRC commanders.[3182] Witness George Johnson corroborated the evidence of witness TF1-334 that the Accused Kamara was the senior AFRC commander, subordinate to Denis Mingo. [3183]

8881. para. 1868: Witness TFl-334 testified that the Accused Kamara gave orders through his subordinate the Operations Commander, whose name was given to the Court in closed session.[3184] The Accused Kamara also appointed Colonel Foday Kallay as deputy operations commander.[3185] Battalions consisting of both RUF and AFRC soldiers (but: predominantly the latter) were under AFRC command in Jagbwema Fiama, Tombodu, Bumpe, Sewafe, Yengema, and Woama.[3186] Witness TF1-334 testified that the battalion commanders were subordinate to the Operations Commander and reported directly to him.[3187] Witness TFl-334 testified that the Accused Kamara promoted these individuals in rank after the capture of Kono District. [3188]

8882. para. 1869: The Accused Kamara was based, along with other senior commanders, at the AFRC headquarters in Kono District, in Masingbi Road.[3189] Witness TF1-334 testified that discussions were held regularly between the military supervisors, the Accused Kamara and the Operations Commander.[3190] The witness went on patrol with the operations commander and soldiers under his command as they monitored the various battalions.[3191] Witness TFl-334 also testified that the AFRC troops held muster parades every week in Kono, until they were prohibited from doing so by Morris Kallon (RUF).[3192] The Trial Chamber notes that the prohibition on AFRC musters therefore occurred only at the end of the period in which crimes were committed in Kono. The witness explained that 'mustering' is a military term that refers to the force being brought together and addressed publicly. This procedure is indicative of an organised force that is responsive to superior command.

8883. para. 1870: There is evidence that the Accused Kamara's orders were followed. Witness TF1-334 testified that Kamara ordered the troops to attack ECOMOG forces. [3193] In May 1998,

the Accused Kamara ordered the burning of houses surrounding the AFRC headquarters in Masingbi Road. This order was obeyed by soldiers including witness TF1-334.[3194] The commanders of surrounding villages including Yengema, Bumpe, Jagbwema Fiama and Tombodu were also ordered to burn those villages and witness TF1-334 accompanied the Operations Commander to monitor the carrying out of these orders. Witness TF1-334 also testified that Kamara organised a squad called "wild dogs" who were responsible for "raising", that is, taking things from other soldiers.[3195]

8884. para. 1871: The Trial Chamber recalls that there was a parallel presence and authority of RUF and AFRC commanders active in Kono District in this period.[3196] While the Trial Chamber is satisfied that the Accused Kamara maintained effective control over some mixed battalions of AFRC and RUF troops, given evidence of the Accused Kamara's subordination to Denis Mingo; evidence of RUF dominancy over the AFRC; and indications that independent RUF chains of command may have also existed during this time period, the Trial Chamber finds that it has not been established beyond reasonable doubt that the Accused Kamara's authority extended to all battalions active in Kono District. Thus, it cannot be stated with certainty that Kamara exercised effective control over the entire AFRC and RUF troops in Kono District during this period. This however does not exclude that he had effective control over some troops.

8885. para. 1872: The Prosecution did not generally attempt to differentiate between crimes committed by AFRC troops and those committed by RUF rebels, they instead referred to 'AFRC/RUF troops' as the perpetrators of crimes in Kono District. For many crimes, the Trial Chamber has been unable to determine beyond reasonable doubt the affiliation of the perpetrators nor to which specific commanders they were subordinate.

8886. para. 1873: The Trial Chamber is, however, satisfied that it has been established beyond a reasonable doubt that crimes were committed by 'Savage' and persons under his authority in Tombodu during this period.[3197] The question that remains to be determined is whether he was subordinate to the Accused Kamara, and whether Accused Kamara was in a position to exercise effective control over him.

8887. para. 1874: Witness TF1-334 testified that Captain Mohamed 'Savage' (alias Changabulanga) was a commander in Tombodu. His deputy was Staff Alhaji and he reported to the AFRC Operation Commander.[3198] Witness TF1-334 testified that the Accused Kamara promoted Staff Alhaji to Lieutenant after the capture of Kono District.[3199] He was a staff sergeant until 'Savage' recommended him for promotion.[3200] Witness George Johnson also stated that 'Savage' was in charge of a battalion in Tombodu and described him as being an SLA soldier. [3201]

8888. para. 1875: There is also evidence that the Accused Kamara actively exerted authority over 'Savage' by directly or indirectly supervising his activities in Tombodu. Witness TF1-334 testified that the SLA Operation Commander [3202], subordinate to the Accused Kamara, patrolled the battalions in various locations including Tombodu. Witness George Johnson testified that Kamara, the Operations Commander and others went to Tombodu on several occasions during the Kono period. [3203] The Witness testified that the Accused Kamara, together with Hassan Papa Bangura and others went to Tombodu to drink palm wine. On one of these occasions, the Witness testified that he observed 'Savage' order the flogging of approximately seven civilians. On cross-examination he testified that 'Savage' would beat people nearly every day and that it was a "common drill".[3204] The Trial Chamber notes that there is no indication on the evidence that the Accused Kamara also observed this event.[3205] Witness TFl-334 testified that the Accused Kamara visited Tombodu with other military supervisors to ensure that Johnny Paul Koroma's orders to burn Tombodu were carried out.[3206]

8889. para. 1876: Witness TF1-334 testified that 'Savage' informed the Accused Kamara that civilians in Tombodu were celebrating because they believed that ECOMOG had taken over the area and that as a result of this communication the SLA Operations Commander, the Witness and Colonel Momoh Dorty went to Tombodu to see what was happening.[3207] When the Witness arrived he observed that 'Savage' and his soldiers had amputated and killed a large number of civilians - actions which this Trial Chamber has found constitute crimes as alleged by the Prosecution.[3208]

8890. para. 1877: Witness George Johnson similarly testified that as the Nigerian ECOMOG troops pressured them out of the District, the Witness together with the three Accused, passed through Tombodu.[3209] There, they met Battalion Commander 'Savage' and the three Accused saw that a large number of civilians had been killed by machete and their bodies had been thrown into a pit. [3210]

8891. para. 1878: The Trial Chamber notes that there is also evidence that 'Savage' was subordinate to the RUF. Witness TF1-334 stated that in addition to reporting to the operations commander, 'Savage' also reported to Denis Mingo.[3211] Significantly, the Witness puts Denis Mingo in Tombodu shortly after the crimes were committed. The Witness testified that Denis Mingo reacted to the crimes by telling 'Savage' that he was committing crimes against humanity.[3212]

8892. para. 1879: Prosecution Witness George Johnson similarly testified that 'Savage' was battalion commander at Tombodu but that he was appointed to the rank of Lieutenant by Denis

Mingo. [3213] He also testified that 'Savage' remained under the command of Denis Mingo while some of his battalion fighters left with the Witness's group to go to Mansofinia.[3214]

8893. para. 1880: Defence Witness DAB-095 testified that Savage was the commander of a battalion of mixed AFRC and RUF troops in Tombodu.[3215] Defence Witness DBK-117 testified on re-examination that he visited Tombodu after December 1998.[3216] He stated that by that time, Staff Alhaji was the commander in Tombodu and that 'Savage' was his deputy. At that time they were all under the control of the RUF.[3217]

8894. para. 1881: The Trial Chamber also notes that there is evidence that regardless of which faction he adhered to, 'Savage' was unruly in character and operated independently from his superiors. Prosecution Witness George Johnson testified in cross-examination that 'Savage' was very difficult to control and was an "unpredictable character".[3218]

8895. para. 1882: He testified that "in the early stages" 'Savage' was under the command of Denis Mingo and would listen to his instructions and carry them out, but later became "abnormal" and stated that he would not listen to anyone except Johnny Paul Koroma.[3219] On one occasion, prior to the time 'Savage' became "abnormal", the Witness saw 'Savage' flogging two individuals in the presence of the Accused Brima and the Accused Kanu. Brima told him to stop, which he did, but Witness George Johnson testified that after they returned to Koidu Town, 'Savage' executed the two men.[3220]

8896. para. 1883: He also testified that 'Savage' had possession of enough weapons to protect himself and his men and that because of this no one dared to tell him what to do or not to do.[3221]

8897. para. 1884: On the basis of the evidence examined above, the Trial Chamber is satisfied that the Accused Kamara exercised effective control over 'Savage'. There is clear evidence that 'Savage' was subordinate to the Accused Kamara; that Kamara both directly and indirectly through the SLA Operations Commander was in a position to supervise the activities of 'Savage'; that the Accused Kamara promoted 'Savage'; that 'Savage' himself reported to the Accused Kamara; and that the Accused Kamara was physically present in Tombodu when it was under the control of' Savage.'

8898. para. 1885: The fact that 'Savage' also reported to Denis Mingo and remained with Denis Mingo after Kamara departed from the District does not preclude Kamara exercising effective control over him. [3222]

8899. para. 1886: The Trial Chamber is also satisfied that 'Savage's alleged unpredictable character in and of itself does not bar a finding that Kamara was in a position of effective control over him. Evidence of a subordinate's unpredictability or irresponsibility in no way vitiates a superior's responsibility to exercise authority over that subordinate. Rather, it is exactly this type of situation to which a superior is under an obligation to respond by putting in place measures to prevent the commission of crimes by a subordinate or to punish such a subordinate once such crimes have been committed.

8900. para. 1887: Similarly, the Trial Chamber finds the fact that 'Savage' and his men were well armed does not raise a reasonable doubt vis-à-vis the Accused Kamara's ability to exercise effective control over him. Subordinates in any organisation engaged in active combat will be armed or have access to weapons. It remains in all cases for superiors to put in place measures to prevent a malcontent or unstable subordinate from using those weapons for his own purposes. Should a subordinate use the weaponry of the organisation to shore up his own power, it falls also to superiors to quell or at the very least attempt to quell such an initiative. The Trial Chamber is satisfied that as a senior commander of the AFRC, the Accused Kamara himself, or together with other senior commanders such as his immediate superior Denis Mingo, would have had the material ability to control 'Savage' and his subordinates.

iii. Actual or Imputed Knowledge - Responsibility of Accused Kamara under Article 6.3 - Kono District

8901. para. 1888: The Prosecution submits that the Accused Kamara either knew or, at least had reason to know, that the subordinates were about to or had committed the offences as the orders were given by him or in his presence. The Prosecution further submits the crimes committed by Savage in Tombodu was so notorious that the Accused must have known.[3223]

8902. para. 1889: The Trial Chamber finds it is not necessary to establish whether the crimes committed by 'Savage' and his battalion in Tombodu were "notorious" as there is clear evidence which establishes beyond a reasonable doubt that the Accused Kamara knew or ought to have known of the crimes. As examined above, there is evidence which establishes that Kamara was routinely apprised of the situation in Tombodu. He was himself repeatedly present in Tombodu and indirectly supervised the activities in Tombodu through patrols carried out by the SLA Operation Commander. He worked together with Denis Mingo to whom 'Savage' also reported. There is also evidence that the Accused Kamara was apprised specifically of the crimes committed by 'Savage' and his battalion. 'Savage' sent a message to Kamara prior to the commission of the

crimes indicating that the civilians in Tombodu were celebrating. Witness George Johnson testified that the Accused Kamara passed through Tombodu after the commission of the crimes and himself observed the bodies of the civilians killed.

iv. Failure to prevent or punish - Responsibility of Accused Kamara under Article 6.3 - Kono District

8903. para. 1890: The Prosecution submits that 'as the key commander in the field, the Second Accused clearly had the material ability to prevent offences or to punish those subordinates responsible for [3224] committing crimes.

8904. para. 189l: The Trial Chamber finds on the basis of the evidence examined above that the Accused Kamara had the ability to issue orders which were followed; that he took over authority for promoting SLA soldiers after Johnny Paul Koroma left Kono District; and that generally, that the SLAs maintained an effective day-to-day chain of command and regularly mustered, that therefore, as examined above, it was within the Accused's material ability to prevent crimes committed by his subordinates or to punish subordinates for committing crimes.

8905. para. 1892: The Trial Chamber finds further on the evidence the Accused Kamara did not attempt to prevent or punish the crimes committed by 'Savage" and his battalion in Tombodu.

v. Findings - Responsibility of Accused Kamara under Article 6.3 - Kono District

8906. para. 1893: The Trial Chamber finds that the Accused Kamara was in a position of superior responsibility and criminally responsible under article 6(3) of the Statute, for crimes committed by his subordinates in Kono District; namely, unlawful killings and physical violence, committed with the primary purpose to spread terror and to collectively punish civilians for allegedly failing to provide sufficient support to the AFRC/RUF.

c. Responsibility of Accused Kanu under Article 6.3 – Kono District

8907. See above: Chapter 12 – AFRC – Trial Judgment – Kono District - Kanu - Crimes committed – Kono District – para. 1997 [8027].

i. Pleadings – Responsibility of Accused Kanu under Article 6.3 – Kono District

8908. para. 2001: The Prosecution makes no submission in its Final Brief that the Accused Kanu bears superior responsibility for crimes committed in Kono District. The Prosecution case is that the Accused Kanu was shuttling between SAJ Musa in Koinadugu and the Accused Kamara in Kono in order to keep SAJ Musa informed of the developments on the ground in Kono.[3336]

8909. para. 2002: The Kanu Defence cites witness TF1-033 to demonstrate that Kanu was only one of the commanders present in Tombodu in 1998, the others being Hassan Papa Bangura, Franklyn Woyo Conteh alias 'Woyo', 'Savage', Ibrahim Bazzy Kamara, Ibrahim Sesay alias 'Biyoh', and Abdul Sesay.[3337] The Kanu Defence asserts that thus, the "evidence is insufficient in holding the Third Accused responsible for superior responsibility for the crime of collective punishment, as his mere presence as a commander, one of many, is mentioned".[3338]

ii. Findings - Responsibility of Accused Kanu under Article 6.3 - Kono District

8910. para. 2003: The Trial Chamber has already found that the evidence regarding the role of the Accused Kanu in Kono District is inconclusive.[3339] The evidence adduced is insufficient to establish that the Accused Kanu occupied a particular position in the: AFRC command structure established by the Accused Kamara or that he had any troops under his effective control.

8911. para. 2004: The Trial Chamber accordingly finds the Prosecution has not established that the Accused Kanu was in a superior-subordinate relationship with the perpetrators of the crimes committed in Kono District. In the absence of this first element of superior responsibility, it is unnecessary to consider whether the Accused Kanu had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators thereof.

8912. para. 2005: The Trial Chamber finds that the Prosecution has not established beyond reasonable doubt that the Accused Kanu is liable as a superior under Article 6(3) for crimes committed in Kono District.

(iv) Kailahun District

a. Responsibility of Accused Brima under Article 6.3 – Kailahun District

8913. See above: Chapter 12 – AFRC – Trial Judgment – Kailahun District - Brima - Crimes committed – Kailahun District – para. 1674 [8031].

i. Pleadings - Responsibility of Accused Brima under Article 6.3 – Kailahun District

8914. para. 1680: Neither the Prosecution nor the Brima Defence in their Final Briefs make specific submissions son the superior responsibility of the Accused Brima specifically in relation to Kailahun District. The Trial Chamber notes that Accused Brima submits as part of his alibi defence that he was under RUF arrest in Kailahun District throughout the relevant Indictment period and that as a detainee himself, he was not in a position of superior commander over the perpetrators of the alleged crimes in Kailahun.[291]

ii. Findings - Responsibility of Accused Brima under Article 6.3 - Kailahun District

8915. para. 1681: The Trial Chamber recalls its findings that the only proven perpetrators of crimes committed in Kailahun District during this period were members of the RUF and its finding that the AFRC faction and the RUF were not working together in Kailahun during this period.[2912]

8916. para. 1682: The Trial Chamber also recalls its finding that the Accused Brima was detained by the RUF in Kailahun District from February to late April/early May 1998, a much shorter period than he claimed to be under detention.[2913] During this period he was detained by the RUF and did not exercise any control over any troops in the District.

8917. para. 1683: The Trial Chamber further found that after his release from detention in Kailahun in early May 1998, the Accused Brima travelled to Kono District and then travelled to Koinadugu and Bombali Districts in June and July 1998.[2914]

8918. para. 1684: While the presence of a commander in the location in which crimes were committed is not necessary to prove effective control, the Trial Chamber finds that the Prosecution

has not proved beyond reasonable doubt that the Accused Brima was able to exercise effective control over the RUF in Kailahun District after February 1998.

8919. para. 1685: In the absence of this first element of superior responsibility, the Trial Chamber does not consider it necessary to consider whether there is any evidence that the Accused Brima had actual or imputed knowledge of the crimes committed and that he failed to prevent or punish the perpetrators. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima, for the crimes committed in Kailahun District.

b. Responsibilty of Accused Kamara under Article 6.3 – Kailahun District

8920. See above: Chapter 12 – AFRC – Trial Judgment – Kailahun District - Kamara - Crimes committed – Kailahun District – para. 1894 [8037].

i. Pleadings – Responsibility of Accused Kamara under Article 6.3 – Kailahun District

8921. para. 1898: The Prosecution in its Final Brief makes no submissions that the Accused Kamara bears superior responsibility for crimes committed in Kailahun District in the period after the Intervention in February 1998.

8922. para. 1899: The Kamara Defence submits that the Prosecution did not lead any evidence to show that the Accused Kamara was in Kailahun throughout the relevant period and that all the witnesses indicate that the entire Kailahun District was a RUF stronghold.

ii. Findings - Responsibility of Accused Brima under Article 6.3 - Kailahun District

8923. para. 1900: The Trial Chamber recalls its findings that the only proven perpetrators of crimes committed its finding that the AFRC and the RUF were not working together in Kailahun during this period. [3229]

8924. para. 1901: The Trial Chamber finds the evidence insufficient to establish that the Accused Kamara exercised effective control over members of the RUF in Kailahun District after February 1998.

8925. para. 1902: In the absence of this first element of superior responsibility, it is not necessary to consider whether there is any evidence that the Accused Kamara had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators.

8926. para. 1903: The Trial Chamber accordingly finds that the Prosecution has not proved beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed in Kailahun District. in Kailahun District during this period were members of the RUF. The Trial Chamber also recalls

c. Responsibility of Accused Kanu under Article 6.3 – Kailahun District

8927. See above: Chapter 12 – AFRC – Trial Judgment – Kailahun District - Kanu - Crimes committed – Kailahun District – para. 2006 [8041].

i. Pleadings – Responsibility of Accused Kanu under Article 6.3 – Kailahun District

8928. para. 2010: The Prosecution makes no submission in its Final Brief that the Accused Kanu has superior responsibility for crimes committed in Kailahun District in this period. The Kanu Defence does not make submissions specific to Kailahun District in its Final Brief arguments on the superior responsibility of the Accused Kanu.

ii. Findings - Responsibility of Accused Kanu under Article 6.3 - Kailahun District

8929. para. 2011. The Trial Chamber recalls its findings that the only proven perpetrators of crimes committed in Kailahun District during this period were members of the RUF. The Trial Chamber also recalls its finding that the AFRC and the RUF were not working together in Kailahun during this period.[3344]

8930. para. 2012: The Trial Chamber found that there is conflicting evidence regarding the activities of the Accused Kanu in the period February-May 1998, when he joined the group of SLA troops led by the Accused Brima in Mansofinia. The Trial Chamber is not satisfied on the evidence adduced that the Accused Kanu exercised effective control over any members of the RUF in Kailahun District after February 1998.

8931. para. 2013: In the absence of this first element of superior responsibility, it is not necessary to consider whether there is any evidence that the Accused Kanu had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators.

8932. para. 2014: The Trial Chamber accordingly finds that the Accused Kanu is not liable under Article 6(3) for crimes committed in Kailahun District.

(v) Koinadugu District

a. Responsibility of Accused Brima under Article 6.3 – Koinadugu District

8933. See above: Chapter 12 – AFRC – Trial Judgment – Koinadugu District - Brima - Crimes committed – Koinadugu District – para. 1686 [8045].

i. Pleadings – Responsibilty of Accused Brima under Article 6.3- Koinadugu District

8934. para. 1697: The Prosecution in its Final Brief submits that each of the three Accused bears superior responsibility for crimes committed in the attack on YifinlYiffin.[2932] As stated above, the Trial Chamber notes the Prosecution did not include the location of Yifin/Yiffin in the particulars under Counts 3 through 6, 8 through 11 or 14, and thus no findings have been made on evidence adduced in this regard. The Trial Chamber notes further that no evidence with respect to Yifin/Yiffin has been adduced under Counts 9, 12 or 13.

8935. para. 1698: The Brima Defence makes no submissions specific to Koinadugu District in relation to the superior responsibility of the Accused Brima.

ii. Findings - Responsibilty of Accused Brima under Article 6.3- Koinadugu District

8936. para. 1699: The Trial Chamber finds that the crimes committed in Koinadugu District were perpetrated by AFRC/RUF forces associated with groups led by SAJ Musa and ‘Superman’. While there is evidence that the Accused Brima was in sporadic contact with SAJ Musa between May and July 1998, the Prosecution has not submitted, nor is there evidence to the effect that, the Accused Brima exercised effective control over the troops of SAJ Musa or Superman. In the absence of proof of the existence of a superior-subordinate relationship between the Accused Brima and the perpetrators of the crimes in Koinadugu District, it is unnecessary to consider

whether there is any evidence that the Accused Brima had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima, for the crimes committed in Koinadugu District.

b. Responsibility of Accused Kamara under Article 6.3 - Koinadugu District

8937. See above: Chapter 12 – AFRC – Trial Judgment – Koinadugu District - Kamara - Crimes committed – Koinadugu District – para. 1904 [8056].

i. Pleadings – Responsibilty of Accused Kamara under Article 6.3 – Koinadugu District

8938. para. 1907: The Prosecution submits that the Accused Kamara has superior responsibility for all crimes committed in the attack on Yiffin.[3236]

ii. Findings - Responsibilty of Accused Brima under Article 6.3- Koinadugu District

8939. para. 1908: As stated above, Yiffin was not a location pleaded in the Indictment.

8940. para. 1909: The Trial Chamber has found that the crimes committed in Koinadugu District were perpetrated by AFRC/RUF forces associated with groups led by SAJ Musa and Denis Mingo.[3237] The Prosecution has not submitted, nor is there evidence to the effect that, the Accused Kamara exercised effective control over the troops of SAJ Musa or Denis Mingo. In the absence of a superior-subordinate relationship between the Accused Kamara and the perpetrators of the crimes in Koinadugu District, it is unnecessary to consider whether there is any evidence that the Accused Kamara had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators.

8941. para. 1910: The Trial Chamber accordingly finds that the Prosecution has not established beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed by AFRC/RUF troops in Koinadugu District.

c. Responsibilty of Accused Kanu under Article 6.3 – Koinadugu District

8942. See above: Chapter 12 – AFRC – Trial Judgment – Koinadugu District - Kanu - Crimes committed – Koinadugu District – para. 2015 [8060].

i. Pleadings - Responsibility of the Accused Kanu under Article 6.3 – Koinadugu District

8943. para. 2019: The Prosecution submits that the Accused Kanu has superior responsibility for all crimes committed in the attack on Yiffin.[3351]

8944. para. 2020: The Kanu Defence makes no submissions on the superior responsibility of the Accused Kanu specifically in relation to crimes committed in Koinadugu District.

ii. Findings – Responsibilty of the Accused Kanu under Article 6.3 – Koinadugu District

8945. para. 2021: The Trial Chamber notes that the Prosecution did not specify Yiffin as a location in the Indictment under Counts 3 through 6, 8 through Ill, and 14 and therefore, no findings have been made in this regard. No evidence has been adduced that the crimes committed under Counts 9, 12 or 13 in Koinadugu District are attributable to the Accused Kanu.[3352]

8946. para. 2022: The Trial Chamber has found that the crimes: under Counts 3 to 6, 8 to 11, and 14 committed in other locations in Koinadugu District were perpetrated by AFRC/RUF forces associated with groups led by SAJ Musa and 'Superman'. The evidence on the activities of the Accused Kanu between February and late April or early May 1998 is inconclusive.[3353] The Accused Kanu was then sent by SAJ Musa to accompany the Accused Brima's group from Mansofinia to Rosos.3354 The Prosecution has not submitted, nor is there evidence to the effect that, the Accused Kanu was in a command position in relation to the troops of SAJ Musa or Superman, either between February and late April or early May, or while he was with the Accused Brima's group thereafter.

8947. para. 2023: In the absence of the existence of a superior-subordinate relationship between the Accused Kanu and the perpetrators of the crimes in Koinadugu District, it is unnecessary to consider whether there is any evidence that the Accused Kanu had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators.

8948. para. 2024: The Trial Chamber accordingly finds that the Prosecution has not established beyond reasonable doubt that the Accused Kanu is liable as a superior under Article 6(3) for crimes committed by AFRC/RUF troops in Koinadugu District.

(vi) Bombali District

a. Responsibility of Accused Brima under Article 6.3 - Bombali District

8949. See above: Chapter 12 – AFRC – Trial Judgment – Bombali District - Brima - Crimes committed – Bombali District – para. 1700 [8064].

i. Pleadings – Responsibilty of Accused Brima under Article 6.3 – Bombali District

8950. para. 1721: The Prosecution in its Final Brief submits that the Accused Brima as a superior over the subordinate perpetrators, bears individual criminal responsibility for all crimes committed in Bombali District from 1 May 1998 until 30 November 1998.[2968]

8951. para. 1722: The Brima Defence in its Final Brief submitted that the Accused Brima was under arrest at Colonel Eddie Town and therefore not in a position to command the alleged perpetrators of the crimes [2969] The crimes in Bombali District were committed by AFRC/RUF troops prior to their arrival in Colonel Eddie Town in September 1998.

ii. Existence of a superior-subordinate relationship - Responsibilty of Accused Brima under Article 6.3- Bombali District

8952. para. 1723: The Trial Chamber has found that the Accused Brima was the overall commander of the AFRC forces that committed the crimes in Bombali District.[2970] It has been established that the AFRC in this period had a functioning chain of command, planning and orders process, and disciplinary system [2971] Structures were therefore in place to facilitate the effective control by the Accused Brima of his subordinates. The Trial Chamber will now examine the evidence pertaining to the troops' activities in this period to determine whether the command structure functioned and the Accused Brima was able to actually exercise effective control over the SLA troops on a day-today basis.

8953. para. 1724: There is ample unchallenged evidence that the Accused Brima's orders were obeyed. [2972] For example upon arrival at Rosos, the Accused Brima gave orders distributing the

companies out to various surrounding villages [2973] The Accused Brima ordered an advance troop to depart from Rosos to find a suitable new location for the camp.[2974] Upon this location being found at 'Colonel Eddie Town', Brima ordered the entire brigade to move there. [2975] In addition the Trial Chamber refers to its previous findings that the Accused Brima gave a number of orders to commit crimes which were obeyed by AFRC troops. [2976]

8954. para. 1725: The Trial Chamber is satisfied that the Accused Brima's exercise of effective control was not sporadic, but constant. His orders remained effective and applicable to incidents that occurred some time after their issuance. For example, at Kamagbengbe, prior to arrival at Rosos, a number of civilian abductees attempted to escape from the troops. They were recaptured and brought before the Accused Brima. He ordered one of the company commanders Lieutenant Tito to immediately execute them, on the basis of his prior order at Mansofinia that persons attempting to escape would be shot. Lieutenant Tito shot the civilians.[2977]

8955. para. 1726: Similarly, at Rosos, the Accused Brima warned the troops that disciplinary action would be taken against soldiers that brought captured civilians to camp.[2978] There is evidence of the subsequent implementation of this order by his subordinates in his absence. Witness TFl-334 testified that on one occasion, he and a number of other troops captured six civilians in a village and brought them to their commander, whose identity was revealed in closed session. The commander ordered their execution on the basis that this was what the Accused Brima had ordered.[2979]

8956. para. 1727: The Trial Chamber has observed that the Accused Brima habitually addressed the troops publicly, often using this as a forum to issue orders. One example of this is the speech made by the Accused Brima at Kamagbengbe, in the course of which he ordered the attack 0;1 Karina.[2980] Witness TFl-334 described a particular field at Rosos as 'the field where Gullit normally addressed the troops' [2981] Witness TFl-334 also testified that at the completion of the military training program for civilian abductees at Rosos, the trainees were addressed by 'Gullit' and 'Five-Five'. [2982] Thus, the Accused Brima clearly had a high public profile among the troops and was able to assemble and address them.

8957. para. 1728: On the basis of the foregoing evidence, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Brima was able to effectively control the AFRC troops under his command. The Trial Chamber accordingly finds that a superior-subordinate relationship existed between the Accused Brima and the perpetrators of crimes committed in Bombali District.

iii. Actual or Imputed Knowledge - Responsibilty of Accused Brima under Article 6.3- Bombali District

8958. para. 1729: The Prosecution submits that 'based on the fact that in most cases the orders to commit crimes were given to the subordinates directly by the Accused or at least in their presence, the Accused either knew or at the very least had reason to know that the subordinates were about to commit the offences or had done so, especially since on many occasions the Accused were personally present [...] while the crimes were being carried out. [2983]

8959. para. 1730: The Trial Chamber is satisfied that in many cases actual knowledge of the crimes committed by the Accused Brima's subordinates without his direct participation can be inferred from circumstantial evidence for three reasons.

8960. para. 1731: Firstly, the occurrence of the crimes was widespread and involved a typical modus operandi of attacks against civilians.[2984] The frequency and pattern of crimes, coupled with the evidence that the Accused Brima ordered attacks on civilians on several occasions,[2985] indicates that he had actual knowledge that crimes were about to occur whenever his troops went on operations.

8961. para. 1732: Secondly, actual knowledge can be inferred from the evidence that the troops systematically reported to their commanders, and often to the Accused Brima himself, at the conclusion of operations. [2986]

8962. para. 1733: Thirdly, the Accused Brima was at all times physically proximate to the locations in which crimes were committed. The Trial Chamber observes that the context in which the Accused Brima exercised effective control was different to that of overall commanders in traditional military armies, who are often removed from the front line of the conflict and may receive reports of incidents that have passed through several commanders up a vertical chain of command. Instead, the AFRC troops in Bombali District moved together to Rosos and upon arrival were all located in Rosos itself or satellite camps nearby. The Accused Brima was thus consistently on the ground with the troops, even if he did not accompany them on every operation.

8963. para. 1734: The Trial Chamber is also satisfied that the Accused Brima had reason to know of the crimes committed in Bombali District. The standard for proof of imputed knowledge is strict. Nonetheless, the Trial Chamber finds that there can be no reasonable doubt that the Accused Brima was in possession of information that put him on notice of the likelihood of illegal acts being committed by his subordinates. He directly participated in the commission of a number of

crimes.[2987] He witnessed the commission of crimes by his subordinates.[2988] He received reports of the commission of crimes.[2989]

8964. para. 1735: The Trial Chamber accordingly finds that the Accused Brima knew, or had reason to know, of the crimes committed by his subordinates in Bombali District in which he did not directly participate.

iv. Failure to Prevent or Punish - Responsibilty of Accused Brima under Article 6.3- Bombali District

8965. para. 1736: In its Final Trial Brief the Prosecution submits that as one of "the key commanders in the field", the Accused Brima had "necessary and reasonable measures" at his disposal to prevent or punish his subordinates but that he did not do so.[2990]

8966. para. 1737: The Brima Defence does not make any submissions on whether the Accused Brima attempted to prevent the commission of crimes or punish offending subordinates. Rather, the Brima Defence submits that this third limb of superior responsibility is only applicable where the first two limbs have been established. The Brima Defence argues that the Prosecution has failed to prove these first two elements and the case against the Accused Brima under Article 6(3) of the Statute must therefore be dismissed.[2991]

8967. para. 1738: Before turning to the available evidence, the Trial Chamber wishes to emphasise that any analysis of the type of preventative or punitive measures required on the part of the Accused Brima must recognise that the AFRC was not a traditional military organisation. It is not useful to inquire whether the Accused Brima adopted measures commonly cited in the jurisprudence, such as reporting the perpetrators to competent authorities or commencing formal investigations. [2992] Nonetheless, the fundamental question remains whether there were measures of any type reasonably open to the Accused Brima, taking into account the extent of his ability to control his subordinates, which he failed to take.

8968. para. 1739: The Trial Chamber found that the AFRC faction had a functioning disciplinary system in Bombali District.[2993] The Trial Chamber accepts that this system was not advanced in the sense of being properly codified and formally sanctioned by competent authorities. Nevertheless, the Trial Chamber finds that that this disciplinary system could have been employed by the Accused Brima. Instead, there is no evidence that the Accused Brima took measures to punish subordinates for the commission of crimes. To the contrary, witnesses testified that on occasion the Accused Brima commended offending subordinates [2994] The only evidence that

soldiers were punished for crimes refers to their punishment for the rape of other soldiers' wives. [2995] The Trial Chamber does not consider this sufficient, as the soldier in such cases was not being punished for committing the crime of rape, but for the fact that his victim 'belonged' to another perpetrator.

8969. para. 1740: Insofar as the prevention of offences is concerned, the Trial Chamber recalls that the nature of the measures that must be taken by commanders depends on the degree of their control over their subordinates as well as the severity and imminence of the crimes[2996] The Trial Chamber notes that it is likely that the Accused Brima had less control over his troops than a commander would have over highly disciplined troops in a regular army. It is possible that some of the Accused Brima's troops may have committed crimes even if they were not ordered to do so. This is similarly possible in a traditional military organisation. The law does not require proof that the Accused Brima could have prevented the commission of the crimes. The law requires that the Accused Brima took all steps reasonably open to him in an attempt to do so.

8970. para. 1741: The only evidence of the Accused Brima taking any steps to prevent the crimes committed is that he appointed a provost marshal who was in charge of ensuring that "jungle justice" was adhered to. "Jungle Justice included a "law" prohibiting rapes during operations[2997] and any fighter who raped another fighter's 'wife' would be put to death.[2998] The Trial Chamber finds that rules regarding which troops were entitled to rape civilians or rules that prohibited rape at specified times, do not demonstrate the Accused's attempt to prevent or punish these crimes. Rather they are indicative of the tolerance and institutionalised nature of the commission of the crimes within the AFRC forces.

8971. para. 1742: There is also evidence that the Provost Marshal was in charge of ensuring that "government property," meaning arms, ammunition and medical supplies belonging to the AFRC fighting forces, were not stolen. [2999] The Trial Chamber is of the opinion that this prohibition does not demonstrate the Accused's intention to prevent general looting of civilian property by the troops.

8972. para. 1743: The Trial Chamber accordingly finds that the Accused Brima failed to take necessary and reasonable measures to prevent the crimes committed in Bombali District or punish the perpetrators thereof.

v. Findings - Responsibilty of Accused Brima under Article 6.3- Bombali District

8973. para. 1744: On the basis of the foregoing, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that the Accused Brima as a superior, bears individual criminal responsibility under Article 6(3) for the crimes committed by his subordinates in Bombali District between 1 May 1998 and 30 November 1998 in which he did not directly participate.

b. Responsibility of Accused Kamara under Article 6.3 – Bombali District

8974. See above: Chapter 12 – AFRC – Trial Judgment – Bombali District - Kamara - Crimes committed – Bombali District – para. 1911 [8085].

i. Pleadings – Responsibility of Accused Kamara under Article 6.3 – Bombali District

8975. para. 1921: The Prosecution submits that the Accused Kamara bears superior responsibility for all crimes committed in Bombali District from 1 May 1998 until 30 November 1998 by virtue of the high level of authority possessed by him as second in command of the AFRC troops.[3250]

8976. para. 1922: The Kamara Defence submits that the evidence adduced does not prove that persons under the 'command, authority or direction' of the Accused Kamara participated in the crimes committed in Bombali District.[3251]

ii. Existence of a superior-subordinate relationship - Responsibility of Accused Kamara under Article 6.3 - Bombali District

8977. para. 1923: The Trial Chamber has found that the Accused Kamara was the deputy commander of the AFRC troops in Bombali District. [3252] Evidence of a de jure position of authority does not per se suffice to prove the existence of a superior-subordinate relationship, especially in the context of a non-traditional military organisation such as the AFRC troops.[3253] The Trial Chamber must therefore look at the available evidence to determine whether the Accused Kamara, as deputy commander, was able to exercise effective control over the AFRC troops in Bombali District.

8978. para. 1924: There is evidence that the Accused Kamara played a role at a senior level in military operations in Bombali District. Witness TF1-334 testified that the Accused Kamara was Deputy Brigade Commander[3254] and, at Karina, "[...] the commanders have been monitoring each and every soldier"[3255] The Accused Kamara was one of the senior AFRC commanders who was present at the meeting with SAJ Musa at Kurubonla at which the restructuring of the troops was discussed; however, no evidence was adduced as to his contribution[3256] Within the structure which was subsequently established by the Accused Brima, the Operations Commander and the Provost Marshal were required to report to the Accused Kamara. At Rosos, the Accused Kamara was based at 'headquarters', from where operations were planned and orders issued. Whilst there is no direct evidence on the Accused Kamara's precise involvement[3257] Witness TF1-334 testified that the Accused Kamara was one of the commanders who made decisions regarding the brigade;

> Q. Witness, I'm going to ask you to clarify. My question to you was what did you subsequently see the deputy chief in command do as second in command? Just focus on him specifically, please.
>
> A. He, the chief in command, the chief of staff and the senior military supervisors were responsible for taking decisions in the brigade.
>
> Q. How do you know that?
>
> A. I myself was present whenever they want to take a decision in my presence. I was there whenever they were deciding on anything before they can send it out. [3258]

8979. para. 1925: The Trial Chamber has found that the Accused Kamara issued an order to the troops in Karina which was obeyed.[3259] The Trial Chamber is satisfied on the evidence that the Accused Kamara participated in decision making. On the evidence the Trial Chamber is satisfied that the Accused Kamara exercised effective control over the AFRC troops and was aware that the troops under his control committed crimes in Bombali District.

8980. para. 1926: The Trial Chamber finds on the foregoing evidence that there was a formal command structure in the AFRC faction in Bombali District, that the Accused Kamara, in his capacity as Deputy Brigade Commander had and exercised effective control over the troops under his command.

8981. para. 1927: Accordingly the Trial Chamber finds on the evidence adduced that a superior-subordinate relationship existed between the Accused Kamara and the AFRC troops in Bombali District and that the Accused Kamara had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators.

8982. para. 1928: The Trial Chamber accordingly finds that the Prosecution established beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed in Bombali District.

c. Responsibility of Accused Kanu under Article 6.3 - Bombali District

8983. See above: Chapter 12 – AFRC – Trial Judgment – Bombali District - Kanu - Crimes committed – Bombali District – para. 2025 [8095].

i. Pleadings – Responsibility of Accused Kanu under Article 6.3 – Bombali District

8984. para. 2032: The Prosecution submits that the Accused Kanu bears superior responsibility for all crimes committed in Bombali District from 1 May 1998 until 30 November 1998 by virtue of the high level of authority he possessed as third in command.[3365] The Prosecution further submits that the Accused Kanu was in charge of training child soldiers and was in total control of women at the camp.[3366]

8985. para. 2033: The submissions of the Kanu Defence were: comparatively detailed and will be discussed further as they arise in the findings below. However, the Kanu Defence's position can be summarised as follows. First, it argues that the Prosecution evidence conflicts on whether the Accused Kanu was Chief of Staff or G5 and that he cannot have occupied both positions. The Kanu Defence further submits that neither position entails command authority, since the Prosecution has not established that the Accused Kanu ever functioned as an operational commander, which it defines as "a military leader in command and control of a fighting unit". [3367] The Kanu Defence then accepts that the Accused Kanu was responsible for civilians but argues that in this role he protected them and this does not equate to command responsibility for operations conducted by the SLAs.[3368]

ii. Existence of a superior-subordinate relationship - Responsibility of Accused Kanu under Article 6.3 - Bombali District

8986. para. 2034: The Trial Chamber found that the AFRC faction had a functioning chain of command, planning and orders process and disciplinary system in Bombali District.[3369] The Trial Chamber found that the Accused Kanu was Chief of Staff, commander in charge of civilians and commander in charge of military training.

8987. para. 2035: The Trial Chamber finds the evidence that the Accused Kanu was Chief of Staff does not of itself permit conclusions to be drawn as to his ability to control his subordinates. Prosecution Military Expert Colonel Iron testified that in traditional military organisations, the Chief of Staff is the person that heads the staff of the commander and is essentially responsible for implementing the commander's decisions.[3370] Colonel Iron stated that from the evidence that he was given, the Accused Kanu appeared to have performed the same function for the Accused Brima.[3371]

8988. para. 2036: The Trial Chamber does not find this conclusion particularly helpful, as this description of the Accused Kanu's role does not indicate whether he had effective control over any of the AFRC troops that committed crimes in Bombali District. However, there is other evidence which goes to prove that the Accused Kanu commanded troops on military operations, thus establishing the existence of a superior/subordinate relationship.

8989. para. 2037: Witness TFl-334 testified that while the troops were at Rosos, the Accused Kanu led an operation to Gbinti. [3372] The plan, formulated at Rosos, was to capture the town by pretending to surrender. The soldiers captured a civilian en route, who told them that ECOMOG soldiers were in the town. The Accused Kanu decided that the surrendering tactic would not work. He ordered that the men attack the town immediately, which they did. [3373] The ECOMOG forces withdrew and the Accused Kanu ordered that the town be looted and burned. Soldiers wrote, among other epithets, the words 'Five-Five in town' on the walls.[3374] After this operation, the soldiers returned to Rosos and reported to the Accused Brima.[3375]

8990. para. 2038: Witness George Johnson testified that the Accused Kanu was one of the commanders who led the troops into Karina when the town was burnt and its inhabitants killed.3376 According to the Witness, the Accused Kanu was a member of the headquarters group who "take care of all the operations, and all the orders come from the headquarters". The Witness also said that "headquarters was in charge of planning all operations and giving military orders". Witness TFl-334 confirmed that the Accused Kanu, as chid of staff, was present when the Accused Brima gave orders to attack and burn Karina, amputate the citizens, and capture strong men, as a demonstration "to shock the whole country."

8991. para. 2039: Witness TFl-158 gave evidence that the Accused Kanu was one of the leaders of the troops who attacked Bornoya, where looting took place and civilians were amputated and killed.

8992. para. 2040: The Trial Chamber is satisfied that this evidence proves beyond reasonable doubt that the Accused Kanu had effective control over his AFRC subordinates in Bombali District.

iii. Actual or Imputed Knowledge and Failure to Prevent or Punish - Responsibility of Accused Kanu under Article 6.3 - Bombali District

8993. para. 2041: The Trial Chamber is also satisfied on the evidence beyond reasonable doubt that in his role as leader of the attacks, the Accused Kanu knew or should have known of the crimes committed by his troops and that it was within his ability to have prevented such crimes or to have punished his subordinates for committing them, but that he failed to take the necessary and reasonable measures to do so.

8994. para. 2042: The Kanu Defence submits that the Accused Kanu's responsibilities with respect to civilians was 'protective'. [3380] The Trial Chamber rejects this submission. The factual findings demonstrate that the Accused Kanu presided over a system that institutionalised serious abuse of civilians. The characterisation of the Accused Kanu's function as 'protective' is incorrect and unacceptable.

8995. para. 2043: The Trial Chamber thus finds that the Prosecution has established beyond reasonable doubt that the Accused Kanu knew or ought to have known of the commission of crimes by his subordinates in Bombali District and failed to prevent or punish the perpetrators thereof.

iv. Findings – Responsibility of Accused Kanu under Article 6.3 - Bombali District

8996. para. 2044: The Trial Chamber finds that the Prosecution has established beyond reasonable doubt that the Accused Kanu is liable as a superior under Article 6(3) for crimes committed in Bombali District.

(vii) Freetown and Western Area

a. Responsibility of Accused Brima under Article 6.3 – Freetown and Western Area

8997. See above: Chapter 12 – AFRC – Trial Judgment – Freetown and Western Area - Brima - Crimes committed – Freetown and Western Area – para. 1745 [8102].

i. Pleadings - Responsibility of Accused Brima under Article 6.3 – Freetown and Western Area

8998. para. 1787: The Prosecution submits m its Final Brief that the Accused Brima has superior responsibility for all crimes committed by his subordinates in Freetown between 6 January 1999 until around 28 January 1999.[3065]

8999. para. 1788: The Brima Defence submits that the evidence of mutiny by junior soldiers at Colonel Eddie Town, which led to the arrest and 'long detention' of the three Accused, 'weakens any responsible chain of command and the existence of superior authority'. 3066 The Brima Defence further submits that there was no effective command or control over the fighters that attacked Freetown, citing in support of this argument the Prosecution Military Expert's conclusion that 'the AFRC faction had a strong command capability which failed on 6th January 1999' .[3067]

ii. Existence of a superior-subordinate relationship - Responsibility of Accused Brima under Article 6.3 - Freetown and Western Area

9000. para. 1789: The Trial Chamber has found that the Accused Brima was overall commander of the troops in Freetown.[3068] The Trial Chamber will now consider the evidence pertaining to the Accused Brima's control of the troops from the time he regained command throughout the attack on Freetown until the retreat of the troops to Benguema in February 1999 in order to ascertain whether a superior-subordinate relationship existed.

9001. para. 1790: At Allen Town on 5 January 1999, the Accused Brima ordered the invasion of Freetown and specified the locations to be captured, including State House. 'Gullit' announced that the troops were entitled to loot civilian property as he was unable to pay them. However, he also stated that diamonds and dollars were 'government' property and should be given to the Brigade. [3069] The Trial Chamber considers the limits placed by the Accused Brima on the permissible excesses of his troops indicative of his ability to control their behaviour.

9002. para. 1791: Witness TFl-334 described at length the movement of the troops towards State House on 6 January 1999. His evidence reveals a steady, organised advance pursuant to the orders of the Accused Brima who had specified the locations to be captured. The witness was part of the advance troop and he refers to a number of occasions where they captured new ground and then waited for the brigade senior command, including the Accused Brima, to arrive and tell them what to do next. [3070] At one point the witness stated that he and the other soldiers "will not do anything without the command of Gullit".[3071] The witness states that Gullit ordered the soldiers to set fire to vehicles and this was a deliberate tactic to create an obstacle to prevent ECOMOG armoured cars reaching the AFRC position.[3072] The witness refers to a number of other occasions prior to the troops' arrival at State House on which the Accused Brima gave orders which were obeyed.[3073]

9003. para. 1792: Witness George Johnson also describes a co-ordinated advance to State House. The troops advanced in battalions and his role as task force commander was to ensure that they moved the right way and maintained discipline. He reported throughout this time to the Accused Brima, who gave orders to the troops throughout the advance.[3074]

9004. para. 1793: The troops' acquiescence in the Accused Brima's assumption of command suggests that he was able to effectively control them, notwithstanding any lingering loyalties to SAJ Musa. The Trial Chamber therefore rejects the submission of the Brima Defence that the disruption to Brima's authority due to his arrest in Eddie Town prevented him from resuming the control necessary for a finding of superior responsibility.

9005. para. 1794: Upon capturing State House, the AFRC established its headquarters there. The Accused Brima was in command.[3075] Other senior commanders including the Accused Kamara and Kanu were also present there from time to time.[3076] On arrival at State House, Brima ordered the opening of Pademba Road prison.[3077] There is evidence of the Accused Brima giving other orders at this time which were obeyed.[3078]

9006. para. 1795: The movement of the troops throughout 6 January remained ordered and strategic. Witness George Johnson describes the deployment of the various battalions at different locations, which he marked on a map of Freetown.[3079] There is evidence of commanders reporting the progress of their troops to the Accused Brima.[3080] Witness Gibril Massaquoi testified that on the evening of 6 January he attended a meeting at State House to plan an attack on ECOMOG at Wilberforce. All 3 Accused were present and Gullit commanded the meeting.[3081]

9007. para. 1796: Mosquito announced over Radio France International on 6 January that that the troops commanded by the Accused Brima had captured Freetown and would continue to defend

Freetown.[3082] Later that same day, Brigade Administrator Colonel FAT Sesay, in the presence of all of the Accused, gave a message in the same terms over BBC Radio. [3083] Witnesses DBK-037 and DBK-OI2 also stated that FAT Sesay gave an interview to the BBC while in Freetown, although they did not testify as to its content. [3084]

9008. para. 1797: However, the presence of the AFRC headquarters at State House was the high point of the AFRC dominance during invasion. It appears from the evidence of Prosecution and Defence witnesses that in the days following 6 January, ECOMOG regained the upper hand and in the next two to three weeks the AFRC was dislodged from Freetown, the capital and was in continual retreat. The precise movement of the troops during the retreat was difficult to ascertain from the testimony of Prosecution and Defence witnesses. Witness George Johnson testified that approximately a week after 6 January, with ECOMOG advancing, the AFRC headquarters moved to Ferry Junction, near Shankardass.[3085] From Shankardass, they pulled out to Kissy Mental Home.[3086] Witness TF1-334 states that towards the third week the troops then retreated to Eastern Police. [3087] Witness George Johnson testified that after several days at Kissy the troops pulled out and retreated through Calaba Town and eventually to Benguema.[3088]

9009. para. 1798: Prosecution military expert Colonel Iron's report notes that the command structure began to break down in Freetown and the military chain of command failed after the capture of State House, since commanders gave orders to soldiers nearest them without using battalion structure. [3089]

9010. para. 1799: Colonel Iron further concludes that the fighting force retained cohesion in retreat although the battalion structure had completely broken down.[3090] He opines that the AFRC force "was still a capable fighting force. Commanders were still able to make sound decisions, and the command structure was effective enough to be able to conduct a relatively complex manoeuvre."[3091]

9011. para. 1800: The Trial Chamber examined the following evidence in light of the above expert opinion of Colonel Iron.

9012. para. 180l: Witness TF1-334 testified that he remained mostly with the brigade administration while in Freetown, but he states that 'the troops were all scattered, everybody was just about'.[3092] He stated that any time the commanders needed reinforcements to go on a battle, he and his supervisor needed to move around raising soldiers to go on the mission.[3093] This evidence was corroborated by witness TF1-184, who was ordered by 'Gullit' to find manpower to carry out a mission,[3094] and Gibril Massaquoi who reports 'Five-Five' issuing a similar order to

look for men.[3095] Witness George Johnson no longer described the movement of the troops in terms of battalions led by commanders, rather his testimony becomes a description of a series of isolated incidents that he witnessed as he moved around Freetown. He states that after the headquarters lost State House arms and ammunition were nearly finished and were no longer being distributed by the G4, but 'everybody had his or her own arms and ammunition,.[3096] Witness TF1-184 agreed with Colonel Iron's conclusion that the battalion structure was no longer operating. He stated that 'everyone was disorganised' and 'everybody was just doing what he want [sic]'. Commanders took the soldiers around them 'who they think they were able to control and were listening to them' and started amputations.[3097]

9013. para. 1802: Witness TF1-334 testified that Gullit told the troops at Kissy mental home 'Gentleman (sic), now the jungle has started'. [3098] Witness Gibril Massaquoi testified that after losing State House, looting and burning increased. He described an incident in which a female civilian complained to 'Five-Five' about her house being burned down, in response to which Five-Five arrested the soldier responsible. Five-Five stated that there had been no order to do this and that things were becoming 'very rampant,.[3099] Witness TF1-184 stated that the troops at Kissy with 'Gullit' and 'Bazzy' were losing ground because they were in 'a confused state' .[3100] 'Gullit' complained to the witness that 'Five-Five' had been acting contrary to his wishes.[3101] He testified that during the retreat from Kissy, the soldiers called on the civilian carrying their ammunition so that they could stage an attack, but he had thrown it away while running.[3102] Witness Gibril Massaquoi stated under cross-examination that by the time the troops left Freetown he did not believe that the commanders knew everything that was being done by their men.[3103]

9014. para. 1803: The Trial Chamber notes from the above evidence that the Accused Brima remained able to exercise command over the troops in his immediate surroundings. There is ample evidence of the Accused Brima giving orders to troops in Freetown which were obeyed.[3104] A number of these orders were issued by the Accused Brima in the presence of the Accused Kamara and Kanu.[3105] He was also able to refuse requests from his subordinates. Witness TFl-153 at one point approached 'Gullit' to ask him to release the priests and nuns held captive at PWD, but 'Gullit' refused.[3106]

9015. para. 1804: The Trial Chamber agrees with Col. Iron's opinion above that the AFRC fighting force "retained cohesion in retreat although the battalion structure had completely broken down" and that the AFRC force "was still a capable fighting force. Commanders were still able to make sound decisions, and the command structure was effective enough to be able to conduct a relatively complex manoeuvre".

9016. para. 1805: The foregoing evidence establishes a superior-subordinate relationship existed between the Accused Brima and the AFRC troops in Freetown after the troops lost State House. The Trial Chamber therefore finds that the Accused Brima was in a superior-subordinate relationship with the AFRC troops that committed crimes in Freetown even after the "Headquarters" were dislodged from State House.

iii. Actual or Imputed Knowledge - Responsibility of Accused Brima under Article 6.3 - Freetown and Western Area

9017. para. 1806: The Prosecution submits that 'based on the fact that in most cases the orders to commit crimes were given to the subordinates directly by the Accused or at least in their presence, the Accused either knew or at the very least had reason to know that the subordinates were about to commit the offences or had done so.[3107]

9018. para. 1807: The Trial Chamber is satisfied that the Accused Brima ought reasonably to have known of the commission of crimes committed in which he was not directly involved. He directly participated in the commission of a number of crimes.[3108] The crimes were committed on a wide scale in physical proximity to the Accused Brima at State House.

9019. para. 1808: The Trial Chamber therefore finds that there can be no reasonable doubt that the Accused Brima was in possession of information to put him on notice that crimes were being committed by his subordinates, although he may not have been directly involved in such crimes.

iv. Failure to prevent or punish - Responsibility of Accused Brima under Article 6.3 - Freetown and Western Area

9020. para. 1809: There is no evidence that the Accused Brima took any measures to prevent the troops under his control in Freetown from committing crimes against or punish the perpetrators of such crimes.

v. Findings - Responsibility of Accused Brima under Article 6.3 - Freetown and Western Area

9021. para. 1810: The Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that the Accused Brima is liable as a superior under Article: 6(3) for crimes committed in Freetown and the Western Area during the relevant Indictment period.

b. Responsibility of Accused Kamara under Article 6.3 – Freetown and Western Area

9022. See above: Chapter 12 – AFRC – Trial Judgment – Freetown and Western Area - Kamara - Crimes committed – Freetown and Western Area – para. 1929 [8144].

i. Pleadings – Responsibility of Accused Kamara under Article 6.3- Freetown and Western Area

9023. para. 1942: The Prosecution submits that the Accused Kamara bears superior responsibility for all crimes committed by his subordinates in Freetown between 6 January 1999 until around 28 January 1999.[3273]

9024. para. 1943: The Kamara Defence submits that there was an absence of effective command and control over the fighters that attacked Freetown on 6 January 1999.[3274]

ii. Existence of a superior-subordinate relationship - Responsibility of Accused Kamara under Article 6.3- Freetown and Western Area

9025. para. 1944: The Trial Chamber has found that the Accused Kamara was deputy commander of the AFRC troops during the invasion of Freetown and that a functioning chain of command and a planning and orders process was in place until the senior command moved from State House.[3275]

9026. para. 1945: The Trial Chamber notes that evidence was adduced on the activities of the Accused Kamara during the Freetown invasion. The Accused Kamara was present at the meeting chaired by Brima at Orugu Village on 5 January 1999 in which the invasion of Freetown was planned; however, no evidence was adduced as to Kamara's contribution. The Accused Kamara was present at headquarters at State House immediately after it was captured on 6 January 1999.[3276] There is also evidence that he attended a meeting of senior commanders when an attack on Wilberforce, where ECOMOG forces were based, was discussed; however, no evidence was adduced as to his contribution.[3277] After the capture of the State House, the Accused Brima ordered that Pademba Road Prison should be opened and the prisoners released. The Accused Kamara, together with troops from 1st, 4th and 5th battalion, went to the prison and the door was blasted open. The Accused Kamara ordered that the released prisoners should move to State House; however, while some prisoners followed this order, others did not do so.[3278] The Accused Kamara spoke with 'Mosquito' on the radio prior to the capture of State House.[3279]

9027. para. 1946: Given the limited resources of the AFRC, the Trial Chamber is satisfied that this evidence proves that the Accused Kamara exercised a degree of authority over the AFRC faction.

9028. para. 1947: The Accused Kamara was present at the State House when the Accused Brima announced to the battalion commanders and others, that they were likely to lose "the ground totally" and that the burning of Freetown should start.[3280] After the loss of State House, the Accused Kamara gave an order to AFRC troops to burn houses.[3281]

9029. para. 1948: The Trial Chamber finds the evidence adduced indicates the continual presence of the Accused Kamara during the invasion of Freetown up until State House was lost. He was often in the company of other senior commanders, including the Accused Brima and the Accused Kanu, and gave a number of orders himself, he participated in decision making and did not distance himself from decisions made. The Trial Chamber is satisfied that the Accused's had both a de jure position of authority during this period, and the de facto ability to effectively control the AFRC troops under his command in Freetown.

iii. Knowledge and failure to prevent or punish - Responsibility of Accused Kamara under Article 6.3- Freetown and Western Area

9030. para. 1949: The Accused Kamara had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators.

iv. Findings - Responsibility of Accused Kamara under Article 6.3- Freetown and Western Area

9031. para. 1950: The Trial Chamber finds that the Prosecution has established beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed in Freetown.

c. Responsibility of Accused Kanu under Article 6.3 – Freetown and Western Area

9032. See above: Chapter 12 – AFRC – Trial Judgment – Freetown and Western Area - Kanu - Crimes committed – Freetown and Western Area – para. 2045 [8157].

i. Pleadings – Responsibility of Accused Kanu under Article 6.3 – Freetown and Western Area

9033. para. 2065: The Prosecution submits that the Accused Kanu has superior responsibility for all crimes committed by his subordinates in Freetown from 6 January until about 28 January. The Prosecution argues that the Accused Kanu's actual or imputed knowledge of the crimes can be inferred from the fact that crimes were often ordered by him or in his presence and that as one of the key commanders in the field, the Accused Kanu had the material ability to prevent the commission of crimes or to punish the perpetrators.[3407]

9034. para. 2066: The Kanu Defence submits that the positions of Chief of Staff and commander in charge of civilians are not operational command positions and therefore do not entail superior responsibility.[3408]

ii. Existence of a superior-subordinate relationship - Responsibility of Accused Kanu under Article 6.3 - Freetown and Western Area

9035. para. 2067: The Trial Chamber has found that the Accused Kanu was Chief of Staff and the commander in charge of civilians throughout the attack on Freetown on 6 January 1999 until the retreat to Newton in the Western Area.[3409] The Trial Chamber has also found that the AFRC faction had a functioning chain of command and planning and orders process during the initial invasion of Freetown, but that this command structure failed when the troops lost control of State House.[3410]

9036. para. 2068: The Trial Chamber notes that Accused Kanu's functions as Chief of Staff in the Western Area involved responsibilities which did not require the exercise of command over troops. For example, Prosecution witness George Johnson testified that the Accused Kanu ran the meeting at Orugu Village at which the Accused Brima ordered the attack on Freetown.[3411] The Prosecution Military Expert Colonel Iron opined that it is customary in regular armies for the Chief of Staff to run meetings and for the commander to act as chair, only interjecting when necessary to stress particular points. He also testified that this was the regular practice in the AFRC.[3412]

9037. para. 2069: As with its findings in Bombali District, the Trial Chamber reiterates that it cannot be presumed that the Accused Kanu performed the same role as a Chief of Staff in a regular army. The Trial Chamber accepts the expert evidence of Colonel Iron in this specific regard since it is consistent with the testimony of witness George Johnson. However, as was also

demonstrated in Bombali District, there is other evidence upon which the Trial Chamber is satisfied that, in addition to assisting the commander in an administrative capacity, the position of Chief of Staff placed the Accused Kanu in a position of effective control over troops.

9038. para. 2070: The Trial Chamber has found that as Chief of Staff, the Accused Kanu was third in command in Freetown.[3413] The Trial Chamber further recalls its findings that the Operations Director, the Operations Commander, the Task Force Commander and the head of Military Police were all required to report to the Accused Kanu. These men were senior to the battalion commanders.[3414] Thus, although he did not have a particular unit of men under his command, the Trial Chamber rejects the Kanu Defence's submission that as Chief of Staff and commander in charge of civilians, the Accused Kanu was relegated to the role of a non-operational commander.

9039. para. 2071: The Accused Kanu's seniority is also evidenced by the fact that, like the Accused Kamara, he was based at the AFRC headquarters at State House.[3415] He attended the meeting of commanders held there on the evening of 6 January at which an attack on Wilberforce was discussed.[3416] In addition, the Accused Kanu made an announcement over the local radio on 6 January 1999 that the troops had captured Freetown, identifying himself as Chief of Staff.[3417]

9040. para. 2072: The Accused Kanu's de jure position, taken together with the following evidence of the Accused Kanu giving orders which were obeyed, establishes that as Chief of Staff he possessed the material ability to effectively control troops in Freetown until the loss of State House.

9041. para. 2073: During the advance towards Freetown, the Accused Kanu commanded a body of troops that went on an operation to attack Tumbo.[3418] While in Freetown, one morning prior to the loss of State House, the Accused Kanu ordered the military police to move the dead bodies that were piling up in the vicinity, as the area was beginning to smell.[3419]

9042. para. 2074: Witness Gibril Massaquoi testified that while the senior commanders were still at State House, he observed a soldier coming from the front line who encountered the Accused Kanu near State House. The soldier reported to the Accused Kanu on the current positions of the advancing ECOMOG troops. The witness overheard the Accused Kanu ordering some officers to find men to reinforce that particular area. The officers did so and the Accused Kanu ordered the assembled troops to 'put the war candle on', by which he meant to burn the houses. The Accused Kanu then ordered some kerosene to be brought from State House. This kerosene was distributed by the officers among the troops, who then began setting houses alight.[3420]

9043. para. 2075: Finally, the fact that the Accused Kanu ordered the commission of crimes in Freetown is evidence of his ability to control AFRC troops subordinate to him.

9044. para. 2076: The Trial Chamber therefore finds that a superior-subordinate relationship existed between the Accused Kanu and the AFRC troops in Freetown.

iii. Knowledge - Responsibility of Accused Kanu under Article 6.3 - Freetown and Western Area

9045. para. 2077: The Trial Chamber is satisfied that the Accused Kanu had reason to know of the commission of crimes committed before the loss of State House in which he was not directly involved. He directly participated in the commission of a number of crimes.[3421] The crimes were committed on a wide scale in physical proximity to the Accused Kanu at State House.

9046. para. 2078: The Trial Chamber therefore finds that there can be no reasonable doubt that the Accused Kanu was in possession of information to put him on notice that crimes were being committed by his subordinates before the loss of State House, although he was not directly involved in such crimes.

iv. Failure to prevent or punish - Responsibility of Accused Kanu under Article 6.3 - Freetown and Western Area

9047. para. 2079: There is no evidence that the Accused Kanu took any measures to prevent the troops under his control in Freetown from committing crimes against or punish the perpetrators of such crimes.

v. Findings - Responsibility of Accused Kanu under Article 6.3 - Freetown and Western Area

9048. para. 2080: The Trial Chamber finds that the Prosecution has established beyond reasonable doubt that the Accused Kanu is liable as a superior under Article 6(3) for crimes committed in the Western Area.

(viii) Port Loko District

a. Responsibility of Accused Brima under Article 6.3 – Port Loko District

9049. See above: Chapter 12 – AFRC – Trial Judgment – Port Loko District - Brima - Crimes committed – Port Loko District – para. 1811 [8177].

i. Pleadings – Responsibility of Accused Brima under Article 6.3 – Port Loko District

9050. para. 1815: The Indictment alleges that the Accused Brima, while holding a position of superior responsibility and exercising effective control over his subordinates, is individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute.[3113] The Trial Chamber finds that this is sufficient to charge the Accused Brima with liability under 6(3) for crimes committed in Port Loko District, although it is not specifically referred to in the Indictment as one of the Districts in which the Accused Brima held a command position.[3114] The Trial Chamber notes that the charge of superior responsibility is subsequently reiterated separately in relation to all Counts for which crimes are alleged in Port Loko District.[3115] In addition, the Prosecution in its Supplementary Pre-Trial Brief stated its case that the Accused Brima is liable under Article 6(3) for crimes committed by his subordinates in Port Loko.[3116] The Brima Defence were therefore put on notice at an early stage of the charge against the Accused.

9051. para. 1816: The Prosecution in its Final Brief makes no submissions as to the superior responsibility of the Accused Brima for crimes committed in Port Loko District after the retreat from Freetown in late January 1999.[3117]

9052. para. 1817: The Brima Defence submits that the alleged perpetrators of the crimes in Port Loko District were not under the control of the Accused Brima as he was at the material time not in Port Loko District.[3l18]

ii. Findings - Responsibility of Accused Kanu under Article 6.3 - Freetown and Western Area

9053. para. 1818: The Trial Chamber found that following the: second unsuccessful attack on Freetown staged jointly by AFRC/RUF commanders, the Accused Brima, accompanied by the Accused Kanu and a group of AFRC troops, went to Lunsar to assist Superman, who was fighting against Issa Sesay at the time. [3119] No evidence has been adduced on the organisation of the troops

accompanying the Accused Brima or whether this group fought alongside Superman or under his overall command. The Trial Chamber finds that the Prosecution has failed to establish that the Accused Brima had the effective control over the AFRC troops fighting in these areas.

9054. para. 1819: The Trial Chamber finds pursuant to Article: 6(3) of the Statute, that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima, for the crimes committed in Port Loko District during the relevant Indictment period.

b. Responsibility of Accused Kamara under Article 6.3 – Port Loko District

9055. See above: Chapter 12 – AFRC – Trial Judgment – Port Loko District - Kamara - Crimes committed – Port Loko District – paras. 1951-1952 [8181].

i. Pleadings - Responsibility of Accused Kamara under Article 6.3 – Port Loko District

9056. para. 1956: The Prosecution submits in its Final Brief that the Accused Kamara bears superior responsibility for crimes committed by the AFRC troops in Port Loko District between January and April 1999 by virtue of his position as their commander. [3289]

9057. para. 1957: The Kamara Defence makes no submissions on the superior responsibility of the Accused specific to Port Loko District. The Kamara Defence relied on the testimony of four Defence witnesses to assert that the Accused Kamara was not commander in the West Side.

ii. Existence of a superior-subordinate relationship - Responsibility of Accused Kamara under Article 6.3 - Port Loko District

9058. para. 1958: The Trial Chamber has found that the Accused Kamara was the overall commander of AFRC troops in the area known as the 'West Side' in Port Loko District. [3290] The Trial Chamber has further found that the AFRC faction in Port Loko District had a chain of command and a planning and orders process. [3291]

9059. para. 1959: The Trial Chamber is satisfied, on the basis of the evidence, that the Accused Kamara had effective control over AFRC troops operating in the District. As examined above, Kamara was present in the District throughout the relevant period; established the command structure of the AFRC in the 'West Side'; gave orders to captains and troops which were carried out; appointed and promoted commanders; enforced discipline within the ranks and was in a

position of de jure authority to other high level commanders including the Operations Commander[3292] who reported to him.

9060. para. 1960: The Trial Chamber is satisfied on the basis of the consistent evidence of both Prosecution and Defence Witnesses, including the evidence of George Johnson himself, that George Johnson held a position of command and exercised active authority during the relevant period. However, evidence which suggests the presence and authority of other commanders in the District during the relevant period, does not, in and of itself, create a reasonable doubt of the ability of the Accused Kamara to exercise effective control over subordinates.

9061. para. 1961: The Trial Chamber recalls its findings that unlawful killings were committed in Nonkoba, Tendekum and Manaarma.[3293] The Trial Chamber is satisfied on the basis of the following evidence that only the unlawful killings in Maararma are attributable to AFRC troops under the command of the Accused Kamara.

9062. para. 1962: The Trial Chamber will now consider the available evidence on the role of Kamara in relation to the attack on Port Loko and Manaarma in order to determine whether the Accused Kamara was in effective control of Junior Lion and the troops underneath him.

9063. para. 1963: Witness George Johnson testified that some time prior to 27 April 1999, a meeting of commanders was held, attended by himself, the Accused Kamara, the Operations Director, Tito and the battalion commanders. At this meeting the commanders planned an attack on Port Loko to capture arms and ammunition from the Malians. Witness TFl-334 also testified that witness George Johnson was the commander that led the operation to Port Loko. He testified that 'Bazzy' ordered Junior Lion to lead the attack and also ordered that troops were to burn down any village and kill civilians en route.

9064. para. 1964: Witness George Johnson testified that after he led the operation on Port Loko which included the attacks on Manaarma, he established communication with 'Bazzy' who sent 'Tito' with some civilians to collect the arms and ammunition. On his return to camp, he reported to the Accused Kamara and informed him of the alleged conduct of Cyborg. However, the witness stated that Kamara was so happy about the success of the operation that he neglected to take any action. Rather, the Accused Kamara sent a 'signal message' to Sam Bockarie in Kailahun recommending the witness for promotion. Bockarie endorsed the recommendation and the witness became a colonel. Witness George Johnson testified that subsequent operations to obtain arms and ammunition were planned by him and carried out at Newton, Mile 38 and Gberi Junction before the signing of the peace process. He does not refer to Manaarma in his evidence.

9065. para. 1965: Both witnesses TFl-334 and George Johnson testified that after the attack, 'Bazzy' contacted Mosquito to inform him of its success and the capture of the Malian soldiers. The Trial Chamber notes that witness Gibril Massaquoi testified that Bazzy sent a message to Gullit regarding the attack on Port Loko. Neither witnesses George Johnson nor TFl-334 mention this.

iii. Actual or Imputed Knowledge - Responsibility of Accused Kamara under Article 6.3 - Port Loko District

9066. para. 1966: Prosecution Witness George Johnson testified that en route to Port Loko, he sent an advance troop to secure a village ahead. Upon arrival there, he observed a number of dead civilians and 'Sheriff complained to him that 'Cyborg' had amputated and killed civilians in the villages. The Trial Chamber has found that this village was Manaanna.

9067. para. 1967: George Johnson further testified that on his return to camp after the successful operation to Port Loko, he reported to the Accused Kamara, informing him of the conduct of 'Cyborg'. The Trial Chamber is accordingly satisfied that the Accused Kamara had actual knowledge of the commission of crimes in Manaanna by his subordinates.

iv. Failure to prevent or punish - Responsibility of Accused Kamara under Article 6.3 - Port Loko District

9068. para. 1968: George Johnson stated that the Accused Kamara did not take any disciplinary action in response to his report regarding the killings in Manaanna. Rather, the Accused Kamara radioed Sam Bockarie in Kailahun and recommended that the witness be promoted to Colonel, and Bockarie subsequently endorsed this promotion. George Johnson testified that the Accused Kamara did not take any action. Trial Chamber is satisfied that the Accused Kamara failed to punish his subordinates for committing unlawful killings in Port Loko District.

v. Findings - Responsibility of Accused Kamara under Article 6.3 - Port Loko District

9069. para. 1969: The Trial Chamber finds that it has been established beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed in Manaanna in Port Loko District.

c. Responsibility of Accused Kanu under Article 6.3 - Port Loko District

9070. See above: Chapter 12 – AFRC – Trial Judgment – Port Loko District - Kanu - Crimes committed – Port Loko District – para. 2081 [8187].

i. Pleadings - Responsibility of Accused Kanu under Article 6.3 – Port Loko District

9071. para. 2085: The Prosecution makes no submission in its Final Brief that the Accused Kanu has superior responsibility for crimes committed in Port Loko District between January and April 1999.

9072. para. 2086: The Kanu Defence makes no submissions specific to the superior responsibility of the Accused Kanu in Port Loko District.

ii. Findings - Responsibility of Accused Kanu under Article 6.3 - Port Loko District

9073. para. 2087: The Trial Chamber has found that following the second unsuccessful attack on Freetown staged jointly by AFRC/RUF commanders, the Accused Kanu accompanied the Accused Brima to Lunsar to assist Superman, who was fighting against Issa Sesay at the time. No reliable evidence has been adduced on the organisation of the AFRC troops associated with the Accused Kanu in this period or whether this group fought alongside Superman or under his overall command. It has not been established beyond reasonable doubt that the Accused Kanu had troops under his effective control during this period.

9074. para. 2088: The Trial Chamber finds that the Prosecution has not established beyond reasonable doubt that the Accused Kanu is liable as a superior under Article 6(3) for crimes committed in Port Loko District.

(ix) Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers

a. Responsibility of Accused Brima under Article 6.3 - Crimes of Enslavement, Sexual Slavery and Child Soldiers

9075. See above: Chapter 12 – AFRC – Trial Judgment – Brima - Crimes committed – Crimes of Enslavement, Sexual Slavery and Child Soldiers – paras. 1820 – 1834 [8191].

i. Count 9, Count 12 and Count 13 – Responsibility of Accused Brima under Article 6.3

9076. para. 1838: As the Trial Chamber has already found the: Accused Brima criminally responsible for the planning of the enslavement crimes, it is not necessary to examine his responsibility under Article 6(3).

b. Responsibility of Accused Kamara under Article 6.3 - Crimes of Enslavement, Sexual Slavery and Child Soldiers

9077. See above: Chapter 12 – AFRC – Trial Judgment – Kamara - Crimes committed – Crimes of Enslavement, Sexual Slavery and Child Soldiers – para. 1970 [8208].

i. Kono District – Responsibility of Accused Kamara under Article 6.3 – Crimes of Enslavement, Sexual Slavery and Child Soldiers

9078. para. 1973: The Trial Chamber has found that in Kono District an unknown number of civilians were abducted and used as forced labour; civilians were subjected to sexual slavery; and children under the age of 15 were conscripted into armed groups or used to participate in active hostilities. The Trial Chamber recalls its finding that the Accused Kamara had effective control over the AFRC forces in Kono District led by known SLA commanders 'Savage', SLA Operation Commander and witness TF1-334 while Brima was in detention in Kailahun. The Trial Chamber must therefore determine whether the enslavement crimes proven in Kono District are attributable to AFRC forces under the command of the Accused Kamara.

9079. para. 1974: The Trial Chamber has found, on the evidence of witness TFl-334, that from early March 1998, the Operations Commander and other soldiers went to villages in Kono District and captured civilians who were then used as forced labour or subjected to sexual slavery. Children were also captured who were conscripted into the AFRC force. While the Trial Chamber is satisfied that the Operations Commander was under the effective control of the Accused Kamara after the departure of Johnny Paul Koroma from Kono District. The evidence adduced does not establish beyond reasonable doubt whether these crimes were committed prior to the departure of Johnny Paul Koroma or subsequently when the Accused Kamara had effective command over the AFRC commanders who were among the perpetrators.

9080. para. 1975: The Trial Chamber has found that Witnesses DAB-098, TF1-072 and TFl-216, along with an unknown number of other civilians, were captured in approximately March 1998 in

Kono District and enslaved in Tombodu. The Trial Chamber is satisfied, from the testimony of these witnesses, that the perpetrators of these crimes were led by AFRC commanders 'Savage' and 'Staff Alhaji', who were under the effective control of the Accused Kamara. 1976. The Trial Chamber accordingly finds the Accused Kamara liable as a superior under Article 6(3) for the crime of enslavement in Kono District.

ii. Port Loko District – Responsibility of Accused Kamara under Article 6.3 - Crimes of Enslavement, Sexual Slavery and Child Soldiers

9081. para. 1977: The Trial Chamber has made no findings on Counts 12 and 13. The Trial Chamber notes the evidence of witnesses TFl-282 and TF1-085 who were subjected to sexual slavery in Port Loko District.[3307] However, the evidence adduced does establish beyond reasonable doubt that the perpetrators of these crimes were troops under the command of the Accused Kamara.

3. Appellate Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-A, Judgement, 22 February 2008

(a) Findings and Conclusions:

(i) Brima - Superior Responsibility for Crimes Committed in Bombali, Freetown and Other Parts of the Western Area

9082. para. 225: Brima's Fourth and Sixth Grounds of Appeal, respectively, read as follows:

> (i) "The Trial Chamber erred in fact and/or law by finding the Accused Brima was responsible under Article 6(3) for the crimes committed by his subordinates in Bombali District between 1 May 1998 and 30 November 1998 in which he did not directly participate resulting in a miscarriage of justice."
>
> (ii) There is an "error in law and/or fact due to the Trial Chamber's finding that the Accused Brima is liable as a superior under Article 6(3) for crimes committed in Freetown and other parts of the Western Area during the relevant indictment period thereby occasioning a miscarriage of justice. The Trial Chamber erroneously relied on the evidence of the prosecution witnesses TF1-334, TF1-167, TF1-184 and the prosecution Military expert witness at the expense of several Defence Alibi witnesses and the Defence military expert."

9083. para. 226: Both Grounds complain that the Trial Chamber erred in law and/or fact in finding that the Appellant Brima is liable as a superior under Article 6(3) for crimes committed by

his subordinates in Bombali District (Ground Four) and in Freetown and other parts of the Western Area (Ground Six) during the period covered in the Indictment. Both Grounds of Appeal are grossly defective because they do not give particulars of the errors alleged.

9084. para. 227: In failing to state particulars in his Grounds of Appeal, Brima's submissions are unacceptable, diffused and wide-ranging, complaining of the evaluation of evidence of witnesses by the Trial Chamber and what could be regarded as a profuse, but unnecessary, statement of general principles of law relating to superior responsibility, at the end of which the Appellant Brima did not pinpoint in respect of which finding and in which particular regard the Trial Chamber had erred in fact and or in law.

9085. para. 228: Most of the submissions in respect of Ground Six were mere assertions of fact which properly ought to have been made before the Trial Chamber.

9086. para. 229: The Appeals Chamber in perusing the Judgment of the Trial Chamber finds that the Trial Chamber had made appropriate legal and factual findings upon which it based its conclusion that Brima was responsible as a superior under Article 6(3). We are of the opinion that nothing useful has been urged in this Appeal to make us come to the conclusion that the Trial Chamber was in error.

9087. para. 230: For these reasons Grounds Four and Six of Brima's Grounds of Appeal must fail.

(ii) Kamara - Superior Responsibility

a. Pleadings – Kamara – Superior Responsibility

9088. para. 252: In Kamara's Seventh Ground of Appeal he submits that the "Trial Chamber erred in law and or fact in paragraphs 1884, 1893 (Kono), 1928 (Bombali), 1950 (Western Area), 1969 (Port Loko) and 2117 of the Judgment in finding Kamara criminally responsible/guilty under Article 6(3) for crimes committed by his subordinates at Tombodu, Kono District and throughout Bombali District and the Western Area and Port Loko District pursuant to Counts 1, 2, 3, 4, 5, 6, 9, 10, 12, 13 and 14 of the Indictment thereby leading to a miscarriage of justice."

9089. para. 255: Under his Seventh Ground of Appeal, Kamara submits:

> (i) That he did not have effective control or the ability to control the actions of Savage and consequently could not be liable for crimes committed by Savage in Kono District;

(ii) That he did not have effective control over AFRC troops in Kono District;

(iii) That the Trial Chamber erred in its interpretation of witness TF1-334's evidence;

(iv) That the Trial Chamber erred in fact in finding him criminally responsible as a superior for crimes committed in Bombali District on the basis of evidence demonstrating that he "ordered" crimes and "participated in decision making";

(v) That the Trial Chamber erred in finding him responsible as a superior for crimes committed by AFRC troops in Freetown on the basis of evidence indicating that he was present at meetings and at headquarters at State House immediately following its capture on 6 January 1999.

9090. para. 256: The Prosecution responds that Kamara failed to demonstrate that the Trial Chamber erred in finding him criminally responsible as a superior for crimes committed by AFRC troops in Kono District, Bombali District, Port Loko District and Freetown and other parts of the Western Area. It argues that Kamara's responsibility is not precluded by evidence that Savage had an uncontrollable character. Further the Prosecution argues that Kamara cannot avoid responsibility by relying on evidence that other superiors concurrently exercised effective control over AFRC troops in Kono District. The Prosecution further submits that the Trial Chamber's interpretation of witness TF1-334's testimony regarding muster parades in Kono District was correct and reasonable and argues that even if the evidence was in fact misinterpreted, Kamara has failed to demonstrate how this occasioned a miscarriage of justice in relation to his Article 6(3) responsibility. The Prosecution maintains that there is no material inconsistency in the evidence of witnesses TF1-167 and TF1-334 concerning the burning of five young girls inside a house in Karina and the events in Freetown. In respect of the incident involving the death of five young girls in Karina, the Prosecution concedes that there are "variations in the details of how the crime was committed;" but notes that there is no dispute concerning what it calls the "essential features" of the evidence.

b. Discussion – Kamara – Superior Responsibility

9091. para. 257: In addition to military commanders, superior responsibility under Article 6(3) of the Statute encompasses political leaders and other civilian superiors in positions of authority. A superior is one who possesses the power or authority to either prevent a subordinate's crimes or punish the subordinate after the crime has been committed. The power or authority may arise from a de jure or a de facto command relationship. Whether it is de jure or de facto, the superior-subordinate relationship must be one of effective control, however short or temporary in nature.

Effective control refers to the material ability to prevent or punish criminal conduct. The test of effective control is the same for both military and civilian superiors.

9092. para. 258: Kamara submits that a finding of superior responsibility requires proof of both command and control which he claims are inseparable. The Appeals Chamber rejects this assertion. The terms "command" and "control" are two related but distinct concepts. The term "command" refers to powers that attach to a military superior, while the term "control," which has a wider meaning encompasses both military and civilian superiors.

i. Kamara's Responsibility for Crimes Committed by Savage - Kamara – Superior Responsibility

9093. para. 259: Kamara contends that the Trial Chamber erred in finding him liable as a superior for crimes committed by Savage in Kono District. According to Kamara, he did not have the material ability to control the acts of Savage because Savage was unruly in character. The Trial Chamber noted that there was evidence that Savage was very difficult to control and that he was unpredictable. The Trial Chamber was satisfied that Savage's unpredictable character was not a bar to finding that Kamara had effective control over him. The Appeals Chamber finds no reason to disturb the Trial Chamber's finding that Kamara is liable as a superior for crimes committed by Savage in Kono District.

ii. Kamara's Effective Control in Kono District and the Testimony of Witness TF1-334 on AFRC Muster Parades in Kono District - Kamara – Superior Responsibility

9094. para. 260: With respect to Kamara's responsibility for the crimes committed by AFRC troops in Kono, the Trial Chamber found that after the departure of Johnny Paul Koroma from Kono District, the AFRC was subordinate to the RUF and that Kamara became the highest ranking AFRC soldier in the District. It also found that AFRC and RUF troops worked closely together in Kono District and that commanders from each faction supervised mixed battalions of AFRC and RUF troops. It held that despite the AFRC's subordination to the RUF, including Kamara's subordination to the RUF's Denis Mingo, Kamara still had effective control over some mixed battalions of AFRC and RUF troops.

9095. para. 261: In reaching this conclusion, the Trial Chamber relied on the evidence of witness TF1-334 who testified that Kamara, although subordinate to Denis Mingo, was the most senior commander of the AFRC in Kono District and that AFRC combatants "operated under their i.e.

Mingo's and Kamara's command and were answerable to the AFRC commanders." The Trial Chamber also noted the evidence of George Johnson that Denis Mingo appointed and promoted some members of the RUF and this was endorsed by Kamara, and that Kamara exercised authority over promotions within the AFRC troops in Kono District. According to witness TF1-334, although Kamara was subordinate to Denis Mingo and received orders from him, AFRC troops operated under Kamara's command and were answerable to him. Witness TF1-334 corroborated George Johnson's testimony that Kamara made appointments, gave promotions and issued orders which were carried out by AFRC troops.

9096. para. 262: Subordination of the AFRC to the RUF and substantial cooperation between the AFRC and RUF may have diminished the distinction between the two command structures. Nonetheless, the Appeals Chamber considers that concurrent command does not vitiate the individual responsibility of any of the commanders. In its evaluation of concurrent command in Kono District, the Trial Chamber concluded that Denis Mingo's command in Kono District over joint units of the AFRC/RUF force did not preclude a finding of superior responsibility on the part of Kamara. The Trial Chamber noted Denis Mingo's position of authority over Kamara, but also noted that Kamara continued to issue orders to AFRC subordinates which were followed, and remained the most senior AFRC commander in Kono until Brima's arrival in mid-May 1998. The Appeals Chamber finds no error in the Trial Chamber's approach, and therefore affirms the Trial Chamber's finding that Kamara exercised effective control in Kono District.

9097. para. 263: Kamara argues that the Trial Chamber erred in its interpretation of witness TF1-334's evidence regarding muster parades in Kono. He contends that witness TF1-334 only testified as to "how often a muster [parade] generally occurs in a military context" rather than to how often the AFRC held muster parades in Kono District as held by the Trial Chamber. The relevant excerpts are the following:

> "Prosecution: You use the word muster, M-U-S-T-E-R; what do you mean by muster?
>
> Witness TF1-334: This is a military term that is to bring together the various forces and address them. That is what we call mustered.
>
> Prosecution: How often does a muster generally occur in a military context?
>
> Witness TF1-334: Well, this was a weekly address. Every week the two groups were addressed.
>
> Prosecution: Now go on. You were talking about Morris Kallon saying something about the SLAs and that they should not muster?

> Witness TF1-334: And again he said the SLA should – had no right to call themselves SLA in Kono, and neither AFRC, because he only knew of one faction and that is the RUF faction. So this brought confusion between the RUF and the SLA."

9098. para. 264: In paragraph 1869 of its Judgment, the Trial Chamber summarized the testimony, stating:

> "Witness TF1-334 also testified that the AFRC troops held muster parades every week in Kono, until they were prohibited from doing so by Morris Kallon (RUF) . . . The witness explained that 'mustering' is a military term that refers to the force being brought together and addressed publicly. This procedure is indicative of an organised force that is responsive to superior command."

9099. para. 265: Having considered the relevant excepts, the Appeals Chamber holds that the Trial Chamber did not err in its interpretation of the evidence of witness TF1-334. The evidence remains that the AFRC held regular muster parades in Kono and that this fact demonstrates a degree of command and control from which effective control could reasonably be inferred.

iii. Kamara's Effective Control in Bombali District - Kamara – Superior Responsibility

9100. para. 266: Kamara contends that evidence demonstrating he "ordered" crimes and "participated in decision making" in Bombali District is insufficient to establish his criminal responsibility as a superior. Kamara acknowledges that he had powers to issue orders but stated that he did not have powers to discipline AFRC troops. The powers of a superior to issue orders and make binding decisions are indicative of his ability to exercise effective control. Contrary to Kamara's contention, the Trial Chamber did not establish his effective control merely on the basis of evidence that he ordered crimes. Rather, it considered evidence that Kamara, inter alia, issued orders to troops in Karina which were obeyed, participated at a senior level in military operations in Bombali District and received reports from both the operations commander and the provost marshal. Accordingly, the Appeals Chamber endorses the Trial Chamber's approach in establishing Kamara's effective control in Bombali District.

iv. Conflicting Testimony of Witness TF1-334 and Witness TF1-167 - Kamara – Superior Responsibility

9101. para. 267: Kamara submits that the Trial Chamber failed to reconcile the conflicting testimony of witness TF1-334 and witness TF1-167 concerning the burning of five young girls inside a house in Karina in Bombali District. He argues that in failing to provide a reasoned

opinion explaining its evaluation of the conflicting evidence, the Trial Chamber failed to establish that it was proved beyond reasonable doubt that he is liable as a superior under Article 6(3) of the Statute. Kamara had advanced similar arguments in respect of the testimony of witnesses TF1-167 and TF1-334 concerning an order that prisoners released from Pademba Road Prison should move to State House and that AFRC troops should burn houses and parastatals in Freetown.

9102. para. 268: 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. The Appeals Chamber notes that the Trial Chamber has set out in its Judgment the standard of review for the evaluation of witness testimony.

v. Kamara's Responsibility as a Superior for Crimes in Freetown - Kamara – Superior Responsibility

9103. para. 269: The Appeals Chamber now turns to Kamara's final contention that the Trial Chamber erred in finding him responsible as a superior for crimes committed by AFRC troops in Freetown on the basis of evidence indicating that he was present at meetings and at headquarters at State House immediately following its capture on 6 January 1999. Kamara asserts that such evidence does not form the basis upon which his liability as a superior could be assessed. The Appeals Chamber considers that Kamara misconstrues the Trial Chamber's findings. The Trial Chamber noted evidence that Kamara was present at meetings, but drew no inferences or conclusions from the evidence as the Prosecution did not lead evidence about Kamara's contributions at those meetings. The Appeals Chamber finds this conclusion to be reasonable.

9104. para. 270: Contrary to Kamara's assertion, his presence at State House did not form the sole basis for the Trial Chamber's finding of effective control. In addition to his presence, the Trial Chamber based its finding that he exercised effective control over AFRC forces on the fact that Kamara was often in the company of senior commanders; that he participated in decision making; that he did not distance himself from decisions that were made and that he gave orders that were obeyed. Kamara has not demonstrated any error or unreasonableness in the Trial Chamber's findings.

9105. para. 271: For the above reasons, the Appeals Chamber holds that Ground Seven of Kamara's Appeal is untenable.

(iii) Kanu - Effective Control for Superior Responsibility

a. Pleadings – Kanu – Effective Control for Superior Responsibility

9106. para. 286: The Fifth and Sixth Grounds of Kanu's Appeal both invoke errors relating to the Trial Chamber's findings that he bears superior responsibility under Article 6(3) of the Statute. Kanu advances identical legal arguments in support of these Grounds. Consequently, the Appeals Chamber will consider them together.

9107. para. 287: Kanu submits that the Trial Chamber adopted a flawed approach in assessing whether he had effective control over AFRC troops in Bombali District (Fifth Ground of Appeal) and Freetown and other parts of the Western Area (Sixth Ground of Appeal). Specifically, Kanu submits that the Trial Chamber adopted a "two-pronged" approach to determining effective control which sought first, to establish whether the AFRC leadership collectively had effective control and second, to establish whether Kanu individually had effective control over AFRC troops. Kanu contends that the approach is "legally flawed" because it imputes criminal responsibility to him on the basis of collective responsibility rather than on the basis of individual criminal responsibility.

9108. para. 288: In response, the Prosecution submits that Kanu had the material ability to prevent or punish the AFRC troops under his command and gave several examples in which Kanu exercised that authority. The Prosecution contends that Kanu's arguments are "without merit" and maintains that the Trial Chamber did not commit an error of fact or law that either resulted in a miscarriage of justice or invalidated the Trial Judgment.

i. Discussion - Kanu – Effective Control for Superior Responsibility

9109. para. 289: The Appeals Chamber recalls that the existence of a superior-subordinate relationship is paramount to the determination of superior responsibility. Critical to the finding of a superior-subordinate relationship is that the commander exercised "effective control" over his subordinates. Effective control refers to the material ability of a superior, whether military or civilian, de jure or de facto, to prevent or punish his subordinates' crimes. "Substantial influence" or "persuasive ability" which falls short of effective control is insufficient for a finding of superior responsibility. A finding that a superior exercised effective control is a question of fact to be determined on a case-by-case basis.

9110. para. 290: The Appeals Chamber rejects Kanu's submission that the Trial Chamber adopted a two-pronged approach to determining effective control which sought first whether the AFRC leadership collectively had effective control to establish whether Kanu individually had effective control over AFRC troops. The Appeals Chamber considers that Kanu's assertion is premised on an incorrect interpretation of the Trial Chamber's findings. The Appeals Chamber is of the opinion that the Trial Chamber properly examined the AFRC structure in order to determine whether it created an enabling atmosphere for the exercise of effective control.

9111. para. 291: As to the issue of effective control in respect of superior responsibility the Appeals Chamber reiterates its conclusion it arrived at on the similar Ground of Appeal by the Appellant Kamara.

9112. para. 292: Kanu's Fifth and Sixth Grounds of Appeal therefore fail.

D. CDF

1. Indictment

The Prosecutor v. Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa, SCSL-03-14-I, Indictment, 4 February 2004

(a) General Allegations

9113. At all times relevant to this Indictment, a state of armed conflict existed in Sierra Leone. For the purposes of this Indictment the organized armed factions involved in this conf1ict included the Civil Defence Forces (CDF) fighting against the combined forces of the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC).[463]

9114. 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.[464]

9115. The CDF was an organized armed force comprising various tribally-based traditional hunters. The Kamajors were comprised mainly of persons from the Mende tribe resident in the South and East of Sierra Leone, and were the predominant group within the CDF. Other groups playing a less dominant role were the Gbethis and the Kapras, both comprising mainly of Temnes

[463] CDF Indictment, para. 4.
[464] CDF Indictment, para. 5.

from the north; the Tamaboros, comprising mainly of Korankos also from the north; and the Donsos, comprising mainly of Konos from the east.[465]

9116. The RUF was founded about 1988 or 1989 in Libya and began organized armed operations in Sierra Leone in or about March 1991. The AFRC was founded by members of the Armed Forces of Sierra Leone who seized power from the elected government of Sierra Leone via a coup d'etat on 25 May 1997. Soldiers of the Sierra Leone Army comprised the majority of the AFRC membership. Shortly after the AFRC seized power, the RUF joined with the AFRC.[466]

9117. The ACCUSED and all members of the CDF 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.[467]

9118. All offences charged herein were committed within the territory of Sierra Leone after 30 November 1996.[468]

9119. All acts or 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.[469]

9120. The words civilian or civilian population used in this indictment refer to persons who took no active part in the hostilities, or were no longer taking an active part in the hostilities.[470]

(b) Individual Criminal Responsibility

9121. Paragraphs 4 through 11 are incorporated by reference.[471]

9122. At all times relevant to this Indictment, SAMUEL HINGA NORMAN was the National Coordinator of the CDF. As such he was the principal force in establishing, organizing, supporting, providing logistical support, and promoting the CDF. He was also the Leader and Commander of the Kamajors and as such had de jure and de facto command and control over the activities and operations of the Kamajors.[472]

[465] CDF Indictment, para. 6.
[466] CDF Indictment, para. 7.
[467] CDF Indictment, para. 8.
[468] CDF Indictment, para. 9.
[469] CDF Indictment, para. 10.
[470] CDF Indictment, para. 11.
[471] CDF Indictment, para. 12.
[472] CDF Indictment, para. 13.

9123. At all times relevant to this Indictment, MOININA FOFANA was the National Director of War of the CDF and ALLIEU KONDEWA was the High Priest of the CDF. As such, together with SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA were seen and known as the top leaders of the CDF. MOININA FOFANA and ALLIEU KONDEWA took directions from and were directly answerable to SAMUEL HINGA NORMAN. They took part in policy, planning and operational decisions of the CDF.[473]

9124. MOININA FOFANA acted as leader of the CDF in the absence of SAMUEL HINGA NORMAN and was regarded as the second in command. As National Director of War, he had direct responsibility for implementing policy and strategy for prosecuting the war. He liaised with field commanders, supervised and monitored operations. He gave orders to and received reports about operations from subordinate commanders, and he provided them with logistics including supply of arms and ammunition. In addition to the duties listed above at the national CDF level, MOININA FOFANA commanded one battalion of Kamajors.[474]

9125. ALLIEU KONDEWA, as High Priest had supervision and control over all initiators within the CDF and was responsible for all initiations within the CDF, including the initiation of children under the age of 15 years. Furthermore, he frequently led or directed operations and had direct command authority over units within the CDF responsible for carrying out special missions.[475]

9126. SAMUEL HINGA NORMAN, as National Coordinator of the CDF and Commander of the Kamajors knew and approved the recruiting, enlisting, conscription, initiation, and training of Kamajors, including children below the age of 15 years. SAMUEL HINGA NORMAN; MOININA FOFANA, as the National Director of War of the CDF; and ALLIEU KONDEWA, as the High Priest of the CDF, knew and approved the use of children to participate actively in hostilities.[476]

9127. In the positions referred to in the aforementioned paragraphs, SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA, individually or in concert, exercised authority, command and control over all subordinate members of the CDF.[477]

9128. In addition, or alternatively, pursuant to Article 6.3. of the Statute, SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA, while holding positions of superior

[473] CDF Indictment, para. 14.
[474] CDF Indictment, para. 15.
[475] CDF Indictment, para. 16.
[476] CDF Indictment, para. 17.
[477] CDF Indictment, para. 18.

responsibility and exercising command and 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.[478]

(c) Charges

1991. Paragraphs 4 through 21 are incorporated by reference.[479]

2. Trial Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-T, Judgement, 2 August 2007

(a) Findings and Conclusions

(i) Law on the Modes of Liability charged under Article 6.3.

9129. para. 232: The Chamber notes that the Prosecution, in addition or in the alternative, alleges that the Accused are responsible pursuant to Article 6(3) of the Statute for the crimes alleged in Counts 1 through 8 of the Indictment since these crimes were allegedly committed while the Accused were holding positions of superior responsibility and exercising command and control over their subordinates.[302]

9130. para. 233: The principle of superior responsibility is today anchored firmly in customary international law.[303] The Chamber endorses the views expressed by 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,[304] whether the crimes charged were committed in the context of an international or an internal armed conflict.[305] The Chamber further concurs with the finding of the Appeals Chamber of the Ad Hoc Tribunals that the principle of individual criminal responsibility of superiors is applicable, albeit not exactly in the same way, to both civilian and military superiors.[306]

9131. para. 234: 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

[478] CDF Indictment, para. 21.
[479] CDF Indictment, para. 24.

duty to punish criminal acts of his subordinates. [307] It is thus the failure to act when under a duty to do so which is the essence of this form of responsibility.[308] It is responsibility for an [omission309] where a superior may be held criminally responsible when he fails to take the necessary and reasonable measures to prevent the criminal act or punish the offender.[310]

9132. para. 235: The Chamber takes the view 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.[311]

a. Superior-Subordinate relationship – Law on the Modes of Liability charged under Article 6.3.

9133. para. 236: 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.[312] 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.[313]

9134. para. 237: 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.[314] Someone may also be judged 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 mayexist.[315]

9135. para. 238: In assessing the degree of control to be exercised by the superior over the subordinate, the Appeals Chambers of the Ad Hoc Tribunals have determined that the "effective control" test should be applied. According to this test, the superior must possess the "material ability to prevent or punish criminal conduct".[316] The indicators of effective control are more a matter of evidence than of substantive law.[317] The Chamber adopts the view that this is the appropriate test to apply in determining whether a superior-subordinate relationship exists. 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.[318]

Moreover, *de jure* power in and of itself is not conclusive of whether a superior-subordinate relationship exists, although it may be evidentially relevant to such a determination.[319] The Chamber is therefore of the view that the effective control test must be satisfied even if the Accused has de jure status as a superior.

9136. para. 239: 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.[320] The superior can also be found responsible for a crime committed by a subordinate two levels down in the chain of command.[321]

9137. para. 240: The Chamber further endorses the finding of the ICTY Appeals Chamber that an Accused could not be held liable under Article 6(3) of the Statute for crimes committed by a subordinate before the said Accused assumed command over that subordinate.[322] In order to "hold a commander liable for the acts of troops who operated under his command on a temporary basis it must be shown that *at the time* when the acts charged in the indictment were committed, these troops were under the effective control of that commander."[323]

9138. para. 241: A superior-subordinate relationship may be of a military or civilian character.[324] 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 and, therefore, may be established by the evidence to have been exercised in a different manner.[325] 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.

b. Knowledge – Law on the Modes of Liability charged under Article 6.3.

9139. para. 242: In order to hold a superior responsible under Article 6(3) of the Statue 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.[326]

9140. para. 243: The actual knowledge of the superior, i.e. that he knew that his subordinate was about to commit or had committed the crime, cannot be presumed and, in the absence of direct evidence, may be established by circumstantial evidence.[327] Various factors or indicia may be

considered by the Chamber when determining the actual knowledge of the superior. Such indicia would include: the number, 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.[328]

9141. para. 244: 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.[329] Such information need not be such that, by itself, it was sufficient to compel the conclusion of the existence of such crimes.[330] It need not, for example, 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".[331] 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,[332] and to justify further inquiry in order to ascertain whether indeed such crimes were committed or were about to be committed by his subordinates.[333]

9142. para. 245: The information in question must in fact be available to the superior, who may not be held liable for failing to acquire such information in the first place.[334] 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.[335]

c. Necessary and Reasonable Measures – Law on the Modes of Liability charged under Article 6.3.

9143. para. 246: 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. The question of whether a superior has failed to take such measures is connected to his possession of effective control. In other words, a superior will be liable if he failed to take measures that are within his material ability.[336] Hence, the question of whether the superior had the explicit legal capacity to do so is irrelevant if it is proven that he had the material ability to act.[337]

9144. para. 247: 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.[338] 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.[339] "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."[340]

9145. para. 248: 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 have 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 troops under the superior's command and the failure to insist before a superior authority that immediate action be taken.[341] 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.

9146. para. 249: The Chamber notes that a causal link between the superior's failure to prevent the subordinates' crimes and the occurrence of these crimes is not an element of the superior's responsibility; it is a question of fact rather than of law.[342] "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.[343]

9147. para. 250: 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.[344] The superior has the obligation to take active steps to ensure that the offender will be punished.[345] 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.[346]

d. Conviction under Article 6.1. and Article 6.3. of the Statute – Law on the Modes of Liability charged under Article 6.3.

9148. para. 251: The Chamber takes the view that where the Indictment charges the Accused with both Article 6(1) and Article 6(3) responsibility under the same count, and where the legal requirements pertaining to both of these heads of responsibility are met, a Trial Chamber may only enter a conviction on the basis of Article 6(1).[347]

(ii) President Kabbah's Role in the Conflict

9149. para. 705: As has been briefly mentioned in the introduction of this Judgement, persistent references and allusions were made by the Defence Team in the course of the proceedings that have preceded this Judgement, to President Kabbah and his alleged involvement in the conflict on the side of the CDF.

9150. para. 706: In this regard, and again as well mentioned in passing in the introduction of this Judgement, the Chamber recalls that the three Accused Persons all along in the course of these proceedings, raised a veiled Defence that all they did and stand charged for was as a result of their struggle to restore to power, President Kabbah's democratically elected government that had been ousted in a *coup d'Etat* by the Armed Forces Revolutionary Council (AFRC) on the 25th of May 1997.

9151. para. 707: In view of the fact that the exigencies of justice require that a defence whether directly or indirectly raised by an accused in a criminal matter needs to be examined, we will proceed to determine, whether the President's alleged role, viewed in the light of his political status and that of his government-in-exile, constitutes a legal defence that is available to the Accused Persons.

9152. para. 708: In the light of the evidence adduced We have no doubt in Our minds that President Kabbah occupied and played a central role in this conflict because it was his overthrown Government that was waiting in the wings to be restored after the bitter wrangling and struggle that preceded it and continued after the Kabbah Government was ousted.

9153. para. 709: In February/March 1997, the then Vice President, Albert Joe Demby, organised two meetings to address military dissatisfaction over rice distributions because while senior officers were receiving only one bag for every two officers. A plan to reduce the rice rations provoked discontent and unrest in the Army.[1536]

9154. para. 710: In a meeting between President Kabbah, the vice President Demby and the Army Officers, the late Accused Norman accused two army officials, Hassan Conteh and Col Marx Kanga of planning a coup; an accusation which they denied.[1537]

9155. para. 711: Peter Penfold the British High Commissioner to Sierra Leone, the American Ambassador John Hirsh and the UN Special Representative, Ambassador Berhanu Dinka, in a meeting with President Kabbah, warned him of a possible *coup* against his government. He told them that he had already heard about that coup and that he would be talking to the Military.[1538]

9156. para. 712: Meantime, late Norman, on April 1997, had seen President Kabbah and handed over to him the strategic keys, a bag with working parts of dangerous weapons for safe keeping.

9157. para. 713: Like the Ambassadors who preceded him, Norman told President Kabbah that there was an imminent plot to overthrow him but that the *coup d'Etat* may not be deadly or destructive without those parts of the weapons. On the 5th of May 1997, President Kabbah told Norman that he returned the contents of the bag to the Chief of Defence Staff and the Army Chief, late Brigadier Hassan Conteh and late Max Kanga. Norman then told President Kabbah that the *coup d'Etat* against his government could not be averted.

9158. para. 714: After the *coup d'Etat* of the 25th of May 1997, President Kabbah went into exile in Guinea. His government-in-exile was still recognised and from Conakry he encouraged late Norman and his Kamajor collaborators like the Accused, Moinina Fofana and Allieu Kondewa and other CDF personnel who were engaged in this struggle to restore him to power.

9159. para. 715: He bought a satellite phone for Norman's use to report to him regularly on the progress of the war. He continued to provide logistics support to the Kamajors and their leaders. Samuel Hinga Norman, Moinina Fofana and Allieu Kondewa who were involved in the delegation from Bonthe, went to Freetown to see President Kabbah amongst others to complain about lootings and killings by Kamajors. The President sent 100 bags of rice to the Kamajors in Bonthe Town.[1539]

9160. para. 716: In view of the international recognition accorded to his Government, President Kabbah made it possible for the Economic Community of West African States through ECOMOG to provide military assistance to the CDF to enable it attain the objective of restoring his ousted Government to power. Indeed ECOMOG fought alongside the CDF Kamajor forces against the combined forces of the RUF and of the AFRC as the war raged inside the country for control of areas occupied by enemy forces.

9161. para. 717: It is also on record that Lady Patricia Kabbah gave the sum of $10,000US to Hon. Meme Momoh Pujoh to be conveyed to late Norman for use as part of logistical support to the fighters particularly the amphibious Kassilla battalion in Bonthe. She said that she was very proud of them. She even promised them that she was communicating by a letter and that she would give further offers.[1540]

9162. para. 718: The President's wife, Lady Patricia Kabbah was particularly very concerned about that part of Sierra Leone she came from and she was always asking about Bonthe, about Borhoi, her birth Village.[1541]

9163. para. 719: Defence Witness, Osman Vandi, testified that a meeting which President Kabbah held in Bo, he thanked the Kamajors for dislodging the junta and restoring him as President and that he promised the Kamajors more rice which he later did.[1542]

9164. para. 720: In a second meeting held in Bo and at which prominent dignitaries were in attendance, President Kabbah told the Kamajors he would return and give them all medals. He left two sample medals at the Hall.[1543]

(iii) Towns of Tongo Field

9165. para. 721: The Chamber outlines below, the facts as found in Sections V.2.2 and V.2.3.2 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa:

(i) Base Zero existed as the headquarters for the CDF High Command from about 15 September 1997 to 10 March 1998. Norman, as the National Coordinator, Fofana, as the National Director of War, and Kondewa, as the High Priest, were the key and essential components of the leadership structure of the organisation. They were the executives of the CDF actually taking the decisions, while nobody else could take a decision in their absence. They were the leaders of the CDF and all the Kamajors looked up to them.

(ii) Base Zero was a central storage and distribution site for all of the CDF's logistics. Commanders came to Base Zero from every group and location in the country to take instructions from the High Command or Norman and to receive logistics. Reports were being delivered to Base Zero from the frontlines. Thousands of civilians and Kamajors travened to Base Zero for initiation and military training. Although the COF was a cohesive force under one central command, there were some fighters who acted on their own without the knowledge of central command. Commanders' authority to discipline their men on the ground was entirely their own.

(iii) Norman, Fofana, Kondewa, Mohamed Orinco Moosa, Joseph Koroma, Lamin Ngobeh, Albert J Nallo and die battalion commanders made strategic war decisions of determining when and where to go to war.

(iv) Fofana in his capacity as Director of War at Base Zero planned and executed the war strategies and received frontline reports from the commanders. In executing these functions he was largely assisted by Albert J Nallo and on occasion Fofana passed on his responsibilities to Nallo. These war strategies did not include the commission of criminal acts, such as killing of civilians or looting.

(v) Fofana selected commanders to go to battle and could, on occasion, issue direct orders to these commanders. For example, he issued the order to Joe Tamidey not to release captured vehicles and other items to any other person until they are registered with the CDF Headquarters. Fofana was responsible for the receipt and provision of ammunitions at Base Zero to the commanders upon the instruction of Norman.

(vi) Fofana was seen as having power and authority at Base Zero and was the overall boss of the commanders at Base Zero.

(vii) Kondewa in his capacity as High Priest was in charge of the initiations at Base Zero and was the head of all the CDF initiators in the country. The Kamajors believed in mystical powers of the initiators, especially Kondewa, and that the process of the initiation and immunisation would make them "bullet-proof'. The Kamajors looked up to Kondewa and admired the man with such powers. They believed that he was capable of transferring his powers to them to protect them. By virtue of these powers Kondewa had command over the Kamajors in the country. He never went to the war front himself, but whenever a Kamajor was going to war, Kondewa would give his advice and blessings, as well as the medicine which the Kamajors believed would protect them against bullets. No Kamajor would go to war without Kondewa's blessings.

(viii) Kondewa attended passing out parades at Base Zero, which signified that the Kamajors had passed their training and could present their skills. He, along with Norman and Mbogba, signed a training certificate, which each trainee received after the training.

(ix) On 16 November 1997 TF2-079 prepared a situation report on events occurring between 19 September and 13 November 1997 in Zone II Operational Frontline which included Lower Bambara and Dodo Chiefdoms. It requested arms and ammunitions and described attacks which had been launched in the area. It also narrated crimes which were committed by Kamajors in that area. The report was endorsed by Musa Junisa, the then Commander-in-chief of Zone II Operational Frontline and Mohamed Orinco Moosa, his deputy. TF2-079, Junisa and Moosa with 100 other Kamajors then travelled to Base Zero. At Base Zero they gave the report first to Fofana and then to Norman. Norman commended their efforts and told them that a good number of that group should return to the area with another senior commander to keep the area strong and only a few of

them should remain at Base Zero to await ammunitions. Seven people, including Moosa and TF2-079 stayed at Base Zero.

(x) At a passing out parade at Base Zero between 10 and 12 December 1997 Norman gave instructions for the Tongo and Black December operations. Norman said that the attack on T ongo would determine who wins the war. He also said that there was no place to keep captured prisoners like the juntas, let alone their collaborators. He directed the Kamajors that instead of wasting their bullets, to chop off the left hand of any captured junta as a signal to any group that would want to seize power through the barrels of the gun and not the ballot paper. He also told the fighters not to spare the houses of the juntas. After hearing Norman's instructions, Fofana addressed the Kamajors saying that any commander failing to perform accordingly and "losing your own ground", should kill himself and not come to report to Base Zero. Then all the fighters looked at Kondewa, admiring him as a man with a mystic power, and he gave the last comment saying that the time for the surrender of rebels had long been exhausted and that they did not need any surrendered rebels. He then gave his blessings.

(xi) A subsequent meeting was held by Norman at Base Zero, which was attended by, among others, Fofana, Kondewa, Mohamed Orinco Moosa and some commanders from the Tongo area, such as, Musa Junisa, TF2-079 and Vandi Songo. Norman repeated that whoever took Tongo would win the war and therefore it should be taken "at all costs". He ordered them not to spare anyone working with the juntas or mining for them. He also said that all collaborators should forfeit their properties and be killed. Everyone in the meeting contributed to the discussion, including Fofana and Kondewa. Norman then ordered Fofana to provide logistics for the operation.

a. Responsibility of Fofana – Towns of Tongo Field

9166. para. 733: The Chamber finds that the evidence adduced has not established beyond reasonable doubt that there was a superior-subordinate relationship, either *de jure* or *de facto*, between Fofana and all of the Kamajors, who committed other criminal acts in the towns of Tongo Field prior to, during, and after the second and third attacks on Tongo, which the Chamber found were committed during the time frame charged in the Indictment, so as to conclude that he could or did exercise effective control over those Kamajors.

9167. para. 734: Since an essential element of a superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to other criminal acts which the Chamber found were committed by Kamajors in the towns of Tongo Field during the time frame charged in the Indictment.

b. Responsibility of Kondewa – Towns of Tongo Field

9168. para. 745: The Chamber finds that the evidence adduced has not established beyond reasonable doubt that there was a superior-subordinate relationship, either *de jure* or *de facto*, between Kondewa and all of the Kamajors, who committed other criminal acts in the towns of Tongo Field prior to, during, and after the second and third attacks on Tongo, which the Chamber found were committed during the time frame charged in the Indictment, such as to conclude that he could or did exercise effective control over those Kamajors.

9169. para. 746: Since an essential element of a superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to other criminal acts which the Chamber found were committed by Kamajors in the towns of T ongo Field during the time frame charged in the Indictment.

(iv) Koribondo

9170. para. 756: In addition to the facts listed above in paragraph 721 (i) to (viii), the Chamber outlines below the facts as found in Sections V.2.2, V.2,4.2, V.2,4.3, V.2,4,4 and V.2,4.6 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa with respect to Koribondo:

(i) At a passing out parade at Base Zero in early January 1998 Norman gave orders to the Kamajors to launch an "all-out offensive" in all the areas occupied by the Juntas and laid-down military instructions on how to conduct this operation.

(ii) Fofana addressed the Kamajors at this parade, confirming Norman's order to attack various junta-held territories. During this speech Fofana told the fighters to attack the villages where the juntas were located and "to destroy the soldiers from where they were [...] settled". He also said that the failure to take Koribondo was a disgrace to the Kamajors and that this time he wanted them to go and capture Koribondo.

(iii) Kondewa gave his blessings and the medicines which would make the fighters fearless if they did not spoil the law. He also said that all of his powers had been transferred to them to protect them, so that no cutlass would strike them and that they should not be afraid.

(iv) A subsequent commanders' meeting for Koribondo was held by Norman at Base Zero on the same day as the passing out parade, which had in attendance, among others, Fofana, Kondewa, Lamin Ngobeh, Joe Tamidey, Bobor Tucker and other commanders. Norman chose Joe Tamidey to lead the attack on Koribondo. Norman ordered that Koribondo should be taken

"at all costs" because they had already spent a lot on Koribondo. Norman gave specific orders to the commanders to destroy or burn everything in Koribondo, except for a mosque, church, the Bani and the school. He also said that anyone left in town should be termed an enemy or a rebel since they had been forewarned and should be killed.

(v) At the same meeting Bobor Tucker's group was specifically ordered to reinforce the Bo-Koribondo Highway so that no one could come from Bo to help the juntas.

(vi) At the request of Joe Tamidey, Norman ordered Lumeh to provide Tamidey with ammunition, food and money. Bobor Tucker had reserve ammunitions from before that he used for the attack.

(vii) Norman met with NaIlo before the Koribondo and Bo attacks at Base Zero and gave him specific insttuctions for these two attacks, while Fofana was present. Norman told Nallo that the Kamajors had tried to capture Koribondo many times and that they had failed because the civilians had given their children to the juntas in marriage and thus they were all "spies and collaborators". Therefore, when he goes to Koribondo "anybody that was met there should be killed" and nothing should be left "not even a farm" or "a fowl". All houses were to be burnt, and he was given petrol for the job. Some specific names were mentioned. Shekou Gbao, the driver, should be killed and his compound be burnt because he was giving his vehicle to the juntas. The house of Mike Lamin's father was also to be burnt, because Mike Lamin was a RUF. Mr Biyo, a driver, should have his compound burnt as well. Although Joe Tamidey was appointed by Norman to lead the attack on Koribondo, he and the other commanders involved in that attack were all under Nallo's overall command.

(viii) Fofana as Director of War and one of the leaders at Base Zero was the superior of Nallo by virtue of Nallo's positions in the hierarchical structure of the organisation that existed at Base Zero. Nallo was the Deputy National Director of Operations and the Regional Director of Operations for the Southern Region, which included Districts of Bo, Moyamba, Pujehun and Bonthe. In his capacity as Deputy National Director of Operations, Nallo was responsible for transmitting general and specific insttuctions from Norman to the warfront commanders, for collecting reports he received from the frontline upon his visits and transmitting them to Fofana before presenting them to Norman, and bringing arms and ammunitions to the fighters.

(ix) As Regional Director of Operations Nallo was responsible for implementing commands he received from Base Zero with his commanders. In implementing those commands he did not distinguish between the lawful and unlawful orders and did not recognise that he had discretion to implement them or not.

(x) The local operational planning for the attack on Koribondo was done at Kpetewoma. Nallo was the intermediary between Norman at Base Zero and Joe Tamidey. During the first meeting local manpower was provided to assist the Kamajors. At the third meeting, Nallo supplied cartridges, bombs,

G3s and AK-47s to Joe Tamidey, which he had said were given by Norman for the attack on Koribondo. Thereafter plans were made, fighters were organized and the arms and ammunition were distributed to the various groups by Joe Tamidey. The following commanders were to lead the battle from three flanks: Bobor Tucker from the Bo-Koribondo Highway; Lahai George from the Sumbuya-Koribondo Highway; and Joe Tamidey from Blama. Joe Tamidey then informed Nallo for further report to Norman that the attack was planned for the 13th of February 1998.

(xi) The attack started from Jombohun and was commanded by Joe Tamidey, Bobor Tucker and Lamin Ngobeh. Although the commanders were operating with different groups, they were all under Nallo's command. Around 700 Kamajors that attacked Koribondo were predominantly, but not exclusively, from the Jaiama-Bongor Chiefdom. Others came from the Districts of Pujehun, Bonthe and Bo.

(xii) Four days after the capture of Bo, Joe Tamidey met with Fofana, Kondewa and Norman in Koribondo. He was taken to Bo where he was questioned by Fofana as to his reasons for not killing Shekou Gbao.

(xiii) At the end of March 1998, Norman addressed approximately 200 civilians and 400 Kamajors at the Court Barri in Koribondo. Norman scolded the Kamajors for not having done the work he had told them to do, in particular to destroy all the houses, except for three. On this visit Fofana and Kondewa accompanied Norman but they did not attend this meeting.

a. Responsibility of Fofana – Koribondo

9171. para. 772: The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable dloubt that Fofana is individually criminally responsible as a superior pursuant to Article 6(3) for any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment.

i. Superior-subordinate relationship – Responsibility of Fofana – Koribondo

9172. para. 773: We find that there was a superior-subordinate relationship between Fofana and Nallo and that Fofana had authority and control over Nallo's actions. By virtue of his *de jure* status as Director of War Fofana exercised this control over Nallo, who in the hierarchical structure of the CDF organisation was his subordinate as Deputy National Director of Operations and Director of Operations for the Southern Region. Fofana also had *de facto* control over Nallo. Fofana had the legal and material ability to issue orders to Nallo, both by reason of his leadership role at Base Zero, being part of the CDF High Command, and the authority he exercised in his position as Director of War.

9173. para. 774: Nallo regularlly brought frontline reports to Base Zero. These reports were brought to Fofana before being given to Norman. Further, Fofana and Nallo together planned and executed the war strategies. Fofana's authority at Base Zero was such that people would not approach him unless summoned by him. Finally, he acted as the overall boss of the commanders at Base Zero. The Chamber finds that Fofana had both the legal and material ability to prevent the commission of criminal acts by Nallo and other subordinates or to punish them for these acts.

9174. para. 775: Consonant with our earlier finding, Nallo in addition to being in charge of the commanders in the Southern Region in his capacity as Regional Director of Operations was also specifically assigned the responsibility for the Koribondo operation. Although Joe Tamidey was chosen by Norman to lead the attack on Koribondo, Nallo was the overall commander for this operation. We find that Nallo exercised command over Joe Tamidey, Bobor Tucker and Lahai George as well as the Kamajors under their immediate command.

9175. para. 776: The Chamber finds that the evidence of the local planning in Kpetewoma for the attack on Koribondo demonstrates not only the direct participation of Nallo in the preparation of this attack but also that his participation then ensured that the orders for the attack which the commanders received at Base Zero were implemented by the Kamajors on the ground. Prior to the attack Nallo acted as an intermediary between Base Zero (High Command) and Kpetewoma through bringing arms and ammunitions from Base Zero to Kpetewoma and bringing reports back to Base Zero from Kpetewoma and from Joe Tamidey. Despite the fact that there were 700 Kamajors involved in the attack and that not all of them came from Jaiama-Bongor Chiefdom, they were all placed under Nallo's command. Nallo knew how the attack would proceed and who would be involved in that attack.

ii. Knowledge – Responsibility of Fofana – Koribondo

9176. para. 777: Fofana knew that the attack on Koribondo would involve the commission of criminal acts by Nallo, Joe Tamidey, Bobor Tucker, Lamin Ngobeh and other commanders. He was present at the meetings at which the unlawful orders, namely, to take Koribondo "at all costs", kill everyone who was left in town for being "collaborators" and destroy or burn everything in Koribondo, except for a mosque, church, the Barri and the school, had been given to these Kamajor commanders by Norman. The Chamber further finds that the fact that Fofana met with Joe Tamidey together with Norman and Kondewa after the attack and questioned him as to his reasons for not killing Shekou Gbao, further shows that Fofana knew about the orders given by Norman to kill certain identified "collaborators" in Koribondo.

9177. para. 778: With respect to Count 7, the Chamber finds that it can reasonably be inferred from Norman's order that Fofana knew or had reasons to know that his subordinates were about to commit collective punishments in Koribondo.

9178. para. 779: With respect to Count 6, the Chamber finds that it is not the only reasonable inference that Fofana knew or had reasons to know that his subordinates would commit criminal acts in Koribondo with the primary purpose of spreading terror, as the commission of such acts was not explicitly included in Norman's order.

9179. para. 780: Similarly, while some of the criminal acts which were committed subsequently by the Kamajors in Koribondo might have been committed with the primary purpose of spreading terror, the Chamber finds the evidence adduced has not established beyond reasonable doubt that Fofana knew or had reasons to know that such acts had been committed by his subordinates subsequently.

9180. para. 781: The Chamber recognises that other criminal acts alleged in the Indictment, such as looting, were in fact committed in Koribondo. [1553] However, the Chamber finds that such acts were not included in Norman's order. Therefore, the Chamber finds that it has not been established beyond reasonable doubt that Fofana knew or had reasons to know that these other criminal acts would also be committed by the Kamajors in Koribondo.

iii. Failure to prevent / punish – Responsibility of Fofana – Koribondo

9181. para. 782: The Chamber finds that Fofana as a superior had a duty to take necessary and reasonable measures to prevent the commission of the criminal acts by his subordinates or to punish them. His duty to prevent arose from the moment he learnt that his subordinates received unlawful orders from Norman and were about to execute those orders. We find that Fofana's duty to prevent included both the obligation not to comply with the unlawful orders of Norman and the obligation to ensure that his subordinates did not obey those orders. We find, however, that he did nothing to prevent the commission of these criminal acts by his subordinates. As a result of this failure on his part the Kamajors under his effective control committed the criminal acts of killing, destruction and burning, which the Chamber found were committed by the Kamajors in Koribondo. Thus, he failed as a superior in the exercise of his duties to prevent the commission of these specific criminal acts by his subordinates. Under the sub-heading "Counts - Koribondo", the Chamber will examine only those particular criminal acts that were explicitly included in Norman's order.

9182. para. 783: Since the Chamber finds that Fofana failed his duty as a superior to prevent the commission of criminal acts by his subordinates, it is not necessary to examine whether Fofana also failed to punish those Kamajors for those same acts.

b. Counts – Koribondo – Responsibility of Fofana

9183. para. 784: The Chamber recognises that other criminal acts have been committed by Kamajors in Koribondo during the time frame relevant to the Indictment. In the Chamber's opinion, having regard to all the evidence adduced, these criminal acts were either not charged in the Indictment or fall outside the time frame of the Indictment or there is no indication that the accused were involved in the commission of these crimes through any of the modes of liability alleged in the Indictment. Therefore, the Chamber will not examine these criminal acts for the purposes of making legal findings on the responsibility of each Accused.

i. Count 2: Murder – Counts – Koribondo – Responsibility of Fofana

9184. para. 785: The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for the unlawful killing of an unknown number of civilians or captured enemy combatants, committed by his subordinates on or about January and February 1998, in locations in Bo District, including Koribondo.[1554]

9185. para. 786: As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 2, Murder:

(i) On 15 February 1998, the mutilation and killing at Koribondo junction of five Limba who had been accused of being collaborators.

(ii) On 15 February 1998, the mutilation and killing at Blama Road of two Limba civlians.

(iii) On 16 February 1998, the killing of eight people along the Blama Road: five men belonging to the junta and three soldier's wives.

(iv) On 16 February 1998, the killing and mutilation of Chief Kafala took place in the street opposite the hospital. Chief Kafala had been accused of collaboration; this killing took place in the presence of many people.

(v) After the capture of Koribondo, Lahai Bassie was arrested, beaten and accused of being a collaborator because his son was a soldier. He died of his wounds one week later.

9186. para. 787: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i) through (v) and concludes that all of the perpetrators were Kamajors under the effective control of Fofana. We find that individuals were intentionally killed; in the majority of cases they were specifically targeted because of the perpetrator's belief that they were "collaborators" or rebels. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 786(i)-(v) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 786, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that they were killed and, furthermore, that the perpetrator knew that the victims were not taking an active part in the hostilities.

9187. para. 788: In light of the findings set out above, the Chamber is satisfied that the general requirements of war crimes have been established with respect to each incident described in paragraph 786.

9188. para. 789: With respect to those incidents described in paragraph 786 (i)-(v), listed above, the Chamber is satisfied not only that the general requirements of war crimes have been established but also that the specific elements of murder have been established with respect to each incident.

ii. Count 4: Cruel Treatment – Counts – Koribondo – Responsibility of Fofana

9189. para. 790: The ProsecutIon alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians by his subordinates in Koribondo and surrounding areas. These crimes are alleged to have occurred between November 1997 and December 1999, through the following acts:

- screening for collaborators;
- unlawfully killing suspected collaborators, often in plain view of friends and relatives;
- illegal arrest and unlawful imprisonment of collaborators;
- the destruction of homes and other buildings;

- looting and threats to unlawfully kill, destroy or loot.[1555]

9190. para. 791: As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 4, Cruel Treatment:

(i) On 13 February 1998, TF2-032's nine-room house in Koribondo was set on fire by Kamajors. TF2-032 testified that he is still suffering from the loss: his children are scattered and, despite his advanced age, he currently sleeps in a kitchen.

(ii) Between 13 and 15 February 1998, after the capture of Koribondo, Kamajors went on a rampage and burned 25 houses. People felt helpless, discouraged, and feared for their lives.

9191. para. 792: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i)-(ii) and concludes that all of the perpetrators of these acts were Kamajors under the effective control of Fofana. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all of the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 791(i)-(ii) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to in paragraph 791, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that the acts described above occurred and, furthermore, that the perpetrators knew that they were not taking an active part in the hostilities.

9192. para. 793: In light of the findings set out above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of cruel treatment have been established with respect to the burning of TF2-032's house described in paragraph 791(i) and the burning of many houses, described in paragraph 791(ii).

iii. Count 7: Collective Punishments – Counts – Koribondo – Responsibility of Fofana

9193. para. 794: The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for committing the crimes alleged in Counts 1 through 5, including threats to kill, destroy and loot, to punish the civilian population for their support to, or failure to actively resist, the combined RUF/ AFRC forces.[1556]

9194. para. 795: The Chamber reiterates that only those acts for which the Accused have been found to bear criminal responsibility under another count of the Indictment may form the basis of criminal responsibility for acts of collective punishment. In this regard, the Chamber recalls that it has found that Fofana bears criminal responsibility as a superior under Counts 2 and 4 in Koribondo.

9195. para. 796: The Chamber finds that the evidence adduced proves beyond reasonable doubt that the acts described in paragraph 786 [Count 2] and in paragraph 791 [Count 4] were perpetrated with the specific intent to punish the civilian population in Koribondo and the surrounding areas.

9196. para. 797: The Chamber is therefore satisfied, in relation to those acts described in paragraph 786 [Count 2] and in paragraph 791 [Count 4]' that both the general requirements of war crimes and the specific elements of collective punishments have been proved beyond reasonable doubt with respect to each incident.

c. Conclusion – Responsibility of Fofana – Koribondo

9197. para. 798: On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Fofana is individually criminally responsible as a superior, pursuant to Article 6(3), for the crimes committed in Koribondo as found under Counts 2, 4 and 7 above.

d. Responsibility of Kondewa – Koribondo

9198. para. 805: The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Kondewa is criminally responsible as a superior pursuant to Article 6(3) for any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment.

i. Superior-subordinate relationship – Responsibility of Kondewa – Koribondo

9199. para. 806: We find that there is no evidence upon which to conclude beyond reasonable doubt that Kondewa had a superior-subordinate relationship with any of the Kamajors involved in the commission of criminal acts in Koribondo. Although he possessed command over all the Kamajors from every part of the country, this was, however, limited to the Kamajors' belief in mystical powers which Kondewa allegedly possessed. This evidence is inconclusive, however, to

establish beyond reasonable doubt that Kondewa had an effective control over the Kamajors, in a sense that he had the material ability to prevent or punish them for their criminal acts. The Chamber noted that Kondewa's *de jure* status as High Priest of the CDF gave him the authority over all the initiators in the country as well as put him in charge of the initiations. This authority did not give him the power to decide who should be deployed to go to the war front. He also never went to the war front himself. The evidence adduced, therefore, has not established beyond reasonable doubt that Kondewa had any superior-subordinate relationship with the Kamajors who operated in Koribondo during the attack.

9200. para. 807: Since an essential element of superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to any of the criminal acts which the Chamber found were committed by Kamajors in Koribondo during the time. frame charged in the Indictment.

e. Conclusion – Responsibility of Kondewa – Koribondo

9201. para. 808: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment.

(v) Bo District

9202. para. 809: In addition to the facts, listed in paragraphs 721 (i) to (viii) and 765 (i) to (iii), (viii) and (ix) above, the Chamber outlines below the facts as found in Sections Y.2.2, V.2.5.2 and V.2.5.3, V.2.5.6 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa:

(i) After a passing out parade at Base Zero in early January 1998 a subsequent commanders' meeting was held on the same day at the back of the field at Base Zero. At this meeting Norman ordered the Kamajor commanders James Kaillie, Joseph Lappia and TF2-017 to attack Kebi and Bo Towns. Norman gave specific orders to these commanders to kill enemy combatants and "collaborators", to burn down their houses and loot big shops, especially pharmacies. Fofana and Kondewa were both present at this meeting.

(ii) After the commanders' meeting Fofana provided arms, ammunitions and a vehicle to James Kaillie, Joseph Lappia and TF2-017.

(iii) In Dar-es-Salam TF2-017 presented a verbal situation report on the Kebi attack and handed over a captured soldier and two solar panels to Norman, in the presence of Fofana and Kondewa. Norman handed over the captured soldier to Kondewa who took him to Base Zero.

(iv) The order to attack Bo was reiterated by Norman to TF2-017 in Bumpeh, in the presence of the Director of War Fofana and the High Priest Kondewa. Kondewa renewed the initiation of certain Kamajors to prepare them for the attack.

(v) Norman met with Nallo before the Koribondo and Bo attacks at Base Zero and gave him specific instructions for these two attacks, while Fofana was present. Norman gave specific orders to Nallo to kill certain identified civilians in Bo who he labelled as "collaborators", loot and burn their houses, loot the Southern Pharmacy and bring the medicines to Norman. Specifically the name of MB Sesay was mentioned. Norman also ordered Nallo to kill the police officers.

(vi) The attack on Bo proceeded from four flanks. James Kaillie was the Battalion Commander and the commander of the group coming from the Tikonko road (Mattru). Joseph Lappia was his deputy. TF2-017 was part of this group with his 38 Kapras. Nallo, in his capacity as the Regional Director of Operations, was in charge of the commanders below him but could not exercise full or strict control over all of them because of their large numbers. In Bo operation specifically, he was regarded by TF2-017 as his "operational" or "division" commander.

(vii) In addition to the James Kaillie's group, there were at least three other groups of Kamajors who attacked Bo from Gerihun, Dambara and Moyamba-Bo Highway. At least 270 Kamajors participated in this attack. The tactical planning for the Bo' attack was done in Bumpeh, which was considered by Norman as a focal point for this attack. Nallo knew about the local planning in Bumpeh.

(viii) In April 1998, Norman, Fofana and Kondewa with other Kamajor leaders and initiators visited the New Police barracks in Bo Town. Norman complained that the Kamajor chiefs, in particular Fofana, had lied to him about the burnt down police barracks and policemen killed in Bo Town. Norman said that he felt deceived after having seen the barracks intact and the police at the parade.

(ix) Sometime after the attack on Bo in February 1998, a CDF office was set up in Bo. It was initially run by Alhaji Daramy Rogers, the Regional Coordinator for the Southern Region. Around June 1998, the position of Regional Coordinator was replaced by that of the District Administrator. Kosseh Hindowa occupied the latter position in Bo.

(x) After the dissolution of Base Zero, Fofana retained his position of Director of War. However, he was no longer responsible for the conduct of the war and the fighting forces. His duties included distribution of logistics to the various parts of the country. In mid-1999 he became the Director of the Peace Office in Bo.

a. Responsibility of Fofana – Bo District

9203. para. 816: The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Fofana is individually criminally responsible as a superior pursuant to Article 6(3) for any of the criminal acts which the Chamber found were committed in Bo District during the time frame charged in the Indictment.

i. Superior-subordinate relationship – Responsibility of Fofana – Bo District

9204. para. 817: The Chamber reiterates its finding above that there was a superior-subordinate relationship between Fofana and Nallo and that Fofana exercised effective control over Nallo, in a sense of having the material ability to prevent N allo' s criminal acts or punish him for these acts.[1557]

9205. para. 818: Nallo, in addition to being in charge of the commanders in the Southern Region in his capacity as Regional Director of Operations, was also specifically assigned the responsibility for the Bo operation. We find that he exercised command over the group of Kamajors led by James Kaillie, which included Joseph Lappia and TF2-017 as well as the Kamajors under their immediate command. Having received the specific instructions from Norman at Base Zero, in the presence of Fofana, Nallo ensured that his subordinates implemented those instructions. Indeed, as was found by the Chamber above, it was the group of Kamajors led by James Kaillie, who committed the criminal acts in Bo as specifically ordered by Norman. Thus, we find that the command and control exercised by Nallo over this group of Kamajors was effective.

9206. para. 819: However, there is no evidence from which the Chamber can conclude beyond reasonable doubt that Nallo did exercise the same degree of control over other Kamajor commanders and fighters who operated in Bo both during the attack and subsequently. By Nallo's own admission, he could not exercise full or strict control over all of the Kamajors in Southern Region due to their large numbers. Moreover, the evidence as to the local planning in Bumpeh for the attack in Bo is inconclusive as to the participation of Nallo in it. Hence, on the basis of this evidence it cannot be established beyond reasonable doubt that other Kamajors who participated in the Bo attack were also under the overall command of Nallo, as the group of James Kaillie. Finally, there is no evidence to conclude beyond reasonable doubt that these other Kamajors were present at the commanders' meeting at Base Zero in early January 1998.

9207. para. 820: The Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana had a superior-subordinate relationship with all the Kamajors who operated in Bo District and who committed criminal acts during the attack on Bo as well as subsequently as found by the Chamber above, except those Kamajors who are specifically mentioned above. Since the first element of a superior responsibility is not established, it is not necessary to examine the two remaining elements with respect to the criminal acts which the Chamber found were committed in Bo District by other Kamajors during the time frame charged in the Indictment.

ii. Knowledge – Responsibility of Fofana – Bo District

9208. para. 821: Fofana knew that the attack on Bo Town would involve the commission of criminal acts by Nallo, James Kaillie, Joseph Lappia and TF2-017. He was present at the meetings at which the unlawful orders, namely to kill "collaborators", burn their houses and loot, had been given to these Kamajor commanders by Norman. In Dar-es-Salam Norman in the presence of Fofana, received a situation report about the Kebi attack from TF2-0 17. The Chamber finds that the evidence of Fofana's presence at the third meeting held by Norman in Bo Town in April 1998, where Norman complained that Fofana lied to him about the killing of policemen and burning of their barracks in Bo Town because he could see them intact, further shows that Fofana knew about the orders given by Norman to kill policemen in Bo.

9209. para. 822: With respect to Count 7, the Chamber finds that it can reasonably be inferred from Norman's order that Fofana knew or had reasons to know that his subordinates were about to commit collective punishments in Bo Town.

9210. para. 823: With respect to Count 6, the Chamber finds that it is not the only reasonable inference that Fofana knew or had reasons to know that his subordinates would commit criminal acts in Bo with the primary purpose of spreading terror, as the commission of such acts was not explicitly included in Norman's order.

9211. para. 824: Similarly, while some of the criminal acts which were committed subsequently by the Kamajors in Bo might have been committed with the primary purpose of spreading terror, the Chamber finds the evidence adduced has not established beyond reasonable doubt that Fofana knew or had reasons to know that such acts had been committed by his subordinates subsequently.

9212. para. 825: The Chamber recognises that other criminal acts alleged in the Indictment, such as infliction of mental harm or suffering, were in fact committed in Bo. However, the Chamber

finds that such acts were not included in Norman's order. Therefore, the Chamber finds that it has not been established beyond reasonable doubt that Fofana knew or had reasons to know that these other criminal acts would also be committed by the Kamajors in Bo.

iii. Failure to prevent / punish – Responsibility of Fofana – Bo District

9213. para. 826: The Chamber finds that Fofana as a superior had a duty to take necessary and reasonable measures to prevent the commission of the criminal acts by his subordinates or to punish them. His duty to prevent arose from the moment he learnt that his subordinates received unlawful orders from Norman and were about to execute those orders. We find that Fofana's duty to prevent included both the obligation not to comply with the unlawful orders of Norman and the obligation to ensure that his subordinates did not obey those orders. We find, however, that he did nothing to prevent the commission of these criminal acts. As a result of this failure on his part the Kamajors under his effective control committed the criminal acts of killing, burning and looting, as will be found by the Chamber below. Thus, he failed as a superior in the exercise of his duties to prevent the commission of the criminal acts by his subordinates. Under the sub-heading "Counts - Bo District", the Chamber will examine only those particular criminal acts that were explicitly included in Norman's order.

9214. para. 827: Since the Chamber finds that Fofana failed his duty as a superior to prevent the commission of criminal acts by his subordinates, it is not necessary to examine whether Fofana also failed to punish those Kamajors for those same acts.

b. Counts – Bo District – Responsibility of Fofana

9215. para. 828: The Chamber recognises that other criminal acts have been committed by Kamajors in Bo District during the time frame relevant to the Indictment. In the Chamber's opinion, having regard to all the evidence adduced, these criminal acts were either not charged in the Indictment or fall outside the time frame of the Indictment or there is no indication that the accused were involved in the commission of these crimes through any of the modes of liability alleged in the Indictment. Therefore, the Chamber will not examine these criminal acts for the purposes of making legal findings on the responsibility of each Accused.

i. Count 2: Murder – Counts – Bo District – Responsibility of Fofana

9216. para. 829: The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for the unlawful killing of an unknown number of civilians or captured enemy combatants committed by his subordinates on or about January and February 1998, in locations in Bo District, including the District Headquarters town of Bo, Kebi Town, Kpeyama, Fengehun and Mongere.[1558]

9217. para. 830: As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 2, Murder:

(i) The killing of an unidentified woman who was alleged to have cooked for the rebels, by Kamajors, on the order of TF2-017.

(ii) The killing of John Musa, an alleged collaborator, by Kamajors under the control of Joseph Lappia.

9218. para. 831: The Chamber has examined the facts and circumstances surrounding both incidents set out above in points (i)-(ii) and concludes that all of the perpetrators were Kamajors under the effective control of Fofana. We find that individuals were intentionally killed; in both cases they were specifically targeted because of the perpetrator's belief that they were "collaborators". Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 830(i)-(i0 was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 830, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that they were killed and, furthermore, that the perpetrator knew that the victims were not taking an active part in the hostilities.

9219. para. 832: In light of the findings set out, above, the Chamber is satisfied that the general requirements of war crimes have been established with respect to each incident described in paragraph 830.

9220. para. 833: With respect to those incidents described in paragraph 830 (i)-OO the Chamber is satisfied not only that the general requirements of war crimes have been established but also that the specific elements of murder have been proved with respect to each incident.

ii. Count 4: Cruel Treatment – Counts – Bo District – Responsibility of Fofana

9221. para. 834: The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians by his subordinates in Bo and surrounding areas. These crimes are alleged to have occurred between November 1997 and December 1999, through the following acts:

- screening for collaborators;
- unlawfully killing suspected collaborators, often in plain view of friends and relatives;
- illegal arrest and unlawful imprisonment of collaborators;
- the destruction of homes and other buildings;
- looting and threats to unlawfully kill, destroy or loot.[1559]

9222. para. 835: As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 4, Cruel Treatment:

(i) On 15 February 1998 OC Bundu was detained and beaten by Kamajors under the leadership ofNallo, Agbamu Murray and John Ngombeh.

(ii) On 16 February 1998, in Kandeyama, TF2-001 and other police were separated from other civilians on the order of Kamajor leaders including Agbamu Murray. The police were arrested.

9223. para. 836: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i)-(ii) and concludes that all of the perpetrators of these acts listed above were under the effective control of Fofana. The Chamber finds that OC Bundu and TF2-001 were targeted by the Kamajors because of their status as police officers, a group that was considered by the Kamajors to have collaborated with the juntas. [1560] Furthermore, the incidents described immediately above occurred on the day the Kamajors entered Bo or the following day. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all of the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 835(i) - (ii) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. The Chamber finds that, in light of the circumstances under which these events occurred, it is a reasonable inference that the screening for collaborators experienced by OC Bundu and TF2-001 caused serious mental suffering. Having

considered the particular facts and circumstances of each of the incidents referred to in paragraph 835, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that the acts described above occurred and, furthermore, that the perpetrators knew that they were not taking an active part in the hostilities.

9224. para. 837: In light of the findings set out above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of cruel treatment have been met with respect to each incident described paragraph 835.

iii. Count 5: Pillage – Counts – Bo District – Responsibility of Fofana

9225. para. 838: The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for the unlawful taking of civilian-owned property between about 1 November 1997 and 1 April 1998.[1561] These crimes are alleged to have occurred at various locations in Bo District, including the towns of Bo and the surrounding areas.[1562]

9226. para. 839: As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 5, Pillage:

(i) On 15 February 1998, OC Bundu was forced to go to his house by Kamajors under the leadership of Nallo, Agbamu Murray and John Ngombeh. The Kamajors took ammunition which they found in OC Bundu's house.

(ii) On 15 February 1998, Kamajors under the control of TF2-017 looted MB Sesay's hotel on Sewa Road.

(iii) On 15 February 1998, Kamajors under command of TF2-017 looted medicine from two pharmacies in Bo.

(iv) On 16 February 1998, on the order of Kamajor leaders including Agbamu Murray, TF2-001 was searched; the Kamajors took his watch and 15,000 leones.

9227. para. 840: The Chamber has examined the facts surrounding each incident set out above in points (i)-(iv) and concludes that all of the perpetrators of these acts were Kamajors under the effective control of Fofana. The Chamber reiterates that the Kamajors entered Bo on 15 February 1998. Acts (i) through (iv), described immediately above, all occurred on the day the Kamajors entered Bo or on the day immediately following the capture of Bo. The Chamber recalls its findings that OC Bundu and TF2-001 were targeted by the Kamajors because of their status as police officers, a group the Kamajors considered to have collaborated with the juntas; similarly, the Chamber finds that MB Sesay and TF2-058 were targeted because they were considered

collaborators. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all of the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 835(i)-(iv) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. The Chamber is also satisfied that none of the victims were persons taking an active part in the hostilities at the time that the acts described above occurred and, furthermore, that the perpetrators knew that they were not taking an active part in the hostilities.

9228. para. 841: In light of the findings set out above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of pillage as a war crime have been established with respect to the looting of ammunition from OC Bundu's house; the looting of various objects at MB Sesay's hotel; the looting of medicine from two pharmacies; and the looting of TF2-001's watch and money.

iv. Count 7: Collective Punishments – Counts – Bo District – Responsibility of Fofana

9229. para. 842: The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for committing the crimes alleged in Counts 1 through 5, including threats to kill, destroy and loot, to punish the civilian population for their support to, or failure to actively resist, the combined RUF/AFRC forces.[1563]

9230. para. 843: The Chamber reiterates that only those acts for which the Accused have been found to bear criminal responsibility under another count of the Indictment may form the basis of criminal responsibility for acts of terrorism. In this regard, the Chamber recalls that it has found that Fofana bears criminal responsibility as a superior under Counts 2, 4 and 5 in Bo.

9231. para. 844: The Chamber finds that the evidence adduced proves beyond reasonable doubt that the acts described in paragraph 830 [Count 2], paragraph 835[Count 4] and in paragraph 839[Count 5] were perpetrated with the specific intent to punish the civilian population in Bo and the surrounding areas.

9232. para. 845: The Chamber is therefore satisfied, in relation to those acts described paragraph 830 [Count 2], paragraph 835[Count 4] and in paragraph 839 [Count 5], that both the general requirements of war crimes and the specific elements of collective punishments have been proved beyond reasonable doubt with respect to each incident.

c. Conclusion – Responsibility of Fofana – Bo District

9233. para. 846: On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Fofana is individually criminally responsible as a superior, pursuant to Article 6(3), for the crimes committed in Bo District as found under Counts 2, 4, 5 and 7 above.

d. Responsibility of Kondewa – Bo District

9234. para. 852: The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Kondewa is individually criminally responsible as a superior pursuant to Article 6(3) for any of the criminal acts which the Chamber found were committed in Bo District during the time frame charged in the Indictment.

i. Superior-subordinate relationship – Responsibility of Kondewa – Bo District

9235. para. 853: We find that Kondewa had no superior-subordinate relationship with any of the Kamajors involved in the commission of criminal acts in Bo District. Although he possessed command over all the Kamajors from every part of the country, this was, however, limited to the Kamajors' belief in mystical powers which Kondewa allegedly possessed. This evidence is inconclusive, however, to establish beyond reasonable doubt that Kondewa had an effective control over the Kamajors, in a sense that he had the material ability to prevent or punish them for their criminal acts. The Chamber noted that Kondewa's *de jure* status as High Priest of the CDF gave him the authority over all the initiators in the country as well as put him in charge of the initiations. This authority did not give him the power to decide who should be deployed to go to the war front. He also never went to the war front himself. The evidence adduced, therefore, has not established beyond reasonable doubt that Kondewa had any superior-subordinate relationship with the Kamajors who operated in Bo District.

9236. para. 854: Since an essential element of a superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to any of the criminal acts which the Chamber found were committed by Kamajors in Bo District during the time frame charged in the Indictment.

e. Conclusion – Responsibility of Kondewa – Bo District

9237. para. 855: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Bo District during the time frame charged in the Indictment.

(vi) Bonthe District

9238. para. 856: In addition to the facts, listed in in paragraphs 72 (i) to (viii) and 765 (i) to (iii) above, the Chamber outlines below the facts as found in Sections V.2.2, V.2.6.2 and V.2.6.3 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa:

(i) On 16 August 1997, a delegation from Bonthe Town was sent to Kondewa at the Kamajor base at Tihun Sogbini to discuss the continuing harassment of civilians by soldiers and the security of the island. Kondewa was considered the supreme head of Kamajors.

(ii) At Momaya Kamajors were shooting all around the delegation and threatening them. Kamajor Commander Sheku Kaillie ("Bombowai") pleaded on the delegation's behalf and led them, under his protection, to Kondewa, who by then was no longer in Tihun but in Talia. From Mattru Jong the delegation was led to Talia by Ngobeh, the district grand Kamajor commander.

(iii) The delegation arrived at Kondewa's house in Talia on 24 August 1997. A boy was playing guitar and percussion and singing about the greatness of Kondewa and the Kamajor society. Kamajors armed with rifles and guns were guarding the house. The delegation explained to Kondewa the dreadful effects of the war. In response Kondewa stated: "war means to know that you will die; to know that you have no control over your life; to know that you have no dignity; to know that your property is not yours". Kondewa then called a meeting at the Court Barri that was attended by all of the elders of the region, the paramount chiefs and Kamajor commanders. Kondewa said at the meeting that he was not going to give any of the areas under his control to a military government but to the democratically elected Government of President Ahmad Tejan Kabbah. Kondewa agreed on the cessation of hostilities between the Kamajors and the Soldiers, the stopping of the harassment of civilians and the free movement of boats, and wrote a letter to this effect to all Kamajor commanders around Bonthe. The agreement did not work.

(iv) The delegation accompanied by Ngobeh was stopped in Tihun by a Kamajor who presented a letter, which he demanded to be read in the presence of Kondewa. The letter was written by a commander from Gambia and was accusing the delegation of bringing the soldiers to Bonthe. When the letter was read to Kondewa in Talia, he declared that if the information

was true, all of the delegation would be killed; if it was not true, those responsible for the lie would experience a terrible death. In Gambia Kondewa ordered a court sitting and placed Pa Lewis, Ngobeh and Bombowai in charge of the investigation. Those responsible for the letter pleaded guilty. They were supposed to be killed, but the delegation pleaded with Kondewa to spare their lives and he agreed.

(v) The Kamajors operating in Bonthe were of the Shebro tribe and were referred to as the Kassilla Battalion. Baigeh was the Battalion Commander of the Kassilla Battalion.

(vi) On 15 February 1998 a group of approximately 300 to 500 Kamajors entered Bonthe. The Kamajors came from three chiefdoms, including Sittia and Nongoba Bullom.

(vii) From 15 February 1998, Bonthe Town was under the control of the Kamajors, headed by the District Battalion Commander, Morie Jusu Kamara. Commander Julius Squire was the second in command to Morie Jusu Kamara and was from Bendu Cha.

(viii) On 16 February 1998 Kamajors announced a meeting at the St. Patrick Parish's Compound. Morie Jusu Kamara, was present at the meeting together with Commander Julius Squire, the secretary and spokesman for the meeting.

(ix) Although Morie Jusu was a disciplinarian "in his own right", he did not punish his Kamajors. He promised that that no one else would be killed in Bonthe but demanded money from the civilians.

(x) On 15 February, Kamajors looked for Lahai Ndokoi Koroma, a Chiefdom Speaker, in the Catholic mission who was accused of being a junta collaborator. They threatened to kill everyone if they did not produce this person. Two delegations were sent to Bonthe from Base Zero under Kondewa's instructions. On 1 March 1998, a third group of Kamajors came to Bonthe under the leadership of Kondewa. At a public meeting Kondewa said that he had not allowed his men to enter Bonthe, but that they had not listened to his advice and had done what they had done. Kondewa apologized on their behalf. Kondewa also told those assembled that they should forget about ECOMOG, as they were not responsible for Bonthe. Kondewa said that it was the Kamajors who were responsible for security in the area. He told Father Garrick that he was aware of the atrocities committed by the Kamajors and for this reason he wanted to get Lahai Ndokoi Koroma out of the country. After getting paid 600,000 leones Kondewa took Lahai Ndokoi Koroma to Talia and later to Bo. Only Kondewa had authority to release Lahai Koroma and claimed to kill without restraint and to send people to Mecca.

(xi) Around 23 February 1998, Norman, accompanied by two ECOMOG officials, came to Bonthe. At a public meeting at the Bonthe town hall Norman said that any complaint against the Kamajors was useless as they had fought and saved the nation and that working with the Kamajors was like "working with the cutlass".

(xii) In March 1998 a letter from Soloman Berewa addressed to the Kamajors in Bonthe requesting them to stop looting and killing, was given to Commander Morie Jusu Kamara, who passed it on to his second in command, Julius Squire. Julius Squire said that he did not recognise the authority of the Attorney-General; he refused to accept the instructions in the letter, unless they came from Norman or Kondewa. Morie Jusu Kamara told Father Garrick that he was not able to control the Kamajors.

a. Responsibility of Fofana – Bonthe District

9239. para. 860: The Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana had a superior-subordinate relationship with any of the Kamajors who operated in Bonthe District and committed criminal acts during and after the attack on Bonthe Town or elsewhere in Bonthe District as found by the Chamber above. The Chamber reiterates its finding above that there was a superior-subordinate relationship between Fofana and Nallo, who at the relevant time was the Director of Operations for the Southern Region, which included Bonthe District, and that Fofana exercised effective control over Nallo, in a sense of having the material ability to prevent N aHo' s criminal acts or punish him for these acts.[1564]

9240. para. 861: The Chamber finds, however, that the evidence adduced has not established beyond reasonable doubt whether there was a superior-subordinate relationship between Nallo and the Kamajors who operated in Bonthe District and committed criminal acts during the time frame charged in the Indictment. The evidence has not established beyond reasonable doubt that Nallo exercised effective control over all the Kamajors in Bonthe District. By Nallo's own admission, he could not exercise full or strict control over all of the Kamajors in Southern Region due to their large numbers.

9241. para. 862: Since an essential element of a superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to any of the criminal acts which the Chamber found were committed by Kamajors in Bonthe District during the time frame charged in the Indictment.

b. Conclusion – Responsibility of Fofana – Bonthe District

9242. para. 863: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Bonthe District during the time frame charged in the Indictment.

c. Responsibility of Kondewa – Bonthe District

9243. para. 867: The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Kondewa is individually criminally responsible as a superior pursuant to Article 6(3) for any of the criminal acts which the Chamber found were committed in Bonthe District during the time frame charged in the Indictment.

i. Superior-subordinate relationship – Responsibility of Kondewa – Bonthe District

9244. para. 868: We find that on the evidence adduced there was a superior-subordinate relationship between Kondewa and Morie Jusu Kamara, District Battalion commander of Bonthe District, Julius Squire, Kamara' s second in command and Kamajor Baigeh, Battalion commander of the Kassilla battalion. Kondewa had authority and control over the actions of these Kamajor commanders and the Kamajors under their immediate command. By virtue of his *de jure* status as High Priest Kondewa and his *de facto* status as a superior to these Kamajors in that District, Kondewa exercised effective control over them. Kondewa had the legal and material ability to issue orders to Kamara, both by reason of his leadership role at Base Zero, being part of the CDF High Command, and the authority he enjoyed in his position as High Priest in Sierra Leone and particularly so in Bonthe District.

9245. para. 869: Kondewa had exercised effective control over Kamajors in Bonthe District since before the establishment of Base Zero, as early as August 1997. As "the supreme head of Kamajors" in the area, the delegation from Bonthe chose to plead with him in order to cease hostilities between the Kamajors and the soldiers, stop the Kamajors from harassing civilians and from attacking Bonthe Town. At that time Kondewa had authority and power to issue oral and written directives to the Kamajors in that area, order investigations for misconduct and hold court hearings. He could threaten the imposition of sanctions of "a terrible death" on the Kamajors, if they lied to him. The Kamajor commanders, who the delegation met on its way to Talia, all recognised Kondewa's authority. Kondewa himself acknowledged his control over this area as he publicly refused "to give any areas under his control to a military government but to the democratically elected Government of President Ahmad Tejan Kabbah." The authority and power of Kondewa is further demonstrated by the fact that it was only him who could "spare" lives of his own misbehaved Kamajors, to release Lahai Ndokoi, "to kill without restraint and to send people to Mecca".

9246. para. 870: The Chamber finds that Kondewa had both the legal and material ability to prevent the commission of criminal acts by his subordinate Morie Jusu Kamara and other subordinates and to punish them for those criminal acts.

9247. para. 871: Morie Jusu Kamara was the overall commander for the Bonthe attack. We find that Kamara exercised command over Julius Squire, Baigeh, Rambo Conteh, Lamina Gbokambama as well as the Kamajors under their immediate command. The Kamajors who arrived in Bonthe on 15 February 1998, indeed declared that from then on Bonthe Town was under the control of the Kamajors headed by Morie Jusu Kamara.

9248. para. 872: Finally, the effective control that Kondewa exercised over the Kamajors who operated in Bonthe Town during the attack is further demonstrated by the fact that Morie Jusu Kamara and Julius Squire refused to recognise the authority of the Attorney-General and to accept any instructions, unless they came from Norman or Kondewa.

9249. para. 873: The Chamber finds, however, that there is no evidence from which the Chamber can conclude beyond reasonable doubt that Kondewa did exercise the same degree of control over other Kamajor commanders and fighters who operated in the surrounding areas of Bonthe Town prior to the attack on Bonthe or subsequently.

ii. Knowledge – Responsibility of Kondewa – Bonthe District

9250. para. 874: Kondewa knew that the attack on Bonthe Town involved the commission of criminal acts by the Kamajors under the command of Morie Jusu Kamara. On the basis of the evidence adduced it is not entirely clear when precisely Kondewa obtained the knowledge that his subordinates in fact were about to commit, were committing or had committed criminal acts.

9251. para. 875: The Chamber is satisfied, however, that Kondewa knew at least as of 15 February 1998, that the Kamajors were looking for Lahai Ndokoi Koroma in Bonthe Town, who was perceived to be a ‘collaborator’. Kondewa was informed about it at Base Zero, in response to which he sent two delegations to Bonthe Town under his instructions. Therefore, the Chamber concludes that it has been established beyond reasonable doubt that Kondewa had reasons to know that the Kamajors under his effective control were about to commit or were committing criminal acts in Bonthe District, particularly that they were targeting suspected “collaborators”.

9252. para. 876: Furthermore, the Chamber observes that on 1 March 1998, Kondewa came to Bonthe Town himself leading the third delegation. At the meeting held by Kondewa in Bonthe

Town on the same day he publicly acknowledged that he had not allowed his men to enter Bonthe, but that they had not listened to his advice and had done what they had done. He also apologized on their behalf. When speaking to Father Garrick on the same day he also admitted that he was aware of the atrocities committed by the Kamajors during the attack and for this reason he wanted to get Lahai Ndokoi Koroma out of the country.

9253. para. 877: The Chamber, therefore, concludes that it has been established beyond reasonable doubt that at this stage Kondewa knew that the Kamajors under his effective control had in fact committed criminal acts in Bonthe District.

9254. para. 878: With respect to Count 7, the Chamber finds that it can reasonably be inferred from all the circumstances that Kondewa knew or had reasons to know that his subordinates were about to commit collective punishments or were committing them or had committed such acts in Bonthe Town.

9255. para. 879: With respect to Count 6, the Chamber finds, however, that while some of the criminal acts which were committed by the Kamajors in Bonthe Town might have been committed with the primary purpose of spreading terror among the civilian population, the Chamber finds on the totality of the evidence adduced that it has not been established beyond reasonable doubt that Kondewa knew or had reasons to know that such acts had been committed by his subordinates for the primary purpose of spreading terror.

iii. Failure to prevent / punish – Responsibility of Kondewa – Bonthe District

9256. para. 880: The Chamber finds that Kondewa as a superior had a duty to take necessary and reasonable measures to prevent the commission of the criminal acts by his subordinates or to punish them. His duty to prevent arose from the moment he learnt that his subordinates were about to commit criminal acts. He should have exercised his duty to punish when he learnt that his subordinates did in fact commit criminal acts in Bonthe Town during and subsequently to the attack. He did not properly exercise his duty to prevent the commission of the criminal acts as a superior simply by telling his subordinate Kamajors that they were not allowed to enter Bonthe. His duty was to ensure that an effective mechanism was in place so that his subordinates would in fact comply with his orders. We find that Kondewa did nothing to prevent the commission of these criminal acts nor did he punish his subordinates for other criminal acts once he had been informed that they indeed had committed such other criminal acts. Thus, we find that he failed as

a superior in the exercise of his duties to prevent or to punish the commission of the criminal acts by his subordinates.

d. Counts – Bonthe District – Responsibility of Kondewa

9257. para. 881: The Chamber recognises that other criminal acts have been committed by Kamajors in Bonthe District during the time frame relevant to the Indictment. In the Chamber's opinion, having regard to all the evidence adduced, these criminal acts were either not charged in the Indictment or fall outside the time frame of the Indictment or there is no indication that the accused were involved in the commission of these crimes through any of the modes of liability alleged in the Indictment. Therefore, the Chamber will not examine these criminal acts for the purposes of making legal findings on the responsibility of each Accused.

i. Count 2: Murder – Counts – Bonthe District – Responsibility of Kondewa

9258. para. 882: The Prosecution alleges that Kondewa is individually criminally responsible, pursuant to Article 6(3), for the unlawful killing of an unknown number of civilians between October 1997 and December 1999 in locations in Bonthe District including Talia (Base Zero), Mobayeh, Makose and Bonthe Town.[1565]

9259. para. 883: As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 2, Murder:

(i) On 15 February 1998, Kpana Manso was killed by Beigeh, a Kamajor Commander subordinate to Morie Jusu Kamara.

(ii) On 16 February 1998, Bendeh Battiama was accused of being a collaborator and was killed by a Kamajor named Rambo Conteh.

(iii) On 17 February 1998, Abu Conteh was killed at St. Joseph's Secondary School by one of Mori Jusu's Kamajors.

(iv) In early March 1998, a woman named Jitta was killed by a Kamajor named Beigeh between Sebongie and Bonthe.

(v) TF2-087's uncle was killed in Gambia Village by Kondewa's deputy Sheku Kallie, after having reported to Kondewa the misconduct of some of his boys.

(vi) During the same period of time, three pregnant women were killed in Gambia Village by Kondewa's boys before Norman's arrival in Gambia.

9260. para. 884: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i) through (vi) and concludes that all of the perpetrators were Kamajors under the effective control of Kondewa. We find that individuals were intentionally killed; in the majority of these cases they were specifically targeted because of the perpetrator's belief that they were "collaborators" or rebels. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all of the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 883 was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of these incidents, referred to above in paragraph 883, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that they were killed and also that the perpetrator knew that the victims were not taking an active part in the hostilities.

9261. para. 885: In light of the above the Chamber is satisfied that the general requirements of war crimes have been established with respect to each incident described in paragraph 883.

9262. para. 886: With respect to those incidents described in paragraph 883 (i)-(iv), the Chamber is satisfied that Kamajors under the effective control of Kondewa intentionally caused the deaths of Kpana Manso, Bendeh Battiama, Abu Conteh and a woman named Jitta.

9263. para. 887: The Chamber is therefore satisfied not only that the general requirements of war crimes have been established but also that the specific elements of murder have been established with respect to the killing of Kpana Manso, Bendeh Battiama, Abu Conteh and Jitta.

9264. para. 888: The Chamber finds, however, that the evidence adduced has not established beyond reasonable doubt that the killings described in paragraph 883 (v) and (vi) occurred during the time period set out in the Indictment. The Chamber finds that Kondewa is not guilty with respect to these killings.

ii. Count 2: Cruel Treatment – Counts – Bonthe District – Responsibility of Kondewa

9265. para. 889: The Prosecution alleges that Kondewa is individually criminally responsible, pursuant to Article 6(3), for the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians by his subordinates in Bonthe District. These crimes are alleged to have occurred between November 1997 and December 1999, , through the following acts:

- screening for collaborators;
- unlawfully killing suspected collaborators, often in plain view of friends and relatives;
- illegal arrest and unlawful imprisonment of collaborators;
- the destruction of homes and other buildings;
- looting and threats to unlawfully kill, destroy or loot.[1566]

9266. para. 890: As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 4, Cruel Treatment:

(i) On 15 February 1998, Kamajors captured Lahai Ndokoi Koroma. He was stripped naked and tied; three delegations came from Talia to investigate the matter.

(ii) On 16 February 1998, at a meeting at St. Patrick's Parish Compound in Bonthe Town, Juilus Squire announced that the Kamajors were looking for three collaborators. At the same meeting TF2-116 was singled out and his life was threatened because of alleged collaboration with the juntas.

(iii) At the same meeting, a boy named Bendeh Battiama was singled out and accused of being a collaborator. He was later killed by Rambo Conteh.

(iv) In early March 1998, TF2-086 was detained by Kamajors, including Baigeh, along the road between Sebongie and Bonthe. The Kamajors threatened her life, saying, "Look how dead you are."

9267. para. 891: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i)-(ii) concludes that all of the perpetrators of these acts were Kamajors under the effective control of Kondewa. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all of the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 889 (i)-(v) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to in paragraph 889, the Chamber is also satisfied that the victims were persons not taking an active part in the hostilities at the time that the acts described above occurred and, furthermore, that the perpetrators knew that they were not taking an active part in the hostilities.

9268. para. 892: The Chamber finds that, in light of the circumstances under which these events occurred, it is a reasonable inference that the screening for collaborators experienced by Lahai Ndokoi Koroma, TF2-116, Bendeh Battiama and TF2-086 caused serious mental suffering, particularly in the case of TF2-116 and TF2-086, whose lives were threatened at the same time.

9269. para. 893: In light of the findings set out above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of cruel treatment have been established with respect to the incidents described in paragraph 889 (ii)-(v).

9270. para. 894: By contrast, the Chamber finds that the specific elements of the crime of cruel treatment have not been established with respect to paragraph 889 (0, as it has not been proved beyond reasonable doubt that those people whose homes were burnt endured serious mental suffering or injury.

iii. Count 5: Pillage – Counts – Bonthe District – Responsibility of Kondewa

9271. para. 895: The Prosecution alleges that Kondewa is individually criminally responsible, pursuant to Article 6(3), for the unlawful taking of civilian-owned property between about 1 November 1997 and 1 April 1998.[1567] These crimes are alleged to have occurred at various locations in Bo District, including the towns of Talia (Base Zero), Bonthe Town, Mobayeh and the surrounding areas.[1568]

9272. para. 896: As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 5, Pillage:

(i) On 15 February 1998, Lamina Gbokambama and his men looted household items and equipment from a number of locations in Bonthe Town.

(ii) On 16 February 1998, Julius Squire and his troops looted a house in Bonthe and took 17,900,000 leones from TF2-116's house.

(iii) In early March 1998, a group of Kamajors including Baigeh took 140,000 leones from TF2-086 and her business partner Jitta on the road between Sebongie and Bonthe.

9273. para. 897: The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i)-(iii) and concludes that all of the perpetrators of these acts were Kamajors under the effective control of Kondewa. The Chamber reiterates that the Kamajors entered Bonthe on the 15th of February 1998. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all of the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 896 (i)-(iii) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to in paragraph 896, the Chamber is also satisfied beyond reasonable doubt that the victims were

persons not taking an active part in the hostilities at the time that the acts described above occurred and, furthermore, that the perpetrators knew that they were not taking an active part in the hostilities.

9274. para. 898: In light of the findings set out above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of pillage as a war crime have been established with respect of the criminal acts described in paragraph 896 (i)-(iii).

iv. Count 7: Collective Punishments – Counts – Bonthe District – Responsibility of Kondewa

9275. para. 899: The Prosecution alleges that Kondewa is individually criminally responsible, pursuant to Article 6(3), for committing the crimes alleged in Counts 1 through 5, including threats to kill, destroy and loot, to punish the civilian population for their support to, or failure to actively resist, the combined RUF/ AFRC forces.[1569]

9276. para. 900: The Chamber reiterates that only those acts for which the Accused have been found to bear criminal responsibility under another count of the Indictment may form the basis of criminal responsibility for acts of terrorism. In this regard, the Chamber recalls that it has found that Kondewa bears criminal responsibility as a superior under Counts 2, 4 and 5 in Bonthe.

9277. para. 901: The Chamber finds that the evidence adduced proves beyond reasonable doubt that the acts described in paragraph 883 [Count 2] and in paragraph 889 [Count 4] and paragraph 896 [Count 5] were perpetrated with the specific intent to punish the civilian population in Bonthe District.

9278. para. 902: The Chamber is therefore satisfied, in relation to those acts described in paragraph 883 [Count 2] and in paragraph 889 [Count 4] and paragraph 896 [Count 5], that both the general requirements of war crimes and the specific elements of collective punishments have been proved beyond reasonabled doubt with respect to each incident.

e. Conclusion – Responsibility of Kondewa – Bonthe District

9279. para. 903: On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Kondewa is individually criminally responsible as a superior, pursuant to Article 6(3), for the crimes committed by Kamajors in Bonthe Town and the surrounding areas as found under Counts 2, 4, 5 and 7 above.

(vii) Kenema District

9280. para. 904: In addition to the facts, listed in paragraphs 721 (i) to (viii) and 765 (i) to (iii) above, the Chamber outlines below the facts as found in Sections V.2.2, V.2.7.2, V.2.7.3 and 2.7.8 of the Factual Findings, which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa:

(i) Mohamed Bhonie Koroma, a Battalion Commander, led the attack on SS Camp. Other Kamajors that participated in this attack included Mohamed Swaray, a Battalion Commander from Kenema, Fallah Bindi, a Commander, CO Sahr, a Section CO and Stephen Lahai Fassay. SS Camp was taken approximately one week before Kenema.

(ii) Mohamed Bhonie Koroma left SS Camp to attack Kenema on 15 February 1998. When he left, Stephen Lahai Fassay replaced him as the Kamajor boss and maintained this position at least until May 1998.

(iii) Kamajors entered Blama on Sunday, 15 February 1998. Key commanders in this attack included Alhaji Bockarie, Sau Vibbie and Foday Saidu.

(iv) Kamajors took control of Kenema Town on Sunday, 15 February 1998. Mohamed Bhonie Koroma led the first battalion of Kamajors, which entered Kenema from the direction of SS Camp. Twenty to thirty units from different sections, comprising at least one thousand Kamajors, entered Kenema on the same day.

(v) ECOMOG arrived in Kenema approximately on 18 February 1998.

(vi) While at Base Zero Musa Junisa was the Director of Operations for the Eastern Region.

(vii) In mid-February 1998, TFUl79 and TF2-201 traveled from Base Zero to Bo and Kenema on the orders of Norman to set up a CDF office. At that time the CDF commanders in Kenema were KBK Magonna, Eddie Massallay and Arthur Koroma. George Jambawai, the Regional Coordinator for the Eastern Region became the head of the new administration; TF2-079 was also part of the executive. Jambawai's administration lasted until June 1998. He was succeeded by the District Administrator, Arthur Koroma. During the administration of Arthur Koroma a base was opened at SS Camp where civilians were taken for detention.

a. Responsibility of Fofana – Kenema District

9281. para. 909: The Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana had a superior-subordinate relationship with any of the Kamajors who operated in Kenema District and committed criminal acts during and after the attacks on Kenema Town, SS Camp and Blama as found by the Chamber above. The Chamber found that

Musa Junisa was appointed to a position of Director of Operations for the Eastern Region at Base Zero and as such was a *de jure* subordinate of Fofana, the Director of War, in the hierarchical structure of the CDF organisation. However, the evidence adduced has not established beyond reasonable doubt that there was any superior-subordinate relationship, either *de jure* or *de facto*, between Musa Junisa and the Kamajors who operated in Kenema District and committed criminal acts during the time frame charged in the Indictment, such as to conclude that he could or did exercise effective control over those Kamajors.

9282. para. 910: Since an essential element of a superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to any of the criminal acts which the Chamber found were committed by Kamajors in Kenema District during the time frame charged in the Indictment.

b. Conclusion – Responsibility of Fofana – Kenema District

9283. para. 911: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Kenema District during the time frame charged in the Indictment.

c. Responsibility of Kondewa – Kenema District

9284. para. 916: The Chamber reiterates its earlier finding that although Kondewa had a de jure status as High Priest in the CDF and as such possessed command over all the Kamajors in the country, this was limited to the Kamajors' belief in mystical powers which Kondewa allegedly possessed. This evidence is inconclusive to establish beyond reasonable doubt that Kondewa had an effective control over the Kamajors, in a sense that he had the material ability to prevent or punish them for their criminal acts in Kenema District. The Chamber further finds that the evidence adduced has not established beyond reasonable doubt that Kondewa had any superior-subordinate relationship with any of the Kamajors who operated in Kenema District and committed criminal acts during and after the attacks on Kenema town, SS Camp and Blama as found by the Chamber above.

9285. para. 917: Since an essential element of a superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to the criminal acts which the

Chamber found were committed by Kamajors in Kenema District during the time frame charged in the Indictment.

d. Conclusion – Responsibility of Kondewa – Kenema District

9286. para. 918: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Kenema District during the time frame charged in the Indictment.

e. Counts – Kenema District

9287. para. 919: The Chamber recognises that criminal acts have been committed by Kamajors in Kenema District during the time frame relevant to the Indictment. In the Chamber's opinion, having regard to all the evidence adduced, these criminal acts were either not charged in the Indictment or fall outside the time frame of the Indictment or there is no indication that the accused were involved in the commission of these crimes through any of the modes of liability alleged in the Indictment. Therefore, the Chamber did not examine these criminal acts for the purposes of making legal findings on the responsibility of each Accused.

(viii) Talia / Base Zero

9288. para. 920: In addition to the facts, listed in paragraphs 721 (i) to (viii) and 765 (i) to (iii) above, the Chamber outlines below the facts as found in Sections V.2.2 and V.2.8 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa:

(i) By late 1996 or early 1997 the Kamajors had taken over Talia from the rebels. The first Kamajor leaders who came to Talia were Ngobeh and Joe Tamidey. Kondewa, who was a herbalist, came two weeks later with his priests and was performing initiations in Mokusi. By the time of the coup the Kamajors were also in control of the surrounding villages around Talia.

(ii) After the coup and before the arrival of Norman to Talia around 15 September 1997, Fofana and Kondewa were both in Talia. Around July-August 1997 Kondewa was in Tihun performing initiations. At that time Kondewa was considered the supreme head of Kamajors in Bonthe District.

(iii) Fofana and Kondewa stayed in Talia for the entire period of time of the existence of Base Zero.

9289. para. 921: As set out above in the Factual Findings, the Chamber found that the following criminal acts have been committed in Talia / Base Zero, which the Chamber will consider for the purposes of making its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa in this area:

(i) TF2-134 was captured by Kamajors and forcefully brought to Talia. She was tied with FM rope and beaten until she vomited blood. She was then kept in a guardroom and released later in the day.

(ii) TF2-109 was captured by Kamajors along with other women and three men in her village of Mattru Jong and was taken to Talia by Kamajor Kamoh Bonnie. She was held in Talia for three days. The Kamajors also looted her property in Mattru, including furniture, household items and clothing.

(iii) Sometime towards the end of 1997, two "Town Commanders" were brought to Talia. Kondewa took a gun from Kamoh Bonnie, Kondewa's priest, shot and killed one of the town commanders. The next morning witness saw two graves where the bodies of the two town commanders were buried.

(iv) TF2-133 was captured and taken to Talia, where she stayed for one month. During that time, TF2-133 saw Kamajors kill her mother in the palm oil plantation.

(v) TF2-188 and her mother were captured and made to carry loads to Talia. In Talia, Kondewa told his boys to capture TF2-188's mother and kill her. TF2-188 saw the Kamajors kill her mother.

(vi) During the rainy season of 1997, TF2-189 was captured by Kamajors and taken to Talia. While in Talia, TF2-189's husband was captured, his throat was cut by Kamajors and he was decapitated.

(vii) Jusu Shalley, Baggie Vaiey and Lahai Lebbie were captured together and brought to Talia. They were killed in front of a large group of Kamajors and civilians. All three men were civilians. Next morning the Kamajors summoned civilians to a parade, which had Norman and Kondewa in attendance.

(viii) Sometime after 13 February 1998, a surrendered soldier, named Sgt. Kamanda was brought to Talia from Koribondo. Sgt. Kamanda was killed.

(ix) Kondewa's bodyguards Kafi Jini, Jahman, Junisa and Bokindeh accused TF2-096's friend, who was selling cassava, to be a rebel. Jahman reported TF2-096's friend to Kondewa and she was arrested and taken to Nyandehun. She was held in a cage and was not released until 40,000 leones were paid to Kondewa.

(x) Sometime between January and March 1998, Mustafa Fallon was killed at the Poro Bush in Talia as part of a Kamajor ritual. Mustafa Fallon was a fighting Kamajor who had been enlisted by Bobor Tucker. Norman, Fofana and Kondewa and many other Kamajors were present.

(xi) Sometime between December 1997 and January 1998, Alpha Dauda Kanu was killed in the palm oil plantation near Talia as part of a Kamajor ritual. Kanu was one of about 40 Kapras from Gbonkolenken Chiefdom in Tonkolili District who had come to Talia for training. Norman, Fofana and Kondewa approved the killing.

(xii) A truck carrying cocoa and coffee arrived in T alia. It was unloaded and the contents were given to the Director of War, Fofana and the High Priest, Kondewa. The truck was detained in Talia.

9290. para. 922: The Chamber notes that the allegations advanced by the Prosecution in relation to the alleged crimes in Talia / Base Zero include the following time frames: for Count 2 – between about October 1997 and December 1999, for Count 4 - between November 1997 and December 1999, for Count 5 - between about 1 November 1997 and about 1 April 1998 and for Counts 6 and 7 - as charged in the previous counts. These allegations are particularised in paragraphs 882, 889, 895, 899 above.[1570]

9291. para. 923: The Chamber finds that based upon the evidence adduced in support of the acts listed above under paragraph 921 (i), (iv), (v) and (ix) it cannot conclude beyond reasonable doubt what the timing of the occurrence of these incidents was. The incident described in paragraph 921 (vi) may have occurred any time during "the rainy season of 1997" which could have been between the months of June through September 1997. The Chamber also recalls that Kondewa arrived at Talia by late 1996 or early 1997. Both Kondewa and Fofana were in Talia before the arrival of Norman and the establishment of Base Zero around 15 September 1997. Therefore, the Chamber concludes that the evidence has not established beyond reasonable doubt that the incidents listed under paragraph 921 (i), (iv), (v), (vi) and (ix) had taken place within the time frame charged in the Indictment.

9292. para. 924: We find that the incident listed under paragraph 921 (viii) involves the killing of "a surrendered soldier" from Koribondo. While the Chamber recognises that this act may have constituted an unlawful killing, it holds that the Prosecution has limited the allegations in Count 2 for Talia / Base Zero to the unlawful killing of "an unknown number of civilians" only and not that of "captured enemy combatants".[1571]

9293. para. 925: The Chamber further finds that the incidents listed under paragraph 921 (x) and (xi) do not constitute a war crime since both Fallon and Kanu fighters and members of the CDF. Here the Chamber particularly recalls the final position of the Prosecution in respect of these two killings made during their closing arguments as follows:

> [Tlhe best approach is simply to see these two men's deaths as examples of where the three accused stood in the hierarchy, their ability to do acts without sanction from anyone else. In fact, it demonstrates that they were in absolute control of the CDF. That is, we would say, how the deaths of those two men fit into the Prosecution case.[1572]

a. Responsibility of Fofana – Talia / Base Zero

9294. para. 926: The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) or 6(3) for the acts listed by the Chamber above under paragraph 921 (ii), (iii), (vii) and (xii).

9295. para. 927: In relation to the acts described under paragraph 921 (ii), (iii) and (vii) above the Chamber finds that the presence of Fofana at Base Zero when these incidents took place is not sufficient by itself to establish beyond reasonable doubt that Fofana had any involvement in the commission of these criminal acts under any of the modes of liability charged in the Indictment.

9296. para. 928: In relation to the incident described under paragraph 921 (xii) the Chamber finds that the fact that a truck was brought to Talia and the contents of it was given to Fofana is not sufficient to establish beyond reasonable doubt that either the truck might have been looted or that Fofana knew or had reasons to know that the truck might have been looted.

9297. para. 930: Likewise, the Chamber concludes that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(3) as a superior for any of the criminal acts which the Chamber found were committed in Talia / Base Zero by Kamajors during the time frame charged in the Indictment.

(ix) Moyamba District

9298. para. 938: In addition to the facts, listed in paragraphs 721 (i) to (viii) and 765 (i) to (iii), (viii) and (ix) and 809 (vi) above, the Chamber outlines below the facts as found in Sections V.2.2 and V.2.9 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(0 and 6(3) of Fofana and Kondewa:

> (i) Sometime after August 1997, the Kamajors returned to Moyamba in full strength under the leadership of Mustapha Ngobeh. Kenei Torma was the second-in-command to Mustapha Ngobeh. Sometime after Ngobeh's death, Torma became the first in command. In late 1997 and early 1998, Kenei Torma and Chuck Norris were in control of the Kamajors in Moyamba town.

(ii) Albert J Nallo in late 1997 was the Director of Operations for the Southern Province, which included Moyamba District. In this capacity Albert J Nallo had control over Moyamba District. When Albert J Nallo went to Moyamba Town he learned from Mustapha Ngobeh that four days earlier Abu Bawote, the Commander in the Ribbi area, had killed the Chiefdom Speaker. Mustapha Ngobeh related that he had seen Abu Bawote in Bradford with the severed hand of the Chiefdom Speaker; Bawote had dried the hand and tied to his neck as a necklace. Albert J Nallo reported this incident to Fofana and Norman and told Norman that this Chiefdom Speaker was a collaborator. Norman responded: "Well, a Collaborator deserves that. That was the standing order. You know that was the standing order I passed long ago."

a. Responsibility of Fofana – Moyamba District

9299. para. 941: The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Fofana is individually criminally responsible as a superior pursuant to Article 6(3) for any of the criminal acts which the Chamber found were committed in Moyamba District during the time frame charged in the Indictment.

i. Superior-subordinate relationship – Responsibility of Fofana – Moyamba District

9300. para. 942: The Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana had any direct superior-subordinate relationship with any of the Kamajors who operated in Moyamba District and committed criminal acts as found by the Chamber above during the time frame charged in the Indictment.

9301. para. 943: The Chamber reiterates its finding above that there was a superior-subordinate relationship between Fofana and Nallo, who was Director of Operations for the Southern Region, which included Moyamba District, and that Fofana exercised effective control over Nallo, in a sense of having the material ability to prevent the commission of criminal acts by Nallo or punish him for these acts when he learnt of their commission.[1574] The evidence has established beyond reasonable doubt that this relationship between Fofana and Nallo existed at least from the time of the appointment of Nallo at Base Zero to the position of Deputy National Director of Operations for the CDF and Director of Operations for the Southern Region, until the dissolution of Base Zero. Although the Chamber found that Nallo had control over Moyamba District at least in late 1997, the evidence has not established beyond reasonable doubt that at that time Nallo's control was such as to be considered to be effective over all the Kamajors in Moyamba District. By

Nallo's own admission, he could not exercise full or strict control over all of the Kamajors in Southern Region due to their large numbers.

9302. para. 944: In relation to the incident involving the killing of the chiefdom speaker the Chamber finds that the evidence has not established beyond reasonable doubt when exactly the killing took place. Furthermore as we found, the fact that Bawote was seen with a "dried" hand would indicate that the killing had taken place some time earlier but is not sufficient to conclude beyond reasonable doubt as to the timing of the occurrence of this killing. While noting that Nallo was informed of this killing sometime in late 1997, there is no evidence as to the timing of the killing itself. The Chamber takes the view that this evidence has not established beyond reasonable doubt that the killing took place either within the time frame of the Indictment or at the time when Nallo was in control of Moyamba District.

9303. para. 945: The evidence also does not establish beyond reasonable doubt whether there was any superior-subordinate relationship between Ngobeh and Bawote at the time when Ngobeh saw Bawote with a dried hand. The Chamber further finds that there is no evidence beyond reasonable doubt that the killing of the chiefdom speaker was done by a person who at the time of the commission of the killing was a subordinate of Fofana.

9304. para. 946: The Chamber therefore finds that the evidence adduced has not established beyond reasonable doubt that Fofana had a superior-subordinate relationship with all the Kamajors who operated in Moyamba District and who committed criminal acts as found by the Chamber above during the time frame charged in the Indictment.

9305. para. 947: Since an essential element of a superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to any of the criminal acts which the Chamber found were committed in Moyamba District by the Kamajors during the time frame charged in the Indictment.

b. Conclusion – Responsibility of Fofana – Moyamba District

9306. para. 948: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Moyamba District during the time frame charged in the Indictment.

c. Responsibility of Kondewa – Moyamba District

9307. para. 951: The Chamber reiterates its earlier finding that although Kondewa had a de jure status as High Priest in the CDF and as such possessed command over all the Kamajors in the country, this was limited to the Kamajors' belief in mystical powers which Kondewa allegedly possessed. This evidence is inconclusive to establish beyond reasonable doubt that Kondewa had an effective control over the Kamajors, in a sense that he had the material ability to prevent or punish them for their criminal acts in Moyamba District. The only incident in the Factual Findings made by the Chamber in Moyamba District and which could be attributable to Kondewa for Count 5, Pillage, is set out below as follows:

(i) In November 1997, Kamajors under the control of Kondewa took TF2-073's Mercedes Benz from his home in Sembehun. The Kamajors said that they were Kondewa's Kamajors and that they had come from Talia, Tihun, Gbangbatoke and other surrounding villages. Three of them introduced themselves as Steven Sowa, Moses Mbalacolor and Mohamed Sankoh. Mohamed Sankoh said he was Deputy Director of War under Norman. The car was eventually given to Kondewa, who kept the car and used it without permission.

(ii) On the same occasion these Kamajors also took a generator, car tires and other gadgets from TF2-073.

9308. para. 952: The Chamber has examined the facts surrounding each incident set out in both points above and is satisfied that, having regard to all the evidence adduced, each incidence of pillage is sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. The Chamber further finds, given the circumstances surrounding the occurrence of pillage as set out above, that the victims were persons not taking a direct part in the hostilities at the time of the commission of the crimes. The Chamber is additionally satisfied that the perpetrator knew that the victims were not taking an active part in the hostilities.

9309. para. 953: In the light of the above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of pillage have been met with respect to each incident described in paragraph 951.

9310. para. 954: This incident demonstrates that the looting was done by the Kamajors who operated under the direct orders of Kondewa. Kondewa's knowledge that his subordinates committed crimes of pillage can be established on the basis that the looted car was then given to him to be driven around. The Chamber finds that Kondewa not only failed in the exercise of his duties to punish his subordinates for looting, but chose to support their actions by using the looted vehicle himself.

d. Conclusion – Responsibility of Kondewa – Moyamba District

9311. para. 955: On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Kondewa is individually criminally responsible as a superior, pursuant to Article 6(3), for pillage as charged under Count 5 on the Indictment and as found by the Chamber above.

e. Counts – Moyamba District

9312. para. 956: The Chamber recognises that other criminal acts have been committed by Kamajors in Moyamba District during the time frame relevant to the Indictment. In the Chamber's opinion, having regard to all the evidence adduced, these criminal acts were either not charged in the Indictment or fall outside the time frame of the Indictment or there is no indication that the accused were involved in the commission of these crimes through any of the modes of liability alleged in the Indictment. Therefore, the Chamber did not examine these criminal acts for the purposes of making legal findings on the responsibility of each Accused.

(x) Count 8 – Child Soldiers

9313. para. 957: The Prosecution alleges that Fofana and Kondewa are individually criminally responsible, pursuant to Article 6(1) or 6(3), for enlisting children under the age of 15 years ("child soldiers") into armed forces or groups or using them to participate actively in hostilities at all times relevant to the Indictment throughout the Republic of Sierra Leone.[1575]

9314. para. 958: In addition to the facts, listed in paragraph 721 (i) to (viii) and 809(i) (iii) above, the Chamber outlines below the facts as found in Sections V.2.2 and V.2.10 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa with respect to Count 8.

(i) A commanders' meeting was held by Norman after the passing out parade at Base Zero in early January 1998, which had in attendance, among others, Fofana, Kondewa and commanders for the Bo attack. Norman added that the adult fighters were doing less than the children, and just eating and looting.

(ii) Child fighters were present at various times at Base Zero.

a. Responsibility of Fofana – Count 8 – Child Soldiers

9315. para. 964: In addition to the facts, listed above in paragraph 958 the Chamber outlines below the fact upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(3) of Fofana with respect to Count 8:

> (i) In February 1998 TF2-140 passed through the town of Koribondo, he saw Joe Tamidey, a Kamajor commander [under the command of Fofana] being guarded by four small boys. The Witness estimated the boys to be younger than he was.

9316. para. 965: TF2-140 was 15 years old when he witnessed this event. The Chamber has accepted the credibility of TF2-140's statement on this event, however there is room for doubt that the boys referred to were actually younger than 15 years of age. It is conceivable that the boys were younger than the witness, but still older than 15 years. It is also conceivable that TF2-140 may have been incorrect in his estimation that the boys were younger than he. Aside from that, the evidence does not establish that Fofana was aware of the situation regarding his subordinate Joe Tamidey. In conclusion, the Chamber finds that the evidence adduced does not prove beyond reasonable doubt the criminal liability of the Accused.

9317. para. 966: The Chamber finds that the evidence adduced does not prove beyond a reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(3) as a superior for the enlistment or use of child soldiers to participate actively in hostilities anywhere in the Republic of Sierra Leone during the time frame specified in the Indictment. Proof of knowledge alone is insufficient to establish the individual criminal responsibility of an Accused, and the Chamber is unable to conclude that Fofana's presence alone at this or other such meetings has either a condoning or encouraging effect upon the commission of any crimes by his subordinates relating to the enlistment or use of child soldiers.

b. Conclusion – Responsibility of Fofana 0 Count 8 – Child Soldiers

9318. para. 967: On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to either Article 6(1) or 6(3) for Count 8.

c. Responsibility of Kondewa – Count 8 – Child Soldiers

9319. para. 973: Having found the Accused liable under Article 6(1) if the Statute, the Chamber need not consider the Accused's liability under Article 6(3) of the Statute.

3. Appellate Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-A, Judgment, 28 May 2008

(a) Findings and Conclusions

(i) Bonthe District

a. Kondewa – Bonthe District

9320. para. 171: Kondewa alleges that the Trial Chamber erred ill both law and fact in finding that he was responsible as a superior pursuant to Article 6(3) for the crimes committed in Bonthe District. It is evident, however, from the submissions that he does not challenge the Trial Chamber's articulation of the legal requirements for the establishment of superior responsibility under Article 6(3) of the Statute. Kondewa, therefore, does not allege an error of law, but is instead concerned with the way in which the Trial Chamber applied the law to the particular facts of his case. The Appeals Chamber is of the view that this submission, in essence, questions the inferences drawn from facts found by the Trial Chamber and is therefore factual in nature. Kondewa must therefore satisfy the standard of review for alleged errors of fact.

9321. para. 172: Kondewa's arguments concern the Trial Chamber's application of the effective control test in determining a superior-subordinate relationship between him and the perpetrators of certain criminal acts during the attack on Bonthe. Even though Kondewa disputes the totality of the Trial Chamber's findings regarding his role as a superior, he does not proffer any argument in support of other aspects of his ground of appeal.[348] Kondewa's arguments are specifically limited to the finding of the existence of a superior-subordinate relationship. Although Kondewa challenges the finding that he had both the legal and material ability to prevent the commission of criminal acts by his subordinate Morie Jusu Kamara and other subordinates and to punish them for those crimes, the Trial Chamber's finding that he knew or had reason to know that certain crimes were being committed or that he failed to prevent their commission or to punish the alleged perpetrators was not challenged as such.[349]

9322. para. 173: In order for the Appeals Chamber to assess a party's arguments on appeal, the party must set out its grounds of appeal clearly, logically and exhaustively and must support allegations of error with precise references to the trial judgment or other material that supports his appeal. The Appeals Chamber will not consider submissions which are obscure, contradictory, vague or suffer from formal or other deficiencies.[350] The Appeals Chamber will, therefore, only consider the Trial Chamber's application of the effective control test, and determine whether based on the findings of fact, a reasonable trier of fact could have concluded that a superior subordinate relationship existed between Kondewa and these Kamajors.

9323. para. 174: Both parties concur with the Trial Chamber's articulation of the legal requirements for the establishment of superior responsibility under Article 6(3). They differ, however, in the application of the effective control test to civilian as opposed to military superiors. Both parties agree that a superior-subordinate relationship may be of a military or civilian character and that individuals in positions of authority whether within civilian or military structures may incur criminal responsibility on the basis of their *de facto* and/or *de jure* positions as superiors.[351] Kondewa argues that for a civilian superior to be found to have effective control pursuant to Article 6(3), the superior must either exercise powers of control similar to or analogous to that of a military commander, or must be part of a formalized structure of command.[352] According to Kondewa, liability under Article 6(3) is more difficult to establish for civilian superiors because there is usually an absence of formal powers of control in such a case.[353]

9324. para. 175: As has been noted, the position taken by the Prosecution is that there is no distinction between the legal standards required for proof of a superior-subordinate relationship in the case of "civilian" as opposed to "military" superior. The Appeals Chamber holds that the test for establishing the existence of a superior-subordinate relationship is effective control for both military and civilian superiors.[354]

9325. para. 176: The Appeals Chamber will now determine whether it was reasonable for the Trial Chamber to conclude that Kondewa exercised the requisite degree of "effective control" over his alleged subordinates.

9326. para. 177: The Trial Chamber relied on the following facts to conclude that as of 15 February 1998, Kondewa exercised effective control over Kamara, Squire and Baigeh: (a) the *de jure* status of Kondewa as a High Priest; (b) an incident which occurred in August 1997, (c) events which occurred during the 15 February 1998 attack on Bonthe, and (d) a letter sent from the

Attoney-General to Kamajors in Bonthe in March 1998.[355] These facts are discussed in detail below.

i. *De jure* status – Kondewa – Bonthe District

9327. para. 178: In finding that a superior-subordinate relationship existed between Kondewa and the Kamajor commanders responsible for the Bonthe attack, the Trial Chamber relied on what it describes as his *de jure* status as High Priest of Kamajors in Sierra Leone and particularly so in Bonthe District.[356] Kondewa submits that because the Trial Chamber found elsewhere in the Judgment that the command he had over the Kamajors by virtue of his position as High Priest did not amount to a relationship of effective control, it was "unclear how the Trial Chamber determined that [his] status as High Priest gave him any higher degree of authority in Bonthe."[357] The Appeals Chamber notes that the Trial Chamber indeed found that Kondewa's status as High Priest did not amount to effective control over the Kamajors.[358]

9328. para. 179: The Appeals Chamber notes, however, that the Trial Chamber did not base its findings on the existence of a superior-subordinate relationship for Bonthe District on Kondewa's *de jure* position as High Priest alone. In addition to Kondewa's *de jure* status, the Trial Chamber relied on his *de facto* status as a superior to his alleged subordinates, as disclosed by evidence of his actual exercise of effective control over Kamajors who committed crimes in Bonthe District.[359] Although his position as High Priest was one of several factors considered by the Trial Chamber in determining the existence of a superior-subordinate relationship, the Appeals Chamber is of the view that this is not a material factor in view of the overwhelming evidence of his actual exercise of effective control. Such include evidence of the relationship with his alleged subordinates in Bonthe, including an incident occurring in August 1997, events occurring during the 15 February 1998 attack on Bonthe, and a reaction to a letter sent from the Attorney-General to Kamajors in Bonthe in March 1998.

ii. The August 1997 Incident – Kondewa – Bonthe District

9329. para. 180: The Trial Chamber also relied on an incident occurring in Bonthe in August 1997, prior to the setting up of Base Zero, which involved a delegation sent to Kondewa as "the supreme head of the Kamajors."[360] Kondewa submits that the evidence falls outside the time frame of the Indictment, and that such evidence may not be relied upon to find that he exercised effective control six months later.[361]

9330. para. 181: The Appeals Chamber concurs that effective control must be established at the time of commission of the alleged crimes.[362] The Appeals Chamber is of the view, however, that even though an accused cannot be convicted for criminal acts falling outside the period of the Indictment, evidence of matters occurring outside the timeframe of the Indictment may be taken into account where relevant and probative of the accused's responsibility as a superior.[363] The evidence was relied upon by the Trial Chamber to establish that at a time before the commission of the crimes, Kondewa had effective control and that he had authority and power to issue oral and written directives to the Kamajors in the area. He had the power to order investigations for misconduct, and to hold court hearings and to threaten the imposition of sanctions of "a terrible death" on the Kamajors if they lied to him.[364] The evidence also establishes Kondewa' s pre-existing relationship with Squire.[365]

9331. para. 182: Taken together with the events of February and March 1998, the evidence shows that a reasonable trier of fact could conclude that this effective control continued until at least 15 February 1998.

iii. Events occurring during 15 February 1998 Attack on Bonthe – Kondewa – Bonthe District

9332. para. 183: The Trial Chamber also relied on events that occurred during the 15 February 1998 attack itself.[366] Kamara, as the overall commander of the Bonthe attack[367] sent several reports to Kondewa at Base Zero about the situation in Bonthe.[368] Based on these reports, three delegations came to Bonthe from Base Zero to investigate the situation. The first two delegations acted under Kondewa's instructions and Kondewa himself was the leader of the third delegation that arrived in Bonthe on 1 March 1998.[369] Witness Father Garrick testified that Kondewa came to Bonthe on the request of Kamara who had been complaining about the attitude of the Kamajors towards the civilians, and especially regarding the plight of the chiefdom speaker, Lahai Ndokoi Koroma, who was being targeted by the Kamajors for allegedly being a "junta."[370] Only Kondewa had authority to release Lahai Koroma and Kondewa left with him to Talia and later to Bo.

9333. para. 184: This evidence shows that Kamara reported to Kondewa about events in Bonthe not in the latter's capacity as High Priest, but in his capacity as *de facto* commander of the Kamajors who carried out the attack. Furthermore, Kondewa said at a public meeting in Bonthe that he had not allowed his men to enter Bonthe but that they had not listened to his advice and had done what they had done. He apologised on their behalf and told the gathering that the Kamajors and not ECOMOG were responsible for security in the area.[371]

iv. Letter from the Attorney General in March 1998 – Kondewa – Bonthe District

9334. para. 185: In March 1998, a delegation came to Freetown from Bonthe to complain to the President and the Attorney-General about the looting and killing carried out by the Kamajors in Bonthe. A letter written by the Attorney-General was given to Kamara, who passed it on to Squire. The latter declared that he refused to recognise the authority of the Attorney-General, or to accept any instructions unless they came from Norman or Kondewa.[372]

v. Conclusion – Kondewa – Bonthe District

9335. para. 186: The Trial Chamber's findings on the existence of a superior-subordinate relationship in each location was based on the totality of the evidence in the case with regard to such location. In the case of Bonthe, Kondewa's position as High Priest, which gave him a certain status, was just one of several factors considered by the Trial Chamber. The Trial Chamber also found that Kondewa had authority and power to issue oral and written directives; that he could order investigations for misconduct and hold court hearings; and that he had the legal and material ability to issue orders to Kamara.[373] Furthermore, Kondewa himself acknowledged his authority and control over Bonthe by stating publicly that he refused "to give any areas under his control to a military government but to the democratically elected Government of President Ahmad Tejan Kabbah."[374]

9336. para. 187: The Appeals Chamber finds that it was open to a reasonable trier of fact, based on all the evidence adduced, to conclude that Kondewa's *de facto* status as superior resulted in the exercise of effective control over the Kamajors who committed crimes in Bonthe. The fact that the Trial Chamber found that Kondewa did not exercise the same degree of control over Kamajors in other locations does not render the Trial Chamber's findings in relation to Bonthe inconsistent or illogical.

9337. para. 188: The Appeals Chamber therefore finds that Kondewa has failed to show that no reasonable trier of fact could have reached the conclusion that a superior-subordinate relationship existed between him and his alleged subordinates in Bonthe District.

9338. para. 189: For the foregoing reasons, the Appeals Chamber, Justice King dissenting, dismisses Kondewa's First Ground of Appeal.

vi. Dissents – Justice King - Kondewa – Bonthe District

9339. para. 59: I shall now consider Counts 2 and 4 of the Indictment for which the majority of my learned colleagues affirm the Trial Chamber's finding of Guilt in respect of Fofana and the appellant Kondewa, (Fofana not appealing), under Article 6(3), for crimes committed by Kamajors in Bonthe District. Counts 2 and 4 of the Indictment charge both Fofana and Kondewa with Murder and Cruel Treatment respectively, as War Crimes punishable under Article 3.a. of the Statute.

9340. para. 60: It will be recalled that the Trial Chamber, Justice Bankole Thompson dissenting, found Kondewa individually criminally responsible as a superior, pursuant to Article 6(3) for crimes Committed by Kamajors in Bonthe District under Courts 2, 4, 5 and 7. As the Appeals Chamber has found Kondewa Not Guilty of Counts 5 and 7, I shall only deal with Counts 2 and 4.

9341. para. 61: Article 6(3) of the Statute reads

> "The fact that any of the acts referred 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."

Article 3 a. of the Statute referred to above states:

> "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 11 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;

9342. para. 62: It is important to stress, *in limine*, that Kondewa was not found guilty of having personally committed any of the crimes stated in Article 3a. "He never went to the war front himself." He was found guilty because both the Trial Chamber and the majority of the Appeals Chamber found "that a superior-subordinate relationship existed between him and his alleged subordinates in Bonthe District."[1144] That is to say, although he himself was not physically present and did not personally commit the crimes, he is deemed to have done so because of an alleged superior/subordinate relationship with the actual perpetrators of the crimes. I agree with the

Appeals Chamber's articulation of the law with respect to the concept of superior responsibility, but I differ from them in their application of the principle of effective control.

9343. para. 63: Kondewa's First Ground of Appeal challenges his conviction for crimes committed by Kamajors in Bonthe District on the basis of superior responsibility. He challenges the Trial Chamber's application of the 'effective control' test and the existence of a superior-subordinate relationship. He contends that the Trial Chamber erroneously misapplied the 'effective control' test in determining whether a superior-subordinate relationship existed between him and the alleged perpetrators of crimes in Bonthe District.

9344. para. 64: It is now settled law that in interpreting Article 6(3) a superior is one who possesses the power and authority in either a *de jure* or a *de facto* form to prevent a subordinate from committing a crime or to punish the subordinate after the crime is committed.[1145] I agree that the test for establishing the existence of a superior-subordinate relationship is effective control of both military and civilian superiors. [1146] This means that where the relationship is proved to exist, the superior will be held criminally responsible if he fails to punish the actual perpetrators of the crime.[1147]

9345. para. 65: It follows, therefore, 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."[1148] The superior must have the material ability of a superior to prevent or punish his subordinates' crimes.[1149] 'Substantial influence' or 'persuasive ability' does not constitute effective control for the purpose of command responsibility.[1150]

9346. para. 66: The Trial Chamber held with respect to Bonthe District that Kondewa "[b]y virtue of his *de jure* status as High Priest ... and his *de facto* status as a superior to these Kamajors in that District, Kondewa exercised effective control over them."[1151] It is evident from the Trial Chamber's findings that it relied significantly on Kondewa's *de jure* status as "High Priest" in finding effective control and consequently, his criminal responsibility as a superior under Article 6(3). Specifically, I refer to the Trial Chamber's finding that "Kondewa had the legal and material ability to issue orders to Kamara, both by reason of his leadership role at Base Zero, being part of the CDF High Command" and the authority he enjoyed in his position as High Priest in Sierra Leone and particularly so in Bonthe District."[1152] Emphasis added.

9347. para. 67: According to the evidence and the findings of the Trial Chamber:

> Kondewa in his capacity as High Priest was in charge of the initiations at Base Zero and was the head of all the CDF initiators in the country. The Kamajors believed in mystical powers of the initiators, especially Kondewa, and that the process of the initiation and immunisation would make them "bullet-proof". The Kamajors looked up to Kondewa and admired the man with such powers. They believed that he was capable of transferring his powers to them to protect them. By virtue of these powers Kondewa had command over the Kamajors in the country. He never went to the war front himself, but whenever a Kamajor was going to war, Kondewa would give his advice and blessings, as well as the medicine which the Kamajors believed would protect them against bullets. No Kamajor would go to war without Kondewa's blessings.[1153]

9348. para. 68: The Appeals Chamber seems to have given undue credence to that passage from the Trial Chamber's Findings when adumbrating on Kondewa's alleged superior-subordinate relationship. I am impelled, therefore, to analyse that finding, if only to dismiss it as of no evidential or credential value. I start with "High Priest": The evidence shows that Kondewa was not a priest, let alone a "High' one. A Priest, in the non-metaphorical sense, is an ordained minister or a person who performs religious ceremonies and duties in a non-Christian religion.[1154] Kondewa was none of these. He was, in fact, a 'juju man' or 'medicine man' or in local parlance 'meresin man'; he was a 'masked dancer' or in local parlance 'deble dancer' , a 'gorboi' dancer.[1155] It is ludicrous to say that Kondewa's so-called High Priest appellation is analogous to 'Chaplain' in an army. One Dr Hoffman testified that Kondewa would have knowledge of the forest, supernatural or superhuman knowledge which anthropologists prefer to call 'occult' and could protect the village from witches and bush devils.[1156]

9349. para. 69: It boggles the imagination to think that on the basis of purporting to have occult powers, on the basis of his fanciful mystical prowess, Kondewa could be said to qualify as a 'commander' in a superior/subordinate relationship. Without remarking on the novelty of its finding, the Appeals Chamber Majority Opinion, for the first time in the history of international criminal law has concluded that a civilian Sierra Leonean juju man or witch doctor, who practised fetish, had never been a soldier, had never before been engaged in combat, but was a farmer and a so-called herbalist, who had never before smelt military service ("he never went to the war front himself') can be held to be a commander of subordinates in a bush and guerrilla conflict in Sierra Leone, "by virtue" of his reputed superstitious, mystical, supernatural and suchlike fictional and fantasy powers.

9350. para. 70: In my opinion, the roles found to have been performed by Kondewa as "High Priest", are so ridiculous, preposterous and unreal as to be laughable and not worthy of serious consideration by right-thinking persons in civilised society. If the Kamajors believe in the mystical power of Kondewa as an initiator, his imaginary immunisation powers (as if it was

scientific), do the Chambers of the Special Court also believe that Kondewa could make Kamajors "bullet-proof" and that Kondewa's "blessings" would make them impervious to machine-gun bullets? And on that basis find him to be a commander? Obviously not. On these grounds alone I opine that there is no foundation for the Trial Chamber's finding, and its endorsement by my erudite colleagues, that "Kondewa had both the *legal* and material ability to prevent the commission of criminal acts by Kamajors or to punish them for those criminal acts."[1157]

9351. para. 71: The Trial Chamber accepted evidence from Prosecution Witness Albert Nallo who testified that Kondewa did not at any time during the war command any troops. It would be recalled that the Trial Chamber found Nallo to be 'the single most important witness in the Prosecution evidence on the alleged superior responsibility of the Accused ...."[1158]

9352. para. 72: Third, the Trial Chamber found that Kondewa's *de jure* status as High Priest of the CDF gave him authority over all the initiators in the Country and put him in charge of initiations. This authority according to the Trial Chamber did not give Kondewa the power to decide who should be deployed to go to the war front. Kondewa also never went to the war front himself. [1159] And yet he is deemed to have a superior/ subordinate relationship with subordinates.

9353. para. 73: From the foregoing, I opine that the Trial Chamber committed an error of fact in relying on Kondewa's status as "High Priest" in the CDF, as a factor in determining the existence of a superior-subordinate relationship in Bonthe District.

9354. para. 74: The Trial Chamber found that in Tongo,[1160] Koribondo,[1161] Bo District,[1162] Kenema District[1163], and Talia/Base Zero, it was not established beyond reasonable doubt that there was a superior-subordinate relationship, either *de jure* or *de facto* between Kondewa and all the Kamajors. These findings were made despite the Trial Chamber's finding that Kondewa, as the High Priest, was a key and essential component of the leadership structure and organisation and that by virtue of his power as High Priest, Kondewa had command over the Kamajors in the country.[1164]

9355. para. 75: The facts relied on to establish a superior-subordinate relationship in Bonthe District must be carefully scrutinised, having regard in particular, to the fact that the CDF was a militia guerrilla fighting force or an 'irregular army', which although it had a hierarchical command structure, was comparatively less trained, resourced, organised and staffed than a regular army.

9356. para. 76: The Trial Chamber in establishing Kondewa's effective control on the basis of his *de facto* command appears to rely on the following factors:

(i) Testimony that in Bonthe District Kondewa was regarded as the 'supreme head' of the Kamajors;[1165]

(ii) Kondewa's ability to release Lahai Ndokoi;[1166]

(iii) Kondewa's statement that "he was not going to give any of the areas under his control to a military government but to the democratically elected Government of President Ahmad Tejan Kabbah;"[1167]

(iv) Kondewa's ability to stop the Kamajors from harassing civilians from attacking Bonthe Town and his power to issue oral and written directives; order investigations for misconduct and threaten imposition of sanctions;[1168]

(v) Kondewa's legal and material ability to prevent the commission of criminal acts by Morie Jusu Kamara and Kamajors under be command of Morie Jusu Kamara.[1169]

(vi) Morie Jusu Kamara and Julius Squire's refusal to recognise the authority of the Attorney-General and not to accept any instructions, unless they came from Norman or Kondewa.[1170]

9357. para. 77: In evaluating the above evidence, I find that no reasonable tribunal could conclude that Kondewa was a *de facto* superior for the purpose of establishing a superior-subordinate relationship in Bonthe District. First, the Trial Chamber's finding that Kondewa was criminally responsible as a superior in Bonthe District because he was regarded as 'the supreme head' of the Kamajors in the area, directly conflicts with the Trial Chamber's failure to find Kondewa responsible as a superior in Talia/Base Zero. This contradiction is highlighted by the fact that Talia/Base Zero is in Bonthe District and was, at all material times, the Headquarters of the Kamajors.

9358. para. 78: While the Trial Chamber and my learned Appeals Chamber colleagues are of the opinion that Kondewa had 'substantial influence' as a "High Priest" over the Kamajors (which I rejected earlier), this is not the same as demonstrating that Kondewa had the 'material ability to prevent or punish subordinates for the commission of crimes.' It does not necessarily follow that ability to secure the release of an individual, or to stop the Kamajors from harassing civilians, necessarily demonstrates a capability to prevent or punish criminal activity in a superior/subordinate context.

9359. para. 79: The Trial Chamber in arriving at its conclusion held that, based on the evidence adduced; there was a superior-subordinate relationship between Kondewa and Morie Jusu Kamara, District Battalion Commander of Bonthe District, Julius Squire, Kamara's second in command and Kamajor Baigeh, Battalion Commander of the Kassilla Battalion. According to the

Trial Chamber, Kondewa had authority and control over the actions of these Kamajor commanders and the Kamajors under their immediate command.[1171]

9360. para. 80: In my view, such conclusion is fallacious Kondewa in his Appeal Brief submits, rightly, that that there is no direct evidence of any relationship between him and either Morie Jusu Kamara, Julius Squire or Baigeh ("the three Commanders''). If anyone had a superior/subordinate relationship with the perpetrators, it must be, according to the evidence, those three commanders and not Kondewa. Furthermore, there is no credible indirect evidence of any relationship between the three Commanders and Kondewa. The Trial Chamber in concluding that a superior-subordinate relationship existed appeared to have engaged in a speculative exercise. Even assuming, arguendo, that a superior-subordinate relationship did exist, it is still my view that no reasonable tribunal would conclude that Kondewa had authority and control over the actions of the Kamajors, who were not under his command or control, but under the immediate and direct command of the three Commanders. It is important to note that the Trial Chamber expressly found that in March 1998, Morie Jusu Kamara, who in fact was the commander and superior of the Kamajors at all material times in Bonthe District, and not Kondewa, was not able to control the Kamajors:

> When Father Garrick returned to Bonthe from Freetown in March 1998, Battalion Commander Morie Jusu Kamara told Father Garrick that he would stop the Kamajors from mistreating Chief George Brandon, one of the people hidden at Fathel Garrick's mission. However, he was not able to control the Kamajors.[1172]

(ii) Moyamba District

a. Kondewa – Moyamba District

9361. para. 212: The issue raised in this ground is whether, based on the evidence as a whole, a reasonable tribunal of fact could conclude that a superior-subordinate relationship existed between Kondewa and his alleged subordinates. In reaching its findings on the superior responsibility of Kondewa in respect of this incident, the Trial Chamber relied on the following evidence:

> "(i) that at the time the crime was committed, the Kamajors said they were "Kondewa's Kamajors";
>
> (ii) that they also said they had come from village; including Talia and Tihun both of which are in Bonthe District;
>
> (iii) that the vehicle was taken to Talia and given to Norman then to Kondewa; and

(iv) that Kondewa was subsequently seen driving the car around in Bo."[411]

9362. para. 213: Based on this evidence the Trial Chamber concluded that this particular crime in Moyamba District was carried out by Kamajors operating under the direct orders of Kondewa.[412]

9363. para. 214: It is evident that apart from Kondewa's *de jure* status as High Priest of all the Kamajors in the country, a status which the Trial Chamber found did not by itself give Kondewa effective control over the Kamajors, the only other evidence relied on by the Trial Chamber consisted of statements made by the alleged perpetrators and the use of the vehicle by Kondewa after it had first been given to Norman. The Appeals Chamber finds that the fact that the Kamajors in question identified themselves as "Kondewa's Kamajors" is insufficient to establish the existence of a superior-subordinate relationship beyond reasonable doubt, the statement having been made in the absence of Kondewa. Furthermore, the fact that they also stated that they had come from Talia and Tihun, among other villages, was insufficient. The Trial Chamber, in its findings on the responsibility of Kondewa in Bonthe District, found that apart from the Kamajors who carried out the 15 February 1998 attack on Bonthe, there was no evidence on which it could conclude beyond reasonable doubt that "Kondewa did exercise the same degree of control over other Kamajor commanders and fighters who operated in the surrounding areas of Bonthe Town, prior to the attack or subsequently."[413]

9364. para. 215: There was thus, insufficient evidence linking Kondewa to these particular Kamajors that could establish beyond reasonable doubt that he had a superior-subordinate relationship with them. The Appeal Chamber finds, therefore, that on the evidence it was not open to a reasonable tribunal of fact to conclude that Kondewa was individually criminally responsible as a superior for this particular act of pillage, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.f. of the Statute in Moyamba District.

9365. para. 216: For the reasons set out above, the Appeals Chamber grants Kondewa's Third Ground of Appeal and reverses the verdict of guilt on Count 5 and substitutes a verdict of not guilty.

(iii) Acts of Terrorism

a. Fofana – Koribondo - Acts of Terrorism

9366. para. 338: The Prosecution submits that the Trial Chamber erred in law and in fact in finding that the evidence adduced had not established beyond reasonable doubt that Fofana knew

or had reasons to know that his subordinates would commit acts of terrorism in Koribondo or had already done so.[693] It argues that in arriving at its conclusion, the Trial Chamber relied exclusively on its finding that "the commission of such acts of violence with the primary purpose to spread terror was not explicitly included in Norman's order."[694] In so doing, the Prosecution contends that the Trial Chamber failed to consider circumstantial evidence and therefore misapplied the law with respect to the *mens rea* required to establish superior responsibility.[695]

9367. para. 339: Relying on similar arguments made in relation to crimes committed in Tongo, the Prosecution lists several proven acts of violence committed in Koribondo and argues that such acts of violence can only reasonably lead to the conclusion that the perpetrators had the specific intent to spread terror.[696] The Prosecution further submits that several of Norman's instructions such as his statement in January 1998 in advance of the attack in Koribondo, that fighters not leave "any house, or any living thing there" and his instructions given to "Nallo in Fofana's presence to kill anybody in Koribondo" can only be reasonably interpreted as demonstrating the specific intent to spread terror amongst the civilian population.[697] The Prosecution submits that, at the very least, Norman's instructions placed Fofana on notice that acts of terrorism were about to be committed.[698] The Prosecution similarly relies on Fofana's alleged prior knowledge that civilians had been in the past terrorized in Tongo and the Trial Chamber's finding that there was a reporting system in place and that "Albert J Nallo did all the planning for the Koribondo attack and then submitted it to… Fofana."[699]

9368. para. 340: In response, Fofana relies on similar arguments raised in relation to criminal responsibility for acts of terrorism alleged in Tongo and submits that there is no evidence demonstrating that he knew or had reason to know that his subordinates were perpetrating acts of violence with the specific intent to spread terror.[700] Fofana refutes the Prosecution's submissions that Norman's instructions demonstrated the specific intent to spread terror and argues that other inferences than the spreading of terror may be drawn from the evidence, such as the primary purpose of the Kamajors was "to capture or take towns that were under rebel or Junta control."[701] Fofana submits that evidence as accepted by the Trial Chamber reveals that the reporting system and organisation of the CDF was poor[702] and that certain Kamajors acted 1m their own outside the knowledge of the CDF.[703]

9369. para. 341: He further argues that the Prosecution's argument that he had prior knowledge of crimes committed by Kamajors is flawed because "knowledge that previous instances of violence cannot amount to proof of knowledge beyond reasonable doubt that acts of terrorism would be committed in the future."[704]

9370. para. 371: To be held responsible as a superior for acts of terrorism in Koribondo, Fofana must have known or had reason to know that acts of terrorism were about to be committed or were committed by his subordinates with the specific intent to spread terror.[730]

9371. para. 372: The Prosecution relies on four principal arguments to establish that Fofana knew or had reason to know that acts of terrorism were committed in Koribondo. These are:

(i) Fofana had knowledge of previous criminal acts, including crimes that could have been qualified as terrorism;[731]

(ii) Norman's instructions in advance of the attack in Koribondo demonstrated an intent to spread terror; [732]

(iii) Acts of terrorism were perpetrated in Koribondo; and

(iv) The Trial Chamber's findings that a reporting system existed and that the planning of the attack in Koribondo was submitted by Nallo to Fofana, who submitted it to Norman.[733]

9372. para. 373: Although acts of terrorism may have been committed in Koribondo, the Prosecution does not demonstrate that Fofana knew or had reason to know that acts of terrorism would be or were committed there. The Prosecution only points to one finding of fact to suggest that Fofana may have learned, after the fact, that acts of terrorism were committed in Koribondo, however even this finding is far from conclusive. The Prosecution submits that the Trial Chamber found that "Fofana received reports on any military operation, in particular when Nallo was involved."[734] In fact, in the relevant paragraphs, the Trial Chamber found that Fofana "received frontline reports, both written and verbal, from the commanders in the field and passed them on to Norman" and that the strategies for war operations planned by Nallo and Fofana "did not include the killing of innocent civilians, looting of property or raping of women."[735] Neither of these findings points ineluctably to the conclusion that Fofana knew or had reason to know that acts of terrorism were committed in Koribondo.

9373. para. 374: The real strength of the Prosecution's argument that Fofana must have known or had reason to know that acts of terrorism would be committed in Koribondo lies in his knowledge of Norman's orders, but even there the argument must fail. Although Norman's statement at the December 1997 Passing Out Parade contained illegal orders, it did not unambiguously indicate a specific intent to spread terror. In light of this ambiguity, a reasonable tribunal of fact could find that Fofana neither knew nor could have known of the specific intent.

9374. para. 375: The Prosecution's argument with respect to Fofana's superior responsibility for acts of terrorism in Koribondo must be rejected.

9375. para. 379: The Appeals Chamber, therefore, finds no reason to disturb the Trial Chamber's findings with respect to the criminal responsibility of Fofana and Kondewa for acts of terrorism under Article 6(1) and/or Article 6(3) of the Statute. The Appeals Chamber rejects the Prosecution's Sixth Ground of Appeal in its entirety.

b. Kondewa – Bonthe District - Acts of Terrorism

9376. para. 342: The Prosecution submits that the Trial Chamber erred in law and in fact in finding that the evidence adduced had not established beyond reasonable doubt that Kondewa knew or had reason to know that his subordinates would commit acts of terrorism in Bonthe District or had already done so.[705] In support of its argument, the Prosecution similarly relies on Kondewa's alleged knowledge that civilians had been in the past terrorized in Tongo and proven acts of violence committed in Bonthe District.[706] The Prosecution further relies on Kondewa's admission that "he was aware of the atrocities committed by the Kamajors during the attack."[707]

9377. para. 343: In response, Kondewa relies on similar arguments raised in relation to acts of terrorism alleged in Tongo and submits that there is no evidence demonstrating that he knew or had reason to know that his subordinates were perpetrating acts of violence with the specific intent to spread terror. He argues that the "link between the acts of the subordinates and his knowledge regarding the specific act of terrorism is unfounded."[708]

9378. para. 376: The Appeals Chamber is not convinced by the Prosecution's submissions that the Trial Chamber erred in not finding that Kondewa knew or had reasons to know that acts of terrorism were about to be or had been committed in Bonthe District. A reasonable tribunal of fact could conclude, as did the Trial Chamber, that instructions given by Norman during the Passing Out Parades in December 1997 and in early January 1998 did not convey the specific intent to spread terror.

9379. para. 377: The additional submissions by the Prosecution also do not render the Trial Chamber's conclusion on Kondewa's lack of unreasonable. As discussed above, and contrary to the Prosecution's submission, the Trial Chamber reasonably concluded that Kondewa was not aware that civilians had been terrorized in Tongo, although it found that he was aware that the Kamajors who operated in the towns of Tongo Field had committed crimes.[736] Further, Kondewa's admission that "he was aware of the atrocities committed by the Kamajors during the attack" on Bonthe[737] does not necessarily demonstrate that he was aware that his subordinates committed acts of terrorism. A reasonable tribunal of fact could have concluded that he had the

requisite knowledge that some crimes had been committed in Bonthe, but lacked knowledge of the crime "acts of terrorism."

9380. para. 378: The Prosecution's argument with respect to Kondewa's superior responsibility for acts of terrorism in Bonthe must be rejected.

9381. para. 379: The Appeals Chamber, therefore, finds no reason to disturb the Trial Chamber's findings with respect to the criminal responsibility of Fofana and Kondewa for acts of terrorism under Article 6(1) and/or Article 6(3) of the Statute. The Appeals Chamber rejects the Prosecution's Sixth Ground of Appeal in its entirety.

CHAPTER 14 - SENTENCING

A. CHARLES TAYLOR

1. Sentencing Judgment

The Prosecutor v. *Charles Ghankay Taylor*, SCSL-03-01-T, Judgement, 30 May 2012

(a) Applicable Law

(i) Applicable Provisions

9382. para. 6: Sentencing in the Special Court for Sierra Leone is governed by Article 19 of the Statute of the Special Court ("Statute") and Rule 10 1 of the Rules of Procedure and Evidence ("Rules"). Article 19 of the Statute provides:

> 1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.
>
> 2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
>
> 3. In addition to imprisonment, the Trial Chamber may order the forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct, and their return to their rightful owner or to the State of Sierra Leone.

Rule 101 of the Rules provides:

> (A) A person convicted by the Special Court, other than a juvenile offender, may be sentenced to imprisonment for a specific number of years.
>
> (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 19 (2) of the Statute, as well as such factors as:
>
> (i) Any aggravating circumstances;
>
> (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the Statute.

(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

(D) Any period during which the convicted person was detained in custody pending his transfer to the Special Court or pending trial or appeal, shall be taken into consideration on sentencing.

9383. para. 7: According to the above provisions, the Trial Chamber is obliged to take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. Aggravating and mitigating circumstances and the general practice regarding prison sentences in the International Criminal Tribunal for Rwanda (lCTR) and the national courts of Sierra Leone shall, where appropriate, be taken into account. These requirements are not exhaustive and the Trial Chamber has the discretion to determine an appropriate sentence depending on the individual circumstances of the case.8

9384. para. 8: The Trial Chamber recognises the universally accepted principle that a person who has been convicted of many crimes should generally receive a higher sentence than a person convicted of only one of those crimes.[9]

9385. para. 9: According to Rule 101 (C) of the Rules, the choice as to concurrent or consecutive sentencing is a matter within the Trial Chamber's discretion.[10] Such discretion must be exercised with reference to the fundamental consideration that the sentence to be served by an accused must reflect the totality of the accused's criminal conduct.[11] In this respect, the Trial Chamber acknowledges that the sentence should be individualised and also proportionate to the conduct of the Accused, reflecting the inherent gravity of the totality of the criminal conduct of the convicted person, taking into consideration the particular circumstances of the case, the form and degree of participation of the Accused.[12]

9386. para. 10: The practice of imposing a single 'global' sentence for multiple convictions is well established in the jurisprudence of the international criminal tribunals,[13] as well as that of the Special Court.[14] The Trial Chamber has accepted the ICTR Appeal Chamber holding in *Prosecutor v. Kambanda* that it is within the discretion of the Trial Chamber to impose a global sentence in respect of all counts for which an accused has been found guilty.[15] The governing criteria is that the final or aggregate sentence should reflect the totality of the criminal conduct, or generally that it should reflect the gravity of the offence and the overall culpability of the offender, so that it is both just and appropriate.[16]

9387. para. 11: In the present case, the Trial Chamber finds that it is appropriate to impose a global sentence for multiple convictions in respect of Mr Taylor.

(ii) Sentencing Objectives

9388. para. 12: The Trial Chamber notes the content of the Preamble of the United Nations Security Council Resolution 1315 (2000) establishing the Court which recognises that [...] in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace.[17]

9389. para. 13: The SCSL Appeals Chamber has stated that, in relation to legitimate sentencing purposes, "the primary objectives must be retribution and deterrence".[18] This is also acknowledged by the ICTY Appeals Chamber which stated that "it is well established that at the ICTY and the ICTR, retribution and deterrence are the main objectives in sentencing".[19] In the context of international criminal justice, retribution is not to be understood as fulfilling a desire for revenge, but as duly expressing the outrage of the international community at these crimes,[20] and it is meant to reflect a fair and balanced approach to punishment for wrongdoing. The penalty imposed must be proportionate to the wrongdoing. In other words, the punishment must fit the crime.[21]

9390. para. 14: International criminal tribunals have held that a sentence should make plain the condemnation of the international community of the behaviour in question and show that the international community is not ready to tolerate serious violations of international humanitarian law and human rights.[22] Thus, the penalties imposed by the Trial Chamber must be sufficient to deter others from committing similar crimes.[23] Deterrence is both general, referring to the notion that a convicted person who is punished can serve as an example to others, who will then desist from committing or will be unlikely to commit the said crimes for fear of being punished, and also specific deterrence or incapacitation, which describes the objective of preventing future criminal conduct by restraining or incapacitating convicted persons.

9391. para. 15: Although rehabilitation is considered as an important objective of punishment, it is more relevant in domestic jurisdictions than in international criminal tribunals.[24]

9392. para. 16: The Trial Chamber endorses the principle that: One of the main purposes of a sentence is to influence the legal awareness of the accused, the surviving victims, their relatives, the witnesses and the general public in order to reassure them that the legal system is implemented

and enforced. Additionally, sentencing is intended to convey the message that globally accepted laws and rules have to be obeyed by everybody.[25]

9393. para. 17: In deciding the appropriate sentences, the Trial Chamber has taken into account all the factors that are likely to contribute to achievement of these objectives.

(iii) Sentencing Factors

a. Gravity of Offence

9394. para. 19: The gravity of the offence is the primary consideration in imposing a sentence,[27] and is the "litmus test" in determination of an appropriate sentence.[28] The gravity of the offence is determined by assessing the inherent gravity of the crime and the criminal conduct of the accused,[29] a determination that requires consideration of the particular circumstances of the case and the crimes for which the person was convicted, as well as the form and degree of participation of the Accused in the crime.[30]

9395. para. 20: In assessing the gravity of the offence, the Trial Chamber has taken into account such factors as (i) the scale and brutality of the offences committed;[31] (ii) the role played by the Accused in the commission of the crime;[32] (iii) the degree of suffering, impact or consequences of the crime for the immediate victim in terms of physical, emotional and psychological effects;[33] (iv) the effects of the crime on relatives of the immediate victims and/or the broader targeted group;[34] (v) the vulnerability and number ofvictims;[35] and (vi) the length of time during which the crime continued.[36]

9396. para. 21: With respect to the assessment of the criminal conduct of the convicted person, the Trial Chamber has taken into account the mode of liability under which the Accused was convicted, as well as the nature and degree of his participation in the offence.[37] In this regard, the Trial Chamber adopts the jurisprudence of ICTY and ICTR that aiding and abetting as a mode of liability generally warrants a lesser sentence than that to be imposed for more direct forms of participation.[38] However, the Trial Chamber will also take into account the unique circumstances of this case in applying this principle and determining an appropriate sentence.

b. Individual Circumstances of the Convicted

9397. para. 22: The Trial Chamber notes that "the individual circumstances of the convicted person" can be either mitigating or aggravating. Family concerns should in principle be a

mitigating factor. [39] The convicted person's behaviour before, during and after the offence, his motives for the offence and demonstration of remorse thereafter are all factors that can be taken into account.[40] The purpose of taking the individual circumstances of the convicted person into account is to individualise the penalties concerned. For this purposes, the unfettered discretion of judges to evaluate the facts and attendant circumstances should enable them to take into account any other factor that they deem pertinent.[41]

9398. para. 23: As a general principle, a convicted person's motive can be considered as a factor in sentencing, either as an aggravating factor or a mitigating factor.[42] Among those motives that have been considered as aggravating factors are enjoyment of criminal acts, sadism and desire for revenge, group hatred or bias, and a desire to cause terror. Desire for pecuniary gain, desire to inflict pain or harm and a desire to escape punishment may also be considered aggravating circumstances.[43] The Appeals Chamber opined that while as a general principle a convicted person's motive can be considered a mitigating factor, it does not amount to a legal excuse for criminal conduct.[44] It held that:

> allowing mitigation for a convicted person's political motives, even where they are considered by the Chamber to be meritorious, undermines the purposes of sentencing rather than promotes them. In effect, it provides implicit legitimacy to conduct that unequivocally violates the law.[45]

c. Aggravating Circumstances

9399. para. 24: It is a widely accepted practice that aggravating factors should be established by the Prosecution beyond reasonable doubt,[46] and that only circumstances directly related to the commission of the offence charged, and for which the Accused has been convicted, can be considered to be aggravating.[47]

9400. para. 25: The Statute and the Rules do not provide an enumeration of the circumstances that the Trial Chamber may consider as aggravating.[48] Thus, the Trial Chamber is tasked with weighing the individual circumstances of each case and has discretion to identity the relevant factors. Based on the established jurisprudence, the Trial Chamber may consider factors such as:

> (i) the position of the accused, that is, his position of leadership, his level in the command structure, or his role in the broader context of the conflict [...]; (ii) the discriminatory intent or the discriminatory state of mind for crimes for which such a state of mind is not an element or ingredient of the crime; (iii) the length of time during which the crime continued; (iv) active and direct criminal participation, if linked to a high-rank position of command, the accused's role as fellow perpetrator, and the active participation of a superior in the criminal acts of subordinates; (v) the informed, willing or enthusiastic participation in crime; (vi)

> premeditation and motive; (vii) the sexual, violent, and humiliating nature of the acts and the vulnerability of the victims; (viii) the status of the victims, their youthful age and number, and the effect of the crimes on them; (ix) the character of the accused; and (x) the circumstances of the offences generally.[49]

9401. para. 26: In addition to the above aggravating factors, the Trial Chamber has also taken into account the fact that attacks committed in traditional places of civilian sanctuary such as churches, mosques, schools, and hospitals are generally considered as being more serious.[50]

9402. para. 27: The Trial Chamber has also taken into account as an aggravating factor the extraterritoriality of the criminal acts of the Accused. The International Court of Justice has held that acts of intervention by a State in support of an opposition within another State constitute "a breach of the customary principle of non-intervention and will also, if they directly or indirectly involve the use of force, constitute a breach of the principle of non-use of force in international relations".[51] The International Court of Justice also held that support given to military and paramilitary activities including "financial support, training, supply of weapons, intelligence and logistic support constitutes a clear breach of the principle of non-intervention".[52] While these provisions of customary law govern conduct between States, the Trial Chamber considers that the violation of this principle by a Head of State individually engaging in criminal conduct can be taken into account as an aggravating factor.

9403. para. 28: Facts which go to proof of the gravity of the offence and facts which constitute aggravating factors may overlap.[53] The practice of some international criminal trial chambers has been to consider the gravity of the offence together with aggravating circumstances.[54] The Trial Chamber considers that, regardless of the approach, where a factor has already been taken into account in determining the gravity of the offence, it cannot be considered additionally as an aggravating factor and vice versa.[55] Similarly, if a factor is an element of the underlying offence, then it cannot be considered as an aggravating factor.[56]

9404. para. 29: The Trial Chamber is of the view that the position of leadership of an accused held criminally responsible for a crime under Article 6(1) of the Statute can be considered to be an aggravating circumstance.[57] Furthermore, breach of trust or authority, where the accused was in a position that carries with it a duty to protect or defend the victims, such as in the case of a government official, police chief or commander, can be an aggravating factor.[58]

9405. para. 30: The Trial Chamber notes the Defence submission that a Trial Chamber may only consider aggravating circumstances that have been pleaded in the Indictment.[59] However, the line of authority cited for this assertion begins with the ICTR in the *Simba* Appeal Judgement,[60] which

cites in support of this assertion a number of earlier precedents, which state much more broadly that aggravating circumstances are "those circumstances directly related to the commission of the offence charged".[61] The Trial Chamber notes that in accordance with these precedents, specifically the *Delalic* Appeal Judgement and the *Kunarac* Trial Judgement, it is only the circumstances and their direct relation to the offences charged, and not necessarily their statement in the Indictment, that is required for them to be considered as aggravating factors. The RUF Sentencing Judgement, which is also cited by the Defence, does not mention the Indictment in this regard, and is in line with the *Delalic* and *Kunarac* precedents. Moreover, the Trial Chamber notes that these precedents are drawn from the ICTR and the ICTY where judgement and sentencing are consolidated, whereas in this Court sentencing is the subject of a separate proceeding subsequent to delivery of the judgement.

d. Mitigating Circumstances

9406. para. 31: Mitigating circumstances need only be proven on a balance of probabilities, and need not be related to the offence.[62]

9407. para. 32: The Trial Chamber notes that neither the Statute nor the Rules define the factors that may be considered to be mitigating. Accordingly, what constitutes a mitigating factor is a matter for the Trial Chamber to determine in the exercise of its discretion.[63]

9408. para. 33: Under Rule 101(B), the only mitigating circumstance that the Trial Chamber is required to consider is the substantial cooperation of the Accused with the Prosecutor.[64]

9409. para. 34: It is generally within the discretion of the Trial Chamber to determine whether or not a factor will be accepted as a mitigating circumstance, and what weight the factor should be granted. Such factors include but are not limited to (i) the expression of remorse or acknowledgement of responsibility;[65] (ii) good character with no prior convictions;[66] (iii) personal and family circumstances;[67] (iv) the good behaviour or conduct of the accused subsequent to the conflict, particularly with respect to promoting peace and reconciliation;[68] (v) good behaviour in detention;[69] (vi) assistance to detainees and victims;[70] (vii) the accused's lack of education or training;[71] (viii) the advanced age of the accused;[72] (ix) voluntary surrender;[73] (x) duress and indirect participation;[74] and (xi) in exceptional circumstances poor or frail health.[75]

9410. para. 35: The Trial Chamber considers that certain factors do not constitute mitigating circumstances and will therefore not take them into account. These include but are not limited to (i) the fact that convictions relate to crimes committed in less districts than those particularised in

the Indictment in no way lessens the seriousness of the offences;[76] (ii) the fact that a sentence is to be served in a foreign country should not be considered in mitigation;[77] (iii) the guerrilla nature of the conflict does not lessen the grievous nature of the offences,[78and] (iv) whilst motive may shade the individual perception of culpability, it does not amount to a legal excuse for criminal conduct.[79]

e. Sentencing Practice in the National Courts of Sierra Leone and other International Tribunals

i. Sentencing Practice at other International Tribunals

9411. para. 36: Article 19(1) of the Statute directs the Trial Chamber to consider, where appropriate, the sentencing practices adopted at the ICTR.[80] The Trial Chamber will also consider the sentencing practice of the ICTY as its statutory provisions are analogous to those of the Special Court and the ICTR.[81] The Trial Chamber is of the view that the sentencing practices of ICTR and ICTY are instructive and has considered these practices where appropriate. The Trial Chamber notes that the jurisprudence of the ICTR and ICTY holds that aiding and abetting as a mode of liability generally warrants a lesser sentence than that imposed for more direct forms of participation.[82] The Trial Chamber further notes that the pronouncement of global sentences is a well established practice at those tribunals.[83] The mitigating and aggravating factors that the Trial Chamber has considered in the instant case have also been widely considered by the ICTR and ICTY.[84]

ii. Sentencing Practice in Sierra Leone

9412. para. 37: Article 19(1) of the Statute directs the Trial Chamber to consider, where appropriate, the sentencing practices of Sierra Leonean national courts. This does not oblige the Trial Chamber to conform to that practice, but rather to take into account that practice as and when appropriate.[85] In the present case, the Trial Chamber notes that Mr Taylor was not indicted for, nor convicted of, offences under Article 5 of the Statute in the Sierra Leonean law. Nevertheless, it has noted with regard to its consideration of the appropriate relative penalties for different modes of liability that the law of Sierra Leone provides that an accessory to a crime "may be indicted, tried, convicted and punished in all respects as if he were a principal felon".[86]

(b) Determination of Sentence

(i) Gravity of the Offences

9413. para. 70: The Accused has been found responsible for aiding and abetting as well as planning some of the most heinous and brutal crimes recorded in human history. The Trial Chamber is of the view that the offences for which the Accused has been convicted - acts of terrorism, murder, rape, sexual slavery, cruel treatment, recruitment of child soldiers, enslavement and pillage - are. of the utmost gravity in terms of the scale and brutality of the offences, the suffering caused by them on victims and the families of victims, and the vulnerability and number of victims.

9414. para. 71: In determining an appropriate sentence for the Accused, the Trial Chamber has taken into account the tremendous suffering caused by the commission of the crimes for which the Accused is convicted of planning and aiding and abetting, and the impact of these crimes on the victims, physically, emotionally and psychologically. The Trial Chamber recalls the tremendous loss of life - innocent civilians burned to death in their homes, or brutally killed by maiming and torture. The amputation of limbs was a hallmark of terror and cruelty visited upon innocent civilians. For those who survived these crimes, the long-term impact on their lives is devastating - amputees without arms who now have to live on charity because they can no longer work; young girls who have been publicly stigmatized and will never recover from the trauma of rape and sexual slavery to which they were subjected, in some cases resulting in pregnancy and additional stigma from the children born thereof; child soldiers, boys and girls who are suffering from public stigma, highlighted by the identifying marks carved on their bodies, and enduring the after-effects of years of brutality, often irreparable alienation from their family and community, all as a consequence of the crimes for which Mr. Taylor stands convicted of aiding and abetting and planning. The Defence aptly described "the pain of lost limbs, the agony of not only rape in its commonly understood sense, but also the rape of childhood, the rape of innocence, possibly the rape of hope".[132] The Trial Chamber witnessed many survivors weeping as they testified, a decade after the end of the conflict. Their suffering will be life-long.

9415. para. 72: In assessing the gravity of the crimes committed, the Trial Chamber recalls the evidence of several witnesses whose testimony highlights the brutality of the crimes committed, the suffering caused by these crimes on the victims, and their vulnerability. Witness TF1-064 was forced to carry a bag containing human heads to Tombodu.[133] On the way, the rebels ordered her to laugh as she carried the bag dripping with blood. TF1-064 testified that when they arrived at Tombodu, the bag was emptied and she saw the heads of her children.[134] Witness TFI-143 was 12

years old [135] when he and 50 other boys and girls were captured by RUF rebels in September 1998 in Konkoba. The rebels turned him into a child soldier after carving the letters "RUF" on his chest.[136] Having been told to amputate the hands of those who resisted him, this 12 year-old subsequently used a machete to amputate the hands of men who had refused to open the door of their shop.[137] When ordered on a food-finding mission to rape an old woman they found at a farmhouse, the boy cried and refused, for which he was punished.[138] The Trial Chamber recalls the testimony of TFI-358, who treated a young nursing mother whose eyes had been pulled out from their sockets after she was gang raped by seven armed rebels, so that she would not be able to later identify them.[139]

9416. para. 73: The scale and brutality of the crimes committed in Sierra Leone, as demonstrated by these individual incidents, is also clearly demonstrated by the code names given by the perpetrators to the military campaigns in which the crimes were committed. Names such as Operation Spare No Soul and Operation No Living Thing, indicating the indiscriminate killing of anything that moved, speak for themselves as to the gravity of the crimes committed.

9417. para. 74: The Trial Chamber notes that the effects of these crimes on the families of the victims, as well as the society as a whole, are devastating. A large number of physically handicapped Sierra Leoneans have been left unable to do the simplest tasks we take for granted as a direct result of amputation. Many of the victims were productive members of society, breadwinners for their families, and are now reduced to beggars, unable to work as a result of the injuries inflicted on them. They are no longer productive members of society.

9418. para. 75: Particularly reprehensible were the crimes committed against vulnerable groups. Girls and women, were raped, subjected to sexual slavery, and in many cases unwanted pregnancy. Pregnant women were cut open to settle bets as to the sex of the unborn child. Child soldiers, both boys and girls, had their innocence stolen and were forced to commit murders, rapes and mutilations at a very young age, their lives permanently marred by these traumatic experiences. Elderly men and women, a particularly vulnerable group, were also affected by the crimes committed, their dignity violated by brutal attacks and cruel treatment.

9419. para. 76: In assessing the role of Mr. Taylor, the Trial Chamber has considered the modes of liability under which he was convicted, as well as the nature and degree of his participation. The Trial Chamber recalls that Mr. Taylor's conviction for aiding and abetting the commission of crimes by the AFRC/RUF is based on a number of interventions. In addition to supplying arms and ammunition, and providing military personnel, Mr. Taylor provided various forms of sustained operational support, including communications and logistical support. In addition to this

practical assistance, Mr. Taylor also provided encouragement and moral support through ongoing consultation and guidance. The cumulative impact of these various acts of aiding and abetting heightens the gravity of Mr. Taylor's criminal conduct, in the view of the Trial Chamber. Moreover, the steady flow of arms and ammunition that he supplied extended the duration of the Sierra Leone conflict, and the commission of crimes it entailed. Had the RUF/AFRC not had this support from Mr. Taylor, the conflict and the commission of crimes might have ended much earlier.

9420. para. 77: With regard to Mr. Taylor's conviction for planning the commission of crimes in the attacks on Kono and Makeni, and in the invasion of and retreat from Freetown between December 1998 and February 1999, the Trial Chamber notes the submission by the Defence distinguishing the design of the overall operation from the planning of the actual crimes that were perpetrated.[140] The Trial Chamber does not accept this distinction and recalls its finding that having drawn up the plan with Bockarie, Mr. Taylor followed its implementation closely via daily communications, either directly or through Benjamin Yeaten.[141]

9421. para. 78: The Prosecution argues that the length of time over which the crimes were committed, spanning up to five years, should be taken into account as an aggravating factor. The Trial Chamber has considered this issue in the context of its consideration of the gravity of the offence rather than as an aggravating factor. With regard to the duration of the crimes committed, the Defence submits that the bulk of crimes occurred within an eighteen month period in 1998 and 1999, not the longer period of five years set forth by the Prosecution.[142] The Trial Chamber notes that the Prosecution has outlined various time periods for various crimes, with the time periods as a whole spanning five years.[143] The Trial Chamber notes the Defence acknowledgement that the full time span of crimes committed is five years, as documented on its own chart of the temporal range of counts.[144] In the Trial Chamber's view, it is clear from the evidence, as supported by the submissions of both Parties, that the length of time over which the crimes were committed was five years, with a concentration of the crimes having been committed during an eighteen month or two year period within the five year time span. In the Trial Chamber's view, the length of time over which the crimes continued heightens the gravity of the offence.

(ii) Individual Circumstances of the Convicted

9422. para. 79: The Defence submits that Mr. Taylor's age, health and family circumstances "constitute the essence of the individual circumstances contemplated in Article 19(2) of the Statute" and that they may be regarded as mitigating factors.[145] Mr. Taylor is 64 years old. The Trial Chamber is not aware of any serious concerns relating to Mr. Taylor's health, and no

medical evidence has been submitted relating to his health. The Trial Chamber notes that Mr. Taylor has and will continue to have access to medical attention as needed throughout the period of his sentence. His age and the fact that he is married with children are not, in the Trial Chamber's view, mitigating factors in this case. Further, his social, professional and family background, which the Defence submits shows the likelihood of rehabilitation,[146] is· not a mitigating factor in the Trial Chamber's view. The Trial Chamber recalls that the SCSL Appeals Chamber, as well as the ICTY Appeals Chamber, has held that the primary objectives in sentencing must be retribution and deterrence".[147] Moreover, in the absence of Mr. Taylor's acceptance of responsibility or remorse for the crimes committed, the Trial Chamber does not consider the likelihood of rehabilitation to be significant, nor is it demonstrated by his social, professional and family background.

9423. para. 80: In light of these considerations, the Trial Chamber finds that nothing in Mr. Taylor's personal circumstances justifies any mitigation of his sentence.

(iii) Alleged Selective Prosecution

9424. para. 8l: The Defence and Mr. Taylor have both highlighted their contention that the Accused was singled out for selective prosecution. The Trial Chamber has addressed this issue in its Trial Judgement and found that Mr. Taylor was not singled out for selective prosecution.[148] In the Trial Chamber's view, this issue is not relevant to sentencing.

(iv) Time Served

9425. para. 82: On 7 March 2003, the Indictment against Mr. Taylor was approved by the Special Court under seal, and a warrant for Mr. Taylor's arrest was issued. On 4 June 2003, the Indictment and Warrant of Arrest were publicly disclosed, and formally unsealed one week later.[149] On II August 2003, Mr. Taylor stepped down from the Presidency. He went into exile to Nigeria where he remained until 29 March 2006 when he was arrested by Nigerian authorities, following a request by Liberian President Johnson Sirleaf that he be surrendered to the Special Court pursuant to his Warrant of Arrest. On the same day he was handed over to the Liberian authorities who in turn transferred him to the custody of the Special Court. For security reasons, by order of the President of the Court, in June 2006 Mr. Taylor was transferred from Freetown to The Netherlands to stand trial in The Hague, where he has been on remand since.[150]

9426. para. 83: The Defence submits that in addition to the time he has spent in the custody of the Court, Mr. Taylor should be credited for time that he spent in Nigeria prior to his transfer, an additional 2 years and 7 months.[151] The Defence submits that during this time Mr. Taylor was

effectively under house arrest and that the time therefore constitutes detention, highlighting the conditions of his stay in Nigeria as set forth in Exhibit D-406.[152] The Prosecution submits that Mr. Taylor was not under house arrest, highlighting his own testimony that he was free to go where he wanted during this time.[153]

9427. para. 84: Rule 10l(D) of the Special Court's Rules of Procedure and Evidence provides that credit for time served shall be taken into consideration for any period "during which the convicted person was detained in custody pending his transfer to the Special Court or pending trial or appeal " [emphasis added].[154] The Trial Chamber notes that house arrest has been recognized as a form of detention pending surrender which might be considered for purposes of crediting a convicted person for time served.[155] However, in the case of Mr. Taylor, the period of time he spent in Nigeria cannot be considered, in the Trial Chamber's view, as having taken place pending his transfer to the Court and therefore does not fall within the scope of Rule 101(D). Mr. Taylor's time in Nigeria was not unrelated to his effort to avoid the jurisdiction of the Court, and during his time in Nigeria, the Court was in no way involved in the conditions governing his stay there. It is from 29 March 2006 that Mr. Taylor was detained in custody pending his transfer to the Court.

9428. para. 85: The Trial Chamber further notes, as highlighted by the Prosecution, that Mr. Taylor himself testified that he was not under house arrest during the period of time he was in Nigeria following his departure from Liberia. Exhibit 0-406 is cited by the Defence as listing the conditions of his stay in Nigeria and including serious restrictions on his movement and liberty.[156] The Trial Chamber notes that the conditions listed in Exhibit 0-406 are set forth as "Conditions of Asylum for Former President Charles Taylor". They list a number of obligations of Mr. Taylor, and of Nigeria. The obligations of Mr. Taylor include his abstention from subversive activities against Nigeria, and from political activities in or military incursions into Liberia. The restrictions on his movement are the requirement that he obtain clearance to leave the city limits of Calabar and that he be accompanied on any travel outside Calabar by a Nigerian escort officer. Security is listed as an obligation of Nigeria, to provide protection to Mr. Taylor.[157] The Trial Chamber does not find that these conditions governing the asylum offered to Mr. Taylor by the Government of Nigeria can be considered to constitute "house arrest", as alleged by the Defence.

9429. para. 86: In light of these considerations, for reasons of fact and law, the Trial Chamber does not credit Mr. Taylor for the period of time he spent in Nigeria prior to his arrest and finds that his detention for the purpose of credit for time served commenced on 29 March 2006.

(v) Mitigating Circumstances

9430. para. 87: The Defence has set forth a number of factors to be considered in mitigation of sentence, while the Prosecution submits that there are no significant mitigating factors.

9431. para. 88: The Trial Chamber has addressed the role of Mr. Taylor in the peace process for Sierra Leone at length in its Judgement, finding that while Mr. Taylor publicly played a substantial role in this process, including as a member of the ECOWAS Committee of Five, later Committee of Six, secretly, he was fuelling hostilities between the AFRC/RUF and the democratically elected authorities in Sierra Leone, by urging the former not to disarm and by actively providing them with arms and ammunition. For this reason, the Trial Chamber does not find Mr. Taylor's role in the peace process to be a mitigating factor in sentencing. The Trial Chamber notes the constructive role Mr. Taylor played in the release of UN peacekeepers and other hostages, but in light of the gravity of the crimes does not consider this intervention a significant mitigating factor.

9432. para. 89: The Defence submits that Mr. Taylor's record of public service to his country, and his resignation from office, are mitigating factors. With regard to his resignation from office and departure from Liberia, the Trial Chamber notes the circumstances at the time, including his indictment by this Court, and does not find that his public service, or his resignation from office and departure from Liberia, to be mitigating factors in sentencing.

9433. para. 90: The Defence suggests that the cooperation of Mr. Taylor with the Prosecution and the Court should be considered in mitigation. The Trial Chamber recalls that Mr. Taylor directed his counsel to disregard orders of the Trial Chamber and does not consider that Mr. Taylor cooperated with the Prosecution and the Court. For this reason cooperation cannot be considered a mitigating factor for sentencing.

9434. para. 91: The Defence submits that expressions of sympathy and compassion by Mr. Taylor for the victims of the crimes committed should be taken into account as a mitigating factor.[158] Although the Defence accepted that crimes were committed in Sierra Leone, it nevertheless put the Prosecution to proof beyond reasonable doubt of the crimes charged in the Indictment, necessitating the testimony of numerous victims who relived in this Court the pain and suffering they experienced. In his statement to this Court, Mr. Taylor stated that "Terrible things happened in Sierra Leone and there can be no justification for the terrible crimes."[159] Mr. Taylor has not accepted responsibility for the crimes of which he stands convicted, and the Trial Chamber

does not consider this statement, and the other comments made by Mr. Taylor, to constitute remorse that would merit recognition for sentencing purposes.

9435. para. 92: The Defence submits that Mr. Taylor's lack of a prior criminal record and his good conduct in detention should be considered as mitigating factors. The Trial Chamber notes the report submitted by the Defence of Mr. Taylor's good conduct in detention and has taken this report into account, although it does not consider this factor to have great significance in light of the gravity of the crimes committed. Similarly, with regard to Mr. Taylor's lack of a prior criminal record, in light of the gravity of the crimes committed, this is not, in the Trial Chamber's view, a significant factor. Moreover, the Trial Chamber notes the question raised by the Prosecution - who was in a real position of power or authority to prosecute the President of Liberia.[160] The Trial Chamber considers that while not impossible, it is difficult to prosecute a Head of State.

9436. para. 93: The Defence submits that the hardship on Mr. Taylor of serving a sentence outside his country of origin should be a mitigating factor. The Trial Chamber notes that the determination as to where Mr. Taylor will serve his sentence shall be made by the President of the Court following sentencing, pursuant to Rule 103 of the Rules of Procedure and Evidence,[161] and recalls the determination of the Appeals Chamber that the fact that a sentence is to be served in a foreign country should not be considered in mitigation.[162]

9437. para. 94: The Trial Chamber recalls that Mr. Taylor was found not guilty of participation in a joint criminal enterprise, and not guilty of superior responsibility for the crimes committed. A conviction on these principal or significant modes of liability might have justified the sentence of 80 years' imprisonment proposed by the Prosecution. However, the Trial Chamber considers that a sentence of 80 years would be excessive for the modes of liability on which Mr. Taylor has been convicted, taking into account the limited scope of his conviction for planning the attacks on Kono and Makeni in December 1998 and the invasion of and retreat from Freetown between December 1998 and February 1999.

(vi) Aggravating Factors

9438. para. 95: The Prosecution argues that Mr. Taylor's "willing and enthusiastic participation" in the crimes constitutes an aggravating factor, citing his detailed knowledge of the crimes that were committed.[163] The Defence contends that to consider this an aggravating factor would amount to "double counting" elements of the offences for which Mr. Taylor was convicted.[164] The Trial Chamber agrees that Mr. Taylor's knowledge of the crimes is an element of his conviction and cannot be considered an aggravating factor.

9439. para. 96: The Prosecution argues that Mr. Taylor's leadership role, as President of Liberia and as a member of the ECOW AS Committee of Five, imbued him with inherent authority, which he abused to "fan the flames of conflict".[165] The Defence contends that this argument fails the pleading requirement and cites jurisprudence which the Trial Chamber has considered in its discussion of Applicable Law.[166] The Trial Chamber notes that the precedents cited state, more broadly than suggested by the Defence, that aggravating circumstances are "those circumstances directly related to the commission of the offence charged".[167] As the leadership role of Mr. Taylor during the Indictment period is directly related to the commission of the offences with which he was charged, the Trial Chamber has considered this role as an aggravating factor.

9440. para. 97: The Trial Chamber notes that as President of Liberia, Mr. Taylor held a position of public trust, with inherent authority, which he abused in aiding and abetting and planning the commission of the crimes for which he has been convicted. As a Head of State, and as a member of the ECOW AS Committee of Five and later the Committee of Six, Mr. Taylor was part of the process relied on by the international community to bring peace to Sierra Leone. But his actions undermined this process, and rather than promote peace, his role in supporting the military operations of the AFRC/RUF in various ways, including through the supply of arms and ammunition, prolonged the conflict. The lives of many more innocent civilians in Sierra Leone were lost or destroyed as a direct result of his actions. As President and as Commander-in-Chief of the Armed Forces of Liberia, Mr. Taylor used his unique position, including his access to state machinery and public resources, to aid and abet the commission of crimes in Sierra Leone, rather than using his power to promote peace and stability in the subregion. The Trial Chamber finds that Mr. Taylor's special status, and his responsibility at the highest level, is an aggravating factor of great weight. There is no relevant sentencing precedent for Heads of State who have been convicted of war crimes and crimes against humanity, but as Mr. Taylor himself told the Trial Chamber "I was President of Liberia.1 was not some petty trader on the streets of Monrovia".[168]

9441. para. 98: The Trial Chamber notes that the actions of Mr. Taylor, then President of Liberia, caused and prolonged the harm and suffering inflicted on the people of Sierra Leone, a neighbouring country not his own. While Mr. Taylor never set foot in Sierra Leone, his heavy footprint is there, and the Trial Chamber considers the extraterritoriality of his criminal acts to be an aggravating factor.

9442. para. 99: The Trial Chamber found that there was a continuous supply by the AFRC/RUF of diamonds mined from areas in Sierra Leone to Mr. Taylor, often in exchange for arms and ammunition. Mr. Taylor repeatedly advised the AFRCIRUF to capture Kono, a diamondiferous

area, and to hold Kono and to recapture Kono, so that they would have access to diamonds which they could use to .obtain from and through him the arms and ammunition that were used in military operations to target civilians in a campaign of widespread terror and destruction. Mr. Taylor benefited from this terror and destruction through a steady supply of diamonds from Sierra Leone. His exploitation of the conflict for financial gain is, in the view of the Trial Chamber, an aggravating factor.

9443. para. 100: The Trial Chamber notes that although the law of Sierra Leone provides for the sentencing of an accessory to a crime on the same basis as a principal, the jurisprudence of this Court, as well as the ICTY and ICTR, holds that aiding and abetting as a mode of liability generally warrants a lesser sentence than that imposed for more direct forms of participation.[169] While generally, the application of this principle would indicate a sentence in this case that is lower than the sentences that have been imposed on the principal perpetrators who have been tried and convicted by this Court, the Trial Chamber considers that the special status of Mr. Taylor as a Head of State puts him in a different category of offenders for the purpose of sentencing.

9444. para. 101: Although Mr. Taylor has been convicted of planning as well as aiding and abetting, his conviction for planning is limited in scope. However, Mr. Taylor was functioning in his own country at the highest level of leadership, which puts him in a class of his own when compared to the principal perpetrators who have been convicted by this Court.

9445. para. 102: Leadership must be carried out by example, by the prosecution of crimes not the commission of crimes. As we enter a new era of accountability, there are no true comparators to which the Trial Chamber can look for precedent in determining an appropriate sentence in this case. However, the Trial Chamber wishes to underscore the gravity it attaches to Mr. Taylor's betrayal of public trust. In the Trial Chamber's view this betrayal outweighs the distinctions that might otherwise pertain to the modes of liability discussed above.

9446. para. 103: Accordingly, the Trial Chamber is of the view that his unique status as Head of State, and the other aggravating factors set forth above, should be reflected in his sentence.

(c) Disposition

> **FOR THE FOREGOING REASONS, THE TRIAL CHAMBER UNANIMOUSLY SENTENCES** Charles Ghankay Taylor to a **SINGLE TERM OF IMPRISONMENT OF FIFTY (50) YEARS** for all the Counts on which he has been found **GUILTY**.
>
> Credit shall be given to him for the period commencing from 29 March 2006 during which he was detained in custody pending this trial.

2. Appellate Judgment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-A, Judgment, 26 September 2013

9447. para. 646: The Trial Chamber sentenced Taylor to a single term of imprisonment of fifty (50) years for all the Counts on which he was found guilty.[1901] Both Parties challenge the Sentence.

(a) The Law of Sentencing

9448. para. 661: The Appeals Chamber has earlier in this Judgment discussed the object and purpose of the Statute and recalls its conclusions regarding Article 6(1).[1934] With respect to the law of sentencing, Article 19(2) of the Statute provides that, in imposing the sentence upon a convicted person, the Trial Chamber "should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person." Article 19 further provides that the Trial Chamber should, as appropriate, also have recourse to the sentencing practices of the ICTR and the national courts of Sierra Leone. Rule 101(B) provides that, in applying Article 19(2) of the Statute, the Trial Chamber shall take into account aggravating and mitigating circumstances when determining the appropriate sentence. The Statute does not establish minimum or maximum sentences of imprisonment in any respect.

9449. para. 662: Applying the Statute and the Rules, the Appeals Chamber has held that sentences must be determined in accordance with the "totality principle":

> A Trial Chamber must ultimately impose a sentence that reflects the totality of the convicted person's culpable conduct. This principle, the totality principle, requires that a sentence must reflect the inherent gravity of the totality of the criminal conduct of the accused, giving due consideration to the particular circumstances of the case and to the form and degree of the participation of the accused in the crimes.[1935]

The "totality principle" embodies and gives effect to the mandate of the Court, the object and purpose of the Statute, principles of individual criminal liability and the rights of the accused, as established in the Statute and Rules.

9450. para. 663: The Statute provides for the prosecution and punishment of persons who bear the greatest responsibility and establishes individual criminal liability under Articles 6(1) and 6(3). If the accused's guilt under Article 6 is proved beyond a reasonable doubt for a crime in Articles 2-5 of the Statute and charged in the Indictment, the Trial Chamber must then determine the appropriate sentence reflecting "the inherent gravity of the totality of the convicted person's

culpable conduct." Consistent with the object and purpose of the Statute, the Appeals Chamber has held that the paramount consideration in sentencing at the Special Court is to impose sentences that reflect the revulsion of mankind, represented by the international community, to the crime and the convicted person's participation in the crime.[1936]

9451. para. 664: As expressed in the totality principle, Article 19(2) and Rule 101(B) establish that in determining an appropriate sentence, the Trial Chamber must consider and weigh all relevant facts,[1937] including the gravity of the offence, the convicted person's criminal conduct and the convicted person's individual circumstances.[1938] This is in accordance with principles of individual criminal liability as established in the Statute and Rules.[1939] An appropriate sentence should reflect the gravity of the crime and its effects, and should also be individualised so as to hold a convicted person responsible for what he himself has done or failed to do.[1940] It should be a sentence that reflects the gravity of the totality of the convicted person's culpable conduct and the individual circumstances of the convicted person.[1941] The gravity of the totality of the convicted person's culpable conduct, including "the form and degree of the participation of the accused in the crimes," must be determined by the particular circumstances of the case: the actual conduct, role and mental state of the convicted person as proved beyond a reasonable doubt.

9452. para. 665: The Appeals Chamber recalls that in determining matters of guilt and punishment, the Trial Chamber and the Appeals Chamber must be guided by the interest of justice and the rights of the accused, and avoid formulaic analysis that is not faithful to the whole of the circumstances and the facts of individual cases.[1942] Trial Chambers have wide discretion as to the particular methodology they adopt.[1943] What is critical is that the Trial Chamber considered all facts relevant to determining the gravity of the offence and the totality of the convicted person's culpable conduct, and did not allow the same factor to detrimentally influence the convicted person's sentence twice.[1944]

9453. para. 666: In the Appeals Chamber's view, the Trial Chamber's holding that aiding and abetting generally warrants a lesser sentence than other forms of participation is not consistent with the Statute, the Rules and this Appeals Chamber's holdings.[1945] First, the plain language of Article 6(1) of the Statute clearly does not refer to or establish a hierarchy of any kind.[1946] Second, a hierarchy of gravity among forms of criminal participation in Article 6(1) is contrary to the essential requirement of individualisation that derives from the mandate of the Court, principles of individual criminal liability and the rights of the accused. Presumptions regarding the gravity of forms of participation in the abstract preclude an individualised assessment of the convicted person's actual conduct and may result in an unjust sentence that may be either overly punitive or

overly lenient. Third, the totality principle requires an individualised assessment of the total gravity of the convicted person's conduct and individual circumstances. A general presumption for sentencing purposes expressed in terms of forms of participation is thus both unnecessary and unhelpful: unnecessary because the totality principle already provides that the sentence must reflect the gravity of the convicted person's actual conduct; and unhelpful because it either improperly directs the trier of fact's attention to forms of participation in the abstract rather than actual conduct, or is a vague and extraneous statement devoid of legal meaning.

9454. para. 667: The Appeals Chamber has considered the ICTY/ICTR jurisprudence cited by the Defence and adopted by the Trial Chamber,[1947] which is based on the holding of the ICTY Appeals Chamber in Vasiljević.[1948] This Appeals Chamber does not consider that holding persuasive. A number of the national laws relied on in the *Vasiljević* Appeal Judgment do not support the principle that aiding and abetting as a form of criminal participation warrants a lesser punishment, but only establish that an accused's minor participation in the commission of the crime may be a mitigating circumstance.[1949] For example, United States federal criminal law specifically provides that "[w]hoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.[1950] Likewise, the Austrian Penal Code is consistent with the approach that the sentence is determined based on the accused's individual conduct, not the form of participation.[1951] Similar provisions can be found in a number of other civil law jurisdictions, including Brazil,[1952] Costa Rica,[1953] Puerto Rico,[1954] France[1955] and Italy.[1956] It is unclear from its reasoning whether the ICTY Appeals Chamber presumed that aiding and abetting liability constitutes minor participation in the commission of a crime, or if its holding was only limited to the facts of the case before it and was not a statement of general principle. This Appeals Chamber notes that the *Vasiljević* Appeals Chamber did not declare its holding reflective of customary international law, nor did it pronounce it a general principle of law.

9455. para. 668: The Appeals Chamber notes that Sierra Leonean law provides that there is no distinction between principal and accessory liability for sentencing purposes.[1957] The Defence submits that the Trial Chamber erred in referring to this law. The Appeals Chamber observes that the Trial Chamber only noted this law and did not apply it. The Appeals Chamber, moreover, does not agree that the Trial Chamber would have erred had it applied it. The Appeals Chamber's holding in Fofana and Kondewa addressed sentencing considerations for the gravity of the crime, not the form of participation which constitute the convicted person's criminal conduct.[1958] With respect to the convicted person's participation in the crime, the Appeals Chamber finds that it is

appropriate to have recourse to Sierra Leonean law. In this respect, Sierra Leonean law and the jurisprudence of this Court regarding the punishment of convicted persons are consistent.

9456. para. 669: The Post-Second World War caselaw further illustrates that sentencing for international crimes has historically relied on the totality principle, and that there is no hierarchy or distinction for sentencing purposes between forms of criminal participation established in customary international law.[1959] The tribunals sentenced aiders and abettors to the most severe punishment where warranted, and did not distinguish between forms of criminal participation in the abstract in relation to sentencing, but looked rather to the gravity of the offence, the convicted person's actual conduct and the convicted person's individual circumstances.[1960] The Appeals Chamber does not accept the argument that variations in domestic law,[1961] applicable to domestic crimes, establish contrary state practice relevant to sentencing for international crimes.[1962] Accused persons are presumed to be aware that under customary international law, the most serious violations of international humanitarian law are punishable by the most severe of penalties,[1963] with sentences determined on the basis of the gravity of the offence and the totality of their culpable conduct, without regard to the provisions of domestic law or established sentencing tariffs.[1964]

(i) Conclusion

9457. para. 670: In light of the foregoing, the Appeals Chamber holds that the totality principle exhaustively describes the criteria for determining an appropriate sentence that is in accordance with the Statute and Rules, and further holds that under the Statute, Rules and customary international law, there is no hierarchy or distinction for sentencing purposes between forms of criminal participation. The Appeals Chamber concludes that the Trial Chamber erred in law by holding that aiding and abetting liability generally warrants a lesser sentence than other forms of criminal participation.

9458. para. 671: In regard to Ground 43, the Appeals Chamber concludes that the Trial Chamber did not err by noting the law of Sierra Leone on sentencing practice. Accordingly, Defence Ground 43 is dismissed in its entirety.

(b) Alleged Lack of Notice of Aggravating Factors

9459. para. 674: Every accused person has the right to be heard under Article 17(2) of the Statute, which provides that "the accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Court for the Protection of victims and witnesses."[1970] Rule 100(A) and (B) provide that the Parties shall submit any relevant information in writing,[1971] and

make oral submissions at a sentencing hearing that may assist the Trial Chamber in determining an appropriate sentence.[1972] The Parties filed their Sentencing Briefs on 3 and 10 May 2012, and the Trial Chamber heard oral arguments at a Sentencing Hearing on 16 May 2012. The Trial Chamber further accorded Taylor the opportunity to address the Court personally during the Sentencing Hearing, which he did for thirty minutes.[1973] The Appeals Chamber finds that the Defence was provided a full opportunity to be heard.

9460. para. 675: It is well-established that Trial Chambers have considerable discretion in identifying and then weighing facts due to their obligation to individualise the penalty when determining an appropriate sentence.[1974] The Appeals Chamber holds that a Trial Chamber is not limited to considering factors identified by the Parties in their sentencing submissions. The Parties' submissions may be of assistance, but the Trial Chamber is ultimately responsible for identifying and weighing relevant facts from the entire evidentiary record, of which the convicted person has notice. In the instant case, the Prosecution and Defence made written and oral submissions. The Trial Chamber had the assistance of those submissions, but was not limited to the facts raised in them. The Trial Chamber identified facts it considered relevant to its sentencing decision based on the entire evidentiary record of the trial. The Appeals Chamber sees no error.

9461. para. 676: Defence Ground 44 is dismissed in its entirety.

(c) Aggravating Factors

(i) Extraterritoriality of Taylor's Acts

9462. para. 682: The Appeals Chamber notes that in assessing the ―gravity of the offence as part of its determination of the appropriate sentence, the Trial Chamber took into account the consequences of the crimes on the immediate victims, the relatives of the victims and/or the broader targeted group.[2000] In assessing additional facts, the Trial Chamber further took into account the extraterritorial nature and consequences of Taylor's acts and conduct.

9463. para. 683: The Appeals Chamber considers that it was unnecessary for the Trial Chamber to refer to public international law in order to take into consideration the extraterritorial nature and consequences of Taylor's acts and conduct. The Appeals Chamber accepts the Trial Chamber's finding that the extraterritorial nature and consequences of Taylor's acts and conduct are directly related to Taylor and the gravity of his culpable conduct, justifying holding him responsible.[2001] As the Trial Chamber found, before the invasion of Sierra Leone in March 1991, Taylor publicly threatened on the radio that "Sierra Leone would taste the bitterness of war"[2002] because it was supporting ECOMOG operations in Liberia impacting Taylor's NPFL forces.[2003] That Taylor's

acts and conduct throughout the Indictment Period "left a heavy footprint" in Sierra Leone and had extraterritorial consequences is confirmed by the United Nations Security Council's determination in October 1997 that "the situation in Sierra Leone constitutes a threat to international peace and security in the region."[2004] Taylor's acts and conduct did not only harm the victims of the crimes and their immediate relatives, but fuelled a conflict that became a threat to international peace and security in the West African sub-region. The Appeals Chamber concludes that it was proper for the Trial Chamber to consider the extraterritorial nature and consequences of Taylor's acts and conduct in assessing the gravity of the totality of his culpable conduct.

(ii) Breach of Trust

9464. para. 684: Immediately after he was elected President of Liberia in August 1997, Taylor was appointed to the ECOWAS Committee of Five, which was established to help restore peace to Sierra Leone.[2005] The members of the Committee decided to put Taylor ―in the front line‖ of their peace mandate, because of his experience in dealing with insurgency groups and also because Sierra Leone and Liberia shared a common border.[2006] Taylor admitted in his testimony that he got involved in the Committee of Five because:

> it became a duty and a responsibility to help in whatever way that I could to help end this conflict in Sierra Leone, because unless it ended, Liberia would never move. That's why I got involved.[2007]

On becoming a member of the Committee of Five, Taylor understood that he had assumed a responsibility towards the Sierra Leonean people to assist in ending the civil conflict. He was also relied on by the international community to help bring peace to Sierra Leone. Yet, rather than end the civil war in Sierra Leone, as he had undertaken to do, he helped to fuel it in various ways, including, inter alia: (i) while he was participating in ECOWAS efforts to promote peace in Sierra Leone, Taylor continued to provide arms and ammunition to the RUF/AFRC[2008] in exchange for diamonds;[2009] (ii) Taylor ―was engaged in arms transactions at the same time that he was involved in the peace negotiations in Lomé, publicly promoting peace at the Lomé negotiations, while privately providing arms and ammunition to the RUF/AFRC;[2010] and (iii) from the time Issa Sesay assumed leadership of the RUF, Taylor began advising him not to disarm, even though Issa Sesay himself was enthusiastic about disarmament at that time.[2011] In light of its findings of fact, the Trial Chamber found that Taylor's abuse of the trust of the Sierra Leonean people and the international community was a personal characteristic increasing the gravity of his culpable conduct.

9465. para. 685: The Appeals Chamber does not accept the Defence submission that Taylor did not have a position of public trust and authority in relation to the people of Sierra Leone. Taylor

himself admitted that he did, and that the people of Sierra Leone and the international community trusted him to encourage the RUF/AFRC to participate in peace negotiations and accept a peaceful resolution of the conflict. The Appeals Chamber considers that in this case breach of trust concerns matters of fact, not legal duties.[2012] The Appeals Chamber holds that the Trial Chamber was not required to identify an enforceable legal duty in order to recognise that in fact the international community and Sierra Leoneans placed their trust in Taylor to help end the conflict. The Appeals Chamber further accepts the Trial Chamber's findings that Taylor publicly purported to accept that trust and work in the interest of peace, while he in reality abused that trust by aiding and abetting the widespread and systematic commission of crimes against the civilian population of Sierra Leone throughout the Indictment Period and planning the attack on Freetown. The Appeals Chamber thus concludes that the Trial Chamber reasonably and properly considered Taylor's abuse of trust in assessing the gravity of the totality of his culpable conduct.

(iii) Double-Counting

9466. para. 686: The Appeals Chamber recalls that a Trial Chamber must ensure that it does not allow the same factor to detrimentally influence the convicted person's sentence twice.[2013] An appellant bears the burden of demonstrating that the Trial Chamber impermissibly double-counted the factor at issue.[2014]

9467. para. 687: The Appeals Chamber does not accept the Defence submission that the Trial Chamber impermissibly double-counted Taylor's role as Head of State. Taylor's position as Head of State was multifaceted, involving distinct aspects including his leadership role, his further role as a direct participant in the peace process in a position of public trust and his special status as a Head of State who aided and abetted and planned the commission of crimes. The Appeals Chamber concludes that it was proper for the Trial Chamber to consider the different aspects of Taylor's acts and conduct in assessing the gravity of the totality of Taylor's culpable conduct, and that the Trial Chamber did not impermissibly double-count the same factor.

9468. para. 688: The Appeals Chamber concludes, therefore, that the Defence does not demonstrate an error in the Trial Chamber's identification and assessment of facts relevant to the totality of Taylor's culpable conduct.

(d) Mitigating Factors

9469. para. 694: The Defence misapprehends the Appeals Chamber's holding in *Sesay et al*. In that Judgment, the Appeals Chamber noted that it is common practice that convicted persons from international criminal tribunals serve their sentences in foreign countries, and that there is no

jurisprudence that such circumstances qualify as a mitigating factor.[2029] The Appeals Chamber considers that the Trial Chamber did not abuse its discretion in considering that serving a sentence in a foreign country is not a fact in mitigation.

9470. para. 695: The Appeals Chamber further holds that in order for remorse to be considered as a mitigating factor, it must be real and sincere.[2030] A Trial Chamber is not required to find that every acknowledgement that crimes were committed or expression of sympathy for the victims establishes real and sincere remorse constituting a fact in mitigation.[2031] It is always within the Trial Chamber's discretion to determine whether or not real and sincere remorse is demonstrated, including when the convicted person does not accept responsibility for the crimes.[2032] In the instant case, the Trial Chamber acknowledged that Taylor accepted that crimes were committed in Sierra Leone, but did not find that he demonstrated real and sincere remorse meriting recognition for sentencing purposes.[2033] The Appeals Chamber accepts the Trial Chamber's finding as a proper exercise of its discretion.

9471. para. 696: The Appeals Chamber rejects the Defence submission in Ground 42 that serving a sentence abroad is a fact in mitigation. The Appeals Chamber affirms the Trial Chamber's conclusion that Taylor did not demonstrate real and sincere remorse warranting recognition in mitigation. Defence Ground 45 is dismissed in its entirety.

(e) Alleged Errors in the Exercise of Discretion

(i) The Sentencing Practice of the Special Court

9472. para. 705: In accordance with the totality principle, a Trial Chamber is required to impose a sentence reflecting the inherent gravity of the totality of the criminal conduct of the accused.[2057] The totality principle requires an individualised assessment of the particular circumstances of the case. As such, any attempt to compare an accused's case with others that have already been the subject of final determination is of limited assistance in challenging a sentence.[2058] As the Appeals Chamber held in *Sesay et al.*:

> The relevance of previous sentences is however often limited as a number of elements relating inter alia to the number, type and gravity of the crimes committed, the personal circumstances of the convicted person and the presence of mitigating and aggravating circumstances, dictate different results in different cases such that it is frequently impossible to transpose the sentence in one case mutatis mutandis to another. This follows from the principle that the determination of the sentence involves the individualisation of the sentence so as to appropriately reflect the particular facts of the case and the circumstances of the convicted person.[2059]

9473. para. 706: In the instant case, the Trial Chamber properly referred to the gravity of the crimes for which Taylor was convicted and considered his role in their commission. Further, the Trial Chamber compared the circumstances of Taylor's case to other cases that have been determined by this Court. It noted that Taylor's status as a Head of State puts him in a different category of offenders, stating that "there are no true comparators to which [it] can look for precedent in determining an appropriate sentence in this case."[2060] In light of the foregoing, the Appeals Chamber concludes that the Defence fails to demonstrate any discernible error in the exercise of the Trial Chamber's discretion in sentencing.

(ii) The Totality of Taylor's Culpable Conduct

9474. para. 707: The Appeals Chamber recalls its conclusion that the Trial Chamber erred in law by holding that aiding and abetting liability generally warrants a lesser sentence than other forms of criminal participation.[2061] The Appeals Chamber has further rejected the Parties' other challenges to the sentence imposed by the Trial Chamber. The remaining issues are first, whether, as the Prosecution submits, the Trial Chamber's error of law sufficiently impacted its determination of the appropriate sentence as to result in a discernable error, and second, whether the Prosecution has otherwise demonstrated that the Trial Chamber failed to exercise its discretion properly in determining the sentence. The Appeals Chamber also recalls that it has revised Taylor's conviction for planning crimes.[2062]

9475. para. 708: Defence Ground 42 is dismissed in its entirety. Prosecution Ground 4 is dismissed in its entirety. In light of the above considerations, the Appeals Chamber concludes that the sentence imposed by the Trial Chamber is fair and reasonable in light of the totality of the circumstances.

(f) Disposition

For the foregoing reasons, THE APPEALS CHAMBER

PURSUANT to Article 20 of the Statute and Rule 106 of the Rules of Procedure and Evidence;

NOTING the written submissions of the Parties and their oral arguments presented at the hearings on 22 and 23 January 2013;

SITTING in open session;

UNANIMOUSLY;

WITH RESPECT TO THE DEFENCE'S GROUNDS OF APPEAL;

NOTES that Ground 35 has been withdrawn;

ALLOWS Ground 11, in part, REVISES the Trial Chamber's Disposition for planning liability under Article 6(1) of the Statute by deleting Kono District under Counts 1-8 and 11, and DISMISSES the remainder of the Ground;

DISMISSES the remaining Grounds of Appeal;

WITH RESPECT TO THE PROSECUTION'S GROUNDS OF APPEAL;

ALLOWS Ground 4, in part, HOLDS that the Trial Chamber erred in law in finding that aiding and abetting liability generally warrants a lesser sentence than other forms of criminal participation, and DISMISSES the remainder of the Ground;

DISMISSES the remaining Grounds of Appeal;

AFFIRMS the sentence of fifty (50) years imprisonment imposed by the Trial Chamber;

ORDERS that this Judgment shall be enforced immediately pursuant to Rule 119 of the Rules of Procedure and Evidence;

ORDERS, in accordance with Rule 109 of the Rules of Procedure and Evidence, that Charles Ghankay Taylor remains in the custody of the Special Court for Sierra Leone pending the finalization of arrangements to serve his sentence.

B. RUF

1. Sentencing Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-T, Sentencing Judgement, 8 April 2009

(a) Convictions and Form of Liability

(i) Sesay

9476. para. 3: Issa Hassan Sesay was found guilty of the crimes, set out below, by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute:

(i) Acts of Terrorism, punishable under Article 3(d) of the Statute (Count 1), (or crimes set forth in Counts 3 to 11 and Count 13 in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(ii) Collective Punishments, punishable under Article 3(b) of the Statute (Count 2), for crimes set forth in Counts 3 to 5 and Count 10 to 11 in relation to events in specified locations in Kenema, Kono and Kailahun Districts;

(iii) Extermination, a Crime against Humanity, punishable under Article 2(b) of the Statute (Count 3), in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(iv) Murder, a Crime against Humanity, punishable under Article 2(a) of the Statute (Count 4), in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(v) Violence to life, health and physical or mental well-being of persons, in particular murder, punishable under Article 3(a) of the Statute (Count 5), in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(vi) Rape, a Crime against Humanity, punishable under Article 2(g) of the Statute (Count 6), in relation to events in specified locations in Kono District;

(vii) Sexual slavery, a Crime against Humanity, punishable under Article 2(g) of the Statute (Count 7), in relation to events in specified locations in Kono District and unspecified locations in Kailahun District;

(viii) Other inhumane acts (forced marriage), a Crime against Humanity, punishable under Article 2(i) of the Statute (fount 8), in relation to events in specified locations in Kono District and unspecified locations in Kailahun District;

(ix) Outrages upon personal dignity, punishable under Article 3(e) of the Statute (Count 9), in relation to events in specified locations in Kono District and unspecified locations in Kailahun District;

(x) Violence to life, health and physical or mental well-being of persons, in particular mutilation, punishable under Article 3(a) of the Statute (Count 10), in relation to events in specified locations in Kono District;

(xi) Other inhumane acts (physical violence), a Crime against Humanity, punishable under Article 2(i) of the Statute (Count 11), in relation to events in specified locations in Kenema and Kono Districts;

(xii) Enslavement, a Crime against Humanity, punishable under Article 2(d) of the Statute (Count 13), in relation to events in Tongo Field in Kenema District and unspecified location in Kono and Kailahun Districts; and

(xiii) Pillage, punishable under Article 3(f) of the Statute (Count 14), in relation to events in specified locations in Bo and Kono Districts.

9477. para. 4: Additionally, Issa Hassan Sesay was found guilty, pursuant to Article 6(1) of the Statute, of planning the following crimes:

(i) The use of children to actively participate in hostilities, an other serious violation of International Humanitarian Law, punishable under Article 4(c) of the Statute (Count 12), in relation to events in Kailahun, Kenema, Kono and Bombali Districts; and

(ii) Enslavement, a Crime against Humanity, punishable under Article 2(c) of the Statute (Count 13), in relation to events in specified and unspecified locations in Kono District.

9478. para. 5: Lastly, pursuant to Article 6(3) at the Statute, Issa Hassan Sesay was convicted of:

(i) Enslavement, a Crime against Humanity, punishable under Article 2(c) of the Statute (Count 13), in relation to events in Yengema in Kono District;

(ii) Intentionally directing attacks against the UNAMSIL peacekeeping operations, an other serious violation of International Humanitarian Law, punishable under Article 4(b) of the Statute (Count 15), in relation to events in Bombali, Port Loko, Kono and Tonkolili Districts; and

(iii) Violence to life, health and physical or mental well-being of persons, in particular murder, punishable under Article 3(a) of the Statute (Count 17), in relation to events involving UNAMSIL peacekeepers in Bombali and Tonkolili Districts.

(ii) Kallon – Convictions and Form of liability

9479. para. 6: Morris Kallon was found guilty of the crimes, set out below, by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute:

(i) Acts of Terrorism, punishable under Article 3(d) of the Statute (Count 1), for crimes set forth in Counts 3 to 11 and Count 13 in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(ii) Collective Punishments, punishable under Article 3(b) of the Statute (Count 2), for crimes set forth in Counts 3 to 5 and Count 10 to 11 in relation to events in specified locations in Kenema, Kono and Kailahun Districts;

(iii) Extermination, a Crime against Humanity, punishable under Article 2(b) of the Statute (Count 3), in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(iv) Murder, a Crime against Humanity, punishable under Article 2(a) of the Statute (Count 4), in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(v) Violence to life, health and physical and mental well-being of persons in particular murder, punishable under Article 3(a) of the Statute (Count 5), in

relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(vi) Rape, a Crime against Humanity punishable under Article 2(g) of the Statute (Count 6), in relation to events in specified locations in Kano District;

(vii) Sexual slavery, a Crime against Humanity, punishable under Article 2(g) of the Statute (Count 7), in relation to events in specified locations in Kono District and unspecified locations in Kailahun District;

(viii) Other inhumane acts (forced marriage), a Crime against Humanity, punishable under Article 2(i) of the Statute (Count 8), in relation to events in specified locations in Kono District and unspecified locations in Kailahun District;

(ix) Outrages upon personal dignity punishable under Article 3(e) of the Statute (Count 9), in relation to events in specified locations in Kono District and unspecified locations in Kailahun District;

(x) Violence to life, health and physical or mental well-being of persons, in particular mutilation, punishable under Artide 3(a) of the Statute (Count 10), in relation to events in specified locations in Kono District;

(xi) Other inhumane acts (physical violence), a Crime against Humanity, punishable under Article 2(i) of the Statute (Count 11), in relation to events in specified locations in Kenema and Kono Districts;

(xii) Enslavement, a Crime against Humanity, punishable under Article 2(c) of the Statute (Count 13), in relation to events in Tongo Field in Kenema District and unspecified locations in Kono and Kailahun Districts; and

(xiii) Pillage, punishable under Article 3(f) of the Statute (Count 14), in relation to events in specified locations in Bo and Kono Districts.

9480. para. 7: Additionally, Morris Kallon was found guilty, pursuant to Article 6(1) of the Statute, of the following crimes:

(i) Instigating Murder, a Crime against Humanity, punishable under Article 2(a) of the Statute (Count 4), in relation to an event in Wendedu in Kono District;

(ii) Instigating Violence to life, health and physical or mental well-being of persons, in particular murder, punishable under Article 3(a) of the Stature (Count 5) in relation to an event in Wendedu in Kono District;

(iii) Planning the use of children to actively participate in hostilities, an other serious violation of Internarional Humanitarian Law, punishable under Article 4(C) of the Statute (Count 12), in relation to events in Kailahun, Kenema, Kono and Bombali districts; and

(iv) Committing and ordering attacks against peacekeepers, and other serious violation of International Humanitarian Law, punishable under Article 4(b) of the Statute (Count 15), in relation to events in Bombali District.

9481. para. 8: Lastly, pursuant to Article 6(3) of the Statute, Morris Kallon was convicted of:

(i) Acts of Terrorism, punishable under Article 3(d) of the Statute (Count 1), for a crime under Count 7 in Kissi Town in Kono District;

(ii) Sexual slavery, a Crime against Humanity, punishable under Article 2(g) of the Statute (Count 7), in relation to an event in Kissi Town in Kono District;

(iii) Other inhumane acts (forced marriage), a Crime against Humanity, punishable under Article 2(i) of the Statute (Count 8), in relation to an event in Kissi Town in Kono District;

(iv) Outrages upon personal dignity, punishable under Article 3(e) of the Statute (Count 9), in relation to an event in Kissi Town in Kono District;

(v) Enslavement, a Crime against Humanity, punishable under Article 2(c) of the Statute (Count 13), in relation to events in unspecified locations in Kono District;

(vi) lntentionally directing attacks against the UNAMSIL peacekeeping operations, an other serious violation of International Humanitarian Law, punishable under Article 4(b) of the Statute (Count 15), in relation to events in Bombali, Port Loko, Kono and Tonkolili Districts; and

(vii) Violence to life, health and physical or mental well-being of persons, in particular murder, punishable under Article 3(a) of the Statute (Count 17), in relation to events involving UNAMSIL peacekeepers in Bombali and Tonkolili Districts.

(iii) Gbao

9482. para. 9: By a majority, Justice Boutet dissenting, Augustine Gbao was found guilty of the following crimes by participating in a joint criminal enterprise, pursuant to Article 6(1) of the Statute:

(i) Acts of Terrorism, punishable under Article 3(d) of me Statute (Count 1), for crimes set form in Counts 3 to 5 and Counts 6 to 9 in relation to events in Kailahun Town and throughout Kailahun District;

(ii) Collective Punishments, punishable under Article 3(b) of the Statute (Count 2), for crimes set forth in Counts 3 to 5 in relation to events in Kailahun Town and throughout Kailahun District;

(iii) Extermination, a Crime against Humanity, punishable under Article 2(b) of the Statute (Count 3), in relation to, events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(iv) Murder, a Crime against Humanity, punishable under Article 2(a) of the Statute (Count 4), in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(v) Violence to life, health and physical or mental well-being of persons, in particular murder, punishable under Article 3(a) of the Statute (Count 5), in relation to events in specified locations in Bo, Kenema, Kono and Kailahun Districts;

(vi) Rape, a Crime against Humanity, punishable under Article 2(g) of the Statute (Count 6), in relation to events in specified locations in Kono District;

(vii) Sexual slavery, a Crime against Humanity, punishable under Article 2(g) of the Statute (Count 7), m relation to events in specified locations in Kono District and unspecified locations In Kailahun District;

(viii) Other inhumane acts (forced marriage), a Crime against Humanity, punishable under Article 2(i) of the Statute (Count 8), in relation to events in specified locations in Kono District and unspecified locations in Kailahun District;

(ix) Outrages upon personal dignity punishable under Article 3(e) of the Statute (Count 9), in relation to events in specified locations in Kono District and unspecified locations in Kailahun District;

(x) Violence to life, health and physical or mental well-being of persons, in particular mutilation, punishable under Article 3(a) of the Statute (Count 10), in relation to events in specified locations in Kono District;

(xi) Other inhumane acts (physical violence), a Crime against Humanity, punishable under Article 2(i) of the Statute (Count 11), in relation to events in specified locations in Kenema and Kono Districts;

(xii) Enslavement, a Crime against Humanity punishable under Article 2(c) of the Statute (Count 13), in relation to events in Tongo Field in Kenema District and unspecified locations in Kono and Kailahun Districts; and

(xiii) Pillage, punishable under Article 3(f) of the Statute (Count 14), in relation to events in specified locations in Bo and Kono Districts.

9483. para. 10: Additionally, Augustine Gbao was found guilty, pursuant to Anicle 6(1) of the Statute, in relation to events in Bombali District of aiding and abetting attacks on peacekeepers, an other serious violation of International Humanitarian Law, punishable under Article 4(b) of the Statute (Count 15).

(b) Applicable Law

9484. Applicable provisions para. 11: Article 19 of the Statute and Rules 100 and 101 of the Rules of Procedure and Evidence ("Rules") provide as follows:

> Article 19- Penalties
>
> 1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate , have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national Courts of Sierra Leone.
>
> 2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
>
> Rule 100 - Sentencing Procedure
>
> (A) If the Trial Chamber convicts the accused or the accused enters a guilty plea, the Prosecutor shall submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence no more than 7 days after such conviction or guilty plea. The defendant shall thereafter, but no more than 7 days after the prosecutor's filing submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence
>
> (B) Where the accused has entered a guilty plea, the Trial Chamber shall hear submissions of the parties at a sentencing hearing. Where the accused has been convicted by a Trial Chamber, the Trial Chamber may hear submissions of the parties at a sentencing hearing.
>
> (C) The sentence shall be pronounced in a judgement in public and in the presence of the convicted person, subject to Rule 102(8).
>
> Rule 101 - Penalties
>
> (A) A person convicted by the Special Court, other than a juvenile offender, may be sentenced to imprisonment for a specific number of years.
>
> (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 19 (2) of the Statute, as well as such factors as:
>
> (i) Any aggravating circumstances;
>
> (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
>
> (iii) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the Statute

(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

(D) Any period during which the convicted person was detained in custody pending his transfer to the Special Court or pending trial or appeal, shall be taken into consideration on sentencing.

(i) Sentencing objectives

9485. para. 12: It is settled law that the goals and objectives of sentencing in the sphere of international criminal law derive essentially from the doctrines underlying penal sanctions in the domestic or national law setting.

9486. para. 13: The SCSL Appeals Chamber has stated that, in relation to legitimate sentencing purposes, "[t]he primary objectives must be retribution and deterrence."[3] The ICTY Appeals Chamber has further stated that "[i]t is well established that, at the [ICTY] and at the ICTR, retribution and deterrence are the main objectives in sentencing."[4] In its simplest formulation, retribution implies that punishment must be proportionate to guilt and the gravity of the offence.[5] Elsewhere it has been stated that "[t]his is not to be understood as fulfilling a desire for revenge but as duly expressing the outrage of the international community at these crimes."[6] Deterrence is both general, referring to the notion that a convicted person who is punished can serve as an example to others, who will then desist from committing or will be unlikely to commit the said crimes for fear of being punished, and also specific deterrence or incapacitation, which describes the objective of preventing future criminal conduct by restraining or incapacitating convicted persons.

9487. para. 14: Other sentencing objectives recognised under international criminal law are (i) prevention; (ii) rehabilitation; and, (iii) stigmatisation.[7]

9488. para. 15: In relation to the commission of international crimes, it such as crimes against humanity, war crimes and other serious violations of international humanitarian law, is our opinion that the punishment of the offender must also adequately reflect the revulsion of the international community to such conduct, and denounce it as unacceptable. The Chamber endorses the following rationale:

> One of the main purposes of a sentence imposed by an international Tribunal is to influence the legal awareness of the accused, the surviving victims, their relatives, the witnesses and the general public in order to reassure them that the legal system is implemented and enforced. Additionally, the process of sentencing is intended to convey the message that globally accepted laws and rules have to be accepted by everyone.[8]

9489. para. 16: Rehabilitation as a goal of punishment means the restoration of the convicted person to a state of physical, mental and moral health through treatment and education, so that he can become a useful and productive member of society.[9] However, the Chamber recognises that despite its importance as an objective of punishment, rehabilitation is more relevant in the context of domestic criminality than international criminality.

(ii) Sentencing factors

9490. para. 17: The Chamber notes that Article 19 and Rule 101(B) stipulate that certain factors have to be considered in determining an appropriate sentence. These include the gravity of the offence, the individual circumstances of the Accused, any aggravating and mitigating factors, and where appropriate, the general sentencing practices of the ICTR and of the national courts of Sierra Leone.

9491. para. 18: In this regard the Chamber recognises that it is necessary to impose a sentence which reflects the totality of the convicted person's criminal conduct.[10] Furthermore we note that it is universally recognised and accepted that a person who has been convicted of many crimes should generally receive a higher sentence than a person convicted of only one of those crimes.[11] By parity of reasoning, the Chamber acknowledges that the sentence should be individualised and also proportionate to the conduct of the Accused,[12] reflecting the inherent gravity of the totality of the criminal conduct of the convicted person, taking into consideration the particular circumstances of the case and the form and degree of the participation of the accused.[13] Within these parameters, and provided that the factors which have been considered are made clear, a Trial Chamber has a broad discretion to choose between the imposition of either a single "global" sentence or separate sentences for each count on which the Accused was found guilty.[14] After having carefully considered the issue, the Chamber deems it more appropriate to address each count separately. Where the Chamber so exercises its discretion to impose separate sentences, it must indicate whether those sentences should be served concurrently or consecutively.[15]

a. Gravity of the offence

9492. para. 19: The Chamber acknowledges that Article 19(1) of the Statute imposes the obligation, when determining an appropriate sentence, to take into account the "gravity of the offence." It has been held that the gravity of the offence is the "litmus test for the appropriate sentence",[16] and that it requires a "consideration of the particular circumstances of the case, as well as the form and degree of participation of the Accused in the crime".[17] In assessing the gravity of the offence, the Chamber has taken into account such factors as:

i) the scale and brutality of the offences committed;[18]

ii) the role played by the Accused in their commission;[19]

iii) the degree of suffering or impact of the crime on the immediate victim, as well as its effect on relatives of the victim;[20] and,

iv) the vulnerability and number of victims.[21]

9493. para. 20: Furthermore, in determining the role of the Accused in the crime, the Chamber may take into account the mode of liability under which the Accused was convicted, as well as the nature and degree of his participation in the commission of the offence. The Chamber may also consider whether the Accused was held liable as an indirect or a secondary perpetrator.[22] In this respect, we have found that aiding and abetting as a mode of liability generally warrants a lesser sentence than that imposed for a more direct form of participation.[23]

9494. para. 21: The Chamber acknowledges that it is also settled law that in assessing the gravity of the offences for which the Accused was convicted as a superior, it should consider the gravity of the underlying offence and the gravity of the conduct of the Accused in failing to prevent or punish the crimes committed by his subordinates.[24]

9495. para. 22: We also endorse the view that where the Accused has been convicted as a participant in a joint criminal enterprise, the level of contribution as well as the category of joint criminal enterprise under which responsibility attaches are to be considered in assessing the appropriate sentence.[25] As stated in *Brdjanin*, the doctrine of joint criminal enterprise:

> […] offers no formal distinctions between JCE members who make overwhelmingly large contributions and JCE members whose contributions, though significant, are not as great. However, the Appeals Chambers recalls that any such disparity is adequately dealt with at the sentencing stage.[26]

9496. para. 23: The Chamber is cognisant of the impermissibility of "double-counting", meaning that the factors considered in assessing the gravity of the offence, cannot be used or considered as aggravating circumstances.[27] The Appeals Chamber has however endorsed the view that there is no double-counting merely because a Trial Chamber considers the impact of the crimes on the victim in one section and the vulnerability of the victims in the other section.[28] In this regard, this Chamber takes the view that factors which it considers and accepts as lessening the gravity of the offence, cannot be taken into account as mitigating circumstances.

9497. Separate concurring opinion and Dissents – Justice Itoe, para. 6: The Chamber has been cautious to reiterate its adherence to the Rule against "Double Counting" which could, if contravened, prejudice, or violate the rights of the Accused.

9498. Separate concurring opinion and Dissents – Justice Itoe, para. 7: If, as I admit, the sentence to be inflicted on the Accused Persons should be determined by the gravity of the offence amongst others, for which they have been convicted, the question to be answered is, what criteria determine the "gravity" of the offence. It is the sentence attached to it the constitutive elements, the mode of commission or one or more of the criteria.

9499. Separate concurring opinion and Dissents – Justice Itoe, para. 8: In principle and in Common Law driven judiciaries, the gravity or seriousness of the offence is properly distinguished by a categorization of offences, generally into 4 broad categories namely: Felonies, Misdemeanors, Simple Offences and lastly, Contraventions, in that order of their importance, and I would say, in that order of their gravity.

9500. Separate concurring opinion and Dissents – Justice Itoe, para. 9: What is also prevalent in these systems is that even within the confines of the categories, in any system the gravity of felonious is measured by the penalty that is, of life imprisonment as is the case with some International Criminal Tribunals, and in some cases within those systems, with the death penalty which is quite apart and different from some other felonies of lesser gravity that are characterised by sentences which are statutorily fixed within a discretionary range and whose minimum and maximum at times vary.

9501. Separate concurring opinion and Dissents – Justice Itoe, para. 10: In Sierra Leone, offences are classified as Treasons, Felonies and misdemeanors,[3] the sentences attached to them creating the main distinction as to their gravity.

9502. Separate concurring opinion and Dissents – Justice Itoe, para. 11: As I have already mentioned, all offences such as those that feature in the Statutes of International Criminal Tribunals, by their very nature, enjoy the same status in terms of the possible term of imprisonment to be meted out upon a conviction, a fortiori, in terms of their gravity.

9503. Separate concurring opinion and Dissents – Justice Itoe, para. 12: Notwithstanding this Statutory equality in status and in gravity that is attributed to these offences however, an examination of Articles 2, 3 and 4 of the Statute of the Special Court and the offences provided for and defined therein, makes it evident that some of these offences do not, in reality, carry the same status nor do they highlight the same characteristics of seriousness in terms of gravity particularly

when one looks at of high profile offences such as murder, extermination, abduction, killing and mistreatment of U.N. Peacekeepers, Torture, rape, sexual slavery or other sexually related offences or inhumane acts provided for in Article 2 of the Statute; or those provided for in Articles 3 such as violence to life, health and physical or mental well being in particular, murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment, acts of terrorism, to mention just these, as compared to other with a relatively low profile like pillage, Persecution on political, rational, ethnic or religious grounds and threats to commit any of the foregoing acts.

9504. Separate concurring opinion and Dissents – Justice Itoe, para. 13: In fact the provision in Article 18 (2) of the Statute that the sentence should reflect the gravity of the offence is in itself a recognition of the fact that all the offences defined in to Statute do not enjoy the same status in terms of gravity, and that it is left to the Judges for purposes of sentences to determined this element having regard to the nature of the offence and the circumstances surrounding its commission.

9505. Separate concurring opinion and Dissents – Justice Itoe, para. 14: It is in the context of these categorisations that an International Tribunal can properly guide itself in making a determination on the issue of what the gravity of the offence is or not, depending, how and where it was perpetrated, and its consequences on the victims, with a view to determining the sentence to be handed down to the Convict.

9506. Separate concurring opinion and Dissents – Justice Itoe, para. 15: In considering what I term the" basic" and "aggravated" forms of offences, it is pertinent to observe and to state that the role of legislator of Penal instruments and Statutes is to define and spelt out conduct which is considered to be dangerous and disruptive of social harmony, peace, cohesion, and human and proprietary rights with a view to proscribing them by envisaging penalties in various forms and scales of imprisonment or fines or both, for the offenders.

9507. Separate concurring opinion and Dissents – Justice Itoe, para. 16: In this process, crimes generally are categorized on the scale of their gravity, all of them sharing the common characteristic of prescribing a sanction.

9508. Separate concurring opinion and Dissents – Justice Itoe, para. 17: In any opinion, what is legislated upon in Criminal Codes, in Penal Codes, in Statutes or other Instruments regulating criminal conduct which defines criminal offences their ingredients and their penalties is the "basic form" of the offences provided for and defined therein. It is in this form that the category and gravity of the offence is determined.

9509. Separate concurring opinion and Dissents – Justice Itoe, para. 18: In International Criminal Tribunals for instance, and particularly the Special Court for Sierra Leone, all the crimes that are stipulated in the Statute are spelt out but not defined in terms of specifying their constitutive elements or ingredients in their basic form. However, the penalty of 'imprisonment for a specified number of years' as provided for in the Article 19(1) of the Statute is already indicative of the high profiled nature and gravity of those offences should any Accused such as the 3 before us, be found guilty of them'.

9510. Separate concurring opinion and Dissents – Justice Itoe, para. 19: Even though Article 19 (2) provides that in imposing the sentences, the Trial Chamber should take in to account, such factors as the gravity of the offences and the individual circumstances of the convicted person, I am by the opinion that a finding of guilt for any of the offences defined in the Statute and for which the Accused has been indicted, is already indicative of the fact that he has been found guilty, not just for an ordinary offence, but, indeed for one which is viewed with extreme gravity because it attracts an incarceration for a considerable and an unspecified number of years.

9511. Separate concurring opinion and Dissents – Justice Itoe, para. 20: What is true however, is that the legislator of penal Statute, like those of the Special Court for Sierra Leone, gives to the Trial Chamber, some wriggling room to determine the sentence to be imposed, due consideration being given, as is stated in the Statute to the gravity of the offence and the individual circumstances of the convicted person and I would add, the constitutive elements of the offence whose ingredients are defined by the Chamber in its judgment on the subject of the "Law on the Crimes Charged" and as has been held by other ad hoc International Tribunals whose practices, Article 19(2) of the Statute recommends that we have recourse to 'where appropriate'.

9512. Separate concurring opinion and Dissents – Justice Itoe, para. 21: In its delineation of the general requirements and the ingredients of the offence charged in order to base and define the crimes enumerated in the Statute, the Chamber has, highlighted all the factors that enable it to determine the liability or not, of the Accused. Some of these elements, I would observe, are clearly very indicative of the gravity of the offences charged and for which the Accused Persons have been found guilty.

9513. Separate concurring opinion and Dissents – Justice Itoe, para. 22: In these circumstances, and as we have opined following the Blaskic precedent, if a particular circumstance is an element of the underlying offence, it cannot and in fact should not be taken into account as an aggravating factor.[4]

9514. Separate concurring opinion and Dissents – Justice Itoe, para. 23: It is therefore my considered opinion, as we have already indicated in the Judgment, that the gravity of the offence, in our analysis of what may be considered as a constitutive element of the offence cannot, under the risk of violating the principle of 'Double Counting' or indeed, the Rule against 'Double Jeopardy', also be considered under the rubric of the gravity of the offence as provided for under the provisions of Article 19 (2) of the Statute.

9515. Separate concurring opinion and Dissents – Justice Itoe, para. 38: What I say here is that there is no doubt that besides what is proven in terms of the required elements of each of these offences which I have characterised as constitutive, elements of considerable gravity in their "basic form", there are some other acts which the Accused person committed in addition to, and beyond those envisaged in the basic form as defined in the "Law Applicable on the Crimes Charged". In such a case, it cannot be contested that these acts which are committed in addition to and beyond those required to establish the basic constitutive elements of the 'basic offence', give the offence another grave indeed, a graver dimension.

9516. Separate concurring opinion and Dissents – Justice Itoe, para. 39: For instance, there is no offence known as gang rape. In this context, gang rape is not an ingredient to be proven in establishing the constitutive elements of the basic offence of rape as defined by the Chamber. In a case therefore against the Accused person for rape, it is not necessary for the Prosecution to prove the fact of a commission of the offence of rape by a gangraping team to establish the ordinary elements of the 'basic offence' of rape as defined by the Chamber in the judgment.[11]

9517. Separate concurring opinion and Dissents – Justice Itoe, para. 40: However, if the Prosecution in establishing the basic form of rape, also elicits, as it has done in some instances in this case, evidence of gang raping, this should, in my view, be considered more as an aggravating factor even though I concede that it could also logically constitute an additional element which certainly enhances the basic offence and thereby impacts on the process of determining the gravity of the offence as required by Article 19 (2) of the Statute of the Special Court.

9518. Separate concurring opinion and Dissents – Justice Itoe, para. 41: As a Chamber we should stand cautioned in such situations and avoid to factor the gravity of the offence element into the aggravating circumstances equation. Indeed, even though at this stage of the proceedings, the term "gravity" and "aggravating" tend to muddy the waters for the Judges in their quest to know which one to know which one they can opt for in these circumstances, it should be conceded that they are complementary to each other. Indeed as was held in the case of the *Prosecutor vs. Momcilo Krajisnick*,[12] "the Trial Chamber should strive to distinguish between the gravity of criminal

conduct and the aggravating circumstances in making the determination on which of them should apply and to which situation. This, to my mind should have been avoided in our analysis on the gravity of the offences on the one hand and on the aggravating circumstances of the offences as we appear to have done in this Decision. I say this because the raison d'etre of the rule against 'double counting' is to shield the convicted person from incurring a severer sentence than is ordinarily necessary and further, to rescue him from the hazards of the double jeopardy rule for the same offence and in relation to the same conviction.

9519. Separate concurring opinion and Dissents – Justice Itoe, para. 42: Even though the Statute, in its Article 19 (2), mandates the Chamber to take in to account, the gravity of the offence in determining a sentence, it is my considered opinion, as I have already stated, that all the offences provided for therein, in their very basic form, are offences of extreme gravity particularly given their constitutive elements and as they are defined and set out by the Chamber in the 'Law applicable to the crimes charged".

9520. Separate concurring opinion and Dissents – Justice Itoe, para. 43: For instance the offence of murder as a crime against humanity is stipulated in Article 2 of the Statute. The general requirements, which reveal the gravity and indeed seriousness of the office, are that there must be an attack and that it must be widespread or systematic and directed against any civilian population. The term widespread, this Chamber has held, refers to the large scale nature of the attack and the number of victims.[13] This obviously, and without more, in my opinion, denotes the gravity of such an offence, particularly where such attacks, as we have found proven, were systematic in terms of the organized nature of the acts of violence and the improbability of their random occurrence.[14]

9521. Separate concurring opinion and Dissents – Justice Itoe, para. 44: The trend of our analysis is the same for the other offences on this same chapter on the "Gravity of Offences" in relation to Sexual Crimes, Physical Violence, (counts 1-2 and 10-11), Enslavement, (Counts 1 and 13), Pillage and Burning crimes (Counts 1-2 and Count 14), Use of Child Soldiers (Counts 12) Crimes against UNAMSIL Personnel (Counts 15 and 18).

9522. Separate concurring opinion and Dissents – Justice Itoe, para. 45: The comments I have made on the issue of the gravity of war crimes, and the caution I have formulated on murder as a crime against humanity, hold good for these offences as well. I say this however, with a caveat. In certain findings, the Accused persons are guilty of some offences such as Murder, Sexual Offences, Physical Violence and Crimes against UNAMSIL Personnel to mention just a few.

9523. Separate concurring opinion and Dissents – Justice Itoe, para. 46: It must be recognized that some of these offence have been perpetrated in a gruesome manner that one cannot and with exceptional acts of inhumanity and methodology that transcend the basic and ordinary ingredients, that are constitutive of the offence in its basic form.

9524. Separate concurring opinion and Dissents – Justice Itoe, para. 47: I will mention here, only some of the numerous gruesome incidents which I consider significant in demonstrating this phenomenon of extreme brutality and inhumanity that has contributed to enhancing and raising the profile, in terms of their gravity and of the basic offences for which the Accused have been found guilty in the context of liability under the Joint Criminal Enterprise.

9525. Separate concurring opinion and Dissents – Justice Itoe, para. 48: In the definition of an offence in the creating Statute, it can also take an aggravated dimension in its "basic form" and definition. For instance, ordinary theft in the creating Statute which has a lesser gravity and of course a maximum penalty of 10 years cannot be compared to the offence in its basic form of aggravated theft which is punishable with the death penalty.[15]

9526. Separate concurring opinion and Dissents – Justice Itoe, para. 49: In its ordinary basic form, an offence such as rape can assume aggravating proportions even if this were not envisioned by its definition in the creating Statute. In this regard, and as I have already opined, the Prosecution does not need to prove the aggravating gang-raping element to establish the offence of Rape as a Crime against Humanity. The Prosecution can however, adduce evidence of gang-raping in order to establish the ordinary and basic offence of Rape as defined in the Statute. Where this is done it is my view that it enhances the gravity of the offence of rape and to my mind and considered opinion, only for purposes of a finding of aggravating circumstances with a view to securing a higher sentence.

b. Aggravating factors

9527. para. 24: The Chamber opines that it is an accepted practice that aggravating factors should be established by the Prosecution beyond a reasonable doubt[29] and that only circumstances directly related to the commission of the offence charged, and for which the Accused has been convicted, can be considered to be aggravating.[30] Hence, when a particular circumstance is an element of the underlying offence, it cannot be taken into account as an aggravating factor.[31]

9528. para. 25: The Chamber acknowledges that the Statute and the Rules do not provide an exhaustive enumeration of the circumstances that the Trial Chamber may consider to be

aggravating. Based on the established jurisprudence, factors considered as aggravating in other international criminal jurisdictions, however, include the leadership role of the Accused,[32] premeditation and motive,[33] a willing and enthusiastic participation in the crime,[34] the length of time during which the crime was committed,[35] the location of the attacks – attacks committed in traditional places of civilian sanctuary such as churches, mosques, schools and hospitals being generally considered as more serious,[36] sadism and a desire for revenge,[37] abuse of trust or official capacity,[38] "total disregard for the sanctity of human life and dignity." The Chamber takes the view that deceptive behaviour such as luring others into a false sense of security through fraudulent offers to discuss or negotiate and subsequently taking advantage of the others revealed weakness may also amount to aggravating circumstances. The Prosecution submitted that bad behaviour of an accused during trial might constitute and aggravating factor, however the Chamber does not accept that argument.

9529. para. 26: Furthermore, the Chamber opines that the position of leadership of an Accused held criminally responsible for a crime under Article 6(1) of the Statute, may constitute an aggravating circumstance.[39] However, it has been held that if an Accused has been found liable under Article 6(3), his leadership position cannot be considered by the Chamber as an aggravating factor as it is in itself a constitutive element of the offence.[40] It has also been held that where the Accused has actively abused his position of command or participated in the crimes of his subordinates, however, such conduct can be considered to be aggravating.[41]

c. Mitigating factors

9530. para. 27: The Chamber recalls that neither the Statute nor the Rules exhaustively define the factors that may be considered to be mitigating. As a consequence, we opine that the category of mitigating circumstances is not closed. Accordingly, "what constitutes a mitigating factor is a matter for the Trial Chamber to determine in the exercise of its discretion."[42]

9531. para. 28: It has been held that the burden of proof on the Accused with regard to mitigating circumstances is that of a balance of probabilities, meaning that it is more probable than not that the circumstances in question did exist. Therefore, it is a much lower burden of proof than that required by the Prosecution.[43] Unlike aggravating factors, mitigating factors may be taken into account regardless of whether or not they are directly related to the alleged offence.[44]

9532. para. 29: However, the Chamber notes that under Rule 101(B), it is mandatory to consider as a mitigating circumstance the substantial cooperation of the Accused with the Prosecutor.

Further, the Chamber has the discretion to consider other factors or circumstances in mitigation, such as:

i) the expression of remorse or acknowledgement of responsibility;[45]

ii) lack of education or training;[46]

iii) good character with no prior convictions;[47]

iv) personal and family circumstances;[48]

v) behaviour and conduct subsequent to the conflict, particularly with respect to promoting peace and reconciliation;[49]

vi) good behaviour in detention;[50] and,

vii) assistance to detainees or victims.[51]

9533. para. 30: The Chamber may also consider the motive of the Accused in either aggravation or mitigation of sentence. However, whilst "motive may shade the individual perception of culpability, it does not amount to a legal excuse for criminal conduct".[52] In addition, "allowing mitigation for a convicted person's political motives, even where they are considered by the Chamber to be meritorious, undermines the purposes of sentencing rather than promotes them".[53]

(iii) Sentencing practice of other tribunals and courts

9534. para. 31: Article 19(1) empowers the Chamber to consider as appropriate the practice regarding sentencing at the International Criminal Tribunal for Rwanda ("ICTR"). The Chamber also considers as appropriate the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia ("ICTY"), which shares a common Appeals Chamber with the ICTR, to be instructive, and has also considered this as appropriate. The Chamber has also considered the sentencing practice of this court, to the limited extent possible.

9535. para. 32: Article 19(1) authorises the Chamber to consider, where appropriate, the sentencing practices of Sierra Leonean domestic courts. However, as none of the Accused was charged for offences under Sierra Leonean law, the Chamber deems it unnecessary to make this enquiry.[54]

(c) Gravity of Offences

9536. General comments para. 103: We consider that some factors and considerations may overlap in the analysis. It is been held in the ICTY that:

> The Appeals Chamber is of the view that, while a Trial Chamber should strive to distinguish between the gravity of the criminal conduct and the aggravating circumstances, it might be difficult or artificial to separate the two in some cases. For instance, in the present case, Krajisnik's contribution to the JCE is precisely his abuse of powers and public positions; this element arguably concerns both the 'gravity of the criminal conduct' and the 'aggravating circumstances'. What is important is to avoid double counting (i.e. no factor should be taken into account twice in sentencing);[192]
>
> Where a factor could equally be considered under either the "gravity of the criminal conduct" or under aggravating circumstances, the Chamber has opted to consider it under the former.

9537. para. 104: The Chamber recalls its findings that Sesay, Kallon and Gbao, Justice Boutet dissenting in relation to the finding on Gbao, have been found guilty of a high number of crimes against humanity and war crimes. The Chamber also observes that some of these crimes were particularly heinous and brutal, and were committed over a long period of time and a large geographical area. Much human suffering resulted from the crimes committed pursuant to the joint criminal enterprise, of which we have found all the accused, Justice Boutet dissenting in relation to the finding on Gbao, to be joint participants.

9538. para. 105: We have concluded that the crimes show a systematic targeting of civilians and a wanton disregard for life, property and collective well-being. These crimes were, in many instances, intended to force the civilian population into submission and dissuade them from collaborating with what they considered to be the enemies of the Junta.

9539. para. 106: The Chamber, Justice Itoe dissenting, is of the view that, where a particular act amounting to criminal conduct within the jurisdiction of the Court, such as murder or rape as a crime against humanity has also, because of the additional element of intent necessary for a conviction for acts of terrorism or collective punishments as a war crime, amounted to a crime as alleged in Counts 1 and 2 of the Indictment, for purposes of sentencing we will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

9540. Separate concurring opinion and Dissents – Justice Itoe, para. 30: The second arm of my Dissent is grounded on the other decision which contextually says the following in a number of paragraphs;[9] and I quote:

> Where murder or rape has been found to amount to an act of terrorism or collective punishment, for purposes of sentencing we will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.[10]

9541. Separate concurring opinion and Dissents – Justice Itoe, para. 31: The first comment I would like to make here to support the Dissenting position I have taken is that the indictment on which the Accused Persons have been found guilty comprised 18 counts. It is my view that in law, each of those counts, provided they were not charged in the alternative with another, stands or falls on its own and on the evidence that the prosecution has adduced to prove it.

9542. Separate concurring opinion and Dissents – Justice Itoe, para. 32: If the prosecution succeeds in establishing the guilt of the Accused on all or some of the Counts, it appear to me, legally anomalous, in the sentencing process, to decide or to direct that the gravity of one offence should aggravate or enhance the gravity of the other which stands independently on its own, and this, notwithstanding, as one will expect in a multi-dimensional indictment, that all the offences charged do not have the same status in terms of their gravity, and that the same evidence may overlap or may be adduced to prove more than one of the Counts.

9543. Separate concurring opinion and Dissents – Justice Itoe, para. 33: I would like in this regard to invoke here, the affinity of this situation to a statutory and very fundamental legal right of an Accused person, under Article 17(4) (a) of the Statute, for him 'to be informed and promptly in detail, of the nature and cause of the charge against him or her.' This right and principle is founded on the rules of fundamental fairness so as to avoid surprises before and during the trial and I would say, during both the Judgment and Sentencing as well.

9544. Separate concurring opinion and Dissents – Justice Itoe, para. 34: In my opinion, it is and should be the legal position as well, and I so opine, that what the Chamber Majority Judgment has decided on the process of now making a determination on the sentences to be handed down to the Accused Persons, should have been explained and served or notified to them at the time that they were being served with the Indictment or during the exchange of trial briefs or even in the course of the trial, so as to enable them to plan and pattern their defence strategies accordingly and well in advance.

9545. Separate concurring opinion and Dissents – Justice Itoe, para. 35: This was not done during the opening of these RUF proceedings on the 4th day of July 2004. In was not the case either even as the trial proceeded all along because the Accused Persons have never been informed that if they were convicted of acts of rape and it turned out that the evidence adduced to establish that offence contained elements or ingredients of offences of terrorism or of collective punishments, the gravity of that offence of the rape will be increased, meaning of course, that the sentence for those offences will be higher and severer than they ordinarily would have been, or should be.

9546. Separate concurring opinion and Dissents – Justice Itoe, para. 36: Consequentially and inferentially, therefore, what I read in this is that this Chamber is technically and legally convicting and sentencing the Accused Persons for an unknown and a more serious offence for which they have neither been indicted nor tried, and imposing an arbitrary and imaginary sentence which is not fixed by law, thereby violating the *nolle poena sine lege*, and at the same time, the *nullum crimen sine lege* principles.

9547. Separate concurring opinion and Dissents – Justice Itoe, para. 37: Since the Chamber Majority Judgment, in my opinion, seriously undermines and compromises the legal rights of the Accused Persons at this sentencing stage where they come into grips for the first time and are confronted with a novel decision which I respectfully consider prejudicial to their judicial interests, I am constrained to accompany the said Chamber Majority judgment in this regard, with an unfavourable expression of dissent and disapproval.

9548. See above: Sentencing – RUF – Sentencing Judgment – Applicable Law – Sentencing factors – Gravity of the offence – Separate concurring opinion and Dissents – Justice Itoe – paras. 6-23, 38 – 49 [9497].

(i) Unlawful killings

a. Nature of the offence

9549. para. 107: The Chamber takes the view that the unlawful killings for which the Accused have been found guilty are of the utmost gravity. For instance, civilians – including babies, children, women and men of all ages – were murdered in diverse brutal ways. Many civilians were targeted on suspicion that they were Kamajors or Kamajor collaborators.[193] The rebels showed a general disregard for civilians. They sometimes dressed in ECOMOG uniforms so as to deceive the civilians.[194] Civilians were shot, beaten to death, burned alive and hacked to death, often indiscriminately and in large numbers.[195]

9550. para. 108: The Chamber also recalls it's finding that in Penduma, Staff Alhaji allowed the killing of the wife of TF1-217, after he organised, supervised and presided over her brutal rape by eight rebels.[196]

b. Scale and brutality

9551. para. 109: Killings were done arbitrarily, brutally and cruelly. A man was shot in the chest and had his head severed and his legs broken. A Limba man was killed because he refused to surrender palm wine.[197] Rebels would routinely sing, celebrate murders and taunt survivors. Men were disembowelled with their intestines subsequently used as makeshift checkpoints.[198] The severed heads of victims were placed on sticks and displayed publicly.[199] A boy had all four limbs hacked off before being thrown into a latrine pit and left to die.[200] Civilians were made to choose between their own lives or those of their family members and, and one instance, a civilian was made to watch as rebels cast lots on whether he would live or die.[201]

9552. para. 110: The Chamber further recalls that in Bo District, the unlawful killings were committed during attacks on Tikonko, Sembehun and Gerihun all between 15 and 30 June 1997. At least 207 people were killed by rebels who, at times, used anti-aircraft weapons on the civilians.[202] The rebels discharged their weapons indiscriminately, committing these murders in homes and at a school.[203] All the killings in Bo District, given amongst others their public nature were found to constitute acts of terrorism and that the massive killing in Tikonko was found to constitute extermination.[204]

9553. para. 111: We found that in Kenema Town and Tongo Field in Kenema District, the unlawful killings occurred between 25 May 1997 and about February 1998. At least 82 people were then murdered, of which 63 were found to have been exterminated, 72 died as a result of acts of terrorism and 11 from collective punishments on suspicions of collaborating with the Kamajors.[205] We also found that the massacres at Cyborg Pit in Tongo Field, in particular, highlight the scale and brutality of the killings of civilians who complained of the very treatment they were being subjected to in furtherance of the Junta's quest for diamonds.[206]

9554. para. 112: The Chamber has found that Kono District was the site of some of the most extensive and brutal massacres committed in Sierra Leone during the period of the Indictment. Between 14 February and 30 April 1998 at least 317 civilians, plus an unknown number of civilians, were murdered in Koidu Town, Tombodu, Yardu and Penduma. Of those 317 murders, at least 280 were acts amounting to extermination and 230 were considered to be the result of collective punishment. All of the killings for this time period were considered to be acts of terrorism, including the killings at the Sunna Mosque in Koidu committed by CO Rocky as he forced a man to pray. Similarly, the killings done by Savage and Staff Alhaji show the brutality and scale of the murders – such was the magnitude of the killings that the diamond pit where corpses and severed heads were dumped became known as "Savage Pit".[207]

9555. para. 113: Between May 1998 and June 1998, after the JCE had ceased to exist, an additional 29 murders were committed in Kono District at PC Ground, Koidu Buma and Wendedu. 8 of these murders, committed by Captain Banya on Superman's orders, were an act of terrorism. We recall in particular the brutal killing of 15 civilians by RUF Rambo and a group of rebels, who "felled the victims with a cutlass."[208]

9556. para. 114: We have found that on 19 February 1998, 63 civilians were murdered in Kailahun Town, Kailahun District, on the orders of Sam Bockarie. This extermination, one of the worst single incidents during the war, also constituted an act of terrorism and collective punishment. It shocked the conscience of the town and of all those present.[209]

c. Impact on victims and society

9557. para. 115: The Chamber observes that the killing of civilians in such circumstances brings along with it a lot of suffering on families and on the community. In several of these incidents the Chamber made findings as to the grief of the civilian populations and their ordeal in burying the corpses, estimated in the hundreds. Some were exposed to the decomposing bodies, left in the streets for days, or to the severed heads of victims, also left on the street. Many were subjected to the ordeal of observing one or several family members killed in their presence.[210]

d. Conclusion

9558. para. 116: Having carefully considered the instances of crimes of unlawful killings as we have found in the Judgement (Counts 3 to 5 of the Indictment) the Chamber concludes that the inherent gravity of the criminal acts in question is exceptionally high. Where those acts have also been found to constitute either Acts of Terrorism or Collective Punishments (Counts 1 and 2 of the Indictment) the Chamber, Justice Itoe dissenting, will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

9559. See above: Sentencing – RUF – Sentencing Judgment – Gravity of Offences – General Comments - Separate concurring opinion and Dissents – Justice Itoe – paras. 30 – 37 [9540].

(ii) Sexual violence

a. Nature of the offence

9560. para. 117: In this case, the sexual violence crimes that we found were committed by the AFRC/RUF as a tactic of war was often perpetrated with impunity to humiliate, dominate and instil fear in victims, their families and communities during the armed conflict.[211]

9561. para. 118: The Chamber observes that the gravamen of crimes of sexual violence involves physical aggression on the most private and intimate parts of an individual's body. The Chamber found ample evidence of gruesome crimes of sexual violence which were perpetrated exclusively and disproportionately against unknown number of the female population throughout the territory of Sierra Leone, in locations including but not limited to, Tombodu, Sawao, Penduma, Bumpeh, Wendedu and Bomboafuidu in Kono District[212] and in locations within Kailahun District. For instance, a group of captured civilians in Bumpeh were stripped naked and forced to laugh and line-up before the rebels molested and defiled them.[213] A husband and wife and their daughter were overtly selected from a group of civilians and the couple was ordered to have sexual intercourse in public or otherwise face death. The couple's 10 year old daughter was then forced to wash her father's penis.[214]

9562. para. 119: In another instance, a rebel armed with a gun and knife, threatened to kill TF1-218 as he lifted and opened her legs before penetrating her. She described her condition stating "I was trembling, so I got up. I stood there for some time trembling."[215] The rapes were sometimes followed with further violence to the victims. TF1-218 managed to escape after she was raped but got shot in her hand. She was naked oozing with blood everywhere, from her vagina and her hand."[216] Similarly, in Sawao, as in Penduma, the multiple rapes of women were committed simultaneously as men were killed or had their limbs amputated.[217]

9563. para. 120: The Chamber has found that the AFRC/RUF systematically rampaged through towns and villages, armed and dangerous on missions to demolish and despoil the civilian population. In Bomboafuidu about 50 armed men, captured TF1-192 and approximately 20 civilians who were then paired up, male and female, and ordered to have sexual intercourse with each other.[218] The violent sexual acts were also indiscriminately perpetrated against the civilians regardless whether they were nursing mothers, pregnant women or children. In Tombodu, Staff Alhaji pointed a gun at the head of a woman carrying a child and commanded her to put the child down and undress. He touched her private part and then raped her in front of her child.[219]

9564. para. 121: We have also found that the public manner in which the crimes of sexual violence were committed was a deliberate tactic on the part of the perpetrators to instil fear into the civilians.[220]

9565. para. 122: In addition, as we have found, many women and girls were forcibly made 'wives' of RUF commanders and rebels in Kono and Kailahun District. 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.[221] Many of these women were under the control of the Commanders for prolonged period of time, "serving them as their wives,"[222] and for sex. An unknown number of women were forced into sexual slavery for protracted period of time in Koidu and Wendedu, in Kono District[223] and also in Kailahun District.[224]

b. Scale and brutality

9566. para. 123: The Chamber considers that the crimes of sexual violence for which the accused stand convicted are of an extremely serious nature and were committed in conspicuously brutal manner as demonstrated in the Factual Findings of the Trial Judgement. We have also found as already stated that these crimes were committed with the further intent to terrorise the civilian population.[225]

9567. para. 124: The Chamber has found that sexual violence was rampantly committed against the civilian population in an atmosphere in which violence, oppression and lawlessness prevailed.[226] The Chamber notes that armed RUF rebels paraded through towns and villages, threatening women and girls, and in some instances capturing, assaulting or killing them.

9568. para. 125: Moreover, the rebels, as we have found, used perverse methods of sexual violence against women and men of all ages ranging from brutal gang rapes, the insertion of various objects into victims' genitalia, the raping of pregnant women and forced sexual intercourse between male and female civilian abductees.[227] TF1-217's wife was gang raped by eight rebels as he and his children were forced to watch. He was ordered to count each rebel as they consecutively raped his wife, as they laughed and mocked him. After this ordeal, one of the rapists, Tamba Joe, took a knife and stabbed TF1-217's wife in front of her entire family.[228]

9569. para. 126: We have also found that several other victims faced brutal multiple rapes. For example TF1-195 was raped fives times[229] and a stick was inserted into her vagina[230] and since this treatment she has experienced physical pain. TF1-218 was raped twice and another victim in

Bomboafuidu had a pistol driven into her vagina and left inside of her.[231] In addition, at least 20 captured civilians were forced to engage in sexual intercourse with each other, slitting the genitalia of several males and females persons.[232]

9570. para. 127: The Chamber has concluded that the AFRC/RUF also systematically and arbitrarily continued to capture and abduct an unknown number of women and girls, forcibly labeled 'wives' in Koidu and Wendedu camps in Kono District. For instance, TF1-314 was captured and abducted at the tender age of 10 and forcibly married to an RUF fighter in Kailahun District and so was TF1-093. Both victims and an unknown number of other women were forcibly married to RUF fighters and Commanders for a protracted period of time in Kailahun District.[233] The Chamber considers the brutal and large scale manner in which crimes of sexual violence were perpetrated increases the gravity of these offence.

9571. Vulnerability of victims para. 128: With specific regard to the crimes of sexual violence, the Chamber observes that many of the victims were particularly young and vulnerable; several of them after arbitrary abductions were held in captivity for prolonged periods of time. This was the situation particularly in Kailahun District which was the RUF stronghold and headquarters, an area where crimes of sexual violence were so prevalent that the victims suffered immensely because the RUF closely exercised territorial dominance and physical control over them. TF1-314 at the tender age of 10 and TF1-093 at 15 were abducted and forcibly married to an RUF fighter in Kailahun District.[234] The Chamber found that the majority of the victims of forced marriages, rapes and sexual slavery were young girls of school going age or village women, who were petty traders or farmers.[235]

9572. para. 129: The Chamber has found that the crimes of sexual violence specifically targeted the female population regardless of age or status, whether pregnant or not, it was done to effectively to disempower the civilian population, and it had the direct effect of instilling fear in communities.[236] Accordingly, for purposes of sentencing, the Chamber concludes that this practice by the rebels of using sexual violence to terrorise the civilian population increases the gravity of the underlying offence.

c. Number of victims

9573. para. 130: Although it may be problematic to give an exact or approximate number of victims of the crimes of sexual violence, we have found that the crimes were committed over a long period of time and a large geographical area. We have further found that on numerous occasions an unknown number of women were raped and/or taken as 'wives'. For instance, in

Tombodu, Staff Alhaji pointed a gun at the head of a woman carrying a child on her back, made her undress, and then raped her.[237] TF1-217's wife was gang-raped.[238] In Bumpeh, 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. The rebels then forced the man's daughter to wash her father's penis.[239] In Bomboafuidu, a woman had a pistol driven into her vagina and left inside of her.[240] An unknown number of women and girls including TF1-314 and TF1-093 were held captive in sexual slavery for prolonged periods of time and as 'wives' in Kailahun District.[241]

9574. para. 131: The Chamber emphasises that all rapes and forced marriages were found also to constitute acts of terrorism and outrages against personal dignity.[242] Accordingly, the Chamber concludes that for purposes of sentencing the practice of using rapes and forced marriage to terrorise the civilian population increases the gravity of the underlying offence.

9575. Impact on victims and degree of suffering para. 132: In our view, the degree of suffering that was endured by victims of sexual violence still continues. Some victims of forced marriage, sexual slavery and rape borne children of their ordeal. The Chamber considers that the crimes of sexual violence also inflicted physical and psychological pain on the victims. The victims continued to live with their captors in a hostile and coercive environment[243], unable to break away from such desperate circumstances. The Chamber recalls the demeanour and testimonies of various victims of sexual violence who expressed deep shame and stigma which they feel and face to date, several years after the abuse. The Chamber specifically recalls Witness TF1-305, the victim of a violent gang rape, who, as a result of the rape, sustained injuries which left her genitally impaired and incontinent. The Witness required frequent rest breaks during her testimony as a result of her condition. As we have found, the victims of sexual violence continue to live their lives in isolation, ostracized from their communities and families, unable to be reintegrated and reunited with their families and /or in their communities.[244] Many of these victims of sexual violence were ostracised or abandoned by their husbands, and daughters and young girls were unable to marry within their community.[245]

d. Impact on relatives and society

9576. para. 133: The Chamber further considers that the crimes of sexual violence were committed in a society where cultural values greatly dictate the sacred manner in which any form of sexual acts take place. Such violations in a society where the sexual lives of women and girls are strictly scrutinised would have an adverse impact on the family as a whole and the society at large.

9577. para. 134: We therefore recall our finding that the brutal manner in which women and girls were debased and molested, in the naked view of their protectors, the fathers, husbands and brothers deliberately destroyed the existing family nucleus, and flagrantly undermined the cultural values and relationships which held the societies together.[246] The Chamber observes that the shame and fear experienced by victims of sexual violence, alienated and tore apart communities, creating vacuums where bonds and relations were initially established.

9578. para. 135: In the Chamber's view the AFRC/RUF inflicted physical and psychological pain and harm which transcended the individual victim and relatives to an entire society. These acts of sexual violence left several women and girls extremely traumatised and scarred for life, consequently destroying the bearers of future generations. The Chamber infers that crimes of sexual violence further erode the moral fibre of society.

e. Conclusion

9579. para. 136: Having carefully considered the instances of crimes of sexual violence as we have found in the Judgement (Counts 6 to 9 of the Indictment) the Chamber concludes that the inherent gravity of the criminal acts in question is exceptionally high. Where those acts have also been found to constitute Acts of Terrorism (Count 1 of the Indictment) the Chamber, Justice Itoe dissenting, will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

9580. See above: Sentencing – RUF – Sentencing Judgment – Gravity of Offences – General Comments - Separate concurring opinion and Dissents – Justice Itoe – paras. 30 – 37 [9540].

(iii) Physical violence

9581. para. 137: In evaluating the gravity of the offence, the Chamber considers that the crimes of physical violence include mutilations, carvings, amputations and beatings.

9582. para. 138: In this regard, and for the purposes of determining the gravity of these offences for which the Accused have been convicted, the Chamber deems it necessary to take into consideration, the extent to which these offences consequentially amounted to acts of terrorism and of collective punishment.

9583. para. 139: We take this stand because the Accused persons by their criminal acts as we have found intended and meted out to the victims, not only collective punishments but also terrorised them and the population at large with a view to subdue and to intimidate those who they

and their fighters perceived as being hostile to them and to the fulfilment of the ideals and ideology of their movement, with a clear message and signal that a similar fate awaits those who do not embrace their cause.

9584. para. 140: The Chamber considers that where it has found that crimes of physical violence were committed with the intent to terrorise the population, or were committed as collective punishments, that for purposes of sentencing it increases the gravity of the underlying offence.

a. Nature of the offence

9585. para. 141: The Chamber is cognisant that the crimes of physical violence were perpetrated against innocent civilians in a cruel manner. We have found that victims were physically mutilated; some had inscriptions of the letters "RUF" with hot irons into their flesh while others were relentlessly beaten by rebels with the view to collectively punish or terrorise them. We further found that the physical and psychological ill-treatment left many victims permanently disfigured, unconscious or dead.[247]

9586. para. 142: The Chamber considers that the cruel manner in which these crimes of physical violence were carried out in absolute disregard for the sanctity of life or respect for human life or human dignity are factors which increase the gravity of the offence.

b. Scale and brutality

9587. para. 143: The Chamber recalls that several innocent civilians suspected of being collaborators were arbitrarily detained, tied up, ill-treated and thoroughly beaten in Kenema District. We recall in this regard that B.S. Massaquoi was beaten and tortured over a period of many days until he was unconscious.[248]

9588. para. 144: The Chamber has also found that in Kono District, several civilians were blindfolded and severely beaten with gun butts, and some were held down in nests of black ants. Rebels fired a gun between the legs of victims.[249] TF1-197 was beaten with sticks and stabbed in the head by rebels whilst other victims were tied on mango trees and mercilessly beaten with wires.[250]

9589. para. 145: The Chamber also considers as particularly brutal, insensitive and inhumane manner in which Major Rocky, an RUF commander shoved a board into the mouth of TF1-015, knocking out his teeth.[251]

9590. para. 146: We have found that victims were subjected to gruesome amputations in Kono District, some of which were committed simultaneously or successively with other crimes. For instance, TF1-195's right arm was severed by a small boy[252] after she was raped five times by rebels. TF1-197's arm was amputated and he was told to go to get extra hands from President Kabbah.[253] Victims were mutilated by rebels; at least 16 victims in Kayima were ordered to undress while a surgical blade was used to carve the letter "RUF" and/or "AFRC" into their bodies;[254] more victims in Tomandu suffered the same fate when a rebel named Soh carved "RUF" into their backs and arms using a razor blade.[255]

9591. para. 147: The Chamber recalls that in Penduma in Kono District, civilians who had been placed in three lines were tied up and locked in a house that was set ablaze.[256] The Chamber also recalls that more than 8 men at the Penduma Primary School were beheaded by Staff Alhaji and his men. The Chamber further recalls that Staff Alhaji and his rebels amputated the hands of the first two men in the line of men where TF1-217 was standing.[257]

9592. para. 148: The Chamber takes particular note of the manner in which TF1-217 was subjected to physical violence in the presence of his children. TF1-217 and his children after bearing the ordeal of watching his wife gang raped was subjected to physical injury. His feet were tied up to a tree, and Staff Alhaji hit his head with a cutlass so that it bled. His wrist watch was taken from him and his left hand was amputated in the presence of his children.[258] TF1-217 stated that:

> 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 […][259]

9593. para. 149: Even whilst TF1-217 tried to reclaim his amputated hand, he was stabbed in the back by Staff Alahaji stating;

> 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.[260]

9594. para. 150: The Chamber recalls its finding regarding physical violence inflicted on a 15 year-old boy in Koidu, whose hands were amputated at the wrist and both his legs were amputated at the ankle. He was then thrown alive into a latrine. The boy was still crying as the rebels walked away.[261]

9595. para. 151: The Chamber considers that the crimes of physical violence were perpetrated on a large scale and in a brutal manner and that this elevates the gravity of the offence. Furthermore,

where the Chamber has found that such crimes also amounted to collective punishments,[262] the Chamber considers that for purposes of sentencing this further increases the gravity of the underlying offence.

9596. Vulnerability of victims para. 152: The Chamber observes that the majority of the victims of these crimes of physical violence were particularly vulnerable. Many of them were very young children, women or men who were unarmed and incapable of defending themselves against such brutal violence. Moreover, the armed rebels used intimidation, threats, coercion and terror to break the will of the people, thereby making civilians more vulnerable.

c. Number of victims

9597. para. 153: The Chamber found that a countless number of persons were victims of crimes of physical violence. It is noteworthy to recount the victims who were mentioned on record. However, this is not intended to minimize the actual vast number of victims. The Chamber notes that 3 civilians were amputated on the orders of Staff Alhaji in Tombodu,[263] TF1-197 suffered an amputation and his brother was flogged,[264] at least 3 men suffered amputations in Penduma,[265] 5 victims of amputations in Sawao[266] and also an unknown number of civilians were beaten with sticks and with guns.[267] In Wendedu, TF1-015's teeth were knocked out of his mouth[268] and at Kayima at least 18 civilians had "RUF" and/or "AFRC" carved into their flesh.[269] At least 13 civilians in Tomandu in Kono District suffered the same fate. In Kenema District there were several victims including TF1-122, TF1-129, 9 suspected collaborators and 6 detained civilians all of whom were severely beaten. The Chamber notes that at least 16 of the acts of physical violence perpetrated in Kenema were also found to constitute acts of terrorism and collective punishment. Where this is the case, the Chamber, for purposes of sentencing, considers that it further increases the gravity of the underlying offence.

9598. para. 154: The Chamber notes that while it is not possible to make an accurate numerical estimate of the victims of crimes of physical violence, the victims were evidently in large numbers.

9599. Impact on victims and degree of suffering para. 155: The Chamber considers that these crimes had a significant adverse physical and psychological effect on the victims. Many victims of these crimes of physical violence have found themselves permanently disfigured and incapacitated. For instance, during his oral testimony, TF1-015 mentioned that he still feels the pain in his mouth, and that he is still unable to chew any food.[270] The Chamber particularly notes the cruel suffering imposed upon those civilians who had hands, feet, or limbs amputated. The

immediate degree of suffering involved in amputations is immense. Amputees are also left to bear the consequences of a permanent and serious physical disability, which in many cases has led to a degree of dependency upon family, and in some cases total and permanent reliance upon others for their every need. The Chamber notes the lasting effects of these crimes on victims, on their dependants and relatives.

9600. para. 156: The Chamber observes that many of these victims endured severe pain and suffering as a result of the physical violence. Some victims have lost the ability to work or the capacity to earn a living. Hence these victims have become dependants in their families, further making the victims feel like burdens to their impoverished families. Victims have lost their mobility and capacity to undertake simple daily tasks. Most victims who were once able persons are now disabled and forced to beg for a living.

9601. Impact on relatives and society para. 157: The Chamber also considers these crimes had a significant adverse impact not only on the immediate victims but also on their relatives and upon the society. Many relatives lost members of their families as a consequence of such physical injury inflicted. The number of dependants in already impoverished families has increased. The Chamber notes that the immediate victims, their relatives and the society as a result of these acts continue to endure serious suffering. The several victims of crimes of physical violence live amidst their relatives and in their communities, permanently scarred, serving as a constant reminder to all of these sufferings.

d. Conclusion

9602. para. 158: Having carefully considered the instances of crimes of physical violence as we have found in the Judgement (Counts 10 and 11 of the Indictment) the Chamber concludes that the inherent gravity of the criminal acts in question is exceptionally high. Where those acts have also been found to constitute either Acts of Terrorism or Collective Punishments (Counts 1 and 2 of the Indictment) the Chamber, Justice Itoe dissenting, will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

9603. See above: Sentencing – RUF – Sentencing Judgment – Gravity of Offences – General Comments - Separate concurring opinion and Dissents – Justice Itoe – paras. 30 – 37 [9540].

(iv) Enslavement

a. Nature of the offence

9604. para. 159: The Chamber has considered that the enslavement crimes for which the accused have been found guilty are of the utmost gravity. We found that hundreds of civilians throughout Kenema, Kono and Kailahun Districts were enslaved and forced to farm, mine for diamonds, carry loads, train for war and generally serve to support the RUF war effort. We recall that deprivation of their liberty, the conditions under which they worked and the harassments and threats they constantly faced symbolise a system designed to exploit civilians, without any regard for their safety or well-being, being focused solely on furthering the accused's criminal objective.

9605. Scale and brutality para. 160: The Chamber recalls that at Tongo Fields in Kenema District hundreds of civilians were enslaved and forced to mine for diamonds. Civilians were captured from surrounding villages and taken to the mines, sometimes tied to ropes. They were given orders by AFRC/RUF Commanders. Those who attempted to escape from the forced mining sites were stripped and left naked so that they would not be able to hide or take diamonds, others were beaten or killed.[271]

9606. para. 161: Again, in Kono District, from about 14 February to 30 April 1998, the Chamber found that there was unknown numbers of civilians enslaved in camps and forced to participate in food-finding missions and used to carry loads of food, ammunition and looted property between Kono and Kailahun Districts.[272] Those who attempted to escape were punished with beatings or given extra work. The use of enslaved civilians to collect and transport goods continued throughout Kono District between May and December 1998 under the same inhumane treatment, in coercive and oppressive conditions.[273] Civilians were organised into so called RUF Camps at Kaidu, Wendedu and Kunduma where they were held with no possibility of escaping and lived under harsh conditions with no adequate access to food and medicines.[274]

9607. para. 162: We found that civilians abducted were from far-away towns and transported to the diamond pits like slaves tied together with ropes and chains, and were arbitrarily removed from their communities and support systems.[275] Under the guise of 'protecting' the civilians, they were kept in camps and had their movement and well-being severely limited.[276]

9608. para. 163: The Chamber also found that the RUF established well-organised extensive diamond mining operations in Kono District in which hundreds of civilians were forced to mine under the guard of armed men and child soldiers. Civilians who refused to mine were beaten,

mining conditions were appalling with no pay, housing, food or medical treatment.[277] Civilians worked from sunrise to sunset, tirelessly digging pits with shovels, pickaxes, sieves and pans. Miners were inhumanely treated, forced to dig while dressed only in their underpants to discourage those who attempted to escape.

9609. para. 164: The mining was characterised by further brutality, when diamonds were not found they would be branded witches and wizards then undressed and severely flogged, stabbed or restrained in cells.[278]

9610. para. 165: We recall that in Kailahun District, enslavement was an institutionalised system in which civilians were screened and enslaved, forced to farm, mine, perform domestic chores, train for combat, work as porters and engage in other forms of forced labour.[279] Civilians were commonly subjected to arbitrary violence and physical retribution. Civilians had to walk several miles to RUF farms, and received no payment or food in return. Some commanders owned private farms cultivated by forced civilian labour and some engaged in private mining under the watchful eyes of child soldiers or other armed security.[280] The rebels guarded the mining pit with guns in order to prevent any of the civilians from escaping.[281]

9611. para. 166: The Chamber notes that the arbitrarily abducted civilians were particularly vulnerable. The circumstances under which the civilians were enslaved rendered the victims powerless and vulnerable. These victims were rampantly abducted often in situations of extreme violence, tied up with ropes and chained like chattels, to be used as slaves, working long hours under oppressive conditions with no adequate food or medicines. Many victims lived under strict control and guard, fear of being killed hence unable to escape. As a result, the victims resigned to their fate, living lives of slaves for prolonged periods of time.

b. Number of victims

9612. para. 167: The Chamber observes that to make an accurate assessment of the number of enslaved civilians forced to mine, train, fish, hunt, farm, and cook, carry loads and/or engage in any other forms of forced labour would be difficult. The Chamber recalls that from the totality of evidence, a massive number of civilians in hundreds were enslaved in one or more ways. It is noteworthy to state that these acts of enslavement were continual, perpetrated on a large scale and for prolonged periods of time.

9613. Impact on victims and degree of suffering para. 168: The Chamber considers that the manner in which innocent civilians were abducted from their settled homes, restrained by ropes

and chains and forced to live in camps manned by armed guards was cruel and degrading. Victims lived under humiliating conditions of complete submission, and resistance to RUF control and dominance brought severe punishment, often death.

9614. para. 169: The Chamber concludes that the enslavement caused its victims immense suffering and pain.

c. Impact on relatives and society

9615. para. 170: The Chamber considers that enslavement removed people from their families and communities and caused psychological injury to the relatives and to the broader community.

9616. Conclusion para. 171: Having carefully considered the instances of crimes of enslavement killings as we have found in the Judgement (Count 13 of the Indictment) the Chamber concludes that the inherent gravity of the criminal acts in question is exceptionally high. Where those acts have also been found to constitute either Acts of Terrorism or Collective Punishments (Counts 1 and 2 of the Indictment) the Chamber, Justice Itoe dissenting, will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

9617. See above: Sentencing – RUF – Sentencing Judgment – Gravity of Offences – General Comments - Separate concurring opinion and Dissents – Justice Itoe – paras. 30 – 37 [9540].

(v) Pillage and Acts of burning as Terrorism

9618. Nature of the offence para. 172: The Chamber found that the crime of pillage predominantly relates to the looting of civilian property in Bo and Kono Districts. The Chamber notes that the looting of property was often accompanied by the setting of many houses and buildings on fire in a chaotic war environment with the intent to instil fear and terror.[282]

9619. Scale and brutality para. 173: The Chamber did find that the destruction of property was committed on a large scale and in an indiscriminate manner, and also as a means to terrorise the civilian population. In Bo District, the fighters looted Le 800, 000 from one Ibrahim Kamara. The Chamber notes that the destruction of property occurred amidst violent attacks, which were accompanied by the setting of houses in towns on fire. The burning of 500 houses in Tikonko and 30 houses in Sembehun clearly sowed fear and terror among the civilian population.[283] Further, the burning of civilian property during the attacks on Koidu and Tombodu were perpetrated as a means to collectively punish the civilian population for allegedly failing to support AFRC/RUF.[284]

9620. Vulnerability of victims para.174: The Chamber further considers that the attacks on Koidu Town and on Bo District which led to the extensive destruction of civilian property were so violent and rampantly perpetrated, to the extent that they rendered all civilians in the vicinity vulnerable.

9621. Number of victims para. 175: The Chamber considers that the indiscriminate manner in which civilian property was destroyed affected several unknown number of civilians. Sometimes towns were set ablaze, as was the case during the attack on Koidu Town. The Chamber recalls that hundreds of civilians became victims of such widespread destruction in Koidu town.

9622. Impact on victims and degree of suffering para. 176: In addition, the Chamber notes that many victims suffered emotional and psychological harm because they powerlessly had to watch their homes and livelihood arbitrarily taken from them or burned as a means of creating immeasurable fear amidst them. Many victims were deprived of property with no remedy for reclaiming it. The Chamber considers that in such impoverished communities, where victims lived on a subsistence basis, all forms of appropriation or destruction by fighters adversely impacted the victims.

a. Impact on relatives and society

9623. para. 177: The Chamber considers that the widespread destruction of property through burning[285] has manifestly had a substantial negative impact on the economy of these communities and stifled their further development. Family ties were broken because many victims fled from their homes and became displaced persons in their own land.

b. Conclusion

9624. para. 178: Having carefully considered the instances of crimes of pillage as we have found in the Judgement (Count 14 of the Indictment) the Chamber concludes that the inherent gravity of the criminal acts in question is high. Having in addition carefully considered the instances of burning where we have found that they constitute acts of terrorism, we consider that the inherent gravity of the criminal acts in question is high. Hon. Justice Benjamin Mutanga Itoe dissents from the Chamber's conclusion in this regard.

9625. Separate concurring opinion and Dissents – Justice Itoe, para. 24: In our sentencing judgment, the following decision has been made and adopted by a chamber majority decision which reads as follows and I quote,

> The Chamber has found that the crime of pillage predominately relates to the looting of civilian property in Bo and Kono Districts. The Chamber notes that the looting of property was often accompanied by the setting of many houses and buildings on fire in a chaotic war environment with intent to instil fear an terror.

9626. Separate concurring opinion and Dissents – Justice Itoe, para. 25: The Chamber did find that the destruction of property was committed on a large scale and in an indiscriminate manner, and also as a means to terrorize the civilian population.[5] Having carefully considered the instances of crimes of pillage as we have found in the Judgment (count 14 of the Indictment) the Chamber concluded that the inherent gravity of the criminal acts in question is high. Having in addition carefully considered the instances of burning where we have found that they constitute acts of terrorism, we consider that the inherent gravity of the criminal acts in question is high. Hon. Justice Benjamin Itoe dissents[6] from the Chamber conclusion in the regard.

9627. Separate concurring opinion and Dissents – Justice Itoe, para. 26: I respectfully dissent from this opinion and findings of my Distinguished Colleagues on the nexus which they have created between crimes of Pillage and Acts of Burning as Terrorism.[7]

9628. Separate concurring opinion and Dissents – Justice Itoe, para. 27: In this regard, I would like to observe that pillage is a War Crime provided for, in Article 3 of the Statute. We, as a Chamber, have determined and defined the ingredients of the offence of pillage as a war crime.[8] They include:

i) The accused unlawfully appropriated the property;

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

iii) The Accused intended to unlawfully appropriate the property.

9629. Separate concurring opinion and Dissents – Justice Itoe, para. 28: The Prosecution in the exercise of their prosecutorial prerogative which, in my opinion, is very extensive and elastic, has the latitude to prefer charges in the same indictment alleging both the crimes of pillage under Article 3 of the Statute and of burning under Article 5 of the said statute. The prosecution did not. It only opted to indict the Accused persons for pillage as a war crime and decided, in the exercise of this discretion not to indict the convicts for the crimes of burning under Sierra Leonean Law as envisaged in Article 5 of the Statute.

9630. Separate concurring opinion and Dissents – Justice Itoe, para. 29: I would like to add here, our Chamber finding that some of the offences charged in the indictment overlapped in terms of the commonality of their constitutive elements as well as of the evidence adduced to prove them.

It is my considered opinion that if the prosecution, intended that the offence of pillage should overlap with that of the crimes of burning, they should also have included the offence of burning as a count in the indictment as this would have made the present Chamber Majority Decision to have a semblance of any credibility at all appear credible at all at this stage and particularly so because as the Appeals Chamber, has held, the definition of the offence of pillage does not include burning.

9631. See above: Sentencing – RUF – Sentencing Judgment – Gravity of Offences – General Comments - Separate concurring opinion and Dissents – Justice Itoe – paras.30 – 37 [9540].

(vi) Child soldiers

9632. para. 179: In considering the gravity of this offence, the Chamber has taken into account the organised, widespread and institutionalised practice by the RUF of recruiting, conscripting and in particular using persons under 15 to actively participate in hostilities.[286]

a. Scale and brutality

9633. para. 180: The Chamber has found that the offences relating to the use of child soldiers, who were known within the context of the war as SBUs/SGUs, were committed throughout the territory of Sierra Leone on a large scale and with a significant degree of brutality. Large numbers of children under 15 years were rampantly abducted from their families, often in a belligerent environment.[287] These child soldiers were subjected to cruel and harsh military training in Yengema, Camp Lion, Bunumbu and Bayama. Those who were unable to endure the training regime were often summarily shot and killed.[288] Children as young as 10 years old were armed with light weapons, rocket launchers and grenades. They were also used to mount ambushes, for instance against the UNAMSIL peacekeepers on the road from Lunsar to Makeni.[289] Some children were armed and used as bodyguards to commanders including Sesay and Kallon, others such as 14 year old Vandy were used during armed patrol which inevitably put the childrens' lives in danger.

9634. para. 181: The Chamber found that very young children were used to engage in the perpetration of gruesome crimes directed against innocent civilians. Armed children manned mining sites[290] in Tombodu, Tongo Fields and Cyborg Pit, guarding civilians who were forced to mine, and indiscriminately beating and killing those who would not perform mining activities. The Chamber also found that the RUF fighters habitually drugged these children with alcohol, cocaine and marijuana which made the children fearless to kill and to perpetrate other violent and heinous

crimes.[291] Children became notorious killing machines, some aged between 8 and 14 actively participating in hostilities by killing and raping civilians;[292] others amputated civilians and burned houses and cars. Children also beheaded corpses of civilians in Koidu following the killings by Rocky of 30 to 40 civilians, and that the 12 year-old child soldier Samuel shot Chief Sogbeh.

b. Vulnerability of victims

9635. para. 182: The Chamber further observes that children were recruited on the basis of their age. The Chamber takes the view that the exceptionally young age of those who were abducted and conscripted rendered them vulnerable. Children as young as 8 or 9 years old[293] were forcibly taken for military training, some barely able to lift the guns they were to shoot. For instance the AFRC/RUF forces forcibly abducted TF1-141 and TF1-263 ages 12 and 14 years respectively in Kono District between February and April 1998.[294]

c. Number of victims

9636. para. 183: The Chamber has found that a large number[295] of children under the age of 15 were arbitrarily recruited and used as child soldiers by the AFRC/RUF on a large scale throughout the territory of Sierra Leone. Therefore, the Chamber's position is that the phenomenon of recruitment of child soldiers by the RUF was so ordinary and vastly practiced that it affected a large number of victims and this increases the gravity of the offence.

d. Impact on victims and degree of suffering

9637. para. 184: The Chamber recalls that child soldiers were arbitrarily abducted from their families, forced into the RUF forces for a protracted period of time and further deprived of a normal childhood and education. Many children were shot and killed during training and in combat activities. Some of the abducted children had the letters "RUF" carved into their bodies[296] essentially branding them as RUF property. The Chamber opines that the use of children under the age of 15 years in this manner considerably increases the gravity of the offence.

9638. para. 185: The Chamber's view is that the psychological impact of the recruitment on these children is particularly evidenced by the fact that in various Interim Care Centres (ICCs) established by UNICEF, the majority of the 'separated' children including child soldiers suffered from war-related stresses which persisted long after the war ended. Hence, the Chamber considers

that the use of children under 15 to actively participate in hostilities had severe physical and psychological impact on the victims and their families due to the separations.

e. Impact on relatives and society

9639. para. 186: The Chamber notes that some former child soldiers have never re-established contact with their families and many who have been re-integrated into society or reunited with their families have inevitably been deprived of a normal childhood, education, physical and psychological development. Most families are in no position to cater for the needs of these children affected by the effects of war. Furthermore, the Chamber considers that because most of these children were forced into the ideology of the RUF, the development of their own identities and understanding of social dynamics are thereby impaired, particularly where no mechanisms are in place to re-channel them and thereby to make positive contributions to development.

f. Conclusion

9640. para. 187: Having carefully considered the instances of crimes of the use of children to actively participate in hostilities as we have found in the Judgement (Count 12 of the Indictment) the Chamber concludes that the inherent gravity of the criminal acts in question is exceptionally high.

(vii) Crimes against UNAMSIL personnel

9641. para. 188: The Chamber recalls irs findin s with regard to crimes committed against UNAMSIL peacekeepers in Bombali, Port Loko an Tonkoltll Districts in relation ro Counts 15 and 17.[297]

9642. para. 189: As a preliminary obseveration, we hold thar the deployment of UN peacekeepers in troubled regions is an important IOstument used by rhe international community for the maintenance of international peace an security and therefore that adequate protection must be granted to peacekeepers deployed i such missions. Consistent wirh the foregoing, we rake cognisance that Resolution 1270 of 22 October 1999 was passed by rhe UN Security Council authorising the esrabllshmenr of UNA SIL as a peacekeeping force ro be deployed with the consent of the warring parties because the situation in Sierra Leone was deemed to constitute a threat to internationa] peace and security.[298]

9643. para. 190: The Chamber further recalls that Article XVI of the Lome 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 a fighters belonging to the RUF, CDF, SLA and orher paramilitary groups. UNAMSIL peace eepers were Therefore acting in fulfilment of rheir mandate, that is, to asslsr with the recess of disarming, demobilising and re-integrating combatants, as well as monitoring a ceas fire and facilitating humanitarian assistance.[299]

a. Scale and brutality Vulnerability of victims

9644. para. 191: The Chamber also recalls that in a short period or rime the RUF directed 14 attacks against the UNAMSIL peacekeepers. We further recall that these arracks were characterised by abductions, captures, brutality, threats of death and the disarming of UNAMSIL peacekeepers.

9645. para. 192: We found that the RUF fighters assaulred individual members of the peacekeeping force, such as Salahuedin, Jaganathan, Maroa's group, Odhiarnbo's group and Rona's groups. The RUF fighters even used dishonest means to lure the peacekeepers, pretending to display interest in resolving the situation but only to seize and capture them. Several peacekeepers were detained in small filthy rooms with no food to eat at Teko barracks, some peacekeepers were photographed as they were forced to rand behind dead bodies covered with blood stained blankets. Six peacekeepers were stripped to thelr underwear, hands tied to their backs with electrical wire; some were severely beaten and slapped. Many captured peacekeepers were recklessly transported in trucks from one location to another, guarded by armed RUF fighters. At least 10 peacekeepers were seriously injured in an accident during snch transfers.

9646. para. 193: We also recall that the fighters also staged ambushes and launched violent offensive against the peacekeepers, even childre under the age of 15 years armed with grenades and rockets where used to ambush peacek pets on the Makeni-Magburaka highway. Kasoma and 10 of his men from the Zambian Battlion (ZAMBATT) were then captured and held captive for 23 days. Three other peacekeepers were attacked in Lunsar and two of them disappeared never to be seen again. Approximately 100 peacekeepers in convoy were surrounded and forcibly disarmed by 1000 RUF fighters. Some peacekeepers were deprived of their liberty, constantly confined under guard, their passports and money confiscated, stripped naked. The fighters further launched attacks by opening gunfire on UN helicopters in Yengema and engaging peacekeepers in crossfire in Magburaka.

b. Vulnerability of victims

9647. para. 194: The Chamber recalls that the andare of the peacekeepers and the purpose of their deployment was to facilitate peace an security with the objective of bringing an end to the protracted conflict.

9648. para. 195: Due to the limited nature of their mandate, peacekeeping forces are inevitably placed in a vulnerable position when deployed in a situation where the peace itself is fragile, and are often situated in the midst of ongoing or protracted violence. We recall that we found that in May 2000 that UNAMSIL peacekeepers consistently conveyed their peaceful intent and interest in maintaining the peace, and engaged in negotiations wirh the RUF leadership. Nevertheless, the RUF fighters engaged the UNAMSIL peacekeepers. In the Chamber's view, this heightens the gravity of the crime.

c. Number of Victims

9649. para. 196: The Chamber recalls its finding that several peacekeepers were captured, injured or killed as a result of these attacks. The Chamber recalls that these included, KENBATT peacekeeper Private Yusif and one Wanyama who died as a result of injuries inflicted during the attacks, two unidentified KENBATT peacekeepers, three peacekeepers in Lunsar went missing and two never returned and were declared dead. In addition, a vast majority of peacekeepers suffered physical assault and were forcibly detained these included Kasoma and ten ZAMBATT's who were detained for 23 days, 100 UNAMSIL peacekeepers were captured by approximately 1000 RUF fighters.[300]

d. Impact on victims and degree of suffering

9650. para. 197: The Chamber further considers that the peacekeepers suffered severe physical and psychological pain and injury as a direct consequence of the attacks by the RUF fighters, The peacekeepers intended to maintain the peace but found themselves as victims of such violent attacks.

9651. para. 198: Salahudein was punched in the face by Kallen, who then attempted to stab him. Jaganarhan was beaten and forcibly abducted in a vehicle and taken to different locations where he was held for approximately three weeks. Maroa and three other peacekeepers were shot at, disarmed, beaten and consequently detained. Gjellsclad and Mendy were detained for several weeks. Rona and three others suffered the same fate.[301] The conditions of detention were very

poor and unsuitable for their purpose. The Chamber concludes that the attacked and captured UNAMSIL peacekeepers suffered physical and psychological harm, as well as humiliation and degrading treatment.

e. Impact of attacks on the UNAMSIL peacekeeping force and the international community

9652. para. 199: The international community unequivocally condemned the deliberate and unprovoked attacks by the RUF fighters on the UNAMSIL peacekeepers. It was viral for the UN and the international community to continue the process of peace and reconstruction in Sierra Leone alter such a devastating decade long strife.

9653. para. 200: The suffering of the Sierra Leoean people was no longer limited to internal security concerns but extended to regional and international focus.

> The international community should not lose sight of the overarching objective of helping the pe pie and Govemmeor of Sierra Leone to esrabllsh a durable peace in their co nrrv and rekindling their hope. Their plight has become a crucial rest of th1 solidarttv of the international community, tisiog above race and geograghy, which is a basic gUiding principle of this Organisation. The UN has not abandoned and will not abandon Sierra Leone. It should coruhiue to provide humanitarian aid and the required assistance in taking the many steps needed on the path TO peace, national reconciliation and development.[302]

9654. para. 201: In due regard, regional leaders of the ECOWAS nations like Ghana, Burkina Paso, Liberia, Mali, Guinea, Nigeria and Togo convened meetings to thwart the situation.[303] A joint Implementation Committee meeting was also held to exert strong diplomatic pressure on the RUF and increase the military capacity of UNAMSIL to enhance its operational capablities.[304] This meeting, chaired by the Minister of Foreign Affairs of Mali was attended by representatives from Ghana, Guinea Libya, Sierra Leone, Canada, UK, USA, the then Organisation of African Unity (now Afican Union) and UNAMSIL.[305]

9655. para. 202: It was of utmost international interest that all the UNAMSIL peacekeepers were safely returned, those detained, wounded or injured, death or alive and all the missing peacekeepers.[306] The political effort to assist the Sierra Leonean people should be supplemented by a credible military force. The UK decided to deploy their spearhead battalion to restore relative calm in Freetown, Lungi and the Peninsula areas.

9656. para. 203: The objective of the intenational community was to assist in creating conditions for the establishment of lasring peace. At the 4139th meeting of rhe Security Council on 11 May

2000, many member states advocated that UNAMSIL should be given a strong peace enforcement mandate under Chapter VII of the Charter.[307] The Under-Secretary-General deemed it essential for the intemational community to show the necessary will and resolve to sustain such a commirment to impose peace in Sierra Leone and called on member states with ready capacity and necessary resources to assist.

f. Conclusion

9657. Having carefully considered the instances of crimes against UNAMSIL personnel as we have found in the Judgement (Counts 5 and 17 of the Indictment) the Chamber concludes that the inherent gravity of the criminal acts in question is exceptionally high.

(d) Individual Circumstances of the Accused

(i) Applicable to all Accused

a. Sentence possibly to be served outside of Sierra Leone

9658. para. 205: Having considered the submissions of the Parties in relation to serving a sentence in a foreign country,[308] as well as the submissions of the Registrar in this regard,[309] the Chamber notes that whilst it seems more likely than not at this stage that the convicted persons in this trial will serve sentences outside of Sierra Leone,[310] this is a decision that ultimately lies within the discretion of the President of the Court, based upon agreements concluded by the Registrar.[311] The Chamber is unable to speculate on the result of these negotiations and decision making processes, upon which it has no conclusive information, and which lie outside of its control. It therefore notes for purposes of record that it has not given any weight to this factor in the consideration of the sentences of any of the convicted persons in this case.

9659. para. 206: The Chamber however wishes to recognise that, in general terms, sentences served abroad, where family visits are likely to be few, may be harder to bear. Such circumstances would normally amount to a factor in mitigation of sentence.

b. References in submissions to evidence adduced during trial

9660. para. 207: Although both the Prosecution and the Defence teams referred to evidence adduced at trial in support of their arguments on sentencing, the Chamber has not given this evidence substantial consideration unless such evidence resulted in a finding of fact in the

Judgement. The Chamber had determined that some of the evidence adduced at trial was found to be not credible and therefore attached no probative value to it. In making its findings on the individual circumstances of the Accused for the purposes of sentencing, the Chamber has relied upon the findings in the Judgement, the arguments of the parties including any information adduced specifically in support thereof and the procedural history of the case.

(ii) Sesay

a. Convictions and form of liability

9661. para. 208: The Chamber recalls the crimes for which Sesay has been convicted, and the form of liability for each crime, as set out above in Section II of this Sentencing Judgement.

b. Form and degree of responsibility

i. Personal Commission

9662. para. 209: The Chamber further recalls its finding in the Judgement that the illicit sale of diamonds was the RUF's primary means of financing its operations, and that the mining system in Kono District was designed and supervised at the highest levels.[312] The overall mining commander reported to Sesay, and Sesay received mining commanders at his house in Koidu town. He visited the mines, ordered that more civilians be captured, and arranged for the transportation of civilians to the mines.[313] The Chamber concluded that Sesay's conduct was a significant contributory factor to the perpetration of enslavement, and that he, 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.[314] On the basis of these findings, the Chamber concluded that Sesay was liable under Article 6(1) of the Statute for the planning of enslavement, as charged in Count 13 of the Indictment.[315]

9663. para. 210: Referring to the Chamber's finding 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" and also that "[e]ven where abductions and forced labour occurred simultaneously with other acts of violence otherwise examined by this Chamber with regards to the crime of terror"[316] the Defence submits that these findings are relevant to an assessment of gravity.[317] The Chamber accepts that this is a factor which is relevant to the consideration of the gravity of Sesay's criminal conduct. It is precisely

because the Chamber has not made the finding that Sesay's conduct in this respect amounts to an act of terror that the Chamber will not thereby increase the gravity of the offence for which he has been convicted for purposes of sentencing. Clearly however this does not in any way decrease the gravity of the offence- enslavement- for which he has been convicted.

9664. para. 211: Recalling its findings above in relation to the nature and physical impact of the crime of enslavement,[318] and noting that Sesay was directly involved in the planning of the crime of enslavement, the Chamber concludes that the gravity of Sesay's criminal conduct reaches the highest level.

9665. para. 212: The Chamber recalls its finding in the Judgement 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.[319] We have found that conscription of child soldiers was conducted on a massive scale.[320] We recall our finding that Sesay, as one of the most senior RUF Commanders, had a substantial involvement to the planning of this system of conscription, and he interacted directly with the child soldiers on a regular basis: some of his own personal bodyguards were child soldiers and participated in hostilities. He gave orders that "young boys" should be trained at Bunumbu and Yengema training bases, he told trainees that if they failed to comply with orders they would be executed. He distributed drugs as "morale boosters" for these fighters.[321] At a meeting in Makeni, Sesay expressed his concern that child combatants were being removed from the RUF, and RUF were thereby losing "their fighters".[322] On the basis of these findings, the Chamber concluded that Sesay was 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, Kenema, Kono and Bombali between 1997 and 2000, as charged in Count 12.[323] Recalling its findings above in relation to the nature and physical impact of the crime of use of child soldiers,[324] and noting that Sesay was directly involved in the planning of the crime of use of persons under the age of 15 to participate actively in hostilities, the Chamber concludes that the gravity of Sesay's criminal conduct reaches the highest level.

ii. JCE

9666. para. 213: The Chamber recalls its findings above in relation to the nature and physical impact of the crimes committed pursuant to the joint criminal enterprise, including unlawful killings, sexual violence crimes, physical violence crimes, enslavement, and crimes of pillage and acts of burning.[325] Where those acts have also been found to constitute either Acts of Terrorism or Collective Punishments (Counts 1 and 2 of the Indictment) the Chamber, Justice Itoe dissenting,

will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

9667. para. 214: With respect to the form and degree of Sesay's participation in the joint criminal enterprise, the Chamber recalls its findings that at time of the commission of these crimes, Sesay held a very high position of authority within the RUF, as a Vanguard, Lieutenant Colonel and Battle Group Commander. During the currency of the joint criminal enterprise, from May 1997 until the end of April 1998, Sesay was effectively the second highest senior RUF officer after Sam Bockarie.[326] Sesay was a member of the AFRC Supreme Council, and participated in the meeting of this body throughout the Junta regime. Within the RUF, Sesay, together with Bockarie, approved the appointment of senior RUF Commanders to deputy ministerial positions within the Junta government, in order to integrate the RUF into the AFRC regime.[327] The Chamber concluded that given his position of power, authority and influence, including his role, rank and relationship with Bockarie, Sesay contributed significantly to the joint criminal enterprise.[328]

9668. para. 215: The Chamber further recalls that the crimes committed in furtherance of the joint criminal enterprise, which "intended through the spread of extreme fear and punishment to dominate and subdue the civilian population in order to exercise power and control over the captured territory"[329] were crimes of a shocking nature, deserving of condemnation in the strongest terms possible. Considering Sesay's hugely influential role within the enterprise as a senior military leader and member of the Supreme Council, 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".[330] The Chamber concludes that Sesay's level of participation in the joint criminal enterprise was key to the furtherance of the objectives of the joint criminal enterprise. In addition, by his hands-on approach, including acting as an architect of the scheme by planning in the enslavement of civilian miners and the use of child soldiers to guard mining sites, we likewise conclude that his level of participation in the joint criminal enterprise was key to the furtherance of the objectives of the joint criminal enterprise. Considering also the fact that the crimes committed pursuant to the joint criminal enterprise engulfed scores of civilians, spread over several Districts, and were perpetrated over an extended period of time, the Chamber concludes that Sesay's conduct seriously increased the gravity of the offences committed, and his culpability thus reaches the highest level.

9669. See above: Sentencing – RUF – Sentencing Judgment – Gravity of Offences – General Comments - Separate concurring opinion and Dissents – Justice Itoe – paras. 30 – 37 [9540].

iii. Command responsibility

9670. para. 216: The Chamber recalls its findings in relation to the nature and physical impact of the crimes of Enslavement as well as crimes against UNAMSIL personnel.[331] The Chamber found Sesay liable under Article 6(3) of the Statute for crimes under Counts 13, 15 and 17 of the Indictment. These crimes included Enslavement in relation to events in Kono District, as well as attacks committed against UNAMSIL Peacekeepers in Bombali, Port Loko, Kono and Tonkolili Districts.

9671. para. 217: The Chamber found that at the time the RUF directed attacks against the UNAMSIL peacekeepers, Sesay was the Battle Field Commander, effectively that he was the most senior and overall military commander of the RUF on the ground.[332] Sesay in his leadership role gave orders to all commanders, in relation to the dismantling of checkpoints and also on operational issues. These commanders included Kallon.[333] The Chamber recalls its finding that Sesay was in full command of the operations of the RUF troops in relation to UNAMSIL peacekeeping personnel in later April and May 2000, and that he was in a superior-subordinate relationship with the perpetrators of the attacks directed against UNAMSIL personnel in May 2000.[334] The Chamber consequently found Sesay liable 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.

9672. para. 218: The Chamber considers it utterly reprehensible that such a senior military commander, who was in a position of authority and had effective control of subordinate commanders and troops, would allow, or would allow to go unchecked, attacks directed against a UN Peacekeeping Force that had been deployed as a result of the Lomé Peace Accord, to which the RUF was one of the signatories. UN Peacekeepers act at the behest of the international community in order to preserve the peace for the benefit of ordinary civilians. Sesay's conduct as overall military commander can only be condemned in the strongest terms possible, and the Chamber considers the gravity of Sesay's criminal conduct in this regard to reach the highest level.

c. Aggravating factors – Sesay – Individual Circumstances of the Accused

9673. para. 219: The Chamber finds that, beyond those general and individual circumstances already considered by the Chamber under the gravity of Sesay's criminal conduct,[335] the Prosecution has not established beyond a reasonable doubt any additional aggravating factors as to Sesay's conduct for the crimes for which we have convicted him.

d. Mitigating circumstances – Sesay – Individual Circumstances of the Accused

i. Forced recruitment

9674. para. 220: The Chamber notes that Sesay was 19 years old at the time he was forcibly recruited into the RUF. The Chamber is of the opinion that this forced recruitment cannot mitigate the crimes which Sesay later committed, as we consider that he could well have chosen another path.

ii. Lack of prior criminal conduct

9675. para. 221: The Chamber has duly noted that it has not been demonstrated that Sesay has any prior criminal convictions. Although the Chamber has considered this factor we are of the opinion that only very limited weight can be given to it.

iii. Substantial cooperation

9676. para. 222: Whilst Sesay initially gave statements to the Prosecution, the Chamber recalls that, after a lengthy *voir dire* proceeding during the course of the trial, it ruled that the statements taken from Sesay were not given freely and voluntarily.[336] At the request of the Defence, the Chamber expunged the statements from the record.[337] The Chamber is of the opinion that Sesay has already been accorded an adequate judicial remedy.

9677. para. 223: In the alternative, the Sesay Defence argues that by his treatment at the hands of the Prosecution, Sesay was effectively deprived of the real possibility of cooperation with the Prosecution. The Chamber does not accept this argument. It has been open to Sesay at any time since that episode to offer his cooperation. However, and quite understandably, he has chosen to vigorously defend himself against the charges which he faced. The Chamber finds that the Sesay Defence has not demonstrated on a balance of probabilities that Sesay either substantially cooperated with the Prosecution, or was unduly deprived of that possibility.

iv. Good character and contributions

9678. para. 224: In its submission, the Sesay Defence requested that the Chamber reviews the evidence which shows that Sesay made contributions that improved the lives of many civilians, in particular in Kailahun District and in Makeni. The Chamber made no findings in the Judgement in this regard. We observe however that it appears Sesay on occasion gave assistance to civilians.

Such a conclusion however would do little in our opinion to show Sesay's good character. The Chamber considers that any assistance he gave civilians on occasion, in the circumstances we found to exist then, should not be given undue weight in mitigation.

v. Facilitation of the peace and reconciliation process

9679. para. 225: The Chamber recognises that in situations of protracted armed conflicts where peace can be fragile, all efforts must be made to encourage its preservation. We cannot and do not say that the law should forgive past criminal conduct, however we do agree that in exceptional cases, mitigation of sentence may be offered as an exceptional benefit to those convicted criminals who despite their past actions have, subsequent to their crimes, made a critical and decisive contribution to the peace process. Sesay submits that he is such a person.

9680. para. 226: The Defence submits that at the time he became interim leader, the RUF was in control of approximately half of the territory of Sierra Leone, including the diamond mines in Kono District, and had every reason and ability to fight for its survival. The Sesay Defence presents the Chamber with several witness statements lending support to the suggestion that Sesay made a critical contribution to the peace process. Among them is a statement of the former Special Representative of the Secretary-General of the UN to Sierra Leone ("SRSG") from 1999-2003 (and subsequently Chair of the African Union), Oluyemi Adeniji, where he states that:

> As the peace process progressed to the disarmament stage, Sesay showed that he was able to make promises and keep them. He was, undoubtedly, directing a lot of his energies towards bringing the RUF to disarmament in the face of internal opposition […][338]
>
> In another attached statement, by the former President of ECOWAS from 1999-2000 and the former President of Mali, Alpha Konaré, reads:
>
> He [Sesay] was always very correct in his dealings with the ECOWAS leaders and his actions demonstrated that he was committed to fulfilling the RUF's part of the [Lomé] Accords. Sesay was always very honest and reliable. He never created any preconditions for the RUF's disarmament. This was in contrast to some of the other senior commanders who did not want the RUF to disarm unless Sankoh was released from prison. While Sesay was loyal to Sankoh, as all the RUF were, he did no attempt to use the disarmament process as a tool to secure Sankoh's freedom. Neither did he seek personal gain for himself. He behaved at all times in a straightforward and honourable way. He appeared to be such a contrast to the other commanders and indeed Sankoh himself, that he appeared to be an anomaly in the RUF movement.[339]

> Sesay also points to the fact that according to an attached letter from a former Senior Legal Adviser at UNAMSIL that in 2003 Sesay and Kallon informed the SRSG of an imminent coup d' état by some elements in the military.[340]

9681. para. 227: Standing in contrast to these clear statements describing Sesay as a reliable partner in the peace process however are his convictions by this Chamber for his part in the attacks directed against the UNAMSIL peacekeepers in May 2000. To this, the Sesay Defence submits that

> Sesay's failure to prevent or punish the perpetrators of the attacks is not inconsistent with the determination to disarm and bring the RUF through the peace process: his efforts were directed to disarming the RUF, rather than run the risks of causing further schisms by acting precipitously against key members of the RUF. Whilst this omission has been judges to be criminal, this failure to act arose through the determined intention to bring peace and reconciliation to Sierra Leone, rather than reflecting any disregard for the international community. There is nothing to suggest that Sesay used his leadership position, after the abductions, except to try and ameliorate the overall situation and thereafter bring the conflict to an end.[341]

9682. para. 228: The Chamber finds that the Defence have proved mitigating circumstances on the basis of a balance of probabilities in relation to Sesay's real and meaningful contribution to the peace process in Sierra Leone following his appointment as interim leader of the RUF, however, the Chamber does not accept Sesay's explanation of his reasons for failing to prevent or punish the perpetrators of the attacks against the UNAMSIL personnel, a direct affront to the international community's own attempts to facilitate peace in Sierra Leone.

9683. para. 229: Hon. Justice Benjamin Mutanga Itoe dissents on the Chamber's conclusions in relation to Sesay's contribution to the peace process in Sierra Leone.

9684. Separate concurring opinion and Dissents – Justice Itoe, para. 56: I highlight here for the purpose of this Dissent, Sesay's plea for mitigation in relation to his Facilitation of the Peace and Reconciliation Process.

9685. Separate concurring opinion and Dissents – Justice Itoe, para. 57: In this regard, the Chamber made the following unanimous findings:

> The Defence have proved mitigating circumstances on the basis of a balance of probabilities in relation to Sesay's real and meaningful contribution to the peace process in Sierra Leone following his appointment as interim leader of the RUF.

9686. Separate concurring opinion and Dissents – Justice Itoe, para. 58: The dissent is based on the Chamber Majority decision that follows the unanimous decision of the Chamber and states as follows after the word 'RUF'. It reads as follows:

> However, the Chamber does not accept Sesay's explanation of his reasons for failing to prevent or to punish the perpetrators of the attacks against UNAMSIL personnel, a direct affront to the International Community's own attempts to facilitate peace in Sierra Leone.[20]

9687. Separate concurring opinion and Dissents – Justice Itoe, para. 59: The Majority Judgment in this regard very conspicuously fails to make any mention of whether this mitigating circumstance which the Chamber found was proved, on the balance of probabilities, entitles Mr. Sesay to take the benefit of mitigating circumstances with a view to reducing the sentences which we have impose on him.

9688. Separate concurring opinion and Dissents – Justice Itoe, para. 60: Since I consider this silence to which I made no contribution, on the part of the Chamber Majority to make a pronouncement on this issue, as a rejection of Sesay's plea for mitigation which I find very deserving and well founded on this ground, I would like to dissent from that decision rejecting or refusing to grant mitigating circumstances in his favour after the Chamber had unanimously found, that Sesay's defence have proved mitigating circumstance on the 'Facilitation of the Peace and Reconciliation Process' ground in question.

9689. Separate concurring opinion and Dissents – Justice Itoe, para. 61: I say this because at the time of the attack on UNAMSIL personnel for which the 3 Accused persons have been convicted, and during the leadership transition to Sesay from Foday Sankoh after the disappearance of Sam Bockarie in December 1991, there was no unanimity in the RUF on the question of disarmament in relation to Sankoh's detention.

9690. Separate concurring opinion and Dissents – Justice Itoe, para. 62: I entirely believe the evidence of Sesay when he testified that some of the top ranking officers of the RUF were against disarmament just as they were against Sesay for disarming without making the release of Sankoh from prison as a condition precedent. I believe that Sesay, in such circumstances took a grave risk in the light of the discontent and unhappiness of some of his colleagues at his ascension to the top position of leadership of the RUF after Foday Sankoh and after Bockarie abandoned the movement in December 1999.

9691. Separate concurring opinion and Dissents – Justice Itoe, para. 63: In fact, I believe the statement of H.E. Alpha Konare, the former President of Mali in which he said.

> In contrast, there were some of the other Senior Commanders who did not want to disarm unless Sankoh was released from prison.

9692. Separate concurring opinion and Dissents – Justice Itoe, para. 64: I also entirely attach credit to and believe the statement of the former SRSG Oluyemi Adeniji who reinforces the testimonial of Ex President Konare and also recognizes Sesay's contribution in the following words:

> As the peace process progressed to disarmament stage, Sesay showed that he was able to make promises and keep them. He was, undoubtedly directing a lot of his energies towards bringing the RUF to disarmament in the face of internal opposition[21]

9693. Separate concurring opinion and Dissents – Justice Itoe, para. 65: I can indeed attest to the fact that the Chamber unanimous Decision on this issue was influenced by the testimonies of these two dignitaries.

9694. Separate concurring opinion and Dissents – Justice Itoe, para. 66: In the light of the foregoing analysis, Sesay, in my opinion, more than deserves to be accorded mitigating circumstances on these score, for his positive involvement in the facilitation of the peace and reconciliation process in Sierra Leone that was championed and patronised by some Heads of State of the West African Region, including Ex President Alpha Konare of Mali.

9695. Separate concurring opinion and Dissents – Justice Itoe, para. 67: There may well have been no peace if Sesay did not embrace the peace process and take the bold and risky initiative to encourage disarmament. If Sesay were not on board the peace process, peace would in any event, have certainly been achieved in Sierra Leone but, I dare say, at a renewed, continued, and bloody cost, which, we must admit, Sesay pre-empted and prevented.

9696. Separate concurring opinion and Dissents – Justice Itoe, para. 68: In this regard, and to demonstrate that Sesay took a risk to facilitate the peace process even when Sankoh was still in detention, I again entirely believe Sesay's evidence when in his testimony he told the Chamber of how he was rebuffed by Sankoh when he paid him a visit at a time he was hospitalized in the Choithram Hospital.

9697. Separate concurring opinion and Dissents – Justice Itoe, para. 69: Accordingly, I, for my part, and in light of the foregoing, do clearly find and conclude that Sesay is entitled to benefit from mitigating circumstances in this sentencing judgment for his positive of contribution to the restoration of peace in Sierra Leone.

vi. Family circumstances

9698. para. 230: The Chamber finds that nothing in Sesay's family situation that would necessitate mitigating his sentence.

vii. Remorse

9699. para. 231: The Chamber considers that Sesay's statement of remorse was not sincere. Sesay essentially emphasised what he considered were his moderate attributes as a leader, which he claimed propelled the regional ECOWAS leaders to appoint him as the Interim leader of the RUF.

9700. para. 232: The Chamber does accept however that Sesay has expressed empathy with the victims of the conflict, and to this extent will grant him a very limited mitigation in respect of his sentence.

e. Disposition, p. 93-94:

9701. For the foregoing reasons, the Chamber hereby sentences Issa Hasan Sesay to the following:

> For 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, a term of imprisonment of 52 years;
>
> For 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, a term of imprisonment of 45 years;
>
> For Count 3: Extermination, a Crime Against Humanity, punishable under Article 2(b) of the Statute, a term of imprisonment of 33 years;
>
> For Count 4: Murder, a Crime Against Humanity, punishable under Article 2(a) of the Statute, a term of imprisonment of 40 years;
>
> For 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, a term of imprisonment of 40 years;
>
> For Count 6: Rape, a Crime Against Humanity, punishable under Article 2(g) of the Statute, a TERM OF IMPRISONMENT OF 45 YEARS;

For Count 7: Sexual slavery, a Crime Against Humanity, punishable under Article 2(g) of the Statute, a term of imprisonment of 45 years;

For Count 8: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute, a term of imprisonment of 40 years;

For 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, a term of imprisonment of 35 years;

For 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, a TERM OF IMPRISONMENT OF 50 YEARS;

For Count 11: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute, a term of imprisonment of 40 years;

For 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, a term of imprisonment of 50 years;

For Count 13: Enslavement, a Crime Against Humanity, punishable under Article 2(c) of the Statute, a term of imprisonment of 50 years;

For 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, a term of imprisonment of 20 years;

For 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, a term of imprisonment of 51 years;

For 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, a term of imprisonment of 45 years;

Orders that these sentences shall run and be served concurrently.

(iii) Kallon

a. Convictions and form of liability

9702. para. 233: The Chamber recalls the crimes for which Kallon has been convicted, and the form of liability for each crime, as set out above in Section II of this Sentencing Judgement.

b. Form and degree of responsibility

i. Personal commission

9703. para. 234: The Chamber recalls its findings above in relation to the nature and physical impact of crimes of unlawful killings, use of child soldiers and committing attacks against peacekeepers.[342]

9704. para. 235: Kallon's personal conduct and interaction with his subordinate RUF Commander Rocky prompted Rocky to order the death of a Nigerian female called Waikyoh in Wendedu in Kono District.[343] Kallon's involvement in the murder of the woman was direct and serious, and the Chamber notes that she was killed because Kallon was concerned that if Waiyoh escaped she would disclose information on RUF positions to ECOMOG and, as Kallon's subordinate Rocky later told the civilians, if she escaped she would disclose their position to ECOMOG and the camp would be bombarded by ECOMOG jets.[344]

9705. para. 236: The Chamber recalls its finding that Kallon participated in the design and maintenance of the system of forced recruitment of child soldiers, as well as their use in hostilities, and that his contribution in this regard was important. Furthermore, his involvement was direct: he personally brought a group of children to Bunumbu for training in 1998. Kallon was the senior RUF Commander on 3 May 2000 at Moria near Makeni where child soldiers were used to ambush the UNAMSIL forces.[345] Considering the seriousness of the crimes and Kallon's high level of authority and power and personal involvement, the Chamber concludes that the gravity of Kallon's criminal conduct in relation to the use of child soldiers reaches the highest level.

9706. para. 237: In relation to Kallon's liability for attacks on UNAMSIL peacekeepers, the Chamber recalls its findings that Kallon was directly involved in many of those attacks. For instance, we have found that Kallon struck Major Salahuedin in the face and attempted to stab him with a bayonet. He was also involved in five other separate attacks, including ordering an attack against a convoy of 100 Zambian Peacekeepers resulting in their capture by approximately 1000 RUF fighters.[346] In addition to his direct involvement, his participation was characterised by a heightened level of aggression. Considering the exceptional gravity of the crimes, condemned in the strongest terms by the UN Security Council in Resolution 1313,[347] and Kallon's primary role in their commission, the Chamber concludes that the gravity of Kallon's criminal conduct reaches the highest level.

ii. JCE

9707. para. 238: The Chamber recalls its findings in relation to the nature and physical impact of the crimes committed pursuant to the joint criminal enterprise, including unlawful killings, sexual violence crimes, physical violence crimes, enslavement crimes, pillage crimes and the act of burning properties.[348] Where those acts have also been found to constitute either Acts of Terrorism or Collective Punishments (Counts 1 and 2 of the Indictment) the Chamber, Justice Itoe dissenting, will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

9708. para. 239: With respect to the form and degree of Kallon's participation in the joint criminal enterprise, the Chamber recalls its findings that 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, and that he attended meetings on a fairly regular basis.[349] The Chamber recalls that it was satisfied that his involvement in the governing body of the Junta substantially 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.[350] The Chamber recalls that Kallon was also directly involved in crimes committed in the diamond mining areas of Kenema District. He used his bodyguards to force civilians to mine diamonds at Tongo Field, a practice which was prevalent among senior RUF and AFRC Commanders.[351] The Chamber 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.[352] The Chamber held in the Judgement 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.[353]

9709. para. 240: We recall that the crimes committed in furtherance of the joint criminal enterprise, which "intended through the spread of extreme fear and punishment to dominate and subdue the civilian population in order to exercise power and control over the captured territory"[354] and concludes they were crimes of a shocking nature, deserving of condemnation in the strongest terms possible. Considering our findings regarding Kallon's important role within the enterprise as a senior military leader and member of the Supreme Council, the Chamber concludes that Kallon's level of participation in the joint criminal enterprise was that of a Senior Commander, whose participation in important decision making processes and personal involvement in the commission of crimes made him a key player in the regime. Considering also that the crimes committed pursuant to the joint criminal enterprise engulfed scores of civilians,

spread over several Districts, and were perpetrated over an extended period of time, the Chamber concludes that Kallon's contribution to the offences committed was substantial, and his culpability thus reaches a high level.

9710. See above: Sentencing – RUF – Sentencing Judgment – Gravity of Offences – General Comments - Separate concurring opinion and Dissents – Justice Itoe – paras. 30 – 37 [9540].

iii. Command responsibility

9711. para. 241: The Chamber has found Kallon liable pursuant to Article 6(3) of the Statute for Counts 1, 7-9, 13, 15 and 17. The Chamber recalls its findings in relation to the nature and physical impact of these crimes including unlawful killings, sexual violence crimes, enslavement, and crimes against UNAMSIL personnel.[355] Where those acts have also been found to constitute either Acts of Terrorism or Collective Punishments (Counts 1 and 2 of the Indictment) the Chamber, Justice Itoe dissenting, will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

9712. para. 242: We recall that in Kono District in February/March 1998, Kallon as a superior officer of the RUF had the capacity to give orders to his subordinates.[356] However, 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 and RUF Rambo.[357]

9713. para. 243: As an operational commander, he ordered the fighters under his command to lay ambush at the Guinea-Highway,[358] to maintain contact with Battalion commanders. He had personal bodyguards and addressed muster parades in his leadership role.[359] In addition, Kallon held a supervisory role at the RUF run camps in which hundreds of civilians were detained.[360] He also had the authority to grant permission to civilians to obtain travel passes.[361] In his leadership role, Kallon had the ability to assign commanders for missions.[362] He was further found liable pursuant to Article 6(3) of the Statute for events relating to the attacks directed against the UNAMSIL peacekeepers by the RUF fighters.

9714. para. 244: The Chamber further recalls that as a superior, Kallon was found liable for eight attacks and the killing of four UNAMSIL peacekeepers.[363] At the time of commission of these crimes, as the BGC, Kallon was the de jure and de facto third in command in the whole RUF hierarchy. He was also the second in command and deputy to Sesay, who was then the most senior

military commander of the RUF. He had the responsibility for the Makeni-Magburaka area where the UNAMSIL events predominately occurred.[364]

9715. para. 245: The Chamber recalls its findings that during the events following the attacks on UNAMSIL peacekeepers, Kallon was the senior RUF Commander on 3 May 2000 at Moria near Makeni when children were used to ambush the UNAMSIL forces.[365] The Chamber observes that Kallon as one of the most superior commanders in that area, at that particular time, issued and addressed orders to commanders regarding the events leading to the attacks on the UNAMSIL peacekeepers. These orders were implemented by Kallon's subordinates who in turn reported and sought further instructions from him. We recall that Kallon also maintained direct contact with Sankoh who passed orders to him.[366] The Chamber further notes that Kallon in his position as a senior commander had the authority and capacity to punish his subordinates, for instance on one occasion he punished an unidentified RUF fighter for his involvement in an accident. By virtue of his position, Kallon also received communications and regular reports regarding the UNAMSIL peacekeepers,[367] however he made no attempt to prevent and punish the perpetrators of the attacks on the peacekeepers.

9716. para. 246: Considering his position as a superior commander, his high ranking, his status as a Vanguard and his real authority and power to control all subordinate commanders in the area at that time, and his personal involvement and failure to prevent or punish the crimes of subordinates, the Chamber concludes that the gravity of Kallon's criminal conduct in relation to his 6(3) responsibility is of the highest level, for which appropriate punishment shall be issued.

9717. See above: Sentencing – RUF – Sentencing Judgment – Gravity of Offences – General Comments - Separate concurring opinion and Dissents – Justice Itoe – paras. 30 – 37 [9540].

c. Aggravating factors

9718. para. 247: The Chamber recalls its findings that 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 civilians were taken away, some were executed and beheaded. TF1-015 was ordered to accompany the rebels back to the Sunna Mosque. Upon arrival at the Mosque, he met 30 Commanders, including Kallon and Rambo.[368] 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 rebels, including Kallon, voted on TF1-015's life, with the result being that he was allowed by a majority of one vote, to live.[369] The Chamber finds that the fact that civilians were abducted from a Mosque- a traditional place of civilian safety and

sanctuary- and that the same site was further used by the rebels, including Kallon, in voting on TF1-015's life, constitutes an aggravating factor.

9719. para. 248: Aside from this, the Chamber finds that, beyond those general and individual circumstances already considered by the Chamber under the gravity of Kallon's criminal conduct,[370] the Prosecution has not established beyond a reasonable doubt any additional aggravating factors as to Kallon's conduct for the crimes for which we have convicted him.

i. Accused's conduct during trial

9720. para. 249: The Chamber does not accept the Prosecution's submission that Kallon's "defiant attitude" during trial is an aggravating circumstance, indeed we consider that it has not been established that Kallon acted in such a manner. We have made no such findings and we add that at no time did Kallon exhibit such an attitude in court.

d. Mitigating circumstances

i. Forced recruitment

9721. para. 250: The Chamber is of the opinion that Kallon's forced recruitment into the RUF cannot mitigate the crimes which Kallon later committed, since in our opinion he could instead have chosen another path.

ii. Lack of prior criminal conduct

9722. para. 251: The Chamber has duly noted that it has not been demonstrated that Kallon has any prior criminal convictions. Although the Chamber has considered this factor we are of the opinion that only very limited weight can be given to it.

iii. Good character and contributions

9723. para. 252: The Chamber notes that the Kallon Defence presented Kallon's efforts in the improvement of the well-being of the civilian population by providing social amenities like schools, mosques churches and markets. The Chamber observes that this evidence demonstrates that Kallon on occasion gave assistance to civilians. Such a conclusion however would do little in our opinion to show Kallon's good character, as it simultaneously demonstrates his ability to

influence RUF systems in relation to the well-being of civilians, but did not use it consistently. The Chamber considers that the assistance he gave on occasion should not be given undue weight in mitigation.

iv. Amnesty

9724. para. 253: The Chamber reaffirms that amnesty is no bar to prosecution for the crimes Kallon stands convicted. The Chamber considers Kallon's submission on the issue moot and finds that it cannot be taken into account as a mitigating factor.

v. Family circumstances

9725. para. 254: The Kallon Defence submits that the fact that Kallon is married with three wives and nine children should be considered as a mitigating factor. The Chamber is aware that punishment has an impact on the lives of persons other than the convicted person. The relatives of the convicted person, in particular are likely to suffer from the consequences of the sentence. However, considering the gravity of the crimes for which Kallon has been convicted, the Chamber finds that Kallon's personal family circumstances can have only a minimal impact on his sentence.

vi. Remorse

9726. para. 255: At the sentencing hearing, Kallon personally delivered a statement of remorse, an extract of which has been set out above in Section IV.3. To the knowledge of this Chamber, it is uncommon that a convicted person standing before an international court makes a statement of genuine remorse. In his statement, Kallon also recognised that he played a role in the conflict and sought forgiveness for his actions which claimed the lives of unknown number of civilians. He further apologised to the victims of the war and their relatives, his family, his country, ECOWAS, UNAMSIL and the international community as a whole. Kallon clearly recognises the pain and suffering borne by all the persons affected by the war, and accepts his own role within the conflict.

9727. para. 256: For the Chamber to admit remorse as a mitigating factor in the determination of an appropriate sentence, it must be satisfied that the remorse expressed was sincere.[371] The Chamber is thus satisfied, and Kallon's sincere acknowledgement of his role in the conflict and his apology to the people for the role that he played has been taken into account as a mitigating factor to reduce his sentence.

vii. Executing orders

9728. para. 257: The Chamber notes that the Kallon Defence advanced duress and acting under superior orders as separate mitigating factors in support for Kallon. The Chamber shall consider these factors under the above heading 'Executing Orders,' however, this does not necessarily imply that they are the same.

9729. para. 258: The Kallon Defence submits that Kallon was acting under duress with specific regard to the UNAMSIL events. They submit that Kallon was under threat and forced to obey Sankoh's orders to arrest the peacekeepers. The Kallon Defence further avers that since his recruitment, Kallon found himself in an organisation that operated in an atmosphere of duress and fear. The Kallon Defence have consider as superior orders, the orders given by Sankoh as the RUF leader and orders by Sam Bockarie's as de facto RUF leader, and claim these orders were 'ultimatums that carried severe penalties upon default.'[372]

9730. para. 259: As a preliminary note, the Chamber notes that Kallon has not established on balance of probabilities, Justice Benjamin Mutanga Itoe dissenting, that in fact his life was under actual threat in event that he failed to obey these orders. With specific regard to the UNAMSIL events for which Kallon claims he was acting under duress and superior orders, the Chamber emphasises that Kallon was found liable under Article 6(3) of the Statute for these acts. Kallon was personally in a superior position, issuing orders. The Chamber, Justice Benjamin Mutanga Itoe dissenting, finds that Kallon's liability under Article 6(3) of the Statute negates him from raising these defences.

9731. para. 260: On a balance of probabilities, the Chamber finds, Justice Benjamin Mutanga Itoe dissenting, that the Kallon Defence submission does not establish that Kallon was acting under duress and/or pursuant to a superior's orders.

9732. para. 261: The Chamber has further addressed itself to the provision of Article 6(4) of the Statute which provides that:

> 'The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation or punishment if the Special Court determines that justice so requires.'

9733. para. 262: Cautious of the above provision, the Chamber emphasises that it is implausible that Kallon acted under duress and/or superior orders with respect to the UNAMSIL events. The Chamber further recalls that the evidence on record indicates that in early 2000 Sankoh appointed

Kallon the Battle Group commander,[373] a couple of months after Sankoh was arrested in Freetown on treason [charges374] and Sam Bockarie had left the RUF membership in December 1999.[375] As we have stated earlier, the Chamber considers that Kallon was one of the most superior commanders in the area, and who was in effective control.[376] In light of the foregoing reasons, the Chamber, Justice Benjamin Mutanga Itoe dissenting, considers that the Defence has not established, on a balance of probabilities, that this is a factor in mitigation of sentence.

9734. Separate concurring opinion and Dissents – Justice Itoe, para. 70: Kallon, the 2nd accused, makes a plea, amongst other grounds and reasons he has advanced, that mitigating circumstances be accorded to him under Article 6(4) of the Statute which provides as follows:

> The fact that an Accused person acted pursuant to an order of a government or of a superior shall not relieve him or her of Criminal responsibility but may be considered in mitigation or punishment if the Special Court determines that justice so requires.

9735. Separate concurring opinion and Dissents – Justice Itoe, para. 71: The Chamber is accordingly empowered, if it so decides in the interests of justice, to accord Kallon, the mitigating circumstances he is soliciting.

9736. Separate concurring opinion and Dissents – Justice Itoe, para. 72: On the Kallon submission and plea, I observe that an analysis of the evidence and the Command Structure of the RUF shows that even though Kallon, at the time of the UNAMSIL Personnel incident, was the Battle Group Commander, he was under the orders of Sesay who was the Battle Field Commander. In addition and on the other hand, he also received instructions at times directly from Foday Sankoh. Indeed, as we have learnt from the testimony of the Defence witnesses, Sankoh could communicate directly with any commander at whatever level and issue instructions to him directly without passing through his superior in hierarchy, and vice versa.

9737. Separate concurring opinion and Dissents – Justice Itoe, para. 73: As I have mentioned in the Sesay analysis, all the RUF Commanders were not in favour of disarmament. Foday Sankoh himself who had earlier consented to disarmament was beginning to retract from the process.

9738. Separate concurring opinion and Dissents – Justice Itoe, para. 74: What is in fact also established from the records is the fact that Kallon was quite closed and faithful to Sesay. He was in fact on his side during the RUF leadership race where Sesay faced opposition from formidable front line aspirants like Mike Lamin, who conditioned RUF disarmament to Sankoh's release from prison.22

9739. Separate concurring opinion and Dissents – Justice Itoe, para. 75: In fact, from the communications between Sankoh and Officers on the ground like Kallon, it was clear, and I make that inference and conclusion from the surrounding circumstances and comportment of the Commanders on the grounds that he gave them instructions not to cooperate and longer in the process and that if they did, they would incur severe penalties.

9740. Separate concurring opinion and Dissents – Justice Itoe, para. 76: Such instructions, coming from Sankoh, their leader who was described as being very erratic and who even executed close associates like Mohamed Tarawally23 had to be taken seriously.

9741. Separate concurring opinion and Dissents – Justice Itoe, para. 77: From the build up of events from mid April 2000, it was clear, and I again make this conclusion through an inference from the facts and situation on the ground, that the RUF no longer wanted to continue with the disarmament process and that they had received instructions in this regards from the hierarchy to stop the process. The violent Gbao eruption and intrusion as we have found, in the DDR Camp, demanding the release of disarmed Child Soldiers, followed by the RUF attacks on UNAMSIL Staff in Makump, was as a result, in my considered opinion, of orders received from their superiors, which orders obliged to carry out under pain of severe penalties, not excluding that of his execution which in the circumstances and having regard to the command discipline in there movement, was not a strange phenomenon in the RUF Organisation.

9742. Separate concurring opinion and Dissents – Justice Itoe, para. 78: It is therefore, my finding, and in so doing, I dissent from the Majority Chamber judgment rejecting it, that the plea for executing 'Executive Orders' put up by Kallon is very well founded and that he is further, in addition to the benefit that has been accorded to him for his expression of remorse which the Chamber has endorsed and found as sincere and credible, also entitled to take the benefit of further mitigating circumstances under Article 6(4) of the Statute, in the light of the argument advanced in this regard.

9743. Separate concurring opinion and Dissents – Justice Itoe, para. 79: Very contrary to the Majority finding24 that Kallon has not established on the balance of probabilities, that his life was under actual threat in the event that he failed to obey these Orders from which I, very respectfully dissents, I on the contrary, and from the above analysis, do find that he was acting under duress, and pursuant to superior orders and that he faced a real and indeed, a possible execution if he had not executed those orders.

9744. Separate concurring opinion and Dissents – Justice Itoe, para. 80: I agree with our general approach in this judgment to highlight the gravity of some of the offences for which the Accused have been convicted by alluding to the scale of their commission and their impact on the victims, particularly on their vulnerability and their pain and suffering for purposes of determining the sentence to be imposed. As I have already mentioned however, extreme caution must be exercised to avoid "double Counting" because the gravity of these offences is, and relying on the jurisprudence of International Criminal Tribunal, clearly defined in the ingredients of the offence which we have found established and proven before arriving at a verdict of guilty.

e. Disposition, p. 95-96:

9745. Sentences Morris Kallon to the following:

> For 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, a term of imprisonment of 39 years;
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> For 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, a term of imprisonment of 35 years;
>
> For Count 3: Extermination, a Crime Against Humanity, punishable under Article 2(b) of the Statute, a term of imprisonment of 28 years;
>
> For Count 4: Murder, a Crime Against Humanity, punishable under Article 2(a) of the Statute, a term of imprisonment of 35 years;
>
> For 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, a term of imprisonment of 35 years;
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> For Count 6: Rape, a Crime Against Humanity, punishable under Article 2(g) of the Statute, a term of imprisonment of 35 years;
>
> For Count 7: Sexual slavery, a Crime Against Humanity, punishable under Article 2(g) of the Statute, a term of imprisonment of 30 years;
>
> For Count 8: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute, a term of imprisonment of 30 years;
>
> For 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, a term of imprisonment of 28 years;

For 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, a term of imprisonment of 35 years;

For Count 11: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute, a term of imprisonment of 30 years;

For 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, a term of imprisonment of 35 years;

For Count 13: Enslavement, a Crime Against Humanity, punishable under Article 2(c) of the Statute, a term of imprisonment of 35 years;

For 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, a term of imprisonment of 15 years;

For 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, a term of imprisonment of 40 years;

For 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, a term of imprisonment of 35 years;

Orders that these sentences shall run and be served concurrently.

(iv) Gbao

i. Convictions and form of liability

9746. para. 263: The Chamber recalls the crimes for which Gbao has been convicted, and the form of liability for each crime, as set out above in Section II of this Sentencing Judgement.

b. Form and degree of responsibility

i. Personal commission

9747. para. 264: The Chamber recalls its findings in relation to the nature and physical impact of crimes against UNAMSIL Personnel.[377] Gbao was found guilty by the Chamber of aiding and

abetting the attacks directed against Salahuedin and Jaganathan on 1 May 2000 and found that he deliberately fomented an atmosphere of hostility and orchestrated an armed confrontation at that Makump DDR camp.[378] The gravity of this crime is high. However the Chamber recognises that Gbao was not primarily responsible for the attack, and may not have been able to prevent it,[379] although he remains criminally responsible for his direct involvement in it.

ii. JCE

9748. para. 265: The Chamber recalls its findings in relation to the nature and physical impact of the crimes committed pursuant to the joint criminal enterprise, including unlawful killings, sexual violence crimes, physical violence crimes, enslavement, the crime of pillage and acts of burning.[380] Where those acts have also been found to constitute either Acts of Terrorism or Collective Punishments (Counts 1 and 2 of the Indictment) the Chamber, Justice Benjamin Mutanga Itoe dissenting, will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.

9749. para. 266: The Chamber recalls its finding that Gbao's status, assignment, rank and personal relationship with Sankoh, as well as his knowledge of the RUF's ideology were all factors demonstrating that Gbao had considerable prestige and power within the RUF in Kailahun District.381 Gbao's supervisory role entailed the monitoring of the implementation of the ideology.[382] We also recall that we found that 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.[383] The Chamber, by a majority, Justice Boutet dissenting, 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.[384]

9750. para. 267: The Chamber recalls that Gbao was also directly involved in the planning and enslavement of civilian labour on RUF government farms in Kailahun District, and 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.[385] Furthermore, Gbao's 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.[386] 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.[387]

9751. para. 268: The Chamber recalls however that Gbao did not have direct control over fighters. He was not a member of the AFRC/RUF Supreme Council, and he remained in Kailahun during the Junta regime.[388] He did not have the ability to contradict or influence the orders of men such as Sam Bockarie. He was not directly involved and did not share the criminal intent of any of the crimes committed in Bo, Kenema or Kono Districts.[389]

9752. para. 269: The Chamber has found that crimes committed in furtherance of the joint criminal enterprise, which "intended through the spread of extreme fear and punishment to dominate and subdue the civilian population in order to exercise power and control over the captured territory"[390] were crimes of a shocking nature, deserving of condemnation in the strongest terms possible.

9753. para. 270: We have also found that Gbao's personal role within the overall enterprise was neither at the policy making level, nor was it at the "fighting end" where the majority of the actual atrocities were committed. Indeed, as the Gbao Defence pointed out in its closing submissions, Gbao "has not been found to have ever fired a single shot and never to have ordered the firing of a single shot".[391] Gbao was a loyal and committed functionary of the RUF organisation, whose major contributions to the joint criminal enterprise can be characterised by his role as an ideology instructor and his planning and direct involvement in the enslavement of civilians on RUF government farms within Kailahun District.

9754. para. 271: Whilst the crimes committed pursuant to the joint criminal enterprise for which Gbao has been convicted are vast and atrocious, the Chamber recognises that Gbao's involvement within the overall scheme, whilst sufficient in law to attract criminal liability, was more limited than that of his co-defendants. The Chamber thus finds Gbao's individual contribution to the joint criminal enterprise, and his own particular criminal responsibility, to be on the lower end of the continuum, and considers his role as diminishing his responsibility for sentencing purposes.

9755. See above: Sentencing – RUF – Sentencing Judgment – Gravity of Offences – General Comments - Separate concurring opinion and Dissents – Justice Itoe – paras. 30-37 [9540].

9756. Separate concurring opinion and Dissents – Justice Itoe, para. 86: In the submissions of the Defence Teams and in particular, those of the Gbao Defence Team, it has been argued to support

their plea for mitigating circumstances that in our CDF decision, we admitted and validated the argument that the liability and penalty to be inflicted on indirect perpetrator, like was found in favour of Accused Persons in the CDF case, should indeed be less than that of the direct perpetrators of the crimes charged under the Joint Criminal Enterprise liability.

9757. Separate concurring opinion and Dissents – Justice Itoe, para. 87: Paradoxically, I still have to use here, the recurring example of the horrendous crimes which were committed by Staff Alhaji and the insurgent rebel fighters who were under his control and command at the time of the commission, and which the Chamber has reflected and narrated in both the main and the sentencing judgment in the case and do relate the Staff Alhaji situation to the precedent of the CDF case.

9758. Separate concurring opinion and Dissents – Justice Itoe, para. 88: I consider and am respectfully of the pinion that the same measure of mitigating should, in this regard, and on this score, be accorded to the three Convicts in this case.

c. Aggravating factors

9759. para. 272: Gbao was convicted by the Chamber of aiding and abetting the attacks directed against Salahuedin and Jaganathan at the Makump DDR camp on 1 May 2000, where he was "the senior RUF Commander present until Kallon's arrival and he remained the Commander with the largest number of fighters present".[392] The Chamber finds that Gbao's abuse of his position of leadership and authority to be an aggravating factor in his criminal conduct on that occasion.

9760. para. 273: The Prosecution submits that Gbao's education, training as a police office and experience serve as aggravating factors to the offences for which he has been convicted. The Chamber does not agree, and sees nothing extraordinary in Gbao's prior education, training and experience which should properly be considered as aggravating factors.

9761. para. 274: The Prosecution further submits that the Chamber should consider Gbao's desire for pecuniary gain as an aggravating factor, and highlights the fact that Gbao was convicted for participation in a joint criminal enterprise with regard to enslavement in Kenema, Kailahun and Kono district, and that civilians were forced to work on Gbao's personal farm in 1997 and 1998, the produce of which was for his own personal use. The Chamber understands that the desire for pecuniary gain can be considered as an aggravating factor for some offences, however for the offence of enslavement, where the circumstances consisted of forcing civilian labour on

farms, there is always going to be an element of pecuniary gain, and this in itself cannot be considered as an aggravating factor in these circumstances.

9762. para. 275: Gbao's behaviour during trial has been cited as an aggravating factor by the Prosecution, his "lack of respect for the judicial process in his refusal to attend court" as well as the fact that for a significant period of time Gbao refused to recognise the jurisdiction of the court.[393] The Chamber recalls that the jurisdiction of the court is itself a question which the Chamber and the Appeals Chamber have been called to pronounce upon in the past and legitimately so. We are therefore of the opinion that challenging the Court's jurisdiction is always a justiciable issue and cannot be considered an aggravating factor in sentencing because it is a fundamental legal right of an accused to raise any legal issue he considers valid to ensure his defence. The Chamber would therefore be contravening his universally accepted fundamental right if we were to uphold the Prosecution's thesis in this respect because such submission is clearly misconceived and fundamentally flawed in law.

9763. para. 276: In the same vein, the Chamber opines that Gbao's refusal at one stage to attend trial cannot be considered an aggravating circumstance. Rule 60 empowers the Chamber to continue the proceedings in the absence of an accused. Indeed, the Chamber proceeded in his absence when Gbao exercised his right own not to attend the proceedings.

d. Mitigating circumstances

i. Remorse

9764. para. 277: The Chamber is unable to conclude that Gbao has demonstrated genuine remorse for the crimes for which he has been convicted, and thus gives no weight in mitigation of sentence in this respect.

ii. Advanced age

9765. para. 278: The Chamber does not accept the Defence's submission that life expectancy is a relevant factor in sentencing;394 however it does accept that a lengthy sentence can be harder to bear in older age. Gbao's age of 60 years has thus been taken into account as a relevant factor in mitigation of sentence.

iii. Lack of prior criminal conduct

9766. para. 279: The Chamber has duly noted that it has not been demonstrated that Gbao has any prior criminal convictions, and that the Chamber is obliged to consider this as a factor in mitigation of sentence. The Chamber has done so, however we are of the opinion that only very limited credit for this factor can be given where the crimes committed are of a very serious nature, such as in this case.

e. Dissents – Justice Boutet:

9767. Dissents – Justice Boutet – para. 1: I regret that I am not able to support the sentence the Chamber has imposed upon the Accused Augustine Gbao.

9768. Dissents – Justice Boutet – para. 2: In the Judgement rendered on 25 February 2009, I dissented on the conviction of Gbao in relation to Counts 1 to 11 and Count 14. As mentioned in my dissenting opinion I would have found Gbao only individually responsible under Article 6(1) of the Statute for the planning of enslavement in Kailahun District, as charged under Count 13 of the Indictment, and for aiding and abetting the attacks against peacekeepers, as charged under Count 15 of the Indictment.1

9769. Dissents – Justice Boutet – para. 3: I respectfully dissent from the sentence imposed by my learned colleagues for Gbao's convictions on these two counts in the Sentencing Judgement. In my opinion, my learned colleagues have overstated the culpable criminal conduct of Augustine Gbao.

9770. Dissents – Justice Boutet – para. 4: Having carefully considered the gravity of the crimes for which I found Gbao to be criminally responsible, as well as his form and degree of participation in these crimes, his responsibility and his individual circumstances, I consider that a sentence of 15 years imprisonment for Count 13 of the Indictment, and 15 years imprisonment for Count 15 of the Indictment, sentences to run concurrently, would be appropriate.

f. Disposition, p. 96-98:

9771. Sentences Augustine Gbao, Justice Pierre Boutet dissenting, to the following:

> For 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, a term of imprisonment of 25 years;

For 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, term of imprisonment of 20 years;

For Count 3: Extermination, a Crime Against Humanity, punishable under Article 2(b) of the Statute, a term of imprisonment of 15 years;

For Count 4: Murder, a Crime Against Humanity, punishable under Article 2(a) of the Statute, a term of imprisonment of 15 years;

For 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, a term of imprisonment of 15 years;

For Count 6: Rape, a Crime Against Humanity, punishable under Article 2(g) of the Statute, a term of imprisonment of 15 years;

For Count 7: Sexual slavery, a Crime Against Humanity, punishable under Article 2(g) of the Statute, a term of imprisonment of 15 years;

For Count 8: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute, a term of imprisonment of 10 years;

For 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, a term of imprisonment of 10 years;

For 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, a term of imprisonment of 20 years;

For Count 11: Other inhumane acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute, a term of imprisonment of 11 years;

For Count 13: Enslavement, a Crime Against Humanity, punishable under Article 2(c) of the Statute, a term of imprisonment of 25 years;

For 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, a term of imprisonment of 6 years;

For 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, a term of imprisonment of 25 years;

Orders that these sentences shall run and be served concurrently.

2. Appellate Judgment

The Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, SCSL-04-15-A, Judgment, 26 October 2009

(a) Cumulative convictions

(i) Applicable law

9772. para. 1190: The jurisprudence on cumulative convictions has been thoroughly addressed at the international tribunals. The test to determine the permissibility of cumulative convictions was set out in the *Čelebići* Appeal Judgment, which stated:

> Having considered the different approaches expressed on this issue both within this Tribunal and other jurisdictions, this Appeals Chamber holds that reasons of fairness to the accused and the consideration that only distinct crimes may justify multiple convictions, lead to the conclusion that multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only 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.
>
> Where this test is not met, the Chamber must decide in relation to which offence it will enter a conviction. This should be done on the basis of the principle that the conviction under the more specific provision should be upheld. Thus, if a set of facts is regulated by two provisions, one of which contains an additional materially distinct element, then a conviction should be entered only under that provision.[3300]

9773. para. 1191: The test applied is therefore two-part: first, it is permissible to enter cumulative convictions under different statutory provisions for the same criminal act if each statutory provision has a "materially distinct element" that is not contained in the other statutory provision.[3301] Second, if this is not the case then the conviction for the criminal act should be upheld under the "more specific provision."[3302] It is the legal elements of each statutory provision, and not the acts themselves that must be considered when applying this test.[3303] The issue of whether the same act can lead to a conviction under multiple statutory provisions is a question of law.[3304]

(ii) Cumulative convictions for extermination as a crime against humanity (Count 3) and murder as a crime against humanity (Count 4)

9774. para. 1192: The Appeals Chamber notes that the Trial Chamber correctly stated the law on cumulative convictions with respect to Counts 3 and 4 when it held that "it is impermissible to convict for both murder as a crime against humanity and extermination as a crime against humanity under Count 4 and Count 3 based on the same conduct. What makes a statutory provision materially distinct is whether "it requires proof of a fact not required by the other."[3305] Murder as a crime against humanity does not contain a materially distinct element from extermination as a crime against humanity; they are only distinguished by the fact that extermination requires killings "on a massive scale."[3306] The crime of murder is therefore subsumed in the crime of extermination and consequently convictions under Counts 3 and 4 for the same underlying acts are impermissibly cumulative.

9775. para. 1193: Turning to the second prong of the test, since the first part of the *Čelebići* test was not met, we now turn to the issue under which count the convictions should be upheld. Following the principle in *Čelebići* the statutory provision that is more specific, that is, "contains an additional materially distinct element" should stand.[3307] Extermination as a crime against humanity contains the additional element that the crime must be committed on a massive scale, which murder as a crime against humanity does not contain. Therefore, extermination as a crime against humanity is the more specific statutory provision and convictions for the above noted criminal conduct[3308] should stand under Count 3, but not under Count 4.

9776. para. 1194: The Appeals Chamber also notes that some of the conduct resulting in convictions under Count 4 is not part of the conviction under Count 3,[3309] and therefore the convictions for these underlying acts are not cumulative. These convictions therefore stand under Count 4 since it is permissible to convict on both counts if each count is based on distinct conduct.[3310]

9777. para. 1195: Having found that the Trial Chamber impermissibly entered cumulative convictions, the Appeals Chamber will take this holding into consideration in its determination of the sentence imposed under Count 4 for each of the Appellants.

(iii) Cumulative convictions for acts of terrorism (Count 1) and collective punishments (Count 2) with the war crimes of murder (Count 5), outrages upon personal dignity (Count 9), mutilations (Count 10) and pillage (Count 14)

9778. para. 1196: Kallon's second submission is that the war crimes of acts of terrorism (Count 1) and collective punishment (Count 2) are impermissibly cumulative with the convictions for war crimes of murder (Count 5), outrages upon personal dignity (Count 9), mutilations (Count 10) and pillage (Count 14).[3311] Kallon argues that the crimes of acts of terrorism and collective punishments have materially distinct elements, the intent to terrorise and the intent to punish, but the other war crimes that underlie these crimes do not have materially distinct elements "when they are encompassed within" the crimes of collective punishment and acts of terrorism.[3312] For example, Kallon explains if murder is included in the crime of collective punishment then the elements of murder becomes a part of the crime of collective punishment and "there is no added element of the death of the victim that is part of murder, but not part of the collective punishment when murder is a form of collective punishment."[3313]

9779. para. 1197: The Appeals Chamber finds Kallon's appeal is misconceived and based on a misapplication of the law on cumulative convictions. Cumulative convictions are permissible if the different statutory provisions contain materially distinct elements, that is, the proof of a fact in one statutory provision is not required by the other statutory provision.[3314] In the *Fofana and Kondewa* Appeal Judgment the Appeals Chamber found that cumulative convictions "are permissible for collective punishment, in addition to murder, cruel treatment and pillage."[3315] The same reasoning applies to acts of terrorism.

9780. para. 1198: The Appeals Chamber agrees with the Trial Chamber's finding that the definition of the war crimes of collective punishment and acts of terrorism both contain materially distinct elements not present in the definitions of the crimes of murder, outrages upon personal dignity, mutilation and pillage.[3316] The crime of acts of terrorism requires proof of an intention to spread terror among the civilian population,[3317] and collective punishment requires proof of an intention to punish collectively.[3318] These elements are not contained in the war crimes of murder, outrages upon personal dignity, mutilations and pillage.[3319] Conversely, the war crime of murder requires proof of the death of the person,[3320] outrages upon personal dignity requires proof of humiliation, degradation or otherwise violation of the dignity of the person,[3321] mutilations requires proof of permanent disfigurement or disablement[3322] and pillage requires proof of unlawful appropriation of property,[3323] which the crimes of collective punishment and acts of terrorism do not contain.[3324] Consistent with the case law on cumulative convictions, the Appeals

Chamber upholds the Trial Chamber's findings that each crime requires proof of a materially distinct element, and therefore cumulative convictions are permissible for the war crimes of collective punishment and acts of terrorism with the war crimes of murder, outrages upon personal dignity, mutilations and pillage.[3325]

(iv) Conclusion

9781. para. 1199: The Appeals Chamber holds that the Trial Chamber erred in entering cumulative convictions under Counts 3 and 4 for the following acts:

> (i) in Bo District: the unlawful killings of an unknown number of civilians at Tikonko Junction; the unlawful killings of 14 civilians at a house in Tikonko; the unlawful killings of three civilians on the street in Tikonko; the unlawful killings of approximately 200 other civilians during an attack on Tikonko on 15 June 1997;
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> (ii) the unlawful killings of over 63 civilians at Cyborg Pit in Tongo Field in Kenema District;
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> (iii) in Kono District: the unlawful killings of about 200 civilians in Tombodu between February and March 1998; the unlawful killings of about 47 civilians in Tombodu between February and March 1998; the unlawful killings of three civilians in Tombodu sometime in March 1998; the unlawful killings of an unknown number of civilians by burning them alive in a house in Tombodu about March 1998; the unlawful killings of 30 to 40 civilians in April 1998 in Koidu Town; and
>
> (iv) the unlawful killings of three civilians by Bockarie and the ordered unlawful killings of 63 civilians in Kailahun Town, Kailahun District.

9782. para. 1200: The Appeals Chamber holds that the verdict of guilt under Count 4, murder as a Crime against Humanity, shall be reversed for these offences and the verdict of guilt under Count 3, extermination as a Crime against Humanity, shall be sustained.

(b) Standard of review for appeals against sentences

9783. para. 1201: The Appeals Chamber has previously set out the standard of review for appeals against sentences and hereafter reiterates the applicable principles.[3326] The relevant provisions on sentencing are set out in Article 19 of the Statute and Rules 99 to 105 of the Rules. According to Article 19, a Trial Chamber must take into account the gravity of the offence and the individual circumstances of the convicted person.[3327] The Statute also provides that in determining the term of imprisonment the Trial Chamber shall have recourse to the practice regarding prison sentences in the ICTR and the national courts of Sierra Leone, as appropriate.[3328] According to Rule 101 of

the Rules, aggravating and mitigating circumstances, inter alia, shall be taken into account.[3329] Rule 101(c) of the Rules provides that the Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.[3330]

9784. para. 1202: Appeals against sentence, as appeals from a judgment of a Trial Chamber, are appeals *stricto sensu*. They are not trials *de novo*.[3331] Trial Chambers are vested with broad discretion in determining an appropriate sentence due to their obligation to individualise the penalties to fit the circumstances of the accused and the gravity of the crime.[3332] The Appeals Chamber will not lightly overturn findings relevant to sentencing by the Trial Chamber.[3333] As a general rule, the Appeals Chamber will not revise a sentence unless the Appellant demonstrates that the Trial Chamber has committed a "discernible error" in exercising its discretion or has failed to follow the applicable law.[3334]

9785. para. 1203: In the *Brima et al.* and *Fofana and Kondewa* Appeal Judgments, the Appeals Chamber explained that to demonstrate that the Trial Chamber committed a discernible error in exercising its discretion:

> the Appellant has to demonstrate that the Trial Chamber gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion, or that the Trial Chamber's decision was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the Trial Chamber must have failed to exercise its discretion properly.[3335]

(c) Sesay

(i) The form and degree of Sesay's participation in the crimes

9786. para. 1229: A Trial Chamber must ultimately impose a sentence that reflects the totality of the convicted person's culpable conduct.[3420] This principle, the totality principle, requires that a sentence must reflect the inherent gravity of the totality of the criminal conduct of the accused, giving due consideration to the particular circumstances of the case and to the form and degree of the participation of the accused in the crimes.[3421]

9787. para. 1230: Sesay contests the Trial Chamber's evaluation of his role in the crimes. To do so, he draws comparisons with the criminal conduct of others, but he does not directly challenge or address the Trial Chamber's numerous findings of the specific roles that he played. For example, Sesay contends that the Trial Chamber should have considered that his role was "remote" and "minimal," but he fails to address the extensive findings of his direct participation in

crimes, such as his liability for planning enslavement and the use of children under the age of 15 to participate actively in hostilities, his superior responsibility for enslavement, attacks against peacekeepers and murder of peacekeepers. He also ignores the Trial Chamber's findings that at all relevant times he was an influential senior RUF commander and that during the JCE he was a member of the Supreme Council who furthered the Common Criminal Purpose by securing revenues, territory and manpower for the Junta government and by using criminal means to reduce or eliminate the civilian opposition to the Junta regime.

9788. para. 1231: The Appeals Chamber endorses the view of the ICTY Appeals Chamber that a Trial Chamber is not required to assess the participation of an accused in a JCE relative to the participation of other perpetrators when determining the overall level of the accused's participation.[3422] Sesay's reliance on the *Krstić* Appeals Judgment for this proposition is inapposite. The ICTY Appeals Chamber in *Krstić* held that:

> Radislav Krstić's guilt should have been assessed on an individual basis. The Appeals Chamber further agrees that the comparative guilt of other alleged co-conspirators, not adjudicated in this case, is not a relevant consideration.[3423]

9789. para. 1232: The ICTY Appeals Chamber in *Krstić* merely allowed that the Trial Chamber there "was entitled" to consider the accused's guilt "in context of the conduct of any alleged co-perpetrators."[3424] In the present case, the Trial Chamber specifically addressed Sesay's role with respect to Bockarie and Sesay's role in relation to others within the JCE and to his subordinates who committed the crimes for which he was convicted under Article 6(3) of the Statute. It noted Sesay's "very high position of authority within the RUF" and considered that he was "effectively the second highest senior RUF officer after Sam Bockarie."[3425] It further recalled its findings that:

> Sesay was a member of the AFRC Supreme Council, and participated in the meetings of this body throughout the Junta regime. Within the RUF, Sesay, together with Bockarie, approved the appointment of senior RUF commanders to deputy ministerial positions within the Junta government, in order to integrate the RUF into the AFRC regime. The Chamber concluded that given his power, authority, and influence, including his role, rank, and relationship with Bockarie, Sesay contributed significantly to the JCE."[3426]

9790. para. 1233: The Appeals Chamber, therefore, finds no error in the Trial Chamber's assessment that Sesay's "level of participation was key to the furtherance of the objectives of the JCE" and that "his culpability reaches the highest level."[3427]

(ii) Double-counting the *mens rea* of acts of terrorism and collective punishments

9791. para. 1234: We endorse the ICTY Appeals Chamber's holding that with respect to alleged errors concerning the gravity of the offence or aggravating factors, an appellant must demonstrate that the Trial Chamber impermissibly double counted the factor in question.[3428]

9792. para. 1235: A Trial Chamber must ensure that they do not allow the same factor to detrimentally influence the Appellant's sentence twice. In the present case the Trial Chamber stated:

> The Chamber, Justice Itoe dissenting, is of the view that, where a particular act amounting to criminal conduct within the jurisdiction of the Court, such as murder or rape as a crime against humanity has also, because of the additional element of intent necessary for a conviction for acts of terrorism or collective punishments as a war crime, amounted to a crime as alleged in Counts 1 and 2 of the Indictment, for purposes of sentencing we will consider such acts of terrorism or collective punishment as factors which increase the gravity of the underlying offence.[3429]

9793. para. 1236: The Trial Chamber thus considered that the additional *mens rea* of specific intent which transformed an underlying offence into an act of terrorism or collective punishments increased the gravity of the underlying offence and it took this additional gravity of the offence into account for the purposes of determining the appropriate sentences under Counts 3-11, 13 and 14. In addition, the Trial Chamber entered a sentence for the convictions under Counts 1 and 2. By so doing, the Trial Chamber double-counted the specific intent of the offences of acts of terrorism and collective punishments: first, as increasing the gravity of the underlying offences, and second, as part of the offence of acts of terrorism and collective punishments. Both are reflected in the sentences imposed. Where a factor is not an element of a crime, that factor may be considered in aggravation of sentence. However, where a factor is an element of an offence for which a sentence is imposed, it cannot also constitute an aggravating factor for the purposes of sentencing.[3430]

9794. para. 1237: Having found that the Trial Chamber impermissibly double-counted the specific intent of acts of terrorism and collective punishments as increasing the gravity of the underlying offences, the Appeals Chamber will revise the sentences as appropriate.

(iii) Sesay's contribution to the peace process

9795. para. 1238: Sesay argues that the Trial Chamber erred in law in failing to attach any noticeable weight to Sesay's post-conflict conduct. Sesay contends that the test of whether his post-conflict conduct warranted mitigation is whether his contribution to the peace process amounted to a considerable contribution. If this considerable contribution standard was met, then,

Sesay asserts, the Trial Chamber was required to attach weight to this factor in mitigation of his sentence. According to Sesay, the fact that he was convicted under Counts 15 and 17 for a failure to prevent and punish the perpetrators of attacks against UNAMSIL peacekeepers is irrelevant to the Trial Chamber's consideration of how much weight to attach to Sesay's post-conflict conduct as a mitigating factor. Sesay contends the Plavšić case indicates he is entitled to mitigation, notwithstanding his role in the UNAMSIL attacks.

9796. para. 1239: The Trial Chamber found that Sesay "proved mitigating circumstances on the balance of the probabilities in relation to Sesay's real and meaningful contribution to the peace process in Sierra Leone following his appointment as interim leader of the RUF."[3431] The Trial Chamber's consideration of post-conflict conduct as a mitigating factor for sentencing purposes is consistent with prior cases at this court and other international criminal tribunals.[3432] Despite finding that Sesay established a mitigating circumstance, however, the Trial Chamber did not state what weight it attached to this factor. By failing to do so, the Trial Chamber erred in law in failing to provide a reasoned opinion in writing. Instead, it stated that it "did not accept Sesay's explanation of his reasons for failing to prevent or punish the perpetrators of the attacks against the UNAMSIL personnel, a direct affront to the international community's own attempts to facilitate peace in Sierra Leone."[3433] Sesay contends that the Trial Chamber was not entitled to consider his liability for crimes against peacekeepers in relation to his post-conflict conduct for the purposes of sentencing. The Appeals Chamber, Justices Winter and Fisher dissenting, disagrees. The Trial Chamber could reasonably have considered that Sesay's failure to punish his subordinates for crimes against UNAMSIL peacekeepers, including while he was interim leader of the RUF, undermined the international community's attempts to facilitate peace in Sierra Leone. As the Trial Chamber held:

> it is utterly reprehensible that such a senior military commander, who was in a position of authority and had effective control of subordinate commanders and troops, would allow, or would allow to go unchecked, attacks directed against a UN Peacekeeping Force that had been deployed as a result of the Lomé Peace Accord, to which the RUF was one of the signatories. UN Peacekeepers act at the behest of the international community in order to preserve the peace for the benefit of ordinary civilians. Sesay's conduct as overall military commander can only be condemned in the strongest terms possible, and the Chamber considers the gravity of Sesay's criminal conduct in this regard to reach the highest level.[3434]
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> The Appeals Chamber endorses the view of the ICTY Appeals Chamber that "proof of mitigating circumstances does not automatically entitle an appellant to a 'credit' in the determination of the sentence."[3435] The weight to be attached to a mitigating circumstance is within the discretion of the Trial Chamber,[3436] and an Appellant bears "the burden of demonstrating that the Trial Chamber abused its

discretion" in the weight it attached.[3437] Sesay has not fulfilled this burden on appeal, and his submissions are therefore rejected.

9797. Dissents – Justice Fisher, para. 55, p. 527: The Trial Chamber found that Sesay's contribution to the peace process in Sierra Leone was a mitigating factor.[76] The Appeals Chamber holds that the Trial Chamber erred in law by failing to state what weight it attached to this mitigating factor.[77] Nonetheless, the Majority dismisses Sesay's claim that the Trial Chamber erred by failing to attach any weight to this factor because, it holds, Sesay fails to meet "the burden of demonstrating that the Trial Chamber abused its discretion."[78]

9798. Dissents – Justice Fisher, para. 56, p. 527: I concur with the Majority that the Trial Chamber erred in law. I am unable to agree with the manner in which it then disposes of the issue. I fail to see how Sesay could have demonstrated how the Trial Chamber abused its discretion when the Trial Chamber itself did not state how, or even if, it used its discretion in weighing the effect of Sesay's post-conflict conduct once it found that conduct to be a mitigating factor in determining Sesay's sentence. Sesay cannot be expected to demonstrate an error in a finding the Trial Chamber did not make.

9799. Dissents – Justice Fisher, para. 57, p. 527-528: The Trial Chamber considered "several witness statements lending support to the suggestion that Sesay made a critical contribution to the peace process."[79] Among them were statements by the Special Representative of the Secretary-General of the UN to Sierra Leone from 1999-2003 (and subsequently Chair of the African Union), Oluyemi Adeniji, and by the President of ECOWAS from 1999-2000 and former President of Mali, Alpha Konaré.[80] Mr. Adeniji stated that Sesay "undoubtedly, directed a lot of his energies towards bringing the RUF to disarmament in the face of internal opposition." For his part, Mr. Konaré stated that Sesay "never created any preconditions for the RUF's disarmament" and "appeared to be such a contrast to the other commanders and indeed Sankoh himself, that he appeared to be an anomaly in the RUF movement."[81]

9800. Dissents – Justice Fisher, para. 58, p. 528: The Trial Chamber's failure to explain how it weighed this and other evidence regarding Sesay's post-conflict conduct in mitigation, or if it weighed it at all, was a legal error. Having found that this conduct constituted a mitigating factor, the Trial Chamber was obliged to take it into account[82] and provide a reasoned opinion as to how it took it into account. Rather than hypothesizing on how the Trial Chamber approached this issue,[83] the Appeals Chamber should itself have considered Sesay's mitigating post-conflict conduct when reconsidering his sentence.

9801. Dissents – Justice Winter, para.5, p. 482-483: In addition to this clarification, I also wish to express my complete agreement with the reasoning and conclusions expressed by Hon. Justice Fisher in her Partially Dissenting and Concurring Opinion insofar as it pertains to Gbao's Sub-Grounds 8(j) and 8(k), Gbao's Sub-Ground 8(i), Sesay's Grounds 33 and 46 (…)

(iv) Sesay's character and protection of civilians during the conflict

9802. para. 1240: With respect to Sesay's contention that the Trial Chamber should have taken into account "numerous witnesses who provided evidence of Sesay's reputation as a moderate," the Appeals Chamber notes that Sesay does not support his allegation by identifying the names of particular witnesses or referencing any arguments as to why the Trial Chamber abused its discretion in failing to consider Sesay's reputation as a moderate is a mitigating circumstance. Accordingly, the Appeals Chamber finds that Sesay has not demonstrated that the Trial Chamber abused its discretion in this regard.

9803. para. 1241: With regard to the evidence of Defence witnesses of Sesay's good character which the Trial Chamber deemed not credible at trial, Sesay argues that the Trial Chamber abused its discretion in failing to accord weight to this evidence in relation to Sesay's good character because the witnesses' testimonies were relevant and probative of Sesay's character, even if the Trial Chamber found their evidence was not reliable in relation to other facts.[3438]

9804. para. 1242: The Appeals Chamber notes that some of the witness evidence that Sesay contests was disregarded by the Trial Chamber because it found that the witnesses[3439] "testified out of loyalty to RUF and their superior commanders, and evidently were trying to assist Sesay and Kallon in this trial, and not necessarily to assist this Chamber in the search for the truth."[3440] Sesay fails to explain how the Trial Chamber's reasoning, which he does not challenge, would not also pertain to their testimony concerning Sesay's character. The Appeals Chamber therefore finds no error in the Trial Chamber's holding that "it attached no probative value to" this evidence.[3441]

9805. para. 1243: The Appeals Chamber also observes, in relation to Sesay's argument that the evidence he annexed to his sentencing brief and provided at trial was erroneously disregarded in sentencing because it was repetitive,[3442] and that the Trial Chamber in fact expressly considered this evidence at the sentencing stage in paragraphs 70 and 224 of the Sentencing Judgment. The Trial Chamber considered these submissions and held that although "Sesay on occasion gave assistance to civilians.... this would do little in our opinion to show Sesay's good character ... in the circumstances found to exist then, and therefore it should not be given undue weight in mitigation."[3443] Sesay fails to show error in this regard.

(v) Alleged coercive treatment by the Prosecution - Sesay

9806. para. 1244: The Appeals Chamber is of the view that, contrary to Sesay's argument, the Trial Chamber took into account Sesay's argument that the Prosecution's "coercive conduct" during his arrest and "interview process" denied him of the real possibility of cooperation with the Prosecution. These circumstances were the subject of the "lengthy voir dire process," and Sesay's submissions were noted in paragraph 72 of the Sentencing Judgment.[3444] In the context of considering "Substantial cooperation" with the Prosecution, the Trial Chamber found that Sesay's treatment by the Prosecution during the six day period after his arrest did not preclude him from cooperating with the Prosecution at any point since that episode, and thus it did not warrant additional relief beyond that already afforded to Sesay, namely, that the Trial Chamber expunged from the record the statements obtained by the Prosecution during this six day period.[3445] On appeal, Sesay has not shown any error and, therefore, his submission is untenable.

(vi) Likelihood of serving sentence abroad - Sesay

9807. para. 1245: The Trial Chamber found that:

> [W]hilst it seems more likely than not at this stage that the convicted persons in this trial will serve sentences outside Sierra Leone, this is a decision that ultimately lies within the discretion of the President of the Court, based upon agreements concluded by the Registrar. The Chamber is unable to speculate on the result of these negotiations and decision-making processes, upon which it has no conclusive information, which lie outside of its control. It therefore notes for purposes of record that it has not given any weight to this factor in the consideration of the sentences of any of the convicted persons in this case.
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> The Chamber, however, wishes to recognize that, in general terms, sentences served abroad, where family visits are likely to be few, may be harder to bear. Such circumstances would normally amount to a factor in mitigation.[3446]

9808. para. 1246: The Appeals Chamber finds no error in the Trial Chamber's decision not to mitigate the Appellants sentences as a consequence of the fact that they will likely be served outside of Sierra Leone. As discussed in the Mrđa case, which is relied upon by Sesay, it is common practice that convicted persons from international criminal tribunals serve their sentences in foreign countries.[3447] Sesay does not refer to any case in which serving the sentence in a foreign country has been considered as a mitigating factor for sentencing purposes.[3448]

(vii) Statement of remorse

9809. para. 1247: Although the Trial Chamber found Sesay's statements of remorse were generally "not sincere," it accepted that his expression of empathy toward the victims of the conflict were in fact sincere.[3449]

9810. para. 1248: With regard to any further mitigating weight, Trial Chamber exercised its discretion to find that Sesay's statements, apart from his empathy toward victims of the conflict, did not show any real remorse.[3450] Sesay, however, relies on the ICTY Trial Chamber case of *Brđanin* to assert that in order to constitute a mitigating circumstance "it is sufficient for the accused to extend his sympathy for victims of the conflict."[3451] The Appeals Chamber finds that this is a mischaracterisation of the law. In *Fofana and Kondewa*, the Appeals Chamber observed that only in a minority of cases have Trial Chambers found that an accused's expressions of regret or empathy for victims, without acknowledgement of responsibility for the crimes, constituted a mitigating factor. The Appeals Chamber acknowledged that it is:

> aware of only two cases at the *ad hoc* Tribunals in which the Chamber considered whether an accused's expressions of regret or empathy for victims without acknowledgement of responsibility for the crimes could constitute a mitigating factor. In *Vasiljević*, the ICTY Appeals Chamber opined that an accused can express sincere regrets without admitting his participation in a crime, and that this could be a factor taken into account by the Trial Chamber.3452 However, in *Vasiljević*, the Appeals Chamber declined to consider *Vasiljević's* expressions of regret to be a mitigating circumstance.[3453]
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> The ICTY Trial Judgment in *Orić* is the only case in which a convicted person received credit for expressions of empathy for the victims without acknowledging responsibility.3454 In *Blaškić*, the accused attempted to express remorse while denying accountability and the Trial Chamber refused to take it into account because, after establishing the facts, it felt his remorse was not sincere.[3455]

9811. para. 1249: In *Fofana and Kondewa* we held that the Trial Chamber did not err in taking such an expression into account, but we did not hold that the Trial Chamber must in all circumstances do so. The circumstances of the *Brđanin* case, relied upon by Sesay, are readily distinguished from the present case. In *Brđanin*, the ICTY Trial Chamber allowed expressions of regret for the suffering of victims as a mitigating factor although Brđanin did not express remorse for his own responsibility. The Trial Chamber expressly recognised that Brđanin, through his counsel, told victims he felt sorry for what they had suffered.[3456] Sesay has not pointed to any similar facts in this case. His submission is rejected.

(viii) Conclusion

9812. para. 1250: For the foregoing reasons, the Appeals Chamber holds that the Trial Chamber erred in double-counting the specific intent of acts of terrorism and collective punishments as increasing the gravity of the underlying offences. The Appeals Chamber will revise the sentences imposed on Sesay as appropriate. The remaining submissions in Sesay Ground 46 are rejected.

9813. Disposition, p. 479: In respect of Sesay, taking into account the Grounds of Appeal which have been allowed, the particular circumstances of this case as well as the form and degree of the participation of Sesay in the crimes, and the seriousness of the crimes, the Appeals Chamber finds that the effective sentence imposed by the Trial Chamber reflects the totality of Sesay's culpable conduct for the crimes under Counts 1 through 14. The Appeals Chamber therefore imposes a global sentence for Counts 1 through 14 of fifty-two (52) years imprisonment. The Appeals Chamber affirms the sentence of fifty-one (51) years imprisonment under Count 15 and forty-five (45) years imprisonment under Count 17.

(d) Kallon

(i) Gravity of the offences

9814. para. 1272: Kallon contests the Trial Chamber's assessment of the form and degree of his participation in the crimes, but he fails to address the facts considered by the Trial Chamber, let alone show that consideration of those facts or the failure to consider other facts amounted to an abuse of discretion. For example, Kallon does not address the Trial Chamber's finding that he was "one of the few RUF commanders to be a member of the AFRC Supreme Council," and that "his involvement in the governing body of the Junta substantially contributed to the JCE, 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 of Sierra Leone."[3512] He also does not address the Trial Chamber's consideration of his direct involvement in the crimes committed in the diamond mining areas, including his use of "his bodyguards to force civilians to mine diamonds in Tongo Field" and his presence "at the mining pits in Tongo Field when SBUs and other rebels shot into the mining pits killing unarmed, enslaved civilian miners."[3513] Based on these findings, among others, the Trial Chamber concluded that "Kallon's level of participation in the JCE was that of a Senior Commander, a "key player in the regime."[3514] Kallon's submissions are therefore rejected.

(ii) Double-counting the *mens rea* for acts of terrorism and collective punishments

9815. para. 1273: Kallon's submissions do not extend those raised by Sesay, discussed above.[3515] The Appeals Chamber recalls its reasons there and allows this part of Kallon's Ground 31 for the same reasons.

(iii) Aggravating factors in relation to crimes at Sunna Mosque in Koidu Town

9816. para. 1274: The Trial Chamber found that:

> [T]he fact that civilians were abducted from a Mosque – a traditional place of civilian safety and sanctuary – and that the same site was further used by the rebels, including Kallon, in voting on TF1-015's life, constitutes an aggravating factor.[3516]

9817. para. 1275: The Appeals Chamber finds that the location of an attack, as in places of civilian sanctuary such as churches, mosques, schools, and hospitals, may be considered as part of the gravity of the offence or an aggravating factor, and this is consistent with the case law of Trial Chambers at the Special Court and ICTR.[3517] In part, Kallon contends that the Trial Chamber erred in considering Rocky's actions at the Sunna Mosque, which occurred prior to the arrival of Kallon, as an aggravating factor for Kallon's sentence.[3518]

9818. para. 1276: Article 19 of the Statute provides that "[i]n imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person." The individual circumstances of the convicted person include the aggravating and mitigating factors,[3519] which must therefore relate to the offender himself.[3520] The Appeals Chamber adopts the view of the ICTY Appeals Chamber that the fact that the aggravating circumstances "must relate to the offender himself is not to be taken as a rule that such circumstances must specifically pertain to the offender's personal characteristics. Rather, it simply reflects the general principle of individual responsibility that underlies criminal law: a person cannot be held responsible for an act unless something he himself has done or failed to do justifies holding him responsible."[3521]

9819. para. 1277: In this case, the first attack on civilians at the Sunna Mosque in which Kallon did not participate could not be an aggravating factor for purposes of Kallon's sentence. The Trial Chamber rightly noted, however, that "the same site was further used by the rebels, including Kallon, in voting on TF1-015's life, constitutes an aggravating factor."[3522]

9820. para. 1278: Although we find error in the holding that Rocky's conduct at the Sunna Mosque constituted an aggravating factor for Kallon, the Appeals Chamber finds no reason to

interfere in the sentence. The Appeals Chamber recalls that the weight to be attached to an aggravating circumstance is within the discretion of the Trial Chamber,[3523] and an Appellant bears "the burden of demonstrating that the Trial Chamber abused its discretion" in the weight it attached.[3524] In view of the Trial Chamber's proper consideration of Kallon's use of the Sunna Mosque as an aggravating circumstance, the Appeals Chamber considers that Kallon has not shown that the Trial Chamber abused its discretion in determining the weight to be given to this aggravating circumstance. Kallon's submission is therefore rejected.

(iv) Duress and superior orders

9821. para. 1279: In regard to factors of duress and acting under superior orders, Kallon argues that the Trial Chamber erred in considering these two separate arguments as one mitigating factor.[3525] The Appeals Chamber notes, however, that the Trial Chamber acknowledged that Kallon submitted at trial that these factors were separate mitigating factors and it explained that even though it was considering these factors under the heading "Executing Orders" it did not imply that these factors are the same.[3526] The Trial Chamber committed no error in this regard.

9822. para. 1280: Kallon argues that the Trial Chamber erred in finding that he had failed to establish that with respect to the UNAMSIL events his life was under threat if he failed to obey Sankoh's orders. According to Kallon, the Trial Chamber "ignored the power that Sankoh could still exert even from prison."[3527] He also contends that his post-conflict conduct came at personal risk because it contravened Sankoh's orders.

9823. para. 1281: Beyond mere assertions, Kallon provides no support for these contentions. He simply states that Sankoh could exert power from prison, Sankoh issued the order in relation to the UNAMSIL events, and that Prosecution Witness TF1-362 testified that disobeying Foday Sankoh could lead to death. But he fails to cite any Trial Chamber finding or other evidence which could sustain such assertions. His submissions are undeveloped and therefore rejected.

(v) Conclusion

9824. para. 1282: For the foregoing reasons, the Appeals Chamber holds that the Trial Chamber erred in double-counting the specific intent of acts of terrorism and collective punishments as increasing the gravity of the underlying offences. The Appeals Chamber will revise the sentences imposed on Kallon as appropriate. The remaining submissions in Kallon Ground 31 are rejected.

9825. Disposition, p. 479-480: In respect of Kallon, taking into account the Grounds of Appeal which have been allowed, the particular circumstances of this case as well as the form and degree

of the participation of Kallon in the crimes, and the seriousness of the crimes, the Appeals Chamber finds that the effective sentence imposed by the Trial Chamber reflects the totality of Kallon's culpable conduct for the crimes under Counts 1 through 14. The Appeals Chamber therefore imposes a global sentence for Counts 1 through 14 of thirty-nine (39) years imprisonment. The Appeals Chamber affirms the sentence of forty (40) years imprisonment under Count 15 and thirty-five (35) years imprisonment under Count 17.

(e) Gbao

(i) Gravity of offences committed pursuant to the JCE

9826. para. 1303: Gbao contends that the Trial Chamber erroneously aggregated the gravity of all of the crimes, including those for which he was not convicted, when assessing the gravity of his conduct. He submits that the Trial Chamber thereby failed to take into account that Gbao was not convicted of Counts 1 and 2 in Bo, Kenema and Kono Districts. To the contrary, the Trial Chamber expressly listed each of the crimes for which Gbao was found guilty, including the Districts where they were committed. In this list, the Trial Chamber properly limited Gbao's liability for acts of terrorism and collective punishments to Kailahun District, whereas the liability for Sesay and Kallon also includes crimes committed in Bo, Kenema and Kono Districts. The Trial Chamber's subsequent analysis of the gravity of the offences is not ascribed to any accused – it is strictly an analysis of the gravity of the offences - and it contains no indication that the Trial Chamber erroneously considered the gravity of offences of acts of terrorism and collective punishments committed outside Kailahun District in relation to Gbao's sentence. Gbao's submissions are, therefore, untenable.

(ii) Consideration of findings not proved beyond reasonable doubt

9827. para. 1304: Gbao contends the Trial Chamber increased his sentence based in part on findings not proved beyond reasonable doubt and he supports his argument with three references to the Sentencing Judgment. The first two references do not evince error. He argues the Trial Chamber found that civilians in Kailahun District were "restrained in ropes and chains"[3583] and "forced to live in camps manned by armed guards"[3584] and that no such findings were made for Kailahun District; however, there is no indication that the Trial Chamber made these statements in the Sentencing Judgment in relation to Kailahun District. In fact, it would appear that the first quotation pertains to Tombodu in Kono District and the second to Tongo Fields in Kenema District, and findings in the Trial Judgment support each statement.[3585]

9828. para. 1305: The third statement pointed to by Gbao suggests the Trial Chamber may have misstated in a limited instance the district in which child soldiers stood guard at a mining site, but the conduct relates to forced mining in Kono District for which Gbao was not found liable and there is no indication that the Trial Chamber erroneously considered this conduct in relation to Gbao's sentence.

(iii) The form and degree of Gbao's participation in the JCE

9829. para. 1306: As noted above, a Trial Chamber must ultimately impose a sentence that reflects the totality of the convicted person's culpable conduct.[3586] This requires that a sentence must reflect the inherent gravity of the totality of the criminal conduct of the accused, giving due consideration to the particular circumstances of the case and to the form and degree of the participation of the accused in the crimes.[3587] In its assessment of the form and degree of Gbao's participation in the JCE, the Trial Chamber considered the following significant:

> 266. The Chamber recalls its finding that Gbao's status, assignment, rank and personal relationship with Sankoh, as well as his knowledge of the RUF's ideology were all factors demonstrating that Gbao had considerable prestige and power within the RUF in Kailahun District. Gbao's supervisory role entailed the monitoring of the implementation of the ideology. We also recall that we found that 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. The Chamber, by a majority, Justice Boutet dissenting, found that:
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> … 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.
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> 267. The Chamber recalls that Gbao was also directly involved in the planning and enslavement of civilian labour on RUF government farms in Kailahun District, and 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. Furthermore, Gbao's 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. 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.

> 268. The Chamber recalls however that Gbao did not have direct control over fighters. He was not a member of the AFRC/RUF Supreme Council, and he remained in Kailahun during the Junta regime. He did not have the ability to contradict or influence the orders of men such as Sam Bockarie. He was not directly involved and did not share the criminal intent of any of the crimes committed in Bo, Kenema or Kono Districts.
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> 269. The Chamber has found that crimes committed in furtherance of the joint criminal enterprise, which 'intended through the spread of extreme fear and punishment to dominate and subdue the civilian population in order to exercise power and control over the captured territory' were crimes of a shocking nature, deserving of condemnation in the strongest terms possible.
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> 270. We have also found that Gbao's personal role within the overall enterprise was neither at the policy making level, nor was it at the 'fighting end' where the majority of the actual atrocities were committed. Indeed, as the Gbao Defence pointed out in its closing submissions, Gbao 'has not been found to have ever fired a single shot and never to have ordered the firing of a single shot'. Gbao was a loyal and committed functionary of the RUF organisation, whose major contributions to the joint criminal enterprise can be characterised by his role as an ideology instructor and his planning and direct involvement in the enslavement of civilians on RUF government farms within Kailahun District.
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> 271. Whilst the crimes committed pursuant to the joint criminal enterprise for which Gbao has been convicted are vast and atrocious, the Chamber recognises that Gbao's involvement within the overall scheme, whilst sufficient in law to attract criminal liability, was more limited than that of his co-defendants. The Chamber thus finds Gbao's individual contribution to the joint criminal enterprise, and his own particular criminal responsibility, to be on the lower end of the continuum, and considers his role as diminishing his responsibility for sentencing purposes.[3588]

9830. para. 1307: As is abundantly clear from this passage, the Trial Chamber considered that the form and degree of Gbao's participation in the crimes for which he was held liable pursuant to the JCE are: (i) his role as an ideology instructor and (ii) his planning and direct involvement in the enslavement of civilians on RUF government farms within Kailahun District.[3589] The Appeals Chamber recalls its holding that the finding that Gbao contributed to the JCE in his role as an ideology expert and instructor violated his right to a fair trial. As a result, the finding was disallowed.[3590] This conduct also cannot be considered as part of the form and degree of Gbao's conduct for sentencing purposes. The Appeals Chamber will determine the consequences of this holding in its revision of the sentences imposed for crimes Gbao committed pursuant to his participation in the JCE.

(iv) Gravity of offences against UNAMSIL peacekeepers

9831. para. 1308: Gbao contends that the Trial Chamber erroneously aggregated all of the offences committed against UNAMSIL peacekeepers when assessing the gravity of the offences for which he was convicted under Count 15. The Appeals Chamber recalls that it has allowed Gbao Ground 16, in part, and reversed the verdict of guilt for Gbao for aiding and abetting the attack directed against Salahuedin. We will therefore only consider Gbao's submissions here in relation to his sentence for aiding and abetting the attack against Jaganathan.

9832. para. 1309: The Appeals Chamber notes that the Trial Chamber properly limited itself to considering Gbao's liability for "aiding and abetting the attacks directed against Salahuedin and Jaganathan on 1 May 2000 and found that he deliberately fomented an atmosphere of hostility and orchestrated an armed confrontation at that Makump DDR camp."[3591]

9833. para. 1310: It determined that the "gravity of this crime is high."[3592] However, the Trial Chamber's analysis of the gravity of the offences committed against UNAMSIL peacekeepers makes it difficult, in relation to one of the factors considered, to determine how the gravity of the two offences for which Gbao was convicted is distinguished from the additional 12 offences for which Sesay and Kallon were found guilty. The Trial Chamber initially noted that the RUF directed 14 attacks against UNAMSIL peacekeepers,[3593] and it identified many of the victims of these assaults by name, including Jaganathan.[3594] It then considered the scale and brutality of the offences, the vulnerability of the victims, the number of victims, the impact on victims and the degree of suffering. The Trial Chamber's analysis of these considerations expressly addresses the gravity of the attacks in relation to the victims as identified, and therefore the gravity relevant to Gbao's offences can be ascertained from the Sentencing Judgment. The Appeals Chamber finds no error in this reasoning.

9834. para. 1311: In considering the impact of the attacks on the UNAMSIL peacekeeping force and the international community, the Trial Chamber's reasoning leaves unclear the extent to which it considered this factor in relation to Gbao's offences. For example, it is unclear to what extent the Trial Chamber considered the attack on Jaganathan to have disrupted the peace process in Sierra Leone and to have caused a response in the international community.[3595]

9835. para. 1312: The Appeals Chamber is of the view that although the Trial Chamber's reasoning could have been clearer, its analysis concerned the general conduct of attacks against peacekeepers in the context of the conflict in Sierra Leone to aggravate all of the attacks including the attack for which Gbao was found liable. By doing so, the Trial Chamber did not aggravate

Gbao's sentence for crimes he did not commit. Rather, it considered that he participated in an attack that was part of 14 attacks committed "in a short period of time" which threatened, inter alia, the international community's efforts to assist Sierra Leone. The Appeals Chamber does not find this constitutes error in the Trial Chamber's exercise of its sentencing discretion.

(v) Consideration as an aggravating factor that Gbao was "the senior RUF commander" with "the largest number of fighters" at Makump DDR camp

9836. para. 1313: Gbao contends that the Trial Chamber erred when it considered his position of authority as an aggravating factor for his conviction for aiding and abetting the assault on Jaganathan. He contends that his position of authority was already accounted for by the Trial Chamber when it found that he aided and abetted by tacit encouragement. Gbao's submissions are misconceived. Gbao's position of authority was a factor in the Trial Chamber's determination that he tacitly approved Kallon's assault on Jaganathan and thereby aided and abetted Kallon's conduct, however the Trial Chamber did not, and need not have, relied upon findings that he was "the senior RUF commander" (i.e., as Gbao states, the most senior RUF commander[3596] with "the largest number of fighters" at the Makump DDR camp in order to find that his conduct amounted to aiding and abetting.

9837. para. 1314: Gbao's contention that the Trial Chamber erred by taking into account his leadership role rather than any abuse of that role as an aggravating factor is similarly unavailing. The relevant passage of the Sentencing Judgment must be read in conjunction with the Trial Chamber's findings on Gbao's role in the attack on Jaganathan in paragraphs 2261 through 2265 of the Trial Judgment.

9838. para. 1315: In the Sentencing Judgment, the Trial Chamber noted that Gbao was convicted of aiding and abetting the attacks directed against Jaganathan at the Makump DDR camp "where he was the senior RUF Commander present at the time of Kallon's arrival and he remained the RUF Commander with the largest number of fighters present." As the senior RUF Commander until Kallon's arrival representing the RUF, a signatory to the Lomé Accord, he had a duty to support UNAMSIL personnel who were tasked with bringing peace to the population of Sierra Leone. Thus, it was reasonable for the Trial Chamber to find that Gbao had abused his position of authority, including by (i) demanding, with the support of thirty to forty armed RUF subordinates, that UNAMSIL give him back his five fighters, (ii) fomenting an atmosphere of hostility and (iii) orchestrating an armed confrontation at the Makump DDR camp.[3597]

(vi) Serving sentence in a foreign country

9839. para. 1316: The Appeals Chamber recalls its holding that the Trial Chamber did not error in declining to mitigate the sentences of the Accused in light of its finding that they will likely serve their sentences in a foreign country.[3598] Gbao does not extend the argument made previously by Sesay, and therefore the Appeals Chamber dismisses his argument for the same reasons.

(vii) Disproportionate sentence for aiding and abetting an attack against a UNAMSIL peacekeeper

9840. para. 1317: We endorse the view of the ICTY Appeals Chamber that sentences of like individuals in like cases should be comparable.[3599] The relevance of previous sentences is however often limited as a number of elements, relating, inter alia, to the number, type and gravity of the crimes committed, the personal circumstances of the convicted person and the presence of mitigating and aggravating circumstances, dictate different results in different cases such that it is frequently impossible to transpose the sentence in one case mutatis mutandis to another.[3600] This follows from the principle that the determination of the sentence involves the individualisation of the sentence so as to appropriately reflect the particular facts of the case and the circumstances of the convicted person.[3601]

9841. para. 1318: As a result, previous sentencing practice is but one factor among a host of others which must be taken into account when determining the sentence.[3602] Nonetheless, as held by the ICTY Appeals Chamber in *Jelisić*, a disparity between an impugned sentence and another sentence rendered in a like case can constitute an error if the former is out of reasonable proportion with the latter. This disparity is not in itself erroneous, but rather gives rise to an inference that the Trial Chamber must have failed to exercise its discretion properly in applying the law on sentencing.[3603]

9842. para.1319: In the instant appeal, none of the cases cited by Gbao are instructive because the crimes for which the accused were convicted and the individual circumstances of the accused are readily and significantly distinguished from the present case. Importantly, Gbao fails to address the fact that, unlike any of the cases he relies upon, he is convicted of aiding and abetting an attack against a UN peacekeeper. Gbao's submissions are therefore rejected.

(viii) Conclusion

9843. para. 1320: For the foregoing reasons, the Appeals Chamber holds that the Trial Chamber erred in double-counting the specific intent of acts of terrorism and collective punishments as

increasing the gravity of the underlying offences, and erred in finding that Gbao's role as an ideology expert and instructor contributed to the form and degree of Gbao's conduct in relation to crimes he committed pursuant to the JCE. The Appeals Chamber will revise the sentences as appropriate. The remaining submissions in Gbao Ground 18 are rejected.

9844. Disposition, p. 480: In respect of Gbao, taking into account the Grounds of Appeal which have been allowed, the particular circumstances of this case as well as the form and degree of the participation of Gbao in the crimes, and the seriousness of the crimes, the Appeals Chamber finds that the effective sentence imposed by the Trial Chamber reflects the totality of Gbao's culpable conduct for the crimes under Counts 1, 3 through 11 and 13. The Appeals Chamber, Justices Winter and Fisher dissenting, therefore imposes a global sentence for Counts 1, 3 through 11 and 13 of twenty-five (25) years imprisonment. Taking into account that Gbao's Ground 16 has been allowed, in part, the sentence of twenty-five (25) years imprisonment under Count 15 is decreased to twenty (20) years imprisonment.

9845. Dissents – Justice Fisher, para. 42, p. 523-524: I wish to emphasise that I do not question that heinous crimes were committed against the civilian population of Sierra Leone as found by the Trial Chamber, nor would I find Gbao innocent of all the charges against him. I am satisfied that the Trial Chamber's findings establish beyond reasonable doubt that Gbao is guilty of aiding and abetting the crimes of enslavement committed in Kailahun District, and I join with the Majority in finding him guilty under Count 15 of aiding and abetting the attack on an UNAMSIL peacekeeper.

9846. Dissents – Justice Fisher, para. 43, p. 524: My disagreement with the Majority is therefore not about whether Gbao is guilty of some crimes, but rather, whether Gbao is guilty of all the crimes for which he was convicted by the Trial Chamber pursuant to his alleged participation in the JCE. As I find that the Trial Chamber erred in holding Gbao personally liable under JCE, I respectfully dissent from the Majority's decision to confirm those convictions.

9847. Dissents – Justice Winter, para. 5, p. 482-483: In addition to this clarification, I also wish to express my complete agreement with the reasoning and conclusions expressed by Hon. Justice Fisher in her Partially Dissenting and Concurring Opinion insofar as it pertains to Gbao's Sub-Grounds 8(j) and 8(k), Gbao's Sub-Ground 8(i), Sesay's Grounds 33 and 46, and her opinion regarding the failure to plead locations with sufficient specificity. In particular, I join her dissent from the Majority's decision to confirm Gbao's conviction under JCE liability, given the Trial Chamber's findings that he did not share the Common Criminal Purpose with the other participants in the case before us.

(f) Disposition

9848. For the foregoing reasons, THE APPEALS CHAMBER

[…]

CONSEQUENTLY REVISES the sentences as follows:

In respect of Sesay, taking into account the Grounds of Appeal which have been allowed, the particular circumstances of this case as well as the form and degree of the participation of Sesay in the crimes, and the seriousness of the crimes, the Appeals Chamber finds that the effective sentence imposed by the Trial Chamber reflects the totality of Sesay's culpable conduct for the crimes under Counts 1 through 14. The Appeals Chamber therefore imposes a global sentence for Counts 1 through 14 of fifty-two (52) years imprisonment. The Appeals Chamber affirms the sentence of fifty-one (51) years imprisonment under Count 15 and forty-five (45) years imprisonment under Count 17;

In respect of Kallon, taking into account the Grounds of Appeal which have been allowed, the particular circumstances of this case as well as the form and degree of the participation of Kallon in the crimes, and the seriousness of the crimes, the Appeals Chamber finds that the effective sentence imposed by the Trial Chamber reflects the totality of Kallon's culpable conduct for the crimes under Counts 1 through 14. The Appeals Chamber therefore imposes a global sentence for Counts 1 through 14 of thirty-nine (39) years imprisonment.

The Appeals Chamber affirms the sentence of forty (40) years imprisonment under Count 15 and thirty-five (35) years imprisonment under Count 17;

In respect of Gbao, taking into account the Grounds of Appeal which have been allowed, the particular circumstances of this case as well as the form and degree of the participation of Gbao in the crimes, and the seriousness of the crimes, the Appeals Chamber finds that the effective sentence imposed by the Trial Chamber reflects the totality of Gbao's culpable conduct for the crimes under Counts 1, 3 through 11 and 13. The Appeals Chamber, Justices Winter and Fisher dissenting, therefore imposes a global sentence for Counts 1, 3 through 11 and 13 of twenty-five (25) years imprisonment. Taking into account that Gbao's Ground 16 has been allowed, in part, the sentence of twenty-five (25) years imprisonment under Count 15 is decreased to twenty (20) years imprisonment;

ORDERS that the sentences shall run concurrently;

ORDERS that Issa Hassan Sesay shall serve a TOTAL TERM OF IMPRISONMENT OF FIFTY-TWO (52) YEARS, subject to credit being given under Rule 101(D) of the Rules of Procedure and Evidence for the period for which he has already been in detention;

ORDERS that Morris Kallon shall serve a TOTAL TERM OF IMPRISONMENT OF FORTY (40) YEARS, subject to credit being given under Rule 101(D) of the Rules of Procedure and Evidence for the period for which he has already been in detention;

ORDERS that Augustine Gbao shall serve a TOTAL TERM OF IMPRISONMENT OF TWENTY-FIVE (25) YEARS, subject to credit being given under Rule 101(D) of the Rules of Procedure and Evidence for the period for which he has already been in detention;

ORDERS that this Judgment shall be enforced immediately pursuant to Rule 119 of the Rules of Procedure and Evidence;

ORDERS, in accordance with Rule 109 of the Rules of Procedure and Evidence that Issa Hassan Sesay, Morris Kallon and Augustine Gbao remain in the custody of the Special Court for Sierra Leone pending the finalization of arrangements to serve their sentences.

C. AFRC

1. Sentencing Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-T, Judgement, 19 July 2007

(a) Preliminary Considerations

9849. para. 2: The "Prosecution Submission Pursuant to Rule 100(A) of the Rules of Procedure and Evidence" ("Prosecution Sentencing Brief,)"[2] was filed on 28 June 2007…..

9850. para. 6: The Kanu Defence objected to the documents annexed to the Prosecution Sentencing Brief on the grounds that (1) the Prosecution purported to introduce new evidence through these documents;[11] (2) the Prosecution did not comply with its disclosure obligations under the rules in relation to (Annex G); the expert report was not objective and the Defence was not in a position to call their own expert in rebuttal on such short notice;[12] (3) the introduction of new Prosecution evidence would amount to an abuse of process;[13] (4) the witness statements provided by the Prosecution are inadmissible, or alternatively, the Defence should have had an

opportunity to cross-examine the proposed witnesses;[14] and (5) other material submitted by the Prosecution is irrelevant.[15]

9851. para. 7: In its oral arguments, the Prosecution submitted that it is allowed to introduce additional evidence at the sentencing stage. The Prosecution argued that since the Special Court has two distinct procedures it was not necessary for it to adduce such evidence at the trial stage.[16]

9852. para. 8: The Trial Chamber upholds the Defence objections and has not taken into consideration the documents annexed to the Prosecution Sentencing Brief.

9853. para. 9: The Trial Chamber recalls the general principle that only matters proved beyond reasonable doubt against the Accused are to be considered against him at the sentencing stage.[17] Aggravating circumstances must be proved beyond reasonable doubt[18], whilst mitigating circumstances need only be proved on a balance of probability.[19]

(b) Applicable Law

(i) Applicable Provisions

9854. para. 10: Sentencing in the Special Court is regulated by the provisions of Article 19 of the Statute of the Special Court ("Statute") and Rule 101 of the Rules of Procedure and Evidence ("Rules"). Article 19 of the Statute provides:

> 1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.
>
> 2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
>
> 3. In addition to imprisonment, the Trial Chamber may order the forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct, and their return to their rightful owner or to the State of Sierra Leone.quote .

Rule 101 of the Rules provides:

> (A) A person convicted by the Special Court, other than a juvenile offender, may be sentenced to imprisonment for a specific number of years.
>
> (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 19 (2) of the Statute, as well as such factors as:

(i) Any aggravating circumstances;

(ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the Statute.

(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

(D) Any period during which the convicted person was detained in custody pending his transfer to the Special Court or pending trial or appeal, shall be taken into consideration on sentencing.

9855. para. 11: According to the above provisions the Trial Chamber is obliged to take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. Aggravating and mitigating circumstances and the general practice regarding prison sentences in the International Criminal Tribunal for Rwanda (ICTR) and the domestic courts of Sierra Leone shall, where appropriate, be taken into account. These requirements are not exhaustive and the Trial Chamber has the discretion to determine an appropriate sentence depending on the individual circumstances of the case.[20]

9856. para. 12: The Trial Chamber agrees with the holding of the ICTR Appeals Chamber in *Prosecutor v. Kambanda*, that "[...] the Statute is sufficiently liberally worded to allow for a single sentence to be imposed. Whether or not this practice is adopted is within the discretion of the Chamber".21 The governing criteria is that the final or aggregate sentence should reflect the totality of the culpable conduct, or generally, that it should reflect the gravity of the offences and the overall culpability of the offender, so that it is both just and appropriate. [22] In the present case the Trial Chamber finds it is appropriate to impose a global sentence for the multiple convictions in respect of Brima, Kamara and Kanu.

(ii) Sentencing Objectives

9857. para. 13: The preamble of the United Nations Security Council Resolution 1315 (2000)[23] recognises

> that [...] in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end

impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace.[24]

9858. para. 14: Retribution, deterrence and rehabilitation have been considered as the main sentencing purposes in international criminal justice.[25]

9859. para. 15: Furthermore, international criminal tribunals have held that retribution is not to be understood as fulfilling a desire for revenge but rather as duly expressing the outrage of the national and international community at these crimes,[26] and that is meant to reflect a fair and balanced approach to punishment for wrongdoing. The penalty imposed must be proportionate to the wrongdoing. In other words, the punishment must fit the crime.[27]

9860. para. 16: International criminal tribunals have held further that the element of deterrence is important in demonstrating "that the international community is not ready to tolerate serious violations of international humanitarian law and human rights".[28] It follows that the penalties imposed by the Trial Chamber must be sufficient to deter others from committing similar crimes.[29] In the context of international criminal justice, it is recognised that one of the main purposes of a sentence is to "influence the legal awareness of the accused, the surviving victims, their relatives, the witnesses and the general public in order to reassure them that the legal system is implemented and enforced. Additionally, sentencing is intended to convey the message that globally accepted laws and rules have to be obeyed by everybody".[30]

9861. para. 17: International criminal tribunals have noted that unlike the case in domestic courts, rehabilitation cannot be considered as a predominant consideration in determining a sentence, as the sentencing aims of national jurisdictions are different from the aims of international criminal tribunals.[31]

9862. para. 18: In deciding appropriate sentences, the Trial Chamber has taken into account all the factors likely to contribute to the achievement of the above objectives.

(iii) Sentencing Factors

a. Gravity of Offence

9863. para. 19: In determining an appropriate sentence, the gravity of the crime is the primary consideration or "litmus test".[32] The determination of the gravity of the crime must be individually assessed.[33] In making such an assessment, the Trial Chamber may examine, inter alia, the general nature of the underlying criminal conduct;[34] the form and degree of participation of the Accused[35]

or the specific role played by the Accused in the commission of the crime;[36] the degree of suffering, impact or consequences of the crime for the immediate victim in terms of physical, emotional and psychological effects;37 the effects of the crime on relatives of the immediate victims and/or the broader targeted group;[38] the vulnerability of the victims;[39] and the number of victims.[40]

9864. para. 20: Where an Accused has been found liable as a commander pursuant to Article 6(3) of the Statute, two levels of consideration are necessary in determining the gravity of the offence: (l) the gravity of the underlying crime committed by a subordinate under the effective control of the Accused, and (2) the gravity of the Accused's own conduct in failing to prevent or punish the crimes committed by that subordinate.[41]

b. Aggravating Circumstances

9865. para. 21: The aggravating and mitigating circumstances to be taken into account by the Trial Chamber are not exhaustively set out in the Rules.[42] Thus, the Trial Chamber is tasked with the charge of weighing the individual circumstances of each case and has discretion to identify the relevant factors. The Trial Chamber may consider, for example,

> (i) the position of the accused, that is, his position of leadership, his level in the command structure, or his role in the broader context of the conflict [...]; (ii) the discriminatory intent or the discriminatory state of mind for crimes for which such a state of mind is not an element or ingredient of the crime; (iii) the length of time during which the crime continued; (iv) active and direct criminal participation, if linked to a high-rank position of command, the accused's role as fellow perpetrator, and the active participation of a superior in the criminal acts of subordinates; (v) the informed, willing or enthusiastic participation in crime; (vi) premeditation and motive; (vii) the sexual, violent, and humiliating nature of the acts and the vulnerability of the victims; (viii) the status of the victims, their youthful age and number, and the effect of the crimes on them; (ix) the character of the accused; and (x) the circumstances of the offences generally.[43]

9866. para. 22: The Trial Chamber may also consider the fact that attacks directed against protected persons were carried out in places of religious worship or sanctuary, to be an aggravating factor in sentencing.

9867. para. 23: Facts which go to proof of the gravity of the offence and facts which constitute aggravating factors may overlap.[44] The practice of some Trial Chambers has been to consider the gravity of the offence together with aggravating circumstances.[45] The Trial Chamber considers that, regardless of the approach, where a factor has already been taken into account in determining

the gravity of the offence, it cannot be considered additionally as an aggravating factor and vice versa.[46] Similarly, if a factor is an element of the underlying offence, then it cannot be considered as an aggravating factor. [47]

9868. para. 24: The Trial Chamber may consider the abuse of a position of power by an accused held criminally responsible for a crime under Article 6(1) of the Statute to be an aggravating factor. [48] Where an accused has been found liable for the crimes of a subordinate under Article 6(3) of the Statute his/her mere position of command will not be considered by the Trial Chamber as an aggravating factor as it is an element of liability.[49] However, where it has been proved that an accused actively abused his/her command position or otherwise promoted, encouraged or participated in the crimes of his/her subordinates, such conduct may amount to an aggravating circumstance. [50]

c. Mitigating Circumstances

9869. para. 25: Under Rule 101(B) any substantial cooperation with the Prosecutor by the convicted person before or after conviction must be considered as a mitigating circumstance.51 In addition, the Trial Chamber has the discretion to identify and weigh other mitigating factors according to the circumstances of each case, including, but not limited to (i) expression of remorse or a degree of acceptance of guilt; (ii) voluntary surrender; (iii) good character with no prior criminal convictions; (iv) personal and family circumstances; (v) the behaviour or conduct of the accused subsequent to the conflict; (vi) duress and indirect participation; (vii) diminished mental responsibility; (viii) the age of the accused; (ix) assistance to detainees or victims; and (x) in exceptional circumstances, poor health. [52]

(iv) Sentencing Practice In The National Courts of Sierra Leone and Other *Ad Hoc* Tribunals

a. Deliberations

i. Sentencing Practice in Sierra Leone

9870. para. 32: Article 19(1) states that as appropriate, the Trial Chamber shall have recourse to the practice regarding prison sentences in the national courts of Sierra Leone as and when appropriate. This does not oblige the Trial Chamber to conform to that practice, but rather to take into account that practice as and when appropriate. [66] The Trial Chamber finds that it is not

appropriate to adopt the practice in the present case since none of the Accused was indicted for, nor convicted of, offences under Article 5 of the Statute.

ii. Sentencing Practice at other International Tribunals

9871. para. 33: Article 19(1) of the Statute provides that the Trial Chamber shall, where appropriate, have recourse to the practice regarding prison sentences in the ICTR in determining the terms of imprisonment. The Trial Chamber will also consider the sentencing practice of the ICTY as its statutory provisions are analogous to those of the Special Court and the ICTR. The Trial Chamber is therefore guided by the sentencing practices at both the ICTR and the ICTY. The Chamber further notes that the pronouncement of global sentences is a well established practice at those tribunals.[67] The mitigating and aggravating factors that the Trial Chamber has considered in the instant case have also been widely considered by the ICTR and ICTY.[68]

(v) Determination of Sentences

a. Alex Tamba Brima

i. Gravity of the Offences

9872. para. 40: The Trial Chamber considers that the crimes for which Brima was convicted were heinous, deliberate, brutal and targeted very large numbers of unarmed civilians and had a catastrophic an irreversible impact on the lives of the victims and their families.

9873. para. 41: Brima was convicted under Article 6(1) and under Article 6(3). Specifically, the Trial Chamber found Brima responsible under Article 6(1) for:

1. committing extermination in Karina, Bombali District;

2. committing the murder of five civilians at State House, Freetown, Western Area;

3. committing the mutilation of one civilian in Freetown, Western Area;

4. ordering the terrorisation of the civilian population in:

   a. Karina, Bombali District;

   b. Rosos, Bombali District; and

   c. Freetown, Western Area;

5. ordering the collective punishment of the civilian population in Freetown, Western Area;

6. ordering and planning the recruitment and use of child soldiers in:

a. Freetown, Western Area; and

b. Rosos, Bombali District;

7. ordering the murders of civilians at:

a. Mateboi, Bombali District;

b. Gbendembu, Bombali District;

c. State House, Freetown, Western Area;

d. Kissy Mental Home, Freetown, Western Area; and

e. Rogbalan Mosque, Freetown, Western Area;

8. ordering and aiding and abetting the murders of civilians in Fourah Bay, Freetown, Western Area;

9. ordering and planning the enslavement of civilians in Freetown, Western Area;

10. ordering the looting of civilian property; Freetown, Western Area;

11. planning the commission of outrages upon personal dignity in the form of sexual slavery in Bombali District and the Western Area;

12. planning the enslavement of civilians in Bombali District.

9874. para. 42: Brima was further found liable under Article 6(3) for crimes committed by his subordinates throughout Bombali District and Freetown and the Western Area.

9875. para 43: With regards to the crimes for which Brima is responsible under Article 6(1), the Trial Chamber recalls its factual findings that Brima was the primary perpetrator of the murders of at least 12 civilians in a mosque during the attack on Karina,[73] a fact indicative of the particular gravity of this offence.

9876. para. 44: With regards to the recruitment and use of child soldiers, the Trial Chamber recalls that the young victims were abducted from their families, often in situations of extreme violence, often drugged and forcibly trained to kill and to commit crimes against innocent civilians. These children were robbed of their childhood and many lost the chance of an education.

9877. para. 45: With regards to the crimes for which Brima is responsible under Article 6(3) the Trial Chamber has examined the gravity of the crimes committed by subordinates under his effective control. Many of these crimes, detailed in the Trial Chamber's Factual Findings are of a particularly heinous nature. The Trial Chamber recalls in particular that in Karina, Brima's subordinates unlawfully killed children by throwing them into the flames of burning houses. [74] In Rosos, five of Brima's subordinates beat and orally and vaginally gang-raped a civilian[75] and another four raped a civilian so brutally that she was in great pain, could not stand up and testified that "it seemed as though all my guts were coming out".[76] With regards to the sexual crimes in general, the Trial Chamber notes that many of the victims were particularly young and vulnerable, were held in captivity for protracted periods, often coupled with unwanted pregnancy/miscarriages and endured social stigma.

9878. para. 46: The Trial Chamber considers the crime of mutilation was particularly grotesque and malicious. Victims who had their limbs hacked off not only endured extreme pain and suffering, if they survived, but lost their mobility and capacity to earn a living or even to undertake simple daily tasks. They have been rendered dependent on others for the rest of their lives. The Trial Chamber dismisses the Defence arguments that the guerrilla nature of the conflict lessens the grievous nature of the offences.

ii. Individual Circumstances of Brima

9879. para. 51: The Trial Chamber finds that nothing In Brima's personal circumstances justifies any mitigation of his sentence.

9880. para. 52: The Trial Chamber considers that Brima was a professional soldier whose duty it was to protect the people of Sierra Leone. The fact that he instead attacked innocent and unarmed civilians is considered by the Trial Chamber to be an aggravating factor.

iii. Aggravating Circumstances

9881. para. 55: The Trial Chamber agrees that all the factors submitted by the Prosecution are aggravating factors. Moreover, the Trial Chamber finds that Brima's position as overall commander of the troops is an aggravating factor in relation to the crimes for which he is responsible under Article 6(1) of the Statute. The use by Brima of tactics of extreme coercion, illustrated by the use of the infamous phrase "minus you, plus you", to force his subordinates to

engage in criminal conduct constitutes an abuse of his position of power which is an aggravating factor in his case.[87]

9882. para. 56: The Trial Chamber also finds that Brima was a zealous participant in some of the crimes for which he has been found liable. This factor will be considered as an aggravating circumstance.

9883. para. 57: The Trial Chamber further finds that the prolonged period of time over which the enslavement crimes were committed, the vulnerability of the victims and the targeting of places of worship or sanctuary are all aggravating factors.

iv. Mitigating Circumstances

9884. para. 64: The Trial Chamber does not consider Brima's service in the Army without incident to be a mitigating factor 96 as this was merely his duty.

9885. para. 65: The Trial Chamber further finds that Brima's alleged acts of philanthropy and alleged involvement in the Commission for the Consolidation of Peace are not mitigating factors.

9886. para. 66: The fact that Brima's convictions relate to crimes committed in two districts, as opposed to the seven districts particularised in the Indictment, in no way lessens the seriousness of the offences.

v. Remorse

9887. para. 67: The Trial Chamber finds that the statement made by Brima at the sentencing hearing, whilst containing a fleeting reference to "remorse to the victims of this situation,"[7] cannot be accepted as an expression of genuine remorse. This fact cannot therefore be taken as mitigating his sentence.

b. Ibrahim Bazzy Kamara

i. Gravity of the Offences

9888. para. 70: The Trial Chamber found Kamara responsible under Article 6(1) for:

1. ordering the murder of five civilians in Karina, Bombali District;

2. planning the abduction and use of child soldiers in Bombali District and the Western Area;

3. planning the commission of outrages upon personal dignity in the form of sexual slavery in Bombali District and the Western Area;

4. planning the enslavement of civilians in Bombali and Western Area;

5. aiding and abetting the murder/extermination of civilians at Fourah Bay, Freetown, Western Area;

6. aiding and abetting the mutilation of civilians in Freetown, Western Area.

9889. para. 71: Kamara was further found liable under Article 6(3) for crimes committed by his subordinates at Tombodu, Kono District and throughout Bombali District, the Western Area and Port Loko District.

9890. para. 72: The crimes for which Kamara was convicted were heinous, deliberate, brutal and targeted very large number of unarmed civilians and had a catastrophic and irreversible impact on the lives of the victims and their families.

9891. para. 73: In relation to his criminal responsibility the Trial Chamber finds that the crimes committed by his subordinates were crimes of the most serious gravity and Kamara's failure to prevent or punish the commission of these crimes must be considered correspondingly grave. The Trial Chamber recalls its factual finding that in Tombodu, Kamara's subordinates purposely trapped some 68 people in a house and burned them alive. [100] And that another 47 people were beheaded and thrown into a diamond pit. [101]

9892. para. 74: The Trial Chamber is satisfied that the crimes committed by Kamara or by his subordinates affected a very large number of victims. With regards to the recruitment and use of child soldiers, the Trial Chamber recalls that the victims were abducted from their families, often in situations of extreme violence, often drugged and trained to kill and forced to commit crimes against innocent civilians. These children were robbed of their childhood and many lost the chance of an education.

9893. para. 75: With regards to the crimes for which Kamara is responsible under Article 6(3) the Trial Chamber has examined the gravity of the crimes committed by subordinates under his effective control. Many of these crimes, detailed in the Trial Chamber's Factual Findings are of a particularly heinous nature. The Trial Chamber recalls in particular that in Karina, Kamara's subordinates unlawfully killed children by throwing them into the flames of burning houses.[102] In Rosos, five of Kamara's subordinates beat and orally and vaginally gang-raped a civilian [103] and

another four raped a civilian so brutally that she was in great pain, could not stand up and testified that "it seemed as though all my guts were coming out".[104] With regards to the sexual crimes in general, the Trial Chamber notes that many of the victims were particularly young and vulnerable, were held in captivity for protracted periods, often coupled with unwanted pregnancy/miscarriages, and endured social stigma.

9894. para. 76: The Trial Chamber considers the crime of mutilation was particularly grotesque and malicious. Victims who had their limbs hacked off not only endured extreme pain and suffering if they survived, but lost their mobility and capacity to earn a living or even to undertake simple daily tasks.

9895. para 77: All of the above factors point to the gravity of the offences.

ii. Individual Circumstances of Kamara

9896. para. 80: The Trial Chamber finds that nothing in Kamara's personal circumstances justifies any mitigation of his sentence.

9897. para. 81: The Trial Chamber considers that Kamara was a professional soldier whose duty it was to protect the people of Sierra Leone. The fact that he instead attacked innocent and unarmed civilians is considered by the Trial Chamber to be an aggravating factor.

iii. Aggravating Circumstances

9898. para. 85: The Trial Chamber agrees that all of the factors submitted by the Prosecution are aggravating factors. Moreover, the Trial Chamber has given consideration to the vulnerability of some of the victims of the crimes for which Kamara was convicted with regards to the gravity of the offence and will not consider this factor additionally as an aggravating circumstance.

9899. para. 86: The Trial Chamber also finds that the killing of civilians deliberately locked in their homes and set ablaze, as was ordered by Kamara and carried out by his subordinates, is a violent and cruel circumstance of the offence amounting to an aggravating factor. Further, this particular incident shows that Kamara was a violent and active participant in the crimes, contrary to the Defence assertions.

9900. para. 87: The Trial Chamber further finds that the prolonged period of time over which the enslavement crimes were committed, the vulnerability of the victims and the targeting of places of worship or sanctuary are all aggravating factors.

9901. para. 88: The Trial Chamber does not consider Kamara's position in the AFRC government prior to the commission of the offences to be an aggravating factor. However, the Trial Chamber considers his position of command authority in relation to the crimes for which he has been found liable under Article 6(1) of the Statute to be an aggravating factor.

iv. Mitigating Circumstances

9902. para. 91: The Trial Chamber finds that there are no mitigating circumstances in Kamara's case. In particular, although Kamara chose to address the Trial Chamber at the sentencing hearing, he failed to express any genuine remorse whatsoever for his crimes. [118]

c. Santigie Borbor Kanu

i. Gravity of the Offences

9903. para. 94: The Trial Chamber found Kanu responsible under Article 6(1) for:

i. committing the mutilation of civilians in:
   a. Kissy, Freetown; and
   b. Upgun, Freetown;
ii. committing the looting of civilian property in Freetown;
iii. ordering the murder of persons hors de combat at State House in Freetown;
iv. ordering the murder of civilians at Rogbalan Mosque in Freetown;
v. ordering the mutilations of civilians at:
   a. Ferry Junction, Freetown; and
   b. Upgun, Freetown;
vi. planning the abduction and use of child soldiers in Bombali District and the Western Area;
vii. planning the commission of outrages upon personal dignity in the form of sexual slavery in Bombali District and the Western Area;
viii. planning the enslavement of civilians on numerous occasions in Bombali District and the Western Area;
ix. instigating the murder of civilians in Freetown; and

x. aiding and abetting the murder/extermination of civilians at Fourah Bay in Freetown, and the Western Area.

9904. para. 95: Kanu was further found liable under Article 6(3) for crimes committed by his subordinates throughout Bombali District and Freetown and the Western Area.

9905. page. 96: With regards to the crimes for which Kanu is responsible under Article 6(3) the Trial Chamber has examined the gravity of the crimes committed by subordinates under his effective control. Many of these crimes, detailed in the Trial Chamber's Factual Findings are of a particularly heinous nature. The Trial Chamber recalls in particular that in Karina, Kanu's subordinates unlawfully killed children by throwing them into the flames of burning houses. [121] In Rosos, five of Kanu's subordinates beat and orally and vaginally gang-raped a civilian[122] and another four raped a civilian so brutally that she was in great pain, could not stand up and testified that "it seemed as though all my guts were coming out".[123] With regards to the sexual crimes in general, the Trial Chamber notes that many of the victims were particularly young and vulnerable, were held in captivity for protracted periods often coupled with unwanted pregnancy/miscarriages and endured social stigma.

9906. para. 97: The Trial Chamber considers the cnme of mutilation was particularly grotesque and malicious. Victims who had their limbs hacked off not only endured extreme pain and suffering if they survived, but lost their mobility and capacity to earn a living or even to undertake simple daily tasks.

9907. para.98: The Trial Chamber dismisses the Defence arguments that the RUF was responsible for the bulk of human rights violations in Sierra Leone and finds that this allegation cannot be a mitigating factor.

9908. para. 99: The Trial Chamber found that Kanu was a direct participant in unlawful killings, mutilations, the recruitment and use of the child soldiers, outrages on personal dignity, and enslavement.

ii. Individual Circumstances of Kanu

9909. para. 105: The Trial Chamber finds that nothing in Kanu's personal circumstances justifies any mitigation of his sentence.

9910. para. 106: The Trial Chamber considers that Kanu was a professional soldier whose duty it was to protect the people of Sierra Leone. The fact that he instead attacked innocent and unarmed civilians is considered by the Trial Chamber to be an aggravating factor.

iii. Aggravating Circumstances

9911. para. 109: The Trial Chamber agrees that all of the factors submitted by the Prosecution are aggravating factors.

9912. para. 110: The Trial Chamber finds that Kanu's failure to prevent or punish his subordinates is an element of individual criminal responsibility under Article 6(3) of the Statute and therefore cannot be considered an aggravating factor. [137]

9913. para. 111: However, the Trial Chamber does consider Kanu's leadership positions in Bombali and Freetown and the Western Area to be an aggravating factor with regards to his Article 6(1) liability for unlawful killings and mutilations.

9914. para. 112: Furthermore, the Trial Chamber is satisfied that Kanu's demonstration of amputations in Freetown and his order to commit killings at Rogbalan Mosque, a place of worship, are aggravating factors with regard to those crimes.

iv. Mitigating Circumstances

9915. para. 115: The Kanu Defence submits that Kanu had a relatively low position throughout the conflict, even in Freetown being only third in command and consequently he bore less responsibility. The Kanu Defence recalls Article 1 (1) of the Statute, which empowers the Special Court to prosecute persons bearing the greatest responsibility for the crimes committed in Sierra Leone.[139] The Kanu Defence argues that although the Trial Chamber has found that this is not a jurisdictional requirement, it is a principle which should nevertheless be reflected in sentencing. [140]

9916. para. 116: The Trial Chamber considers that Kanu's position as third in command of armed forces was not a lowly one. He was not a foot soldier nor was he subject to duress. The fact that there were two persons superior to him does not lessen his culpability for crimes committed and does not mitigate his sentence.

9917. para. 117: The Kanu Defence emphasises that the responsibility of Kanu under Article 6(3) for rape is limited to the failure to prevent or punish the crimes and his sentence must reflect his culpability for this omission, rather than for the crimes themselves. [141]

9918. para. 118: The Trial Chamber takes into consideration that Kanu was convicted for rape pursuant to Article 6(3) and not Article 6(1). Nonetheless, this distinction does not mitigate in his favour.

9919. para. 119: The Kanu Defence contends that Kanu has a girlfriend who wishes to marry him and this family consideration should be taken into account. In addition, the Kanu Defence submits that the "harsh environment of this specific armed conflict as a whole" is a mitigating factor. [142]

9920. para. 120: The Trial Chamber finds nothing in Kanu's family background that would mitigate his sentence.

9921. para. 121: The Kanu Defence recalls the Trial Chamber's findings that on several occasions Kanu followed or reiterated the orders of Brima, submitting that this lesser culpability is relevant to sentencing. [143]

9922. para. 122: There is no evidence that Kanu acted under duress. The fact that Kanu voluntarily reiterated criminal orders previously issued by Brima cannot be considered as mitigation.

9923. para. 123: The Kanu Defence submits that the increasing chaotic climate prevailing in Freetown after the troops lost State House during the January 1999 invasion affected Kanu's culpability in relation to the crimes committed subsequently. The Kanu Defence submits that the difficult circumstances in which a convicted person operates is a mitigating factor, citing the Grit Trial Judgement in support of this proposition. [144]

9924. para. 124: The Trial Chamber found that despite the deterioration of the situation in Freetown following the loss of State House by the renegade SLA, Kanu maintained effective control over his troops, he was aware of the crimes committed by his troops, and he took no steps to prevent or punish the troops under his command for the crimes they committed. [145] The battlefield is always chaotic and therefore this fact cannot be considered as mitigating.

9925. para. 125: The Kanu Defence contends that Kanu joined the military at 25 years of age and only received six months training. The Kanu Defence argues that limited military experience is a mitigating factor. [146]

9926. para. 126: The Trial Chamber finds that limited or lack of military training is not a mitigating factor.

9927. para. 127: In relation to Kanu's conviction on Count 12 (recruitment and use of child soldiers), the Kanu Defence refers to expert evidence heard during the trial establishing that the use of children under the age of 15 in the Sierra Leonean military in recent decades was widespread and a normal practice and there was no proper training given to servicemen to make them aware of the international prohibition on such conduct. While the Kanu Defence accepts that mistake of law is not a defence, it submits that Kanu's absence of knowledge of the criminality of the conduct is a substantial mitigating factor. [147]

9928. para. 128: The Trial Chamber found in the instant case that young children were forcibly kidnapped from their families, often drugged and forcibly trained to commit crimes against civilians. In those circumstances, the Trial Chamber cannot accept that Kanu did not know that that he was committing a crime in recruiting and using these children for military purposes.

9929. para. 129: The Kanu Defence reiterates its argument, presented throughout the trial, that Kanu's responsibilities towards civilians m the jungle entailed their protection and this should be considered a mitigating factor. [148]

9930. para. 130: This submission is contrary to the Trial Chamber findings and is without merit.

9931. para. 131: The Kanu Defence submits that the Trial Chamber's delay until the Judgement in deciding that joint criminal enterprise was not properly pleaded made the proceedings against Kanu unnecessarily long, as it resulted in additional evidence and occupied a substantial amount of time in preparation and the presentation of the parties' cases. The Kanu Defence recalls that it raised objections concerning the deficiency of the Indictment in that respect on several occasions from pre-trial proceedings until the submission of Final Briefs; and argues that disproportionately lengthy proceedings are a recognised mitigating factor in the jurisprudence of the ICTY and the European Court of Human Rights. [149]

9932. para. 132: The Trial Chamber holds that the appropriate time to consider its finding on joint criminal enterprise at the end of the trial when all the evidence and final submissions had been considered. The Trial Chamber therefore finds the Defence argument without merit.

9933. para. 133: The Kanu Defence submits that Kanu's "loyal and faithful" service to the Army, described in his discharge booklet (exhibit D-ll), and absence of prior convictions are mitigating factors. [150] In addition, the Kanu Defence submits that Kanu was a person of good character who

assisted vulnerable people in the jungle, referring to evidence to this effect contained in an unsworn, signed witness statement annexed to the Sentencing Brief. [151]

9934. para. 134: The Trial Chamber does not consider Kanu's service in the Army without incident to be a mitigating factor. [152] This was merely his duty.

9935. para. 135: The Kanu Defence recalls evidence at trial to the effect that the overthrow of the AFRC Government and the reinstatement of the Kabbah Government in Freetown in February 1998 was in breach of the Conakry Accord signed between ECOWAS and Johrmy Paul Koroma, which provided for a peaceful handover of power to Kabbah in May 1998. The Kanu Defence submits that this breach put Kanu, as a member of the AFRC Government, "in a dilemma" which mitigates his role in subsequent events. [153]

9936. para. 136: The Trial Chamber finds no merit whatsoever in the Defence submissions with regard to the alleged breach of the Conakry Accord.

9937. para. 137: The Kanu Defence submits that Kanu's trial by the Special Court has "circumvented" the amnesty granted to him as an ex-combatant and this factor should be taken into account as mitigation. [154]

9938. para. 138: The Trial Chamber notes that Article 10 of the Statute states that "an amnesty granted [...] shall not be a bar to prosecution". The Trial Chamber recalls that the Appeals Chamber has addressed legality of amnesties for international crimes and found that the grant of such amnesties violates erga omnes obligations under international law. [155] The Trial Chamber therefore finds no merit in the Defence submission.

d. Remorse

9939. para. 139: The Trial Chamber finds that the statement made by Kanu at the sentencing hearing failed to express any remorse whatsoever for his crimes. [156]

(c) Disposition

9940. FOR THE FOREGOING REASONS, THE TRIAL CHAMBER UNANIMOUSLY

> SENTENCES Alex Tamba Brima to a SINGLE TERM OF IMPRISONMENT OF FIFTY YEARS for all the Counts on which he has been found GUILTY. Credit shall be given to him for any period during which he was detained in custody pending this trial;

> SENTENCES Ibrahim Bazzy Kamara to SINGLE TERM OF IMPRISONMENT OF FORTY FIVE YEARS for all the Counts on which he has been found GUILTY. Credit shall be given to him for any period during which he was detained in custody pending this trial;
>
> SENTENCES Santigie Borbor Kanu to SINGLE TERM OF IMPRISONMENT OF FIFTY YEARS for all the Counts on which he has been found GUILTY. Credit shall be given to him for any period during which he was detained in custody pending this trial.

2. Appellate Judgment

The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu, SCSL-2004-16-A, Judgement, 22 February 2008

(a) Standard of Review on Appeals Relating to Sentence

9941. para. 308: Article 19 of the Statute limits the penalty that a Trial Chamber can impose upon a convicted person (other than a juvenile) to "imprisonment for a specified term of years." It further provides that the Trial Chamber shall, in determining the "terms of imprisonment," as appropriate, have recourse to the sentencing practices of the International Criminal Tribunal for Rwanda ("ICTR") and the national courts of Sierra Leone. The Statute requires the Trial Chamber to take into account such factors as the gravity of the offence and the individual circumstances of the convicted person in imposing sentences.[470]

9942. para. 309: The determination of an appropriate sentence being at the discretion of the Trial Chamber, the Appeals Chamber will only revise a sentence where the Trial Chamber has committed a discernible error in exercising its discretion or has failed to follow the applicable law. To show that the Trial Chamber committed a discernible error in exercising its discretion:

> "the Appellant has to demonstrate that the Trial Chamber gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion, or that the Trial Chamber's decision was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the Trial Chamber must have failed to exercise its discretion properly."[471]

(b) Excessive Sentences: Ground Twelve of Brima's Appeal and Ground Ten of Kamara's Appeal

9943. para. 310: Brima alleges that the Trial Chamber erred by imposing a global sentence of fifty years, that it is "excessively harsh and disproportionate," and that it is inconsistent with the sentencing guidelines of the ICTY and the ICTR.[472] Kamara's Tenth Ground of Appeal argues

that the Trial Chamber was required by Article 19(1) of the Statute to consider the sentencing practices in the ICTR and the national courts of Sierra Leone.[473] Kamara further argues that a sentence of 45 years is inconsistent with the penalties that have been imposed by the ICTR.[474]

9944. para. 311: Article 19(1) of the Statute provides that the "Trial Chamber, as appropriate, shall have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone." The phrase "where appropriate" shows that the Trial Chamber has a discretion in determining when to have recourse to sentencing practices in the two courts.

(c) Mitigating Factors: Ground Nine of Kamara's Appeal and Grounds Eleven, Fifteen, Sixteen, Seventeen and Eighteen of Kanu's Appeal

9945. para. 312: The Appellants make two distinct submissions with regard to mitigating factors. First, that the Trial Chamber did not consider mitigating factors and second, that particular mitigating factors were not given adequate weight.[475]

9946. para. 313: Rule 101(B) of the Rules provides that the "Trial Chamber shall take into account the factors mentioned in Article 19(2) of the Statute, as well as such factors as: …any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction." Brima and Kanu argue that the Trial Chamber failed to consider mitigating factors.[476]

9947. para. 314: In the view of the Appeals Chamber an appellant challenging the weight given by a Trial Chamber to a particular mitigating circumstance has the duty of showing that the Trial Chamber abused its discretion.

9948. para. 315: The mere recital of mitigating factors, as the Appellants have done, without concrete arguments, does not suffice to discharge the burden of demonstrating that the Trial Chamber abused its discretion.[477]

(d) Double-Counting, Gravity of the Offence and Aggravating Factors: Ground Twelve of Brima's Appeal

9949. para. 316: Brima submits that the Trial Chamber erred by considering the following factors in determining the gravity of the offence as well as aggravating factors:

> "The brutality and heinousness of the crimes such as the drugging of child soldiers, brutal gang rapes, lengthy periods of enslavement, the burning alive of civilians and amputations."

9950. para. 317: Although the issue of double-counting was only raised by Brima, it is in the interest of justice for the Appeals Chamber to consider the issue in relation to Kanu and Kamara as well. As the Trial Chamber notes in the Sentencing Judgment, "where a factor has already been taken into account in determining the gravity of the offence, it cannot be considered additionally as an aggravating factor . . . ."[478] This prohibition is well established in the case law of the international criminal tribunals.[479]

9951. para. 318: In *Nikolić*, the ICTY Appeals Chamber determined that the Trial Chamber had double-counted by repeating facts concerning the accused's general role in the offences.[480] However, the Appeals Chamber determined that there was no double-counting where the Trial Chamber considered the impact of the crimes on the victim in one section and the vulnerability of the victims in the other section.[481]

9952. para. 319: The Appeals Chamber notes that there were instances of double-counting in the Sentencing Judgment.[482]

9953. para. 320: Although the Trial Chamber made an error by double-counting, the Appeals Chamber does not consider that this error had a significant impact upon the Appellants' sentences.

(e) Kanu's Eighth Ground of Appeal: Cumulative Convictions and Sentence

(i) Submissions of the Parties

9954. para. 321: In his Eighth Ground of Appeal, Kanu submits that the Trial Chamber erred in law in imposing a global sentence of fifty years. He argues that the term of imprisonment shows that the cumulative convictions entered against him were not discounted for sentencing purposes [483] and that the sentence imposed on him reflects the number of convictions rather than the underlying criminal conduct.[484] Kanu further submits that a more appropriate penalty that reflects his criminal conduct and not the number of convictions should replace the sentence imposed on him. In response, the Prosecution contends that the Trial Chamber was under no obligation to discount the cumulative convictions entered against Kanu for sentencing purposes.[485]

(ii) Discussion

9955. para. 322: The Trial Chamber stated that the Special Court Statute permits it to impose a single sentence. It added that in exercising its discretion whether to impose a single sentence, the

governing criteria is that the final or aggregate sentence should reflect the totality of the culpable conduct, or generally, that it should reflect the gravity of the offences and the overall culpability of the offender, so that it is both just and appropriate."[486] The Trial Chamber then explained that "in the present case the Trial Chamber finds it is appropriate to impose a global sentence for the *multiple convictions* in respect of Brima, Kamara and Kanu."[487]

9956. para. 323: In the Sentencing Judgment, the Trial Chamber enumerated all criminal acts for which Kanu was found responsible under Article 6(1) of the Statute and also referred to the gravity of the criminal conduct of his subordinates throughout Bombali District, Freetown and other parts of the Western Area for which he was found liable under Article 6(3) of the Statute. The emphasis placed on Kanu's criminal acts demonstrates that the Trial Chamber ascertained the gravity of the offences in light of the individual criminal acts rather than in light of the multiple Counts for which Kanu was convicted. This approach ensured that the sentence encompasses Kanu's, overall, criminal conduct.

9957. para. 324: The Appeals Chamber finds that in imposing sentence, the Trial Chamber considered the overall criminal conduct of Kanu, rather than the number of convictions entered against him.

9958. para. 325: The Appeals Chamber thus finds no error in the Trial Chamber's approach that would warrant its interference with the sentence imposed. Ground Eight of Kanu's Appeal therefore fails.

(iii) Sentence: General Conclusion

9959. para. 326: Having considered all the Grounds of Appeal relating to the Sentencing Judgment of the Trial Chamber, the Appeals Chamber is satisfied that the Trial Chamber has overall properly exercised its discretion within the provisions of the Statute of the Court.

9960. para. 327: Article 19(2) of the Statute states as follows:

> In imposing the sentences, the Trial Chamber should take into account such factors as the **gravity** of the offence and the individual circumstances of the convicted person (emphasis added).

9961. para. 328: The Trial Chamber, in applying this provision to the case, had this to say:

> Brima, Kamara and Kanu have been found responsible for some of the most heinous, brutal and atrocious crimes ever recorded in human history. Innocent civilians – babies, children, men and women of all ages – were murdered by being shot, hacked to death, burned alive, beaten to death. Women and young girls were

> gang raped to death. Some had their genitals mutilated by the insertion of foreign objects. Sons were forced to rape mothers, brothers were forced to rape sisters. Pregnant women were killed by having their stomachs slit open and the foetus removed merely to settle a bet amongst the troops as to the gender of the foetus. Men were disembowelled and their intestines stretched across a road to form a barrier. Human heads were placed on sticks on either side of the road to mark such barriers. Hacking off the limbs of innocent civilians was commonplace. The victims were babies, young children and men and women of all ages. Some had one arm amputated, others lost both arms. For those victims who survived an amputation, life was instantly and forever changed into one of dependence. Most were turned into beggars unable to earn any other living and even today cannot perform even the simplest of tasks without the help of others. Children were forcibly taken away from their families, often drugged and used as child soldiers who were trained to kill and commit other brutal crimes against the civilian population. Those child soldiers who survived the war were robbed of a childhood and most of them lost the chance of an education.[488]

The Appeals Chamber is, therefore, satisfied that having regard to that finding, the Trial Chamber was justified in imposing a prison sentence of fifty (50) years on the Appellant Alex Tamba Brima, forty-five (45) years on the Appellant Brima Bazzy Kamara, and fifty (50) years on Santigie Borbor Kanu.

9962. para. 329: The Appeals Chamber finds no cause to interfere with the exercise by the Trial Chamber of its discretion in sentencing the Appellants.

9963. para. 330: In the result the Appellants Appeal against sentence fails.

(f) Disposition

9964. For the foregoing reasons, THE APPEALS CHAMBER

> […..]UNANIMOUSLY;
>
> WITH RESPECT TO BRIMA'S GROUNDS OF APPEAL;
>
> [….] AFFIRMS the sentence of fifty (50) years imprisonment imposed by the Trial Chamber;
>
> WITH RESPECT TO KAMARA'S GROUNDS OF APPEAL;
>
> [….] AFFIRMS the sentence of forty-five (45) years imprisonment imposed by the Trial Chamber;
>
> WITH RESPECT TO KANU'S GROUNDS OF APPEAL;
>
> [….] AFFIRMS the sentence of fifty (50) years imprisonment imposed by the Trial Chamber;

D. CDF

1. Sentencing Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-T, Sentencing Judgement, 9 October 2007

(a) Preliminary Issues

9965. para. 11: The Chamber, in this process, was seized of the Defence Request for Leave to Supplement the Fofana Sentencing Brief,[6] filed on the 14th of September 2007, in which the Fofana Defence requested leave to substitute a signed version of a statement given by Simon Arthy for the unsigned version of this statement that it had appended as Annex A of its Sentencing Brief. The Chamber grants this request.

9966. para. 12: During the Sentencing Hearing on the 19th of September 2007, the Chamber noted that it was seized of the Prosecutor's Response to Defence Request for Leave to Supplement the Fofana Sentencing Brief.[7] The Chamber gave the Parties the opportunity to make oral submissions on this issue, in which the Defence sought to have admitted six statements and to call one witness, Frances Fortune, to attest to the good character of Moinina Fofana.[8] The Prosecution objected to the admission of these statements on the basis that they introduced new evidence, much of which went to proof of the acts and conduct of the Accused, and that it would be prejudiced as it would have no opportunity to cross-examine the witnesses.[9] It also objected to the calling of Frances Fortune as a witness on the basis that her affidavit was taken from a bail application in 2004 and raised an issue of bias.[10] The Fofana Defence submitted that the statements related to the conduct of Fofana in promoting peace and reconciliation which occurred during the post mid-1998 era, and therefore after the commission of the crimes for which he has been convicted.[11]

9967. para. 13: The Chamber made an oral ruling that the documents annexed to both the Prosecution and Defence Briefs were to be admitted insofar as they assisted the Chamber to establish the character of the Accused. However, the Chamber further ruled that any statements included in those documents that go to the acts and conduct of the Accused, as they relate to the subject of the Judgement, were inadmissible and would be disregarded by the Chamber in the process of evaluating the said documents. The Chamber also ruled that it did not deem it necessary for witnesses to be called at this stage, and accordingly, denied the Fofana Defence application to call Frances Fortune.[12]

(b) Applicable Law

(i) Applicable Provisions

9968. para. 25: Article 19 of the Statute and Rules 100 and 101 of the Rules contain provisions relevant to guiding the Chamber in determining an appropriate sentence. They provide as follows:

> Article 19- Penalties
>
> 1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.
>
> 2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
>
> Rule 100 - Sentencing Procedure
>
> (A) If the Trial Chamber convicts the accused or the accused enters a guilty plea, the Prosecutor shall submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence no more than 7 days after such conviction or guilty plea. The defendant shall thereafter, but no more that 7 days after the Prosecutor's filing submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.
>
> (B) Where the accused has entered a guilty plea, the Trial Chamber
>
> shall hear submissions of the parties at a sentencing hearing. Where the accused has been convicted by a Trial Chamber, the Trial Chamber may hear submissions of the parties at a sentencing hearing. (C) The sentence shall be pronounced in a judgement in public and in the presence of the convicted person, subject to Rule 102(B).
>
> Rule 101 - Penalties
>
> (A) A person convicted by the Special Court, other than a juvenile offender, may be sentenced to imprisonment for a specific number of years.
>
> (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 19 (2) of the Statute, as well as such factors as:
>
> (i) Any aggravating circumstances;
>
> (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9 (3) of the Statute.

(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

(D) Any period during which the convicted person was detained in custody pending his transfer to the Special Court or pending trial or appeal, shall be taken into consideration on sentencing.

(ii) Sentencing Objectives

9969. para. 26: According to the jurisprudence of the International Criminal Tribunals on this subject, the primary objectives of sentencing are retribution, deterrence and rehabilitation.[39] In the context of international criminal justice, retribution should:

> not be understood as fulfilling a desire for revenge, but as duly expressing the outrage of the international community at these crimes.[...] Accordingly, a sentence of the International Tribunal should make plain the condemnation of the international community of the behaviour in question and show that the international community was not ready to tolerate serious violations of international humanitarian law and human rights.[40]

9970. para. 27: The Chamber here refers and adopts the definition of retribution provided by Lamer J. of the Supreme Court of Canada, who held that:

> Retribution, in a criminal context, by contrast [to vengeance) represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the international risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more.[41]

9971. para. 28: Although rehabilitation is considered as an important element in sentencing, it is of greater importance in domestic jurisdictions than in International Criminal Tribunals.[42]

9972. para. 29: The Chamber notes the content of Security Council Resolution No. 1315 (2000), which provides as follows:

> [...] in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace.43 The Chamber takes these objectives into consideration in determining the sentences to be meted out to the Accused.

9973. para. 30: The Chamber also endorses the principle that:

> One of the main purposes of a sentence imposed by an international Tribunal is to influence the legal awareness of the accused, the surviving victims, their relatives, the witnesses and the general public in order to reassure them that the legal system is implemented and enforced. Additionally, the process of sentencing is intended to convey the message that globally accepted laws and rules have to be accepted byeveryone.[44]

9974. para. 31: In fact, the sentence imposed must be individualized and proportionate to the conduct of the Accused.[45]

(c) Sentencing Factors

9975. para. 32: The Chamber notes that Article 19 and Rule 101(B) stipulate that certain factors have to be considered in determining an appropriate sentence. These include the gravity of the offence, the individual circumstances of the Accused, any aggravating and mitigating factors, and where appropriate, the general sentencing practices of the ICTR and of the national courts of Sierra Leone.

(i) Gravity of Offence

9976. para. 33: The Chamber is of the view that the "gravity of the offence" is an important principle in determining the sentence to be imposed by the Court. The determination of the gravity of the offence, which has been regarded as the "litmus test for the appropriate sentence",[46] requires a "consideration of the particular circumstances of the case, as well as the form and degree of participation of the Accused in the crime".[47] In considering the gravity of the offence, the Chamber has taken into account such factors as the scale and brutality of the offences committed,[48] the role played by the Accused in their commission,[49] the degree of suffering or impact of the crime on the immediate victim, as well as its effect on relatives of the victim,[50] and the vulnerability and number of victims.[51]

9977. para. 34: In assessing the role of the Accused in the crime, the Chamber has taken into account the mode of liability under which the Accused was convicted, as well the nature and degree of his participation in the offence. In particular, the Chamber has considered whether the Accused was held liable as an indirect or a secondary perpetrator.[52] In assessing the gravity of offences for which the Accused was convicted as a superior, the Chamber has considered the gravity of the underlying offence and the gravity of the conduct of the Accused in failing to prevent or punish the crimes committed by the subordinate.[53]

9978. para. 35: The Chamber is of the opinion however, that the factors it has taken into account in assessing the gravity of the offence, cannot, in addition, be taken into account as aggravating

circumstances.[54] Similarly, the Chamber takes the view that factors which it considers and accepts to lessen the gravity of the offence, cannot be taken into account as mitigating circumstances.

(ii) Aggravating Circumstances

9979. para. 36: Aggravating factors must be shown to have been established by the Prosecution beyond a reasonable doubt.[55] Only circumstances directly related to the commission of the offence charged, and for which the Accused has been convicted, can be considered to be aggravating.[56] If a particular circumstance is an element of the underlying offence, it cannot be taken into account as an aggravating factor.[57]

9980. para. 37: We observe that since the Statute and the Rules do not exhaustively list the circumstances that the Chamber may consider to be aggravating, the courts have, through their Decisions and Judgements, developed jurisprudence on the factors that may be considered as aggravating. These include the leadership role of the Accused,[58] premeditation and motive,[59] a willing and enthusiastic participation in the crime,[60] and the length of time during which the crime was committed.[6l]

9981. para. 38: The Chamber is of the view that the position of leadership of an Accused held criminally responsible for a crime under Article 6(1) of the Statute, can be considered to be an aggravating circumstance.[62] However, if an Accused has been found liable under Article 6(3), his leadership position cannot be considered by the Chamber as an aggravating factor as it is in itself a constitutive element of the offence.[63] Where the Accused has actively abused his position of command or participated in the crimes of his subordinates however, such conduct can be considered to be aggravating.[64]

9982. para. 39: Breach of trust or authority, where the Accused was in a position that carries with it a duty to protect or defend the victims, such as in the case of a government official, police chief or commander, can be an aggravating factor, and even where the Accused held no official position of authority, it is an aggravating factor, if he held a position of prominence or trust in the community.[65]

(iii) Mitigating Circumstances

9983. para. 40: Mitigating factors must be established by the Defence on a balance of probabilities.66 Under Rule 101(B), the only mitigating circumstance that the Chamber is required to consider is the substantial cooperation of the Accused with the Prosecutor. The Chamber, however, has the discretion to consider other factors or circumstances in mitigation, such as the

expression of remorse,[67] good character with no prior convictions,[68] personal and family circumstances,[69] behaviour and conduct subsequent to the conflict, particularly with respect to promoting peace and reconciliation,[70] good behaviour in detention,[71] and assistance to detainees or victims.[72] The Chamber has also considered the prevailing circumstances operating at the time of the commission of the crimes, and the motive of the Accused in determining whether there should be a mitigation of the sentence.

(d) Sentencing Practice of Other International Tribunals

(i) Sentencing Practice at other International Tribunals

9984. para. 41: Article 19(1) directs the Chamber to consider, where appropriate, the sentencing practices adopted at the ICTR. In their written and oral submissions, the Parties also drew the Chamber's attention to jurisprudence from the International Criminal Tribunal for the Former Yugoslavia ("ICTY").[73] The Chamber is of the view that the sentencing practice of both international tribunals is instructive, and has considered these practices where appropriate. However, it is also aware of the limitations of the use that can be made of the sentencing practices of these tribunals. In particular, it notes that the practice of imposing global sentences at both tribunals makes it difficult to ascertain the sentence imposed for each individual crime. Moreover, the Chamber notes that many of the sentences at the ICTR were imposed in relation to the crime of genocide, which is not an offence within the jurisdiction of the Special Court.

(ii) Sentencing Practice in Sierra Leone

9985. para. 42: Article 19(0 authorizes the Trial Chamber to consider, where appropriate, the sentencing practices of Sierra Leonean domestic courts. The Prosecution contends that in determining the gravity of the offence, the Chamber should consider that the offences for which the Accused have been found guilty, would attract the death penalty or life imprisonment under Sierra Leonean law.[74] Both Fofana and Kondewa submit that given that the Accused were not convicted of any offences under Article 5 of the Statute which incorporates offences under Sierra Leonean legislation, the court should not consider Sierra Leonean sentencing practice.[75]

9986. para. 43: In this regard, the Chamber notes that the Accused were neither indicted nor convicted for any of the offences enumerated under Article 5 of the Statute. Furthermore, the Statute of the Special Court does not provide for either capital punishment or imposition of a "life sentence", which are the punishments that the most serious crimes under Sierra Leonean law attract. For these reasons, the Chamber finds that it would be inappropriate to rely on the

sentencing practices of Sierra Leonean Courts in determining the punishment to be imposed on either Fofana or on Kondewa.

(e) Determination of Sentence

(i) Deliberations

9987. para. 44: The Chamber has considered both the Parties' written briefs and their oral submissions, made in court during the Sentencing Hearing, as they relate to the gravity of the offence, as well as any aggravating or mitigating circumstances. Only those factors that the Chamber has found to be relevant in the determination of sentence, however, have here been explicitly discussed by the Chamber.

(ii) Gravity of the Offences – Fofana

9988. para. 45: Fofana was convicted on the basis of Article 6(1) and Article 6(3). Specifically, the

9989. Chamber found him guilty of the following:

1. Aiding and abetting pursuant to Article 6(1) of the Statute for Counts 2, 4 and 7 for the Tongo Crime Base;

2. Failure to prevent pursuant to Article 6(3) of the Statute for Counts 2, 4 and 7 for the Koribondo Crime Base; and

3. Failure to prevent pursuant to Article 6(3) of the Statute for Counts 2, 4, 5 and 7 for the Bo District Crime Base.[76]

9990. para. 46: With respect to the crimes for which Fofana was found liable under Article 6(3), the Chamber has examined the gravity of the crimes committed by subordinates under his effective control. Many of these crimes, as described in the Judgement, were of a very serious nature, and were committed against innocent civilians. The Chamber considers actions such as the mutilation and the targeted killing of Umba civilians77 and the killing and mutilation of Chief Kafala (whom the CDF/Kamajors considered a collaborator) in Koribondo,[78] to be indicative of the brutality of the offences committed by Fofana's subordinates. The Chamber also notes the gruesome murder of two women in Koribondo who had sticks inserted and forced into their genitals until they came out of their mouths. The women were then disembowelled, and while their guts were used as checkpoints, parts of their entrails were eaten.[79]

9991. para. 47: The Chamber also finds that many of the offences for which Fofana was convicted under Article 6(1) were committed on a large scale and with a significant degree of brutality. In particular, the Chamber notes the murder of 150 Loko, Limba and Temne tribe members in Talama,[80] the killings of 20 men on the 15th of January 1998 at the NDMC Headquarters in Tongo, who were hacked to death with machetes,[8l] and the killing of 64 civilians in Kamboma, who were placed in two separate lines and killed, after which their corpses were rolled into a swamp,[82] as indicative of the scale and brutality of the crimes that Fofana was found to have aided and abetted in the Tongo Field area. Furthermore, the Chamber finds that the crimes were particularly serious insofar as they were committed against unarmed and innocent civilians, solely on the basis that they were unjustifiably perceived and branded as "rebel collaborators".

9992. para. 48: The Chamber notes that many of the victims of these crimes were young children and women, and therefore belong to a particularly vulnerable sector of society. For instance, we note our findings of the hacking to death by the CDF/Kamajors of a boy named Sule at a checkpoint in the Tongo area,[83] the murder of a 12 year old boy in Talama[84], the murder of an unidentified woman who was alleged to have cooked for the rebels in Bo, and the atrocious murder of the two women in Koribundo as described earlier.[85]

9993. para. 49: The Chamber considers these crimes to have had a significant physical and psychological impact on the victims of such crimes, on the relatives of the victims, and on those in the broader community. The testimony of witnesses heard by the Chamber during the trial, and appended to the Prosecution Brief in Annex D, indicates the impact which events such as amputations and the loss of family members have had on the lives of victims and witnesses.[86] As appropriately described and summarized by our sister Trial Chamber II, "victims who had their limbs hacked off not only endured extreme pain and suffering, if they survived, but lost their mobility and capacity to earn a living or even to undertake simple daily tasks. They have been rendered dependent on others for the rest of their lives".[87] In particular, the Chamber notes the lasting effect of these crimes on victims such as TF2-0 15, who was the only survivor of an attack on 65 civilians who were hacked to death by machetes or shot, and who was himself hacked with a machete and rolled into a swamp on top of the dead bodies in the belief that he was dead.[88]

9994. para. 50: With respect to the form and degree of Fofana's participation, the Chamber notes that he was found liable for the crimes in Tongo Field as an aider and abettor under Article 6(1) of the Statute. The jurisprudence of the ICTY and ICTR indicates that aiding and abetting as a mode of liability generally warrants a lesser sentence than that to be imposed for more direct forms of participation.[89] The Chamber also notes that while Fofana was found liable for aiding and

abetting, he was not present at the scenes of the crimes and that the degree of his participation amounted only to encouragement.[90]

9995. para. 51: With respect to the crimes for which Fofana was convicted under Article 6(3), the Chamber has considered the gravity of Fofana's conduct in failing to prevent the crimes. It finds that the gravity of the offence committed by Fofana given his leadership role as a superior who failed to prevent his subordinates from committing crimes, is greater than that of the actual perpetrators of the crimes.[91] In this case, the fact that Fofana's failure to prevent was ongoing, rather than an isolated occurrence, had the implicit effect of encouraging his subordinates to believe that they could commit further crimes with impunity. This factor therefore, in our opinion, increases the seriousness of the crimes for which he has been convicted.[92]

(iii) Gravity of the Offences – Kondewa

9996. para. 52: Kondewa was convicted under Article 6(1) and under Article 6(3). Specifically, the Chamber found him guilty of the following:

4. Aiding and abetting pursuant to Article 6(0 of the Statute for Counts 2, 4 and 7 for the Tongo Crime Base;

5. Failure to prevent pursuant to Article 6(3) of the Statute for Counts 2, 4, 5 and 7 for the Bonthe and Moyamba Crime Bases;

3. Commission (murder) pursuant to Article 6(1) of the Statute for Count 2 for the Talia/Base Zero Crime Base;

4. Commission (enlisting child soldiers) pursuant to Article 6(1) of the Statute for Count 8.

9997. para. 53: With respect to the crimes for which Kondewa was found liable under Article 6(3), the Chamber has examined the gravity of the crimes committed by the subordinates under his effective control. Many of these crimes, as described in the Judgement, were of a serious nature. The Chamber notes, in particular, that the CDF/Kamajors in Bonthe stripped Lahia Ndokoi Koroma naked and tied him,[93] a particularly humiliating and degrading act. With respect to Kondewa's liability under Article 6(1), he was convicted for the same crimes as Fofana in the Tongo area; the scale and the barbaric nature of such crimes has been described above.[94]

9998. para. 54: As is the case with Fofana, the Chamber notes that many of the victims of these crimes were young children and women, and were therefore particularly vulnerable. It notes, in particular, the two incidents involving children in the Tongo area described above with respect to Fofana,[95] and the killing of a boy called Bendeh Battiama by Rambo Conteh in Bonthe.[96]

9999. para. 55: With respect to the offence of the enlistment of child soldiers for which Kondewa was convicted, the Chamber notes the particular vulnerability of TF2-021, who was eleven years old when he was captured by the CDF/Kamajors and forcibly trained to kill and to commit crimes against innocent civilians.[97] At the age of eleven, Witness TF2-021 was initiated into the Kamajor society and, at the age of thirteen, he was initiated by Kondewa into the "Avondo Society", a notorious group of Kamajors.[98] The Chamber notes the commentary of the ICRC that "child soldiers are deprived of a family, deprived of an education and all the advantages that would otherwise help them be children and prepare them for adulthood [...] In the end, child soldiers will suffer deep trauma, which persists long after the fighting has stopped".[99]

10000. para. 56: Further, as noted by the Chamber with respect to Fofana, it considers these crimes to have had a significant physical and psychological impact on the victims of such crimes, on the relatives of the victims, and on those in the broader community.[100]

10001. para. 57: With respect to the form and degree of Kondewa's participation in the crimes committed, the Chamber finds that while he was held liable on the basis of aiding and abetting under Article 6(1) and as a superior under Article 6(3), he was also held liable for the direct perpetration of some acts, including the shooting of a town commander in Talia/Base Zero, and for committing the offence of the enlistment of child soldiers.

10002. para. 58: Furthermore, with respect to his liability under Article 6(3), the Chamber finds, as it did with Fofana, that given his leadership role as a superior who failed to prevent his subordinates from committing crimes, the gravity of the offence committed by Kondewa is greater than that of the actual perpetrators of the crimes. The Chamber finds that in this case, the fact that Kondewa's failure to prevent was ongoing, rather than an isolated occurrence, had the implicit effect of encouraging his subordinates to believe that they could commit further crimes with impunity, and therefore increases the seriousness of the crimes for which he has been convicted.

(iv) Aggravating Circumstances

a. Fofana

10003. para. 59: The Chamber has found that Fofana played a central role in the CDF organization.[101] In his capacity as Director of War at Base Zero, he planned war strategies, selected commanders to go to battle, and on occasion, issued orders to such commanders. He also received frontline reports, which went through him before he passed them to Norman. He was also responsible for the receipt and provision of ammunition at Base Zero.[102] The Chamber has found

that Fofana was seen as having power and authority at Base Zero and to be the "overall boss of the commanders".[103]

10004. para. 60: The Chamber considers that, given his role as a former Chiefdom Speaker, a community elder and the CDF National Director of War, Fofana breached a position of trust in committing the offences for which he has been convicted.

b. Kondewa

10005. para. 61: The Chamber has found that, as the High Priest of the CDF organization, Kondewa played an essential role in the leadership of the CDF.[104] He was in charge of initiations, and was held in respect and fear by the Kamajors, who believed that he could protect them from harm. The Chamber has found that no Kamajor would go to war without his blessing.[105] He was one of those who made decisions determining when and where to go to war. He also attended passing out parades and signed the certificates of trainees.[106]

10006. para. 62: The Chamber finds that given the cultural context, Kondewa, in his role as High Priest who blessed the CDF/Kamajors before they went to battle, and as someone widely respected for his mystical powers and abilities to immunize people against harm, held a unique and prominent position in the community. The Chamber therefore finds that he also breached a position of trust in committing the crimes for which he was convicted.

(v) Mitigating Circumstances

a. Fofana - Remorse

10007. para. 63: During the Sentencing Hearing, Counsel for Fofana stated, at the specific request and on behalf of his client:

> [...] Mr Fofana accepts that crimes were committed by the CDF during the conflict in Sierra Leone. Indeed, at least one witness was called on behalf of the Fofana defence, Joseph Lansana, accepting and attesting to crimes committed by the CDF. Mr Fofana deeply regrets all the unnecessary suffering that has occurred in this country.[107]

10008. para. 64: Although Fofana by this statement does not expressly acknowledge his personal participation in the crimes for which the Chamber has convicted him, the Chamber finds that he has clearly expressed empathy with the victims of those crimes.[108]

b. Kondewa - Remorse

10009. para. 65: During the Sentencing Hearing, Kondewa addressed the court and the public in the following terms, "Sierra Leoneans, those of you who lost your relations within the war, I plead for mercy today, and remorse, and even for yourselves."[109] The Chamber finds that although Kondewa did not expressly recognise his own participation in the crimes for which he has been found guilty, the empathy he has shown is real and sincere.

(vi) Lack of Formal Education or Training

10010. para. 66: The Chamber does not consider lack of formal education per se, to be an excuse which would mitigate the severity of punishment. However, the Chamber is aware that both men were propelled in a relatively short period of time, from civilian life to an effective position of authority in a very brutal and bloody conflict, with no adequate training for the roles which they were to play. The Chamber finds that it is only reasonable to take account of the fact that inexperience in difficult situations, does increase the likelihood of making the wrong decisions. Whilst this in no way reduces the gravity of the crimes which were committed, the Chamber recognises it as a factor in mitigation of sentence.

(vii) Subsequent Conduct

10011. para. 67: The Chamber has examined the evidence filed by the Fofana Defence regarding Fofana's conduct subsequent to the time frame in which the crimes he committed occurred. In particular, the Chamber notes the submission of the Defence in relation to Fofana's commitment to and observance of the Lome Peace agreement,[110] and the unchallenged evidence presented by the Defence in relation to his efforts subsequent to that agreement to work without any pay with the NGO community in ensuring that members of the CDF remained committed to the peace process within Sierra Leone.[111] The Chamber also notes the contents of the certificate of good conduct filed by the Officer in Charge of the SCSL Detention Facility, attesting to Fofana's exemplary behaviour whilst in custody during the course of trial.[112] The Chamber commends Fofana's subsequent conduct in fostering the peace process, and recognises it as a factor in mitigation of his sentence.

(viii) Lack of Prior Convictions

10012. para. 68: The Chamber notes that neither Fofana nor Kondewa has any previous convictions. For purposes of sentencing, a clean slate in terms of their criminal records, can be considered as a mitigating circumstance.[113]

(ix) Mitigating Circumstances

a. Necessity as a Mitigating Factor

10013. para. 69: In the course of the Sentencing Hearing, Mr Powles, Learned Counsel for the Defence of Fofana, invited the Chamber to consider the Honourable Justice Thompson's findings on "Necessity" and to factor the same into the Sentencing Judgement as a mitigating circumstance. Mr Powles had this to say:

> [...] the findings and views of Your Brother Judge Bankole Thompson are at the very least a persuasive mitigating factor when considering sentence [...][114]

10014. para. 70: We observe, as Mr. Powles later admitted at this hearing, that the defence of Necessity was never raised by the Defence nor did its applicability to the circumstances of this case, feature for a determination at any stage before the delivery of the Judgement on the 2nd of August 2007.[115] In addition, it is our opinion, that the facts which we have accepted as proven and which form the basis of our findings of guilt against the two Accused in the Judgement, as well as the circumstances surrounding the commission of these offences, do not support nor do they give rise to a defence of Necessity.

(x) Honourable Justice Thompson's Dissenting Opinion

10015. para. 71: In the process of our deliberations for the issuance of this Sentencing Judgment, our colleague and brother, the Honourable Justice Bankole Thompson, provided us with an advance copy of his dissent where he reiterates his stand and upholds the defence of Necessity and in which he had this to say:

> I most respectfully dissent from the said Judgment predicated upon my firm Judicial position taken in my Separate Concurring and Partially Dissenting Opinion (Annex C thereof) delivered on the 2nd day of August 2007, and based specifically on the analysis, considerations, and reasons advanced in Parts Eight and Nine of the said Opinion and consistent with the Dispositions made in Part Ten therein, acquitting the Accused on all Counts of the Indictment.[116]

10016. para. 72: The Chamber observes here that Parts Eight and Nine referred to by the Honourable Justice Thompson relate to the defence of 'Necessity' and that of "Salus Civis Suprema Lex Est' on which he based the acquittal of the Accused Persons; Moinina Fofana on Counts 2, 4, 5 and 7, and Allieu Kondewa on Counts 2, 4, 5,7 and 8 of the Indictment. The Chamber could and would have addressed these defences and their applicability adequately and in greater detail, if as we have already indicated, these issues had been raised by the Parties in the

course of the trial proceedings or at any stage before delivering our Judgement. This would have provided the Chamber the opportunity to address the defences so raised in the Dissenting Opinion in the said Judgement.

10017. para. 73: In this regard, and without going into a detailed analysis at this sentencing stage on the defence of Necessity and its applicability, the Chamber, in arriving at this conclusion, has based its Decision on the fact that the constitutive elements of the defence of Necessity have not been established to sustain it as a defence, as we have found, particularly in this case.[117] The Chamber in this regard and again in arriving at this conclusion, further relies on the law on this subject as applied to the facts and principles established in the celebrated English case of R. v. Dudley and Stephens.[118] In that case, which has served as a foundation for the defence of Necessity in the common law, the Learned Justices decided that the defence of Necessity was unfounded, and sentenced both Accused Persons to death.

10018. para. 74: Applying the precedent of Dudley and Stephens, and the law on this defence, the Chamber, considering the facts and circumstances of this case, concludes that Necessity cannot be sustained as a defence in this case and that by a parity of reasoning, cannot be considered either for purposes of mitigating the sentences because the Chamber opines that it either stands as a defence, or fails on all other grounds or circumstances.

10019. para. 75: The Chamber notes and observes here that Dudley and Stephens was footnoted by the Honourable Justice Thompson in his Dissenting Opinion.[119] In addition and in the same Dissenting Opinion, the Chamber further notes that the Honourable Dissenting Judge himself, quoting from his own book, concedes that "the defence of Necessity bristles with conceptual and doctrinal difficulties" and that "these controversies are still unsettled".[120] According to Stephen, the Honourable Justice Thompson continues, the defence of Necessity is "a subject on which the law of England is so vague" and is "essentially a matter of judicial expediency".[121]

10020. para. 76: The above comments confirm the fragility of this defence in municipal or national systems where it may be applicable. The Chamber considers that it is reinforced and supported in its decision to rule against the propriety and applicability of Necessity as a defence to criminal liability in this case for the reasons that we advanced earlier in this regard and for the considerations that follow with respect to its pertinence and applicability in the domain of International Humanitarian Law.

(xi) Necessity as a Defence in International Humanitarian Law

10021. para. 77: Further to our finding that Necessity is not and cannot be a sustainable defence nor is it a mitigating factor in this case, it is equally the Chamber's view, suffice to say for our purposes here, that it cannot be accepted either, as a defence in cases where Accused Persons are indicted for serious violations of International Humanitarian Law as is the case with the two Accused Persons who we have convicted.

10022. para. 78: In this regard, it is the Chamber's considered opinion that accepting the applicability of the defence of Necessity in prosecutions involving either war crimes or crimes against humanity, would negate the norms and fundamental principles protecting persons not taking part in hostilities and the victims of armed conflicts and consequently, compromise the objectives which International Humanitarian Law seeks to achieve through International instruments and in particular, the Geneva Conventions and Additional Protocols I and II.

10023. para. 79: The Chamber further opines that validating the defence of Necessity in International Criminal Law would create a justification for what offenders may term and plead as a 'just cause' or a 'just war' even though serious violations of International Humanitarian Law would have been committed. This, we observe, would negate the resolve and determination of the International Community to combat these crimes which have the common characteristics of being heinous, gruesome or degrading of innocent victims or of the civilian population that it intends to protect.

10024. para. 80: It is further our view, that the argument of fighting the enemy, the AFRC, as the two Accused Persons indisputably did, in order to restore the ousted democratically elected Government of President Kabbah which we hold is rather a mitigating circumstance, but on which the defence of Necessity has been found to be grounded by the Honourable Justice Thompson in his Dissenting Opinion, we conclude were carefully planned and premeditated killings of innocent and unarmed civilians for which we have found the two Accused Persons guilty. In these circumstances, the Chamber cannot but conclude that such an argument is meretricious and without any foundation.

10025. para. 81: Furthermore, the Chamber is of the opinion that the principle of 'Salus Civis Suprema Lex Est', is more an appropriate concept in legal philosophy on society and the law that neither occupies a visibly recognisable place in criminal proceedings as a defence, nor does it feature as a legal defence that is established and properly recognised as such under the law.

(xii) Prevailing Circumstances

10026. para. 82: The Chamber has taken note of some significant and enlightening precedents on sentencing principles from sister International Criminal Tribunals of the ICTY and ICTR that have been cited by the Parties. However, even though the statutorily oriented sentencing principles in those cases remain relevant in guiding and assisting us to arrive at a decision in this case, it is pertinent to note that there is an important factual and contextual difference and distinction that the Chamber would like to draw between those cases as against this one which we consider relevant and pertinent in scaling the sentences that we are about to hand down on the Accused Persons in relation to the Counts for which we have found them guilty.

(xiii) Historical Background/Prevailing Circumstances

10027. para. 83: The main distinguishing factor is that the acts of the Accused and those of the CDF/Kamajors for which they have respectively been found guilty, did not emanate from a resolve to destabilise the established Constitutional Order. Rather, and on the contrary, the CDF/Kamajors was a fighting force that was mobilised and was implicated in the conflict in Sierra Leone to support a legitimate cause which, as we have already seen, was to restore the democratically elected Government of President Kabbah which had been illegally ousted through a Coup d'Etat orchestrated and carried out on the 25th of May 1997, by a wing of the Sierra Leone Armed Forces that later constituted and baptised itself as the Armed Forces Revolutionary Council (AFRC).

(xiv) Kamajors alongside the Sierra Leonean Armed Forces

10028. para. 84: The Chamber also finds it necessary to consider a further and additional element on the role of the Kamajors, from the outset of the war in Sierra Leone. In effect, these historically traditional hunters,[123] from the evidence adduced, were comrades in arms with the regular Sierra Leone Armed Forces as early as from the outbreak of the rebel war.[124] They acted as guides to the regular Army and facilitated the war against the rebels.[125] Indeed, even the military regime of the NPRC that seized power in a military Coup in 1992,[126] used them to fight against the rebels and to protect the Constitutional Institutions of Sierra Leone. In this process, and in defence of their communities, the local Chiefs mobilised, enlisted and initiated their young and fit ones, into the Kamajor Society with the sole objective of combating the rebels and preventing the brutal killings of their kith and kin and other atrocities, in addition to protecting their lands and their properties.[127]

10029. para. 85: In executing this legitimate mission however, at a later stage that appears in the Indictment, and instead of limiting themselves and directing these attacks on legitimate military targets and objectives where collateral damage, if any ensued at all, could be perceived as justifiable, the Accused Persons and their Kamajors, as has been elucidated in the factual and legal findings of the Judgement, went beyond these acceptable military and legal limits and carried out killings and other atrocities against unarmed civilians who they characterised and designated as 'rebel collaborators'. We find that these atrocities were perpetrated, even though the evidence clearly established, and we so found, that the victims in fact, were disarrayed Sierra Leoneans including children fleeing for their lives and for safety from the bloody exchange of enemy fire, and further, that these civilian captives or fugitives, were unarmed and were not in the least, participating in hostilities. In fact, we note here that the crimes for which they have been found guilty were perpetrated by the Accused Persons and CDF/Kamajor fighters when combat activities and operations against the enemy AFRC forces were already over.

10030. para. 86: However, although the commission of these crimes transcends acceptable limits, albeit in defending a cause that is palpably just and defendable, such as acting in defence of constitutionality by engaging in a struggle or a fight that was geared towards the restoration of the ousted democratically elected Government of President Kabbah, it certainly, in such circumstances, constitutes a mitigating circumstance in favour of the two Accused Persons.

10031. para. 87: It should be recognised however, that the crimes for which the Chamber has convicted them are grave and very serious, but what, in a sense, atones for this vice is the fact that the CDF/Kamajor fighting forces of the Accused Persons, backed and legitimised by the Internationally deployed force, the ECOMOG, defeated and prevailed over the rebellion of the AFRC that ousted the legitimate Government. This achievement, the Chamber notes, contributed immensely to re-establishing the rule of law in this Country where criminality, anarchy and lawlessness, which the United Nations sought to end and was determined to achieve in adopting Security Council Resolution 1315 (2000),[128] had become the order of the day.

10032. para. 88: We recall here in this regard, that the Learned Lead Counsel for the Defence Team of Allieu Kondewa, Mr Charles Margai, himself a well-informed citizen of this Country, in his submission at the Sentencing Hearing on the 19th of September 2007, re-echoed these sentiments of appreciation for the positive contribution of the Kamajors in ending the rebellion and for facilitating the restoration of democracy, peace and security in this Country.

10033. para. 89: Mr. Margai, in a plea for a lenient sentence for his client Kondewa, and also for Moinina Fofana, had this to say:

> We thank God, My Lords, that the war is over, but this war was described and has been described as the most brutal known to mankind. We should not lose sight of that. If it were not for the sacrifice of the CDF, God knows whether some of us, including my learned friend Kamara, would be here today. That, I submit, My Lord, is a factor to be considered, because, otherwise, if a sentence is severe and there occurs a rebel war, whether in Sierra Leone or elsewhere, government militias are going to ask themselves the question: Is it advisable for us to intervene. If we do, might we not be treated in the same manner as Allieu Kondewa and others.[129]

10034. para. 90: He also stated:

> I believe that what is contained in our brief is comprehensive enough, coupled with the authorities which have been cited, to assist Your Lordships in arriving at a fair, just sentencing that will address future occurrences of a similar nature in a positive light. [....] Considering that he has spent over four years in detention, I believe that a sentence of three years will not be unreasonable. If he had not spent four years, I'm sure Seven years would be appropriate. But having spent four years, I believe three years would be appropriate, at least for the Court not to be seen to act in vain.[130]

10035. para. 91: In this context, the contribution of the two Accused Persons to the establishment of the much desired and awaited peace in Sierra Leone and the difficult, risky, selfless and for a very sizeable number of their CDF/Kamajors, the supreme sacrifices that they made to achieve this through a bloody conflict, is in itself a factor that stands significantly in mitigation in their favour. In fact, the medal awarded to Moinina Fofana after the restoration by the reinstated President Kabbah, is a testimony of gratitude and appreciation of Sierra Leonean society, which the President incarnates.[131]

(xv) Motive of Civic Duty

10036. para. 92: In the course of the sentencing hearing, Fofana requested his Counsel to put across five points to the Chamber, which he feels are in his favour. The first of those points deal with what could be called a motive of civic duty. It was stated by Learned Counsel Powles, as follows:

> Firstly, the CDF was established with the sole aim of protecting the civilian population and restoring the democratically elected Government. These were, similarly, Moinina Fofana's sole reasons and motivating factors in joining the CDF movement.[132]

10037. para. 93: Kondewa, for his part, vowed never to give up any territory under his control to any military government, bur only to the democratically elected Government of President Kabbah.[133] In his *allocutus* to the Judges during the sentencing hearing, Allieu Kondewa,

addressing the Judges directly in his native Mende language after Learned Counsel Margai had addressed the Court on his behalf, had this to say:

> As we were fighting, we fought so that civilians would be secured and democracy would be restored and the staff be given back to President Tejan Kabbah. We all fought for that [...][134]

10038. para. 94: The Chamber is of the opinion that there is nothing in the evidence which demonstrates that either Fofana or Kondewa joined the conflict in Sierra Leone for selfish reasons. In fact, we have found that both Fofana and Kondewa were among those who stepped forward in the efforts to restore democracy to Sierra Leone, and, for the main part, they acted from a sense of civic duty rather than for personal aggrandisement or gain. This factor in addition to others that have been raised in this Judgement has, for each of them, significantly impacted to influence the reduction of the sentence to be imposed for each count.

(f) Conclusion

10039. para. 95: It is our view that a manifestly repressive sentence, rather than providing the deterrent objective which it is meant to achieve, will be counterproductive to the Sierra Leonean society in that it will neither be consonant with nor will it be in the overall interests and ultimate aims and objectives of justice, peace, and reconciliation that this Court is mandated by UN Security Council Resolution 1315,[135] to achieve. The motivation of the Accused in this case, where they fought to reinstate democracy, and the prevailing circumstances in which their crimes were committed, has therefore been taken into consideration by the Chamber in arriving at an appropriate sentence.

10040. para. 96: We again observe, however, that the crimes for which the Accused were tried and convicted remain very serious crimes, and both Fofana and Kondewa will bear the stigma of a conviction after we have pronounced their sentences. The Chamber hopes that this Judgement will send a message to future pro-democracy armed forces or militia groups that notwithstanding the justness or propriety of their cause, they must observe the laws of war in pursuing or defending legitimate causes, and that they must not recruit or use children as agents or instruments of war. It will, in addition, remind them of their obligation to protect civilians who are unarmed and not participating in hostilities, and whose aspiration is only to protection, regardless of their perceived affiliation.

10041. para. 97: The Chamber notes that both the Prosecution and the Fofana Defence recommended that a global sentence be imposed, rather than a separate sentence for each crime.[136]

It further notes that while the Kondewa Defence submitted that separate sentences should be imposed, it recommended a single sentence.[137] While the Chamber recognizes that it has the discretion to impose a global sentence,[138] it has chosen to impose separate sentences for each of the crimes for which Fofana and Kondewa have been convicted because it is our view that this better reflects the culpability of the Accused for each offence for which they were convicted, given that distinct crimes were committed by each Accused in discrete geographical areas.[139]

(g) Disposition

10042. FOR THE FOREGOING REASONS, THE CHAMBER:

SENTENCES Moinina Fofana to the following:

For Count 2 - 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, a TERM OF IMPRISONMENT OF SIX YEARS;

For Count 4 - Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, a TERM OF IMPRISONMENT OF SIX YEARS;

For Count 5 - Pillage, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, a TERM OF IMPRISONMENT OF THREE YEARS;

For Count 7 - Collective Punishments, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, a TERM OF IMPRISONMENT OF FOUR YEARS;

ORDERS that these sentences shall run and be served concurrently.

SENTENCES Allieu Kondewa to the following:

For Count 2 - 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, a TERM OF IMPRISONMENT OF EIGHT YEARS;

For Count 4 - Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, a TERM OF IMPRISONMENT OF EIGHT YEARS;

For Count 5 - Pillage, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, a TERM OF IMPRISONMENT OF FIVE YEARS;

For Count 7 - Collective Punishments, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, a TERM OF IMPRISONMENT OF SIX YEARS;

For Count 8 - Enlisting children under the age of 15 years into armed forces or groups and/or using them to participate actively in hostilities, an other serious violation of international humanitarian law, a TERM OF IMPRISONMENT OF SEVEN YEARS;

ORDERS that these sentences shall run and be served concurrently;

ORDERS that for both Fofana and Kondewa, the sentences shall run from the date each was taken into custody; and, in this regard,

ORDERS that Moinina Fofana shall serve a TOTAL TERM OF IMPRISONMENT of SIX YEARS, and that this takes effect from the 29th of May 2003, when he was arrested and taken into the custody of the Special Court; and further,

ORDERS that Allieu Kondewa (also known as Allieu Musa) shall serve a total TOTAL TERM OF IMPRISONMENT of EIGHT YEARS and and that this takes effect from the 29th of May, 2003, when he was arrested and taken into the custody of the Special Court.

10043. Hon. Justice Bankole Thompson appends a Dissenting Opinion to this Judgement, in which he has indicated that he makes no pronouncement as to the sentence and reaffirms that the defence of Necessity is valid in the peculiar circumstances of this case. The said Opinion is attached to this Judgement as Annex A.

(h) Disposition - Dissenting Opinion Of Hon. Justice Bankole Thompson From Sentencing Judgement Filed Pursuant To Article 18 Of The Statute

10044. Justice Thompson-Dissent, para. 6: I have had the benefit of reading and digesting the Sentencing Judgement in this case, for which opportunity I am immensely grateful to my learned and distinguished colleagues. I commend them for it.

10045. Justice Thompson-Dissent, para. 7: I most respectfully dissent from the said Judgement predicated upon the firm judicial positions taken in my separate Concurring and Partially Dissenting Opinion (Annex C thereto) delivered on the 2nd day of August 2007, and based specifically on the analyses, considerations, and reasons advanced in Parts Eight and Nine of the said Opinion and consistent with the Disposition made in Part Ten therein, acquitting the Accused on all Counts of the Indictment.

(i) Disposition

10046. I, accordingly, make no pronouncement as to sentences.

2. Appellate Judgment

The Prosecutor v. Moinina Fofana and Allieu Kondewa, SCSL-04-14-A, Judgment, 28 May 2008

(a) Standard of Review on Appeals Relating to Sentence

10047. para. 465: The relevant provisions on sentencing are Article 19 of the Statute and Rules 99 to 105 of the Rules. Both Article 19 of the Statute and Rule 101 of the Rules contain provisions for sentencing. According to the provision of Article 19, a Trial Chamber must take into account the gravity of the offence[897] and the individual circumstances of the convicted person. [898] The Statute also provides that in determining the term of imprisonment the Trial Chamber shall have recourse to the practice regarding prison sentences in the ICTR and the national courts of Sierra Leone, as appropriate. According to Rule 101 of the Rules, aggravating and mitigating circumstances shall, *inter alia*, be taken into account. [899] Rule 101(c) of the Rules provides that the Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

10048. para. 466: Appeals against sentence, as appeals from a judgement of a Trial Chamber, are appeals *stricto sensu*. They are not trials de novo.[900] Trial Chambers are vested with broad discretion in determining an appropriate sentence due to their obligation to individualise the penalties to fit the circumstances of the accused and the gravity of the crime.[901] The Appeals Chamber will not lightly overturn findings relevant to sentencing by the Trial Chamber.[902] As a general rule, the Appeals Chamber will not revise a sentence unless the Appellant demonstrates that the Trial Chamber has committed a "discernible error" in exercising its discretion or has failed to follow the applicable law.[903]

10049. para. 467: In the AFRC Appeal Judgment, the Appeals Chamber explained that to demonstrate that the Trial Chamber committed a discernible error in exercising its discretion:

> The Appellant has to demonstrate that the Trial Chamber gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion, or that the Trial Chamber's decision was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the Trial Chamber must have failed to exercise its discretion properly.[904]

(b) Prosecution's Tenth Ground of Appeal: Sentencing

(i) Alleged Refusal to Consider Sentencing Practices of the National Courts of Sierra Leone

10050. para. 468: Article 19(1) of the Statute states: "the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.[905]

10051. para. 469: The Trial Chamber held that it would not give consideration to the sentencing practice in Sierra Leone because Fofana and Kondewa had not been convicted of any crime under Sierra Leone law and because the sentencing practice of Sierra Leone for the convictions in this case would indicate either sentence of death or life imprisonment.[906]

a. Discussion

10052. para. 475: The Appeals Chamber notes that at the time the ICTY Statute took effect, the former Yugoslavia had domestic legislation criminalizing "acts against humanity and international law."[919] Similarly, at the time the ICTR Statute took effect, Rwmda had domestic legislation criminalizing war crimes, crimes against humanity and genocide.[920] In contrast, Sierra Leone has not criminalized war crimes and crimes against humani1y as such, and consequently there is no specifically relevant sentencing practice for a Trial Chamber to refer to.

10053. para. 476: The Special Court has jurisdiction over crimes defined in Sierra Leone law in addition to certain international crimes. Bearing this in mind, the Appeals Chamber is of the view that the best interpretation of the word "appropriate" is that a Trial Chamber is to have recourse to the practice of the ICTR for convictions for war crimes and crimes against humanity and is to have recourse to the national courts in Sierra Leone for convictions under Sierra Leone law contained in Article 5 of the Statute.

10054. para. 477: In the result, the Appeals Chamber concludes that the Trial Chamber did not err in holding that it will not consider the sentencing practice of Sierra Leone.

(ii) Alleged Error in Considering Mitigating Factors

a. Fofana's and Kondewa's Statements at the Sentencing Hearing

10055. para. 478: Under the heading "Remorse," the Trial Chamber stated the following:

> "During the Sentencing Hearing, Counsel for Fofana stated, at the specific request and on behalf of his client: '[...] Mr Fofana accepts that crimes were committed by the CDF during the conflict in Sierra Leone. Indeed, at least one witness was called on behalf of the Fofana defence, Joseph Lansana, accepting and attesting to crimes committed by the CDF. Mr Fofana [...] deeply regrets all the unnecessary suffering that has occurred in this country.[921] Although Fofana by this statement does not expressly acknowledge his personal participation in the crimes for which the Chamber has convicted him, the Chamber finds that he has clearly expressed empathy with the victims of those crimes."[922]

10056. para. 479: In support of this approach to "remorse" as a mitigating circumstance, the Trial Chamber cited the Grit Trial Judgement, noting that in that case:

> "the Chamber held that 'the Appeals Chamber bas held that an accused can express sincere regrets without admitting his participation in a crime, and that this is a factor which may be taken into account. This can be done without an accused having to give evidence or being cross-examined by the Prosecution. In this case, the Accused made no such statement, but throughout the trial, there were a few instances when Defence counsel on his behalf expressed compassion to witnesses for their loss and suffering. The Trial Chamber does not doubt the sincerity of the Accused in expressing empathy with the victims for their loss and suffering, and has taker this sincerity into consideration as a mitigating factor."[923]

10057. para. 480: In relation to Kondewa, the Trial Chamber stated:

> "During the Sentencing Hearing, Kondewa addressed the court and the public in the following terms, 'Sierra Leoneans, those of you who lost your relations within the war, I plead for mercy today, and remorse, and even for yourselves.' The Chamber finds that although Kondewa did not expressly recognise h s own participation in the crimes for which he has been found guilty, the empathy he has shown is real and sincere."[924]

b. Discussion

10058. para. 486: This sub-ground of the Prosecution appeal against sentence presents two questions: (1) must an accused acknowledge his participation in a crime for his statements to be considered real and sincere remorse; and (2) if not, did the Trial Chamber err in considering Fofana's and Kondewa's statements as genuine regret which could mitigate the sentence?

10059. para. 487: The Appeals Chamber is aware of only two cases at the *ad hoc* Tribunals in which the Chamber considered whether an accused's expressions of regret or empathy for victims without acknowledgement of responsibility for the crimes could constitute a mitigating factor. In *Vasiljevic*, the ICTY Appeals Chamber opined that an accused can express sincere regrets without admitting his participation in a crime, and that this could be a factor taken into account by the

Trial Chamber.[934] However, in *Vasiljevic*, the Appeals Chamber declined to consider *Vasiljevic´s* expressions of regret to be a mitigating circumstance.[935]

10060. para. 488: The ICTY Trial Judgment in *Oric* is the only case in which a convicted person received credit for expressions of empathy for the victims without acknowledging responsibility.[936] In *Blaskic*, the accused attempted to express remorse while denying accountability and the Trial Chamber refused to take it into account because, after establishing the facts, it felt his remorse was not sincere.[937]

10061. para. 489: An accused's acknowledgement of responsibility can be a mitigating circumstance in sentencing because it makes an important contribution to establishing the truth and, thereby, an accurate and accessible historical record. Moreover, such an acknowledgement of responsibility may contribute to peace and reconciliation, may set an example for other persons to make the same moral choice, and alleviate the pain and suffering of victims.[938] Further, acknowledgement of responsibility is part of the rehabilitative purpose of smtencing,[939] and therefore an accused who acknowledges responsibility can properly be credited with a reduced sentence.[940]

10062. para. 490: The Appeals Chamber is of the view that the Trial Chamber could consider genuine and sincere expressions of empathy for the victim' s suffering or regret for crimes committed, without an acknowledgement of responsibility as a mitigating circumstance. The Appeals Chamber opines that the Prosecution has not shown that the Trial Chamber erred in considering that the statements made by Fofana's counsel and Kondewa were, in fact, sincere expressions of their empathy for the victims, and as such they could be considered as mitiga1:ing circumstances. The Appeals Chamber, Justice Winter dissenting, concludes that the Trial Chamber did not err in accepting the expression of remorse in mitigation.

(iii) Fofana's and Kondewa's Lack of Training

10063. para. 491: Under the heading "Lack of Formal Education or Training," the Trial Chamber stated that it was:

> "aware that both men were propelled in a relatively short period of time, from civilian life to an effective position of authority in a very brutal and bloody conflict, with no adequate training for the roles which they were to play. The Chamber finds that it is only reasonable to take account of the fact that inexperience in difficult situations, [sic] does increase the likelihood of making the wrong decisions. Whilst this in no way reduces the gravity of the crimes which were committed, the Chamber recognises it as a factor in mitigation of sentence."[941]

10064. para. 492: At the Sentencing Hearing, counsel for Fofana stated that "Fofana may not necessarily have been young, but he certainly lacked experience and was thrown into the desperate situation and asked to act."[942]

a. Discussion

10065. para. 498: As far as mitigating circumstances are concerned, Article 19(2) of the Statute provides that the Trial Chamber should take into account the individual circumstances of the convicted persons. The Appeals Chamber considers that the level of education and training of a convicted person is part of his individual circumstances which the Trial Chlll1ber is required to take into consideration as an aggravating or mitigating circumstance.

10066. para. 499: Accepting that, as a matter of law, the surrounding conditions including the convicted person's lack of training can be a mitigating circumstance, the Appeals Chamber opines that the Prosecution has failed to demonstrate that the Trial Chamber erred in considering Fofana's and Kondewa's individual circumstances, namely: their inadequate relevant preparation and training for their roles in the armed conflict as a mitigating circumstance.

(iv) Conduct Subsequent to the Conflict

10067. para. 500: Under the heading "Subsequent Conduct," the Trial Chamber stated it had examined evidence submitted by Fofana regarding his conduct subsequent to the conflict.[952] In particular, the Trial Chamber noted the submission regarding "Fofana's commitment to and observance of the Lomb Peace agreement",[953] the "unchallenged evidence ... in relation to his efforts subsequent to that agreement to work without any pay with the NGO community in ensuring that members of the CDF remained committed to the peace process within Sierra Leone",[954] and "the certificate of good conduct filed by the Officer in Charge of the SCSI. Detention Facility, attesting to Fofana's exemplary behaviour whilst in custody."[955] The Trial Clamber "commended Fofana's subsequent conduct in fostering the peace process, and recognises it as a factor in mitigation of his sentence."[956]

10068. para. 501: The Trial Chamber considered as a mitigating factor "evidence filed by the Fofana Defence regarding Fofana's conduct subsequent to the time frame in which the crimes he committed occurred."[957] Specifically, the Trial Chamber considered "Fofana's commitment to and observation of the Lome Peace agreement."[958]

a. Preliminary Issue

10069. para. 504: Fofana argues that this sub-ground was not included in the Prosecution's Notice of Appeal and therefore should be disregarded.[961] Rule 108 of the Rules states in sub-paragraph (A) that "a party. . . shall. . . file with the Registrar and serve upon the other parties a written notice of appeal setting forth the grounds of appeal."[962] The requirements of "setting forth the grounds of appeal" is neither elaborated upon in the Rules nor in a practice direction.

10070. para. 505: The Prosecution's Notice of Appeal stated in relevant part, "in the Sentencing Judgment, the Trial Chamber erred in law and in fact, and committed a procedural error (in that there has been a discernible error in the exercise of the Trial Chamber's sentencing discretion), in sentencing Fofana to a total and concurrent term of imprisonment of six (6) years. . .."[963] The Prosecution elaborated that "in particular, the Trial Chamber erred in treating as mitigating circumstances matters which it was wholly improper to regard as such. and/or by giving weight to extraneous and irrelevant considerations that it considered as mitigating circumstances. These include its determination that the Respondents might have acted out of a sense of allegiance to a democratically elected government, rather than out of self-interest; treating as expressions of remorse statements of the Respondents which did not express any remorse at all; and lack of formal education."[964]

10071. para. 506: The Prosecution did not state that it would appeal consideration of Fofana's and Kondewa's post-conflict conduct as a mitigating factor. The Appeals Chamber will, therefore, decline to enter into the merits of this aspect of the Prosecution's submission.

(v) Lack of Previous Convictions

10072. para. 507: The Trial Chamber noted that neither Fofana nor Kondewa had any previous convictions, and summarily stated that "for purposes of sentencing, a clean slate in terms of their criminal records, *sic* can be considered as a mitigating circumstance."[965]

a. Discussion

10073. para. 511: Good character with no previous convictions cm be considered as a mitigating factor.[973] However, in certain circumstances even when prior good conduct is found, it may be given little weight in light of the gravity of the criminal conduct. Each case has to be determined in the light of its own circumstances.

10074. para. 512: The Appeals Chamber holds that the Trial Chamber did not err in taking a lack of previous convictions into consideration.

(vi) CDF's Alleged "Just Cause" and Fofana's and Kondewa's Motive of Civic Duty

10075. para. 513. The Trial Chamber found, Justice Thompson dissenting, that there is no defence of "necessity" in international law, and that "necessity" cannot be taken into account as a mitigating factor in sentencing.[974] It was of the opinion that "validating the defence of Necessity in International Criminal Law would create a justification for what offenders may term and plead as a 'just cause' or a 'just war' even though serious violation of International Humanitarian Law would have been committed."[975] It considered that this would "negate the resolve and determination of the International Community to combat" the "heinous, gruesome or degrading" crimes against innocent victims which international humanitarian law intends to protect.[976]

10076. para. 514: Nonetheless, the Trial Chamber took into account as mitigating factors that Kondewa and Fofana and the "CDF/Kamajors" were fighting "to support a legitimate cause which ... was to restore the democratically elected Government of President Kabbah", [977] that the Kamajors "were comrades in arms with the regular Sierra Leone Armed Forces as early as from the outbreak of the rebel war," that the crimes were committed "in defending a cause that is palpably just and defendable",[979] that Kondewa's and Fofana's "CDF/Kamajor fighting forces ... , backed and legitimised by ... ECOMOG, defeated and prevailed over the rebellion of the AFRC that ousted the legitimate Government",[980] and that this "contributed immensely to re-establishing the rule of law" in Sierra Leone.[981] The Trial Chamber concluded that "the contribution of the two Accused Persons to the establishment of the much desired and awaited peace in Sierra Leone and the difficult, risky, selfless and for a very sizeable number of their CDF/Kamajors, the supreme sacrifices that they made to achieve this through a bloody conflict, is in itself a factor that stands significantly in mitigation in their favour."[982]

10077. para. 515: In regard to the motive of civic duty, the Trial Chamber held that:

> "there is nothing in the evidence which demonstrates that either Fofana or Kondewa joined the conflict in Sierra Leone for selfish reasons. In fact, we have found that both Fofana and Kondewa were among those who stepped forward in the efforts to restore democracy to Sierra Leone, and, for the main part, they acted from a sense of civic duty rather than for personal aggrandisement or gain. This factor in addition to others that have been raised in this Judgement has, for each of them, significantly impacted to influence the reduction of the sentence to be imposed for each count."[983]

a. Discussion

10078. para. 521: The Trial Chamber held that "although the commission of these crimes transcends acceptable limits, albeit in defending a cause that is palpably just and defendable, such as acting in defence of constitutionality by engaging in a struggle or a fight that was geared towards the restoration of the ousted democratically elected Government of President Kabbah, it certainly, in such circumstances, constitutes a mitigating circumstance in favour of the two Accused Persons."[999]

10079. para. 522: The Appeals Chamber considers that examination of motive for the purposes of sentencing presents significant problems. As one commentator has noted, inquiry into motive opens the door to speculation about the general moral worth of the convicted person, a task for which courts are ill-equipped.[1000] Nonetheless, the Appeals Chamber is of opinion that evaluation of the motivation, background., and character of the convicted person is part of any system that aims to make punishment proportional to blameworthiness.

10080. para. 523: The Appeals Chamber is of the view that consideration of motive for the purposes of sentence is not to regard motive as a defence. Although motive may shade the individual perception of culpability, it does not amount to a legal excuse for criminal conduct. Therefore, any consideration here of Fofana's and Kondewa's 'just cause" as a motive for the purposes of sentencing should not be considered as a defence against criminal liability for their conduct.

10081. para. 524: As a general principle, the Appeals Chamber opines that a convicted person's motives can be considered for sentencing purposes.[1001] Other international criminal tribunals have recognized motives as aggravating factors, such as enjoyment of criminal acts,[1002] sadism and desire for revenge,[1003] group hatred or bias,[1004] and a desire to cause terror.[1003] There may be several other motives that may be considered to be aggravating circumstances, such as a desire for pecuniary gain, a desire to inflict pain or harm, and a desire to avoid detection or escape punishment.

10082. para. 525: Fofana and Kondewa have also argued that motive should be considered as a mitigating factor. The Appeals Chamber has not been directed to any case at an international criminal tribunal in which such an argument has been accepted on the merits. In *Simba*, the ICTR Trial Chamber, in the context of mitigating circumstances, examined evidence that may have "implied that his participation in the massacres resulted from misguided notions of patriotism and government allegiance rather than extremism or ethnic hatred;" however, the Trial Chamber did

not indicate whether it gave that evidence any weight.[1006] For all factors considered, the Trial Chamber concluded that "limited mitigation was warranted."[1007] On appeal, the ICTR Appeals Chamber suggested this passage "was merely speculation on the part of the Trial Chamber and did not reflect a finding that this motive was itself a separate mitigating factor" but did not state whether it would have considered it an error if the Trial Chamber had treated political motive as a mitigating factor.[1008]

10083. para. 526: In the Media Case, the ICTR Appeals Chamber noted that a defendant argued on appeal that he should receive a mitigated sentence because his actions were performed within a legitimate, democratic and pacific context.[1009] The ICTR Appeals Chamber ambiguously dismissed the argument on grounds that it was not convinced that the facts argued by the appellant constituted mitigating circumstances or that these facts had played a significant role in the determination of the sentence, and specifically suggested that it dismissed the appellant's democratic motive because he made no reference to any part of the case-file to sustain 1he arguments .[1010]

10084. para. 527: In *Kordic and Cerkez*, the ICTY Appeals Chamber rejected Kordic's argument that the Trial Chamber erred in failing to consider "that his primary motivation was to assist his community" as a mitigating circumstance.[1011] However, rather than stating that the factor was irrelevant or impermissible as a matter of law, the Appeals Chamber ruled that Kordic had "not demonstrated that his motivation to become engaged in politics ... warranted mitigation in the light of the seriousness of the offences of which the Trial Chamber found him guilty."[1012] Similarly, the Prosecution there apparently argued that Kordic's political motivation was "insignificant when considered against the extreme gravity of the offences of which he was charged."[1013]

10085. para. 528: In the view of the Appeals Chamber, as a general principle, a convicted person's motive can be considered as a mitigating factor.

10086. para. 529: The Appeals Chamber turns to the question of whether the particular motive of ''just cause" may be considered as a mitigating factor.

10087. para. 530: International humanitarian law specifically removes a party's political motive and the "justness" of a party's cause from consideration. The basic distinction and historical separation between *jus ad bellum* and *jus in bello* underlies the desire of States to see that the protections afforded by *jus in bello* (i.e., international humanitarian law) are "fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or

attributed to the Parties to the conflicts."[1014] The political motivations of a combatant do not alter the demands on that combatant to ensure their conduct complies with the law.

10088. para. 531: Any trial chamber considering punishment must weigh its obligations to the individual accused in light of its responsibility to ensure that it is upholding the purposes and principles of international criminal law. Consideration of political motive by a court applying international humanitarian law not only contravenes, but would undermine a bedrock principle of that law.

10089. para. 532: Furthermore, the Appeals Chamber is of the view that any motive taken into consideration as a mitigating factor must be consistent with sentencing purposes. The following have been recognized by the ICTY as legitimate sentencing purposes: (i) individual and general deterrence concerning the accused and, in particular, commanders in similar situations in the future;[1015] (ii) individual and general affirmative prevention aimed at influencing the legal awareness of the accused, the victims, their relatives, the witnesses, and the general public in order to reassure them that the legal system is being implemented and enforced; (iii) retribution;[1016] (iv) public reprobation and stigmatisation by the international community;[l017] and (v) rehabilitation.[1018] The primary objectives must be retribution and deterrence.[1019]

10090. para. 533: The ICTY Appeals Chamber has held that a convicted person's motivation of "just cause" contravenes the sentencing purpose of affirmative prevention:

> "The sentencing purpose of affirmative prevention appears to be particularly important in an international criminal tribunal, not the least because of the comparatively short history of international adjudication of serious violations of international humanitarian and human rights law. The unfortunate legacy of wars shows that until today many perpetrators believe that violations of binding international norms can be lawfully committed, because they are fighting for a 'just cause'. Those people have to understand that international law is applicable to everybody, in particular during times of war. Thus, the sentences rendered by the International Tribunal have to demonstrate the fallacy of the old Roman principle of *inter arma silent leges* (amid the arms of war the laws are silent) in relation to the crimes under the International Tribunal's jurisdiction."[1020]

10091. para. 534: The Appeals Chamber concurs with this view, Justice King dissenting. Allowing mitigation for a convicted person's political motives, even where they are considered by the Chamber to be meritorious, undermines the purposes of sentencing rather than promotes them. In effect, it provides implicit legitimacy to conduct that unequivocally violates the law-the precise conduct this Special Court was established to punish.[1021]

10092. para. 535: The Appeals Chamber, Justice King dissenting, upholds the Prosecution's submission on this respect of the Prosecution's Tenth Ground of Appeal.

(vii) The Purpose of Reconciliation

10093. para. 536: In the conclusion to the Sentencing Judgment, the Trial Chamber found that:

> "a manifestly repressive sentence, rather than providing the deterrent objective which it is meant to achieve, will be counterproductive to the Sierra Leonean society in that it will neither be consonant with nor will it be in the overall interests and ultimate aims and objectives of justice, peace, and reconciliation that this Court is mandated by UN Security Council Resolution 1315, to achieve. The motivation of the Accused in this case, where they fought to reinstate democracy, and the prevailing circumstances in which their crimes were committed, has therefore been taken into consideration by the Chamber in arriving at an appropriate sentence."[1022]

a. Preliminary Issue

10094. para. 541: The Prosecution did not state that it in its Notice of Appeal that it would challenge the Trial Chamber's appeal consideration of Fofana's and Kondewa's post-conflict conduct as a mitigating factor. The Appeals Chamber, Justice Winter dissenting, will, therefore, decline to enter into the merits of this aspect of the Parties' submission.

(viii) Alleged Error in Considering the Sentences Would run Concurrently Without Adequate Consideration

10095. para. 542: The Trial Chamber stated that despite its discretion to impose global sentences, it chose to impose separate sentences for each of the crimes for which Fofana and Kondewa were convicted because it "better reflected their culpability ... for each offence for which they were convicted, given that distinct crimes were committed by each accused in discrete geographical areas."[1040] Without reasoning, the Trial Chamber then ordered that "the sentences shall run and be served concurrently."[1041]

a. Discussion

10096. para. 546: Rule 101(c) of the Rules states "the Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently." The discretion conferred upon the Trial Chamber to choose between consecutive and concurrent sentences is not unchecked, because the Trial Chamber ultimately must impose a sentence that reflects the totality of the convicted person's culpable conduct. The totality principle is, in fact, recognized by all Parties and

firmly supported in the case law of the international criminal tribunals. The totality principle requires that a sentence must reflect the inherent gravity of the totality of the criminal conduct of the accused, giving due consideration to the particular circumstances of the case and to the form and degree of the participation of the accused.[1050]

10097. para. 547: The following examination of several legal traditions demonstrates that Trial Chambers typically enjoy broad discretion to choose between concurrent and consecutive sentences. However, as at the other tribunals, this discretion is restricted by the requirement that the sentence reflect the gravity of the crime and the culpability of the convicted person.

10098. para. 548: In Australia, courts have generally held that it is "impracticable and undesirable to attempt to lay down comprehensive principles according to which a sentencing judge may determine, in every case, whether sentences should be ordered to be served concurrently or consecutively."[1051] Australian courts have recognized that "the practice of imposing either concurrent or consecutive sentences cannot avoid creating anomalies, or apparent anomalies, from time to time. What must be done is to use the various tools of analysis to mould a just sentence for the conduct of which the prisoner has been guilty."[1052] Generally, courts consider that consecutive sentences are appropriate when there are "truly two or more incursions into criminal conduct."[1053] However, where, "whatever the number of technically identifiable offences committed, the prisoner was truly engaged upon one multi-faceted course of criminal conduct, the judge is likely to find concurrent sentences just and convenient."[1054]

10099. para. 549: In the United Kingdom (England and Wales), courts consider the "sentencer is entitled in his discretion to follow the course of imposing concurrent sentences, provided that the gravity of the criminal conduct ... is properly reflected in the principal sentence."[1055]

10100. para. 550: Likewise, in Canada, courts give the sentencing judge discretion to set the duration and type of sentence due to his or her first-hand knowledge of the case.[1056] The decision to impose concurrent or consecutive sentences is accorded the "same deference as the length of sentences ordered"[1057] and a reviewing court defers to the decision to impose consecutive or concurrent sentences so long as the "global sentence" (e.g., the ultimate sentence) "does not offend the totality principle"[1058] or the "transaction concept."[1059] The transaction concept is similar to the Australian notion that consecutive sentences are appropriate where there are two or more incursions into criminal conduct, and at least one Canadian court has found error when a sentencing judge issued consecutive sentences for crimes that were "part of the same transaction" (e.g., part of the same event).[1060]

10101. para. 551: In the United States, a federal statute gives courts discretion to impose consecutive or concurrent sentences when "multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment."[1061] The same statute mandates that the "court, in determining the particular sentence to be imposed, shall consider ... the need for the sentence imposed ... to reflect the seriousness of the offence, to promote respect for the law, and to provide just punishment for the offences ...."[1062]

10102. para. 552: The Appeals Chamber notes that the Trial Chamber did not give reasons for its preference for concurrent sentences. However, the relevant question for the Appeals Chamber is not whether the choice of concurrent or consecutive sentences itself represented an error, but whether that choice resulted in sentences that fail to reflect the totality of Fofana's and Kondewa's criminal culpability. Accordingly, the merits of this sub-ground will be considered in the Prosecution's subground alleging that the "manifest inadequacy of the sentence" demonstrates that it is "so unreasonable or plainly unjust" that the Trial Chamber must have erred.[1063]

(ix) Manifest Inadequacy of the Sentence

10103. para. 553: In view of the findings that the Trial Chamber bas taken into consideration factors which it should not have considered in the exercise of its sentencing discretion, the Appeals Chamber will substitute its own discretion without the need to pronounce on the Prosecution's complaint that the sentence was manifestly inadequate.

(x) Conclusions on Sentencing

10104. para. 554: The Appeals Chamber recalls the standard of review of sentencing decisions that have earlier been set out in this Judgement. Relying on those standards, the Appeals chamber notes that it has decided that the Trial Chamber was in error in taking into consideration "just cause" and motive of civic duty in exercising its sentencing discretion.

10105. para. 555: A careful perusal of the sentencing judgement shows clearly that those considerations formed the most important factors that influenced the exercise of the Trial Chamber's discretion. Indeed, the Trial Chamber stated that the fact that Fofana and Kondewa "stepped forward in the efforts to restore democracy to Sierra Leone, and, for the main part, they acted from a sense of civic duty ... significantly impacted the influence to the reduction of the sentences to be imposed for each count."[1064] In the circumstances, the Appeals Chamber comes to the conclusion that the Trial Chamber proceeded on an erroneous basis and that it is entitled to revise the sentences handed down by the Trial Chamber.

10106. para. 556: The Appeals Chamber takes note of the extensive reiteration by the Trial Chamber in its Sentencing Judgment of its findings in regard to the responsibility of the accused persons and also its findings as to the gravity of the offences.

10107. para. 557: The Appeals Chamber gratefully adopts these findings, while having regard to such instances in which the Appeals Chamber has set aside the convictions of Kondewa. To put the exercise of its discretion in proper perspective, and for ease of reference, the Appeals Chamber deems it fit to quote, albeit at some length, some of the significant findings of the Trial Chamber that the Appeals Chamber cannot ignore.

10108. para. 558:. Such findings are as follows:

> 46. With respect to the crimes for which Fofana was found liable under Article 6(3), the Chamber has examined the gravity of the crime; committed by subordinates under his effective control. Many of these crimes, as described in the Judgement, were of a very serious nature, and were committed against innocent civilians. The Chamber considers actions such as the mutilation and the targeted killing of Limba civilians and the killing and mutilation of Chief Kafala (whom the CDF/Kamajors considered a collaborator) in Koribondo, to be indicative of the brutality of the offences committed by Fofana's subordinates. The Chamber also notes the gruesome murder of two women in Koribondo who had sticks inserted and forced into their genitals until they came out of their mouths. The women were then disembowelled, and while their guts were used as checkpoints, parts of their entrails were eaten.
>
> 47. The Chamber also finds that many of the offences for which Fofana was convicted under Article 6(1) were committed on a large scale and with a significant degree of brutality. In particular, the Chamber notes the murder of 150 Loko, Limba and Temne tribe members in Talama, the killings of 20 me1 on the 15th of January 1998 at the NDMC Headquarters in Tongo, who were hacked to death with machetes, and the killing of 64 civilians in Kamboma, who were placed in two separate lines and killed, after which their corpses were rolled into a swamp,1065 as indicative of the scale and brutality of the crimes that Fofana was found to have aided and abetted in the Tongo Field area. Furthermore, the Chamber finds that the crimes were particularly serious insofar as they were committed against unarmed and innocent civilians, solely on the basis that they were unjustifiably perceived and branded as rebel collaborators.
>
> 48. The Chamber notes that many of the victims of these crimes were young children and women, and therefore belong to a particularly vulnerable sector of society. For instance, we note our findings of the hacking to death by the CDF/Kamajors of a boy named Sule at a checkpoint in the Tongo area, the murder of a 12 year old boy in Talama, the murder of an unidentified woman who was alleged to have cooked for the rebels in Bo, and the atrocious murder of the two women in Koribundo as described earlier.

49. The Chamber considers these crimes t01ave had a significant physical and psychological impact on the victims of such crime s, on the relatives of the victims, and on those in the broader community. The testimony of witnesses heard by the Chamber during the trial, and appended to the Prosecution Brief in Annex D, indicates the impact which events such as amputations and the loss of family members have had on the lives of victims and witnesses. As appropriately described and summarized by our sister Trial Chamber II, victims who had their limbs hacked c ff not only endured extreme pain and suffering, if they survived, but lost their mobility and capacity to earn a living or even to undertake simple daily tasks. They have been rendered dependent on others for the rest of their lives. In particular, the Chamber notes the lasing effect of these crimes on victims such as TF2-015, who was the only survivor of an attack on 65 civilians who were hacked to death by machetes or shot, and who WLS himself hacked with a machete and rolled into a swamp on top of the dead bodies in the: belief that he was dead.

50. With respect to the form and degree of Fofana's participation, the Chamber notes that he was found liable for the crimes in Tongo Field as an aider and abettor under Article 6(1) of the Statute. The jurisprudence of the ICTY and ICTR indicates that aiding and abetting as a mode of liability generally warrants a lesser sentence than that to be imposed for more direct forms of participation. The Chamber also notes that while Fofana was found liable for aiding and abetting, he was not present at the scenes of the crimes and that the degree of his participation amounted only to encouragement.

51. With respect to the crimes for which Fofana. was convicted under Article 6(3), the Chamber has considered the gravity of Fofana's conduct in failing to prevent the crimes. It finds that the gravity of the offence committed by Fofana given his leadership role as a superior who failed to prevent his subordinates from committing crimes, is greater than that of the actual perpetrators of the crimes. In this case, the fact that Fofana's failure to prevent was ongoing, rather than an isolated occurrence, had the implicit effect of encouraging his subordinates to believe that they could commit further crimes with impunity. This factor therefore, in our opinion, inc "eases the seriousness of the crimes for which he has been convicted.

52 ...

53. With respect to the crimes for which Kondewa was found liable under Article 6(3), the Chamber has examined the gravity of the crimes committed by the subordinates under his effective control. Many of these crimes, as described in the Judgement, were of a serious nature. The Chamber notes, in particular, that the CDF/Kamajors in Bonthe stripped Lahia Ndokoi Koroma naked and tied him, a particularly humiliating and degrading act. With respect to Kondewa's liabilit:1 under Article 6(1), he was convicted for the same crimes as Fofana in the Tongo area; the scale and the barbaric nature of such crimes has been described above.

54. As is the case with Fofana, the Chamber notes that many of the victims of these crimes were young children and women, and were therefore particularly vulnerable. It notes, in particular, the two incidents involving

children in the Tongo area described above with respect to Fofana, and the killing of a boy called Bendeh Battiama by Rambo Conteh in Bonthe.

. . .

58. Furthermore, with respect to his liability under Article 6(3), the Chamber finds, as it did with Fofana, that given his leadership role as a superior who failed to prevent his subordinates from committing crimes, the gravity of the offence committed by Kondewa is greater than that of the actual perpetrators of the ;rimes. The Chamber finds that in this case, the fact that Kondewa's failure to prevent was ongoing, rather than an isolated occurrence, had the implicit effect of encouraging his subordinates to believe that they could commit further crimes with impunity, and therefore increases the seriousness of the crimes for which he has been convicted.

60. The Chamber considers that, given his roe as a former Chiefdom Speaker, a community elder and the CDF National Director of War, Fofana breached a position of trust in committing the offences for which he has been convicted."

62. The Chamber finds that given the cultural context, Kondewa, in his role as High Priest who blessed the CDF/Kamajors before they \Vent to battle, and as someone widely respected for his mystical powers and abilities to immunize people against harm, held a unique and prominent position in the community. The Chamber therefore finds that he also breached a position of trust in committing the (rimes for which he was convicted.

85. In executing this legitimate mission however, at a later stage that appears in the Indictment, and instead of limiting themselves and directing these attacks on legitimate military targets and objectives where collateral damage, if any ensued at all, could be perceived as justifiable, the Accused Persons and their Kamajors, as has been elucidated in the factual and legal findings of the Judgement, went beyond these acceptable military and legal limits and carried out killings and other atrocities against unarmed civilians who they characterised and designated as 'rebel collaborators'. We find that these atrocities were perpetrated, even though the evidence clearly established, and we so found, that the victims in fact, were disarrayed Sierra Leoneans including children fleeing for their lives and for safety from the bloody exchange of enemy fire, and further, that these civilian captives or fugitives, were unarmed and were not :n the least, participating in hostilities. In fact, we note here that the crimes for which they have been found guilty were perpetrated by the Accused Persons and CDF/Kamajor fighters when combat activities and operations against the enemy AFRC forces were already over."

10109. para. 559: Notwithstanding these findings and the significant finding that the accused persons and their subordinates went beyond "acceptable military and legal limits" the Trial Chamber, importing a consideration of "just cause" and "civic duty" into the exercise of its discretion concluded that their sentences deserved to be reduced.

10110. para. 560: The Appeals Chamber has already decided that these were inappropriate considerations and will now review the sentences, taking into consideration the gravity of the offences as found and described by the Trial Chamber and taking note of legitimate mitigating circumstances which the Trial Chamber has taken note of and the fact that in the case of Kondewa, the Appeals Chamber, Justice Winter dissenting, had not found any allegation of "committing" established against him.

10111. para. 561: In exercising its sentencing discretion, the Appeals Chamber re-emphasizes that it is an international court with responsibility to protect and promote the norms and values of the international community, expressed not only as part of customary international law but also, in several international instruments.

10112. para. 562: Shortly after the Special Court was established, the Appeals Chamber had occasion to pronounce on its character and decided, without hesitation, that it is an international court. In the Decision of Constitutionality and Lack of Jurisdiction, [1066] the Appeals Chamber stated that the Special Court "is an international tribunal exercising its jurisdiction in an entirely international sphere and not within the system of the national courts of Sierra Leone ..."[1067] The Appeals Chamber came to the same conclusion in the Decision all Immunity from Jurisdiction. [1068]

10113. para. 563: The Appeals Chamber here emphasizes that the crimes of which the accused have been convicted are international crimes and not political crimes, in which consideration of national interest may be a relevant issue. What has to be paramount are international interests in protecting humanity. Such offences as Fofana and Kondewa have been convicted of are of the nature of such "offences that do not affect the interests of one State alone, but shock the conscience of mankind."[1069] They are not political offences. The Appeals Chamber gratefully adopts the opinion of the Supreme Military Tribunal of Italy quoted in *Tadic* (Jurisdiction) as follows:

> Crimes against the laws and customs of war cannot be considered political offences, as they do not harm a political interest of a particular State, nor a political right of a particular citizen. They are, instead, crimes of *lese-humanite* (*reatu di lesa umanita*) and, as previously demonstrated, the norms prohibiting them have a universal character, not simply a territorial one. Such crimes, therefore, due to their very subject matter and particular nature are precisely of a different and opposite kind from political offences. The latter generally, concern only the States against whom they are committed; the former concern all civilised States, and are to be opposed and punished, in the same way as the crimes of piracy, trade of women and minors, and enslavement are to be opposed and punished, wherever they may have been committed ... "[1070]

10114. para. 564: What should be one of the paramount considerations in the sentencing of an accused person convicted of crimes against humanity and war crimes is the revulsion of mankind, represented by the international community, to the crime and not the tolerance by a local community of the crime; or lack of public revulsion in relation to the crimes of such community; or local sentiments about the persons who have been found guilty of the crimes. In describing what it described as the "Justice Phase" of the armed conflict that took place in Sierra Leone, the Appeals Chamber stated this in "Decision on Immunity from Jurisdiction": The Justice Phase is that phase in which participants in the armed conflict have to answer for crimes committed in the course of the armed conflict. The Justice Phase itself involves separating what is in the exclusive domain of the municipal authority to be resolved under municipal law from what is in the concurrent jurisdiction of that authority and of the international community to be resolved by application purely of international law."[1071] The Appeals Chamber had earlier stated in that Decision that: "The parties, whether from the Government side or the insurgents, were ... subjected to the obligations imposed by international law in a situation of internal armed conlicts."[1072]

10115. para. 565: In assessing the appropriate sentence, the obligation of the Appeals Chamber is, therefore, to impose sentences that reflect the revulsion of the international community to such crimes as those for which the accused persons have been convicted, after taking into consideration all factors that may be considered, legitimately, in mitigation as well as in aggravation.

10116. para. 566: In revising the sentences, the Appeals Chamber, Justice King and Justice Kamanda dissenting" takes into consideration those factors tha1 the Majority of the Trial Chamber have, legitimately, taken into consideration. It also takes note of the opinion of the Majority of the Trial Chamber that Fofana and Kondewa have been found responsible mainly as aiders and abettors and the gravity of their respective responsibility as superior: in respect of some of the crimes.

10117. para. 565: Having taken all the circumstances of the case into consideration, the Appeals Chamber, Justice King and Justice Kamanda dissenting, revises the sentences on Fofana and Kondewa in respect of Counts 2, 4, and 5 and imposes sentences on Fofana and Kondewa on Counts 1 and 3 as follows:

i. In respect of Moinina Fofana the sentences of six (6) years imposed by the Trial Chamber on each of Counts 2 and 4 are increased to fifteen (15) years imprisonment on each of those Counts, and the sentence of three (3) years imposed on Count 5 is increased to five 5 years imprisonment;

ii. In respect of Allieu Kondewa, the sentences of eight (8) years imposed by the Trial Chamber on each of Counts 2 and 4 are increased to twenty (20) years imprisonment on each of those Counts, and the sentence of five (5) years imposed on Count 5 is increased to seven (7) years imprisonment;

iii. In respect of Counts 1 and 3, the Appeals Chamber, Justice King and Justice Kamanda dissenting, imposes sentences of 15 years imprisonment on Fofana on each of those Counts and sentences of 20 years imprisonment on Kondewa on each of those Counts;

10118. The Appeals Chamber orders that the sentences imposed on Fofana, and Kondewa respectively, shall run concurrently;

(c) Disposition

CONSEQUENTLY REVISES, Justice King and Justice Kamanda dissenting, the sentences in respect of Counts 2, 4, and 5 as follows:

In respect of Moinina Fofana the sentences of six (6) years imposed by the Trial Chamber on each of Counts 2 and 4 are increased to fifteen (15) years imprisonment on each of those Counts, and the sentence of three (3) years imprisonment on Count 5 is increased to five (5) years imprisonment;

In respect of Allieu Kondewa, the sentences of eight (8) years imposed by the Trial Chamber on each of Counts 2 and 4 are increased to twenty (20) years imprisonment on each of those Counts, and the sentence of five (5) years imposed on Count 5 is increased to seven (7) years imprisonment;

(d) Dissenting Opinion of Justice King from Sentencing Judgment

10119. para. 98: It is my misfortune to have to dissent, once again, from my learned colleagues. With respect, I believe that they went outside the ambit of the relevant statutory provisions relating to Penalties and Sentencing and, in my opinion, interfered, unjustifiably, with the unfettered discretion to the Trial Chamber.

10120. para. 106: The Appeals Chamber states that "the Trial Chamber was in error in taking into consideration 'just cause' and motive of civic duty in exercising its sentencing discretion."[1189] I disagree. It states further that the Trial Chamber proceeded on an erroneous basis and that it is entitled to revise the sentences handed down by the Trial Chamber.[1190] I disagree.

10121. para. 107: With the greatest respect to my learned colleagues, at no time did the Trial Chamber take into consideration 'just cause' in the way my colleagues put it, in exercising its sentencing discretion. This is palpably and factually incorrect. What in fact, the Trial Chamber took into account as a mitigating factor is the plea that:

> "[t]he acts of the Accused and those of the Kamajors for which they have respectively been found guilty, did not emanate from a resolve to destabilise the established Constitutional Order. Rather, and on the contrary, the CDF/Kamajors was a fighting force that was mobilised and was implicated in the conflict in Sierra Leone to support a legitimate cause which, as we have already seen, was to secure the democratically elected Government of President Kabbah, which had been illegally ousted through a Coup d'Etat orchestrated and carried out on the 25th of May 1997, by a wing of the Sierra Leone Armed Forces that later constituted and baptised itself as the Armed Forces Revolutionary Council (AFRC)."[1191]

10122. para. 108: In the above quote, there is no mention of 'just cause' which only appears when the Trial Chamber was commenting on the defence of 'Necessity' which had been propounded by Justice Bankole Thompson in his Dissenting Opinion. This is what the Trial Chamber said:

> "The Chamber further opines that validating the defence of Necessity in International Criminal Law would create a justification for what offenders may term and plead as a 'just cause' or a 'just war' even though serious violations of International Humanitarian Law would have been committed. This we observe, would negate the resolve and determination of the International Community to combat these crimes which have the common characteristics of being heinous, gruesome or degrading of innocent victims or of the civilian population that it intends to protect."[1192]

10123. para. 109: At the trial, the Accused did not put forward a defence of necessity – it was raised by Justice Thompson in his Dissenting Opinion. In any event, it is my considered opinion that it was wrong for the majority of the Trial Chamber to purport to sit, as if it were an Appeals Chamber, in judgement of Justice Thompson's Opinion as to Necessity as a defence. That right and privilege belong exclusively to the Appeals Chamber. All the Judges of the Trial Chamber are of coeval jurisdiction and they are, therefore, not competent to pass judgement on each other's opinion.

10124. para. 110: At the trial, the Accused did not put forward a defence of necessity – it was raised by Justice Thompson in his Dissenting Opinion. In any event, it is my considered opinion that it was wrong for the majority of the Trial Chamber to purport to sit, as if it were an Appeals Chamber, in judgement of Justice Thompson's Opinion as to Necessity as a defence. That right and privilege belong exclusively to the Appeals Chamber. All the Judges of the Trial Chamber are of coeval jurisdiction and they are, therefore, not competent to pass judgement on each other's opinion.

10125. para. 111: In paragraph 98 supra, I referred to Article 19(1) and 19(2) of the Statute. The Trial Chamber, in determining the terms of imprisonment shall, as appropriate, have recourse to the practice regarding prison sentences in the ICTR and national courts of Sierra Leone. It should

take into account, not only the gravity of the offence, but also, the individual circumstances of the convicted person. Emphasis added.

10126. para. 112: Significantly, unlike Article 20(3) of the Statute, which provides that Appeals Chamber shall be guided by the decisions of the Appeals Chamber of the ICTY and the ICTR, there is no requirement in Article 19(1) that the Trial Chamber shall have recourse to the practice regarding prison sentences in ICTY.

10127. para. 113: It follows, therefore, that in exercising its sentencing discretion the Trial Chamber shall have recourse, not to ICTY, but to ICTR and Sierra Leone national courts, where appropriate and consider, *inter alia*, the individual circumstances of the Accused.

10128. para. 114: Having considered the individual circumstances of the Accused[1195] such as: remorse, lack of formal education or training, subsequent conduct, lack of prior convictions and historical background, the Trial Chamber found as follows:

> (i) "There is nothing in the evidence which demonstrates that either Fofana or Kondewa joined the conflict in Sierra Leone for selfish reasons. In fact, we have found that both Fofana and Kondewa were among those who stepped forward in the efforts to restore democracy to Sierra Leone and for the main part, they acted from a sense of civic duty, rather than for personal aggrandisement or gain. This factor in addition to others that have been raised in this Judgment has for each of them, significantly impacted to influence the reduction of the sentence to be imposed for each count."[1196]
>
> (ii) "The acts of the Accused and those of the CDF/Kamajors for which they have respectively been found guilty did not emanate from a resolve to distabilise the established Constitutional Order."[1197]
>
> (iii) "These historically traditional hunters, from the evidence adduced, were comrades in arms with the regular Sierra Leone Armed Forces as early as from the outbreak of the rebel war. They acted as guides to the regular Army and facilitated the war against the rebels. Indeed, even the military regime of the NPRC that seised power in a military Coup in 1992, used them to fight against the rebels, and to protect the Constitutional Institutions of Sierra Leone. In this process and in defence of their communities, the local chiefs mobilised, enlisted and initiated their young and fit ones, into the Kamajor Society with the sole objective of combating the rebels and preventing the brutal killings of their kith and kin, and other atrocities, in addition to protecting their land and their properties."[1198]
>
> (iv) "It should be recognized however, that the crimes for which the Chamber has convicted them are grave and very serious, but what, in a sense atones for this vice is the fact that the CDF/Kamajors fighting forces of the Accused persons, backed and legitimized by the internationally deployed force, the ECOMOG, defeated and prevailed over the rebellion of the AFRC that ousted the legitimate Government. This achievement, the Chamber notes, contributed immensely to re-establishing the rule of law in this Country where criminality, anarchy and

> lawlessness, which the United Nations sought to end and was determined to achieve in adopting Security Council Resolution 1315 (2000), had become the order of the day."[1199]

10129. para. 115: I opine that from the passages quoted, a reasonable person will inevitably come to the conclusion that the Trial Chamber meticulously, exhaustively, comprehensively, justly and even-handedly 'took into account', not only the gravity of the offence, but 'the individual circumstances' of the convicted person.[1200]

10130. para. 116: The Trial Chamber correctly applied the provisions of Article 19 of the Statute. This is why it is impossible for me to agree with my learned colleagues when they say: "in view of the findings that the Trial Chamber has taken into consideration factors which it should not have considered in the exercise of its sentencing discretion, the Appeals Chamber will substitute its own discretion without the need to pronounce on the Prosecution's complaint that the sentence was manifestly inadequate."[1201]

10131. para. 117: With respect, I do not agree that the Trial Chamber did any such thing. On the contrary, having regard to the provisions of Article 19(1) of the Statute, it is my learned colleagues who, contrary to those provisions, went on to conduct "examination of several legal traditions"[1202] in Australia, United Kingdom and Canada. In effect, what my learned colleagues have done is, with respect, to usurp the discretionary powers of the Trial Chamber, when the Appeals Chamber says it will substitute its own discretion for that of the Trial Chamber's.

10132. para. 118: It follows from all I have said that I find the Prosecution's Ground of Appeal against sentence untenable and I dismiss it.

10133. I accordingly disagree with the Decision of the majority to increase the terms of imprisonment of Fofana and Kondewa.

(e) Partially Dissenting Opinion of Justice Winter

(i) Whether Reconciliation Can Be Considered In Sentencing

10134. Justice Winter-Dissent, para. 90: I agree with aspects of the Majority decision on sentencing and therefore I only address here those parts with which I disagree. As a preliminary matter, I note that the Majority declined to consider the Trial Chamber's patently erroneous treatment of reconciliation as a mitigating factor because it was not properly noticed by the Prosecution. Conversely, the Majority, in another context, endeavoured to correct a legal error in

the interests of justice when it was not even mentioned by the Parties, namely concerning the findings of Fofana's and Kondewa's guilt for collective punishments.[1339]

10135. Justice Winter-Dissent, para. 91: I agree with the Majority, in principle, that reconciliation can be a mitigating circumstance. Indeed, the concepts of reconciliation, justice and peace are inextricably linked in post-conflict societies, and the case is no different in Sierra Leone. The Security Council recognized this when it stated:

> "Recognizing that, in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,
>
> ... 1. Requests the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court consistent with this resolution, ... "[1340]

10136. Justice Winter-Dissent, para. 92: However, some basic conditions connecting the purpose of reconciliation to the perpetrator of the crime must be met in order to make it possible that members of the same society can live again together in peace:

> (i) The perpetrator must admit guilt or at least acknowledge responsibility for what he/she has done.
>
> (ii) The perpetrator must submit excuses for what he/she has done (to the individual victims if possible, in general if not).
>
> (iii) The perpetrator must be prepared to assist in the reconciliation or peace process of the given community.

10137. Justice Winter-Dissent, para. 93: Fofana submits that the Trial Chamber rightly concluded that "a manifestly repressive sentence ... would not be in the overall interests and ultimate aims and objectives of justice, peace and reconciliation, as mandated by the [sic] UN Security Council Resolution 1315."[1341]

10138. Justice Winter-Dissent, para. 94: The necessity of credible justice for reconciliation and peace has been the raison d'etre of this Special Court since its conception.[1342] The belief of the victims that justice in whatever form (e.g., retributive, restorative, etc.) has been done or will be done is of paramount importance to the credibility of justice. This forms the foundation for the social trust upon which reconciliation can be built.

10139. Justice Winter-Dissent, para. 95: It is axiomatic that justice cannot be done unless it is seen to be done. In my view, it is unchallengeable that justice will not be seen to be done, and therefore

will not be credible, if the sentence imposed is so lenient that victims cannot accept or even understand it.

10140. Justice Winter-Dissent, para. 96: Kondewa submits that "purpose of reconciliation has however started to gain prominence in international criminal law"[1343] and argues, therefore, that the Trial Chamber correctly held that "a repressive sentence against him would be counter-productive."[1344] He further argues that the calls for justice by victims as well as the call of the international community to end impunity would not have been answered by a harsh sentence.[1345]

10141. Justice Winter-Dissent, para. 97: I consider, first, that a sentence which adequately reflects the harm caused to victims is not "harsh" and will not be perceived as such. A sentence that adequately reflects the harm caused to victims is a just sentence. Second, an extremely lenient sentence fails to demonstrate to putative subsequent criminals that impunity will end. This principle of affirmative prevention cannot be outweighed by any purpose of reconciliation.[1346]

10142. Justice Winter-Dissent, para. 98: Turning to the requisite conditions for considering reconciliation as a mitigating factor for Fofana and Kondewa, I do not find them satisfied in this case.

10143. Justice Winter-Dissent, para. 99: I cannot see any remorse in the statement that Fofana made through his defence lawyers, (not even personally by himself):

> "Mr Fofana accepts that crimes were committed by the CDF during the conflict in Sierra Leone. Indeed, at least one witness was called on behalf of the Fofana defence, Joseph Lansana, accepting and attesting to crimes committed by the CDF. Mr Fofana deeply regrets all the unnecessary suffering that has occurred in this country."[1347]

10144. Justice Winter-Dissent, para. 100: Fofana's counsel did not express remorse (i.e., acknowledgement of personal responsibility) or even regret for the suffering of the victims. Rather, he expressed global regret for the situation in Sierra Leone, without connecting this situation to himself in any way.

10145. Justice Winter-Dissent, para. 101: Kondewa's statements are equally lacking. Kondewa simply said, "Sierra Leoneans, those of you who lost your relations within the war, I plead for mercy today, and remorse, and even for yourselves."[1348] His address to "Sierra Leoneans" writ large can in no way be understood as meaning that he felt remorse. To the contrary, Kondewa. had the audacity to ask Sierra Leoneans to have remorse and even if the translation has to account for this wording, nothing indicates any personal remorse.

10146. Justice Winter-Dissent, para. 102: Neither Fofana nor Kondewa has ever acknowledged their own responsibility. In fact, the record on appeal demonstrates to me that they only claim their criminal culpability could not be proved, not that it did not exist. I am unaware of any instance in which Fofana or Kondewa claimed they did not commit a crime.

10147. Justice Winter-Dissent, para. 103: In my view, empathy with victims as has been accepted as mitigation by the Majority can only be accepted as real and sincere regret in limited circumstances.[1349] These circumstances are indicated in the facts of the *Oric* case cited by the Trial Chamber and relied upon by Fofana and Kondewa. Critically, in that case, *Oric* expressed empathy *several* times *before* he was found guilty.[1350] The two convicted persons here only found it worth mentioning that they felt empathy – if they even did that – *after* they were convicted. From this, it is clear to me that their statements were not expressions of remorse or empathy, but rather were simply calculated to achieve a reduced sentence. I therefore hold that the statements of the two convicted were neither real nor sincere.

10148. Justice Winter-Dissent, para. 104: Moreover, nothing in the statements of the two convicted persons pointed to any excuse for their criminal conduct or the harm they caused. In my view, the absence of this accounting, demonstrates that little weight, if any, could be given to their statements. The weight given to real and sincere expressions of empathy or remorse is evaluated case by case. When a rather cursory, indirect statement is made, it certainly does not show the required state of mind of a convicted person that he/she is prepared to contribute to reconciliation within his/her community, which would merit a mitigated sentence.

10149. Justice Winter-Dissent, para. 105: Under certain circumstances, a convicted person's post-conflict conduct, such as assisting in restoring peace, in addition to showing remorse, can be considered in mitigation.[1351] The fact that Fofana demonstrated "commitment to and observance of the Lome Peace agreement, and ... worked without any pay with the NGO community in ensuring that members of the CDF remained committed to the peace process within Sierra Leone"[1352] indicates that he tried to assist in the reconciliation process of his country. I therefore come to the conclusion that mitigating circumstances, albeit to a very limited amount, can be credited to Fofana. Not having found anything similar in this regard concerning Kondewa, I hold that reconciliation cannot be a reason to reduce: his sentence.

(f) Partially Dissenting Opinion On Sentencing of Justice Kamanda

10150. Justice Kamanda-Dissent, para. 1: I have in this Judgment concurred with the majority view of my distinguished colleagues in the main Judgment in this case. I have, nonetheless,

disagreed with the majority on the question of SENTENCE. I have, in consequence, had recourse to writing a partially dissenting opinion. Briefly stated, my position is that the sentences imposed by the Trial Chamber are fair and adequate because it is my view that the said Chamber considered all the relevant parameters in arriving at fair and just sentences, all the circumstances considered. Except in those areas where I have joined my learned colleagues to overturn the verdicts pronounced by the Trial Chamber, I have left the sentences undisturbed.

10151. Justice Kamanda-Dissent, para. 2: The two Accused, Moinina Fofana and Alieu Kondewa were each charged on 8 Counts of offences pursuant to crimes that could broadly be categorised under three heads, that is:

(a) Crimes against Humanity (Counts I and 3)

(b) War Crimes (Counts 2, 4,5,6 and 7)

(c) Other Serious Violations Of International Humanitarian Law (Count 8)

10152. Justice Kamanda-Dissent, para. 3: The Accused were charged pursuant to Article 6(l) and/or 6(3) of the Statute for the Special Court for Sierra Leone.

10153. Justice Kamanda-Dissent, para. 4: Article 6(1) of the Statute provides:

> "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 he crime."

10154. Justice Kamanda-Dissent, para. 5: Article (6)(3) provides:

> "The fact that any of the acts referred to in articles 2 and 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 do and the superior had failed to take the necessary and reasonable measures to prevent such acts of to punish the perpetrators thereof.."

10155. Justice Kamanda-Dissent, para. 6: I have quoted these Articles *in extenso* to show that the Accused were not charged as persons who themselves committed these acts directly. Criminal responsibility was thrust upon these two men by the operation of the Statute. I have mentioned the import of these assumed criminality because it is my considered view that this factor must be viewed from the perspective that these lowly-placed men could be clothed with the garment of major players in a very confused warfare where fighters were more often than not on frolic of their own. Since the law holds them culpable in any case, it is my strong view that that same law should in an even-handed manner operate also as a mitigating factor on the accused men's behalf.

10156. Justice Kamanda-Dissent, para. 7: The Trial Chamber found Fofana guilty on Courts 2, 4, 5, 7 with respective prison terms of 6 years, 6 years, 3 years and 4 years passed on him, to run concurrently. This in effect gave Fofana a maximum prison term of 6 years, inclusive of the time he had spent in the custody of the Special Court He was found not guilty on Counts 1, 3, 6 and 8.

10157. Justice Kamanda-Dissent, para. 8: Kondewa was found guilty on Counts 2, 4, 5, 7, 8 with respective prison terms of 8, 8, 5, 6 and 7 years passed on him, to run concurrently. His maximum prison term was 8 years.

10158. Justice Kamanda-Dissent, para.9: Kondewa appealed his conviction. Fofana did not. The Prosecution, among other grounds, appealed against the Counts on which the Accused were acquitted.

10159. Justice Kamanda-Dissent, para. 10: At the completion of the hearing, the Appeals Chamber, by a majority, overturned the not guilty verdict on the two Accused on Counts 1 and 3, entered a conviction on both Counts and imposed sentences in excess of the highest imposed on any Count by the Trial Chamber. The rest of the convictions passed by the Trial Chamber were confirmed and sentences revised upwards.

10160. Justice Kamanda-Dissent, para. 11: Having taken all the circumstances of the case into consideration, I pass the following sentences:

10161. Justice Kamanda-Dissent, para. 12: With respect to Fofana's convictions on Counts 1, 2, 3, 4, 5: I pass sentences of 6, 6, 5, 6 and 3 years respectively, the terms to run concurrently. Maximum term to be served being 6 years.

10162. Justice Kamanda-Dissent, para. 13: With respect to Kondewa's convictions on Counts 1, 2, 3, 4, 5: I hereby pass sentences of 8, 8, 5, 8, 5 years, the terms to run concurrently. Maximum term to be served being 8 years.

10163. Justice Kamanda-Dissent, para. 14: The terms of imprisonment for both men to take effect from 29 May 2003 when they were arrested and taken in custody of the Special Court for Sierra Leone.

10164. Justice Kamanda-Dissent, para. 15: I have had the benefit of reading the Partially Dissenting Opinion on Sentencing by my Learned and Distinguished Colleague, The Honourable Justice Gelaga King, and I most respectfully adopt it as part of this Opinion.

ANNEX A – OFFENCES AGAINST UNAMSIL PERSONNEL

Prosecutor v. Sesay, Morris Kallon and Augustine Gbao, Indictment, SCSL - 2004-15-PT

(RUF)

Offenses against UNAMSIL Personnel were charged only in one case (RUF), and thus fail to meet the commonality criteria for inclusion in the main body of the *Compilation.* However, because of the importance of these crimes in the jurisprudence of the SCSL, Annex A recites the charges as they appear in the Indictment and provides an annotated guide to the paragraphs and pages of the RUF Appellate, Trial, and Sentencing Judgments where those charges were adjudicated. Annex A also provides an online link for access directly to each of the Judgments and is meant to be a roadmap for navigating references to offenses against UNAMSIL personnel where they appear in each Judgement.

1. RUF Amended Consolidated Indictment

Prosecutor v. Sesay, Morris Kallon and Augustine Gbao, Indictment, SCSL - 2004-15-PT, Indictment, 13 May 2004

COUNTS 15 - 18: ATTACKS ON UNAMSIL PERSONNEL

10165. 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.

2. Trial Judgment

Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao (Trial Judgement) SCSL-04-15-T, Judgement, 2 March 2009

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Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao, SCSL-04-15-A, Appeals Judgement, 26 October 2009

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ANNEX B – EVALUATION OF EVIDENCE

Annex B is a summary of the Special Court's approach to the principles and application of evidence as digested and abridged from the *Taylor* appeal judgment. Although the wording of the judgment has not been altered, Annex B extracts from that judgment, where possible, principles that are not case specific, and omits the facts in dispute unless they are intrinsic to the understanding of the section. For citation purposes, the actual judgment and footnotes should be consulted at: *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-01-A, Judgment, 26 September 2013 ('Charles Taylor Appeal Judgment')

HEADINGS

A. GENERAL CONSIDERATIONS

10629. para. 68: A Trial Chamber undertakes two principal mandatory functions regarding evidence: to determine whether or not to admit it, and, if admitted, to evaluate it.[146]

10630. para. 69: The Rules of Procedure and Evidence of the Special Court contain, in Section 3, the rules of evidence that govern the proceedings before the Chamber. Specifically, Rule 89(A) provides that "[t]he rules of evidence set forth in this Section shall govern the proceedings before the Chambers. The Chambers shall not be bound by national rules of evidence." However, Rule 89(B) also provides that: "In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which best favour a fair determination of the matters before it and are consonant with the spirit of the Statute and the general principles of law."

10631. para. 70: Rule 89(C) sets out an overarching rule of admission of evidence when it provides that: "A Chamber may admit any relevant evidence."[147] It is evident that Rule 89 is in consonance with the recognition that flexibility in admitting and evaluating evidence in trials for violations of international criminal law is justified by the *sui generis* nature of these trials.[148]

1. Corroboration

(a) Discussion

10632. para. 73: The Appeals Chamber considers it apt to note at the threshold that technical rules prescribing what constitutes corroboration, and rules requiring technical corroboration for certain classes of witnesses in order to establish their credibility, are an anachronism, abandoned by most domestic jurisdictions[156] and renounced by this and other international tribunals.[157]

10633. para. 74: The maxim "one witness is no witness"[158] has no place in the prosecution of war crimes and crimes against humanity. Since the post-Second World War cases, such as the *Werner Rohde* Case, it has been recognised that "common-law rules as to the necessity of corroborating accomplices amount only to a caution and not to a command."[159] In the *General Tomoyuki Yamashita* Case, the Commission reversed a ruling in which it had previously been unwilling to consider affidavits without corroboration by witnesses on any item in the Bills of Particulars,[160] and affirmed its prerogative of receiving and considering affidavits or depositions, if it chose to do so, "for whatever probative value the Commission believes they may have, without regard to the presentation of some partially corroborative oral testimony."[161]

10634. para. 75: The Appeals Chamber recalls that corroboration of witnesses and evidence is not a legal requirement in international criminal law.[162] In the *Tadić* Appeal Judgment, the ICTY Appeals Chamber decided that a conviction may be based on the testimony of a single witness on

a material fact without the need for corroboration.[163] In that case, the evidentiary record was minimal: the appellant's conviction for two murders was based solely on the testimony of one witness,[164] and the reasonableness of the Trial Chamber's finding turned only on the Trial Chamber's assessment of the credibility and reliability of that single witness.[165] The Appeals Chamber affirmed the Trial Chamber's finding, holding that "[t]he task of hearing, assessing and weighing the evidence presented at trial is left to the Judges sitting in a Trial Chamber."[166] Similarly, the accused in *Furundžija* was convicted based on the evidence of only two witnesses, who largely provided separate testimony regarding separate events.[167]

10635. para. 76: In *Sesay et al.*, this Appeals Chamber held that "[a] Trial Chamber enjoys discretion to use uncorroborated evidence, to decide whether corroboration is necessary in the circumstances, and to rely on uncorroborated, but otherwise credible, witness testimony."[168] In *Brima et al.*, the Appeals Chamber held that if after evaluation of evidence of an accomplice the Trial Chamber comes to the conclusion that the witness is nonetheless credible and his evidence reliable, the Trial Chamber can rely on it solely to enter a conviction.[169] There is no bar to the Trial Chamber relying on a limited number of witnesses or even a single witness, provided it took into consideration all the evidence on the record.[170]

10636. para. 77: There is likewise no technical definition of the word ―corroboration in the jurisprudence of the Special Court.[171] The SCSL Trial Chambers and the Appeals Chamber have consistently relied on the plain meaning of "corroboration" as "evidentiary support."[172] There are no rules specifying the form or substance that such support must take.[173] The Appeals Chamber agrees with the opinion of the ICTR Appeals Chamber that "corroboration is simply one of many potential factors in the Trial Chamber's assessment of a witness's credibility."[174] It also agrees with the opinion held in several cases that a Trial Chamber "has the discretion to rely on uncorroborated, but otherwise credible, witness testimony."[175]

(b) Conclusion

10637. para. 78: The Appeals Chamber holds that corroboration of witnesses and evidence is not a mandatory legal requirement in international criminal law or in the jurisprudence of the Special Court. Corroboration is only one of many factors which the Trial Chamber rightly considers when assessing the credibility of witnesses and the reliability and weight to be accorded to evidence. The Appeals Chamber holds that the Trial Chamber correctly relied on the plain meaning of the term "corroboration," and that there was no need for it to provide a definition of the word "corroboration" or regard it as a technical concept.

2. Uncorroborated Hearsay Evidence

(a) Discussion

10638. para. 81: The Defence contends that "it is legally impermissible to base a particular conviction only on uncorroborated hearsay."[178] For this submission it relies on the ICTY Appeals Chamber *Prlić et al.* Decision Relating to Admitting Transcript, quoting a passage in the decision wherein that Appeals Chamber stated:

> A different matter is, of course, what weight a trier of fact is allowed to give to evidence not subjected to the testing of cross-examination. It is in this matter that the jurisprudence of the ECHR is valuable, as it has authoritatively stated the principle that 'all evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. There are exceptions to this principle, but they must not infringe the rights of the defence.' Unacceptable infringements of the rights of the defence, in this sense, occur *when a conviction is based solely, or in a decisive manner, on the deposition of a witness whom the accused has no opportunity to examine or have examined either during the investigations or at trial*.[179]

10639. para. 82: The Appeals Chamber does not accept that as a general principle of law applicable to international criminal proceedings, uncorroborated hearsay evidence can never be the sole or decisive basis for a conviction.[181]

10640. para. 83: The Appeals Chamber notes that the discussion in the *Prlić et al*. Decision, "concerned 'depositions' elicited by a judicial officer or lawyer, under oath, and recorded by stenographers."[182] It is worth noting that Rule 92*quater* of the Rules provides as follows:

> (A) The evidence of a person in the form of a written statement or transcript who has subsequently died, or who can no longer with reasonable diligence be traced, or who is by reason of bodily or mental condition unable to testify orally may be admitted, whether or not the written statement is in the form prescribed by Rule 92bis, if the Trial Chamber:
>
> (i) is satisfied of the person's unavailability as set out above; and
>
> (ii) finds from the circumstances in which the statement was made and recorded that it is reliable.
>
> (B) If the evidence goes to proof of acts and conduct of an accused as charged in the indictment, this may be a factor against the admission of such evidence, or that part of it.

10641. para. 84: The *Prlić et al*. Decision related to such a written statement. The *Prlić et al*. Decision expressly and solely relied on rulings of the European Court of Human Rights.[183] The Appeals Chamber notes that ECtHR decisions have been recognised by international criminal tribunals as a source of guidance regarding fair trial rights.[184] Their decisions regarding hearsay evidence can be of particular guidance to the Appeals Chamber because the European Convention contains identical language to the fair trial provisions of Article 17(4)(e) of the Statute for the protection of the right of an accused to examine witnesses against him.[185] The findings challenged in this case, however, are not based on written statements made for the purpose or in anticipation of proceedings (now usually referred to in some decisions as "testimonial hearsay");[186] or the circumstances in which the *Prlić et al*. Decision arose, which concern what may be described as the right of "confrontation".[187]

10642. para. 85: The Appeals Chamber considers that the issue in this case in regard to hearsay evidence turns on whether reliance on uncorroborated hearsay evidence as the sole or decisive basis for incriminating findings of fact leading to a conviction amounted to an error in law. It is, therefore, in this context relevant and instructive to note that the ECtHR in the case of *Al Khawaja and Tahery*, decided on 15 December 2011, considered and expressly rejected a similar view. In *Al Khawaja and Tahery*, the Grand Chamber of the ECtHR held that reliance on an uncorroborated hearsay statement as the sole or decisive basis for a conviction is not precluded as a matter of law and does not *per se* violate the accused's right to a fair trial.[189]

10643. para. 86: The opinion of the ECtHR in *Al Khawaja and Tahery* applying Article 6 of the European Convention was that there is no technical rule of law requiring "corroboration" or any other specific type of verification for hearsay evidence, but that the trier of fact must undertake a "fair and proper assessment of the reliability of [hearsay] evidence," and only where "such evidence is sufficiently reliable given its importance in the case" may that evidence be the basis for a conviction.[190] This is in consonance with the intent of Rule 89(B) and (C) of the Rules of the Special Court which the Appeals Chamber is bound to follow. In accordance with the Statute and Rules, the Trial Chamber admitted the evidence proffered before it, notwithstanding that it may have been hearsay or uncorroborated hearsay, as long as such evidence was relevant. Evidence does not become irrelevant because it is hearsay. It is instructive that only Rule 95 of the Rules expressly excludes the admission of evidence when it provides that: "No evidence shall be admitted if its admission would bring the administration of justice into disrepute."

10644. para. 87: The Appeals Chamber recognises, however, that admission of evidence is not conclusive of its reliability, and emphasises that because hearsay evidence is admissible as substantive evidence in order to prove the truth of its contents, establishing the reliability of hearsay evidence is of paramount importance.[191] There exist in the laws applied by the Special

Court safeguards designed to ensure the accused's rights of fair hearing and to ensure that evidence can be fairly challenged at trial.[192]

10645. para. 89: It is fitting to note that while written statements that could be a substitute for trial testimony may be subject to formal legal framework and safeguards, the abiding and lasting safeguard that what may be called "non-testimonial" hearsay evidence has is at the point of assessment of its reliability. It is at that point that a careful appellate review of the Trial Chamber's evaluation becomes imperative in the interest of justice and fair hearing. Several factors would go into the review of such evaluation. It is in that process that pronouncement is made on the test of reliability, by inquiry into whether or not the Trial Chamber tested the reliability of hearsay evidence, using corroboration as a factor.[195]

10646. para. 90: The Appeals Chamber having considered the submissions of the Parties, its jurisprudence and its Statute and Rules regarding the use of hearsay evidence, and noting the counterbalancing protection of the rights of the accused,[196] finds no merit in the argument that it is "legally impermissible" to base a particular conviction only on uncorroborated hearsay evidence. It is important, however, that a trier of fact should carefully evaluate the reliability of such evidence and bear in mind the safeguards designed to ensure fairness.[197]

(b) Conclusion

10647. para. 91: Given the safeguards provided by the Statute and the Rules of the Special Court, as interpreted in the jurisprudence of the Court, there is no prohibition against the use of uncorroborated hearsay evidence, even if such hearsay is the basis of the conviction, provided that the Trial Chamber has subjected the hearsay evidence to a fair and proper assessment of its reliability.[198]

3. Adjudicated Facts

(a) Discussion

10648. para. 108: Rule 94(B) provides:

> At the request of a party or of its own motion, a Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Special Court relating to the matter at issue in the current proceedings.[227]

10649. para. 109: The legal effect of taking "judicial notice" of adjudicated facts pursuant to Rule 94(B) is that it creates a rebuttable presumption in favour of the accuracy of those facts. Unlike facts of common knowledge admitted under Rule 94(A), the accuracy of facts admitted under Rule 94(B) may be challenged.[228]

10650. para. 110: It is commonly accepted that adjudicated facts are creations of international tribunals introduced through their Rules to increase efficiency and assist in factual harmonisation. Often they do neither. The amount of time consumed in their submission, evaluation and review can be substantially greater than the time necessary to introduce testimonial or documentary evidence and subject it to cross-examination and scrutiny. Likewise, harmonisation of facts is not always desirable. Investigations and issues change, depending on the focus of successive cases, and new facts that were either unavailable or irrelevant in previous trials come to light. A risk in the application of Rule 94(B) is that the understanding of facts, which should be evolving in the interest of justice, can instead be calcified in the interest of harmony.

10651. para. 113: The Trial Chambers of the Special Court have interpreted adjudicated facts introduced under Rule 94(B) as evidence, to be weighed with all of the evidence at the time of deliberation.[234] As stated by Trial Chamber I: "In its final deliberations, the Trial Chamber is judicially obligated to assess the weight of any adjudicated facts that are judicially noticed in light of all the evidence presented in the case."[235] The extent to which contrary evidence, regardless of when it is received, undermines the adjudicated fact with its rebuttable presumption of accuracy is a matter to be determined by the trier of fact when viewing it in the context of the evidence as a whole, and evaluated after all of the evidence has been received.[236] It is this position which is set out in the jurisprudence of the Special Court.

10652. para. 114: On appeal, the Defence, citing an ICTY Trial Chamber ruling,[237] now urges this Chamber to find error in this Trial Chamber's adherence to the practice of the Special Court. The Defence now argues that an adjudicated fact is not in itself evidence that can be weighed against evidence of facts contrary to it. Rather "contrary evidence is to be understood as a step to reopen the evidentiary debate on the fact the Chamber took judicial notice of."[238]

10653. para. 115: The difference between the two approaches is clear. According to the approach now argued on appeal, the adjudicated fact cannot be weighed against conflicting evidence at the conclusion of the case, but disappears entirely once the Trial Chamber considers that conflicting evidence has been introduced. At this point, the trier of fact must make a judicial decision regarding the reliability of the adjudicated fact based solely on the evidence for and against it. This will necessarily require notice to the proponent of the fact and the opportunity to present evidence in support of the factual accuracy of the proposition contained in the challenged adjudicated fact. Accordingly, on that approach the adjudicated fact, once challenged, has no evidential value whatsoever.

10654. para. 116: Under the Special Court's jurisprudence, however, the adjudicated fact, with its presumption of accuracy, is a piece of evidence like any other, and it exists as such throughout the trial, regardless of when admitted. It can be argued by the parties in their closing briefs and

weighed against the evidence as a whole during deliberations. Under this approach, there is no point at which the Trial Chamber could advise that the fact had been successfully challenged because it can only make that determination, if at all, when it deliberates on the evidence in its entirety.

(b) Conclusion

10655. para. 118: The Appeals Chamber holds that once admitted by the Trial Chamber, an adjudicated fact, with its attending presumption of accuracy, is a piece of evidence that can be considered and weighed by the Trial Chamber, along with all the other evidence as well as the presumption of innocence, during the deliberation process.

B. ASSESSMENT OF CREDIBILITY

1. Enhanced Assessment of the Credibility of Challenged Witnesses

(a) Discussion

10656. para. 122: The credibility of witnesses is within the Trial Chamber's discretion,[252] and the credibility and reliability of the evidence is a matter for the Trial Chamber to assess in view of the circumstances of the case.[253] This is because the "Trial Chamber has the advantage of observing witnesses in person and so is better positioned than the Appeals Chamber to assess the reliability and credibility of the evidence."[254] The Appeals Chamber in *Brima et al.* held that a Trial Chamber must look at the totality of the evidence on record in evaluating the credibility of a witness, and that a party who alleges on appeal that a Trial Chamber has made a finding as to the credibility of a witness without considering the totality of the evidence on record must show clearly that such error occurred.[255]

10657. para. 123: The Trial Chamber explained in detail in its Judgment its approach to assessing credibility.[256] The Trial Chamber articulated the factors it considered as to each witness, including their demeanour, conduct and character (where possible).[257] It also considered their knowledge of the facts to which they testified, their proximity to the events described, the plausibility and clarity of their testimony, their impartiality, the lapse of time between the events and the testimony, their possible involvement in the events and the risk of self-incrimination, inconsistencies in their testimony and their ability to explain such inconsistencies, any motivations to lie and their relationship with Taylor.[258]

10658. para. 124: In addition to explaining its credibility analysis for all witnesses, the Trial Chamber explained in greater detail its assessment of the credibility of 22 witnesses. The Trial Chamber stated in the Judgment that it provided greater detail for its reasoning for these witnesses because they were significant witnesses whose credibility had been challenged by the Parties.[259]

Of the 22 witnesses, the Trial Chamber found 16 witnesses "generally credible,"[263] and did not find the other six to be so.[264] The designation "generally credible" does not reflect the Trial Chamber's misgivings as to the witnesses' credibility, but rather recognises that not everything every generally credible witness said would be accepted, and not everything said by witnesses who were not found to be generally credible would be rejected.[265] The general credibility of a witness, as determined by the observation of his entire testimony, is a factor which the Trial Chamber could and did properly consider when analysing the reliability of individual aspects of the witness's testimony.

(b) Conclusion

10659. para. 125: The Appeals Chamber finds no error in the Trial Chamber's approach to its assessment of the credibility of witnesses, its application of the law, as established in this Court's jurisprudence, governing the evaluation of the credibility of witnesses to all witnesses or its selection and assessment of the 22 witnesses for whom fuller explanations of its reasoning was provided.

2. Accomplice Witnesses

(a) Discussion

10660. para. 129: The Appeals Chamber considers that, as with any other witness, a Trial Chamber may convict on the basis of a single accomplice witness if the Trial Chamber finds the witness credible and his evidence reliable.[275] The Appeals Chamber further affirms that the Trial Chamber is in a far better position than the Appeals Chamber to decide whether alleged participation in the commission of crimes affects the credibility and the reliability of the witness's testimony.[276]

10661. para. 130: In keeping with the jurisprudence of the Special Court, the Trial Chamber in this case stated that in assessing the credibility of accomplice witnesses, it specifically considered whether or not the accomplice had an ulterior motive to testify as he did.[277] Its credibility assessments included discussions of witnesses' potential ulterior motives due to their prior relationship with Taylor or role in the RUF/AFRC, and the related challenges at trial.[278] The Trial Chamber found some accomplice witnesses to be generally credible and others not.[279]

10662. para. 133: The Appeals Chamber opines that accomplices are neither inherently incredible nor inherently unreliable witnesses.[285] As participants in the crimes and insiders, they may provide false testimony due to ulterior motives. They may also provide credible and reliable testimony due to their intimate knowledge of the crimes.[286] A determination must be made on a witness-by-witness basis.

(b) Conclusion

10663. para. 135: The Trial Chamber acknowledged the jurisprudence of this Court in assessing accomplice evidence and followed it in its Judgment, explaining how it had applied the law with care to the analyses of the credibility of individual accomplice witnesses. The Trial Chamber recognised that the majority of the witnesses were "insiders" who fit within this Court's use of the term "accomplice", and engaged in careful analysis of their credibility in conjunction with all the other evidence on the record. The Appeals Chamber finds no error in the cautious approach articulated by the Trial Chamber or its application of that approach to individual accomplice witnesses, on a witness-by-witness basis.

3. Witnesses who Received Benefits

(a) Discussion

10664. para. 139: The Appeals Chamber has had occasion to hold "that [the] allocation of payment, allowances or benefits may be relevant to assess the credibility of witnesses testifying before the Court."[303] In *Sesay et al*., considering a challenge to the Trial Chamber's assessment of witness credibility in this regard, the Appeals Chamber held that the Trial Chamber had met its obligation to consider and evaluate the credibility of the witness, in light of the evidence of payments made by the Registry's Witness and Victim's Section (WVS) and the Prosecutor's Witness Management Unit, by explaining its approach and by giving three examples as to how it undertook its evaluation.[304]

10665. para. 140: In the present case, the Trial Chamber took into account the following:

(i) The costs of allowances necessarily and reasonably incurred by witnesses as a result of testifying before a Chamber are met by the Special Court in accordance with the "Practice Direction on Allowances for Witnesses and Expert Witnesses," issued by the Registrar on 16 July 2004.[305] No distinction is made between witnesses for the Prosecution and Defence.[306]

(ii) Records of disbursements to witnesses for both parties were fully disclosed, and disbursement forms concerning witnesses for both parties were admitted in evidence,[307] and used to cross-examine witnesses.[308]

(iii) Information regarding Special Measures taken by the prosecutor in connection with the support and assistance of witnesses according to Rule 39(ii)[309] was disclosed to the Defence, admitted in evidence,[310] and used to cross-examine Prosecution witnesses.[311]

(iv) Article 16(4) of the Statute and Rule 34 of the Rules authorize WVS to provide short and long-term protection and support, including relocation, to witnesses and victims who appear before the Special Court.[312]

(v) The Prosecution's disclosure that indemnity letters were provided to some witnesses by the Prosecution,[313] as were offers to release witnesses from prison.[314]

10666. para. 141: In assessing the credibility of witnesses who received benefits in connection with their testimony, the Trial Chamber stated that it took into account information about witness payments made both by the WVS and by the Prosecution, on a witness-by-witness basis, and considered any cross-examination of the witness in relation to those benefits.[315] It considered whether the benefit conferred upon and/or payment made to each witness went beyond that "which is reasonably required for the management of a witness."[316] In assessing whether such a payment was "reasonably required," the Trial Chamber also noted that it took into account the cost of living in West Africa and the station in life of the witness receiving the payment.[317] The Trial Chamber stated that it had also taken into consideration evidence that witnesses were promised relocation or had already been relocated at the time they gave evidence, and the effect that such promises may have had on their testimony.[318] It also considered cross-examination in relation to those issues.[319]

10667. para. 142: The Trial Chamber acknowledged the jurisprudence of the Special Court[320] and followed it in its assessment of each witness who received any form of consideration from the Court or from the Prosecutor.[321]

(b) Conclusion

10668. para. 143: From a scrutiny of the Trial Judgment it is evident that for each witness who received any benefit or promise of benefit in connection with his or her testimony, the Trial Chamber carefully and systematically considered evidence relevant to the benefit and made a careful assessment as to the effect that the receipt or promise of the benefit had on the individual witness's credibility. The Appeals Chamber finds no error in the cautious approach articulated by the Trial Chamber or its application of that approach to individual witnesses, on a witness-by-witness basis.

4. General Conclusion on Credibility

10669. para. 144: It is primarily for the Trial Chamber to determine whether a witness is credible and to decide which witness's testimony to prefer, without necessarily articulating every step of the reasoning in reaching a decision on these points.[322] The Appeals Chamber will uphold a Trial

Chamber's findings on issues of credibility unless it finds that no reasonable tribunal could have made the impugned finding.[323]

10670. para. 145: In this case, the Trial Chamber not only articulated a careful and cautious approach to determining the credibility of all witnesses, but carefully provided additional details in articulating the factors it took into consideration in the assessment of the credibility of witnesses who fell within the enumerated categories: (i) witnesses whose veracity was challenged during closing argument; (ii) accomplice witnesses; and (iii) witnesses who had received some form of benefit in connection with testifying before the Special Court. In singling out these three categories, the Trial Chamber did not deviate from its general credibility analysis, but articulated specifically how its general analysis applied to these witnesses whose credibility had been particularly challenged or who fell into categories presenting apparent questions of veracity. The Appeals Chamber holds that in resolving those questions, the Trial Chamber properly articulated and correctly applied the relevant factors established in the jurisprudence of the Special Court.[324]

C. ASSESSMENT OF RELIABILITY

10671. para. 146: Whereas credibility relates to the veracity of the witness generally, reliability relates to the individual facts to which the witness testifies.

1. The Reliability of Hearsay Evidence

(a) Discussion

10672. para. 149: Hearsay is an out of court statement used for the truth of the matter asserted. The Special Court's jurisprudence recognises that hearsay evidence may be used by the Trial Chamber in reaching its conclusions on the guilt of the accused.[331] In this regard, the jurisprudence of the Special Court is consistent with the practice of the post-Second World War courts,[332] and the other ad hoc tribunals.[333] It is equally well established that care needs to be taken when relying upon hearsay evidence.[334] Establishing the reliability of hearsay evidence is of paramount importance because hearsay evidence is admissible as substantive evidence in order to prove the truth of its contents.[335] Caution in the reliance on hearsay evidence, however, does not imply a formulaic application of set rules, but rather a holistic analysis of the reliability of the out of court statement, the factors for which will differ according to the evidence and the context.[336]

10673. para. 150: The Trial Chamber comprehensively set out its approach to the evaluation of hearsay evidence, acknowledging in its Judgment that in addition to evidence of facts within a witness's own knowledge, it had also considered hearsay evidence,[337] which it noted it had broad discretion to do.[338] It stated that before determining whether or not to rely on hearsay evidence, it examined such evidence with caution, as the weight to be afforded to such evidence will usually

be less than that accorded to the evidence of a witness who has given the evidence under oath or solemn declaration and who has been tested in cross-examination.[339] In so doing, the Trial Chamber took into account whether or not the hearsay evidence was voluntary, truthful, and trustworthy, and considered both its context and the circumstances under which it arose.[340]

10674. para. 151: In addition, the Trial Chamber explained the factors that it took into account in assessing the reliability of the hearsay evidence, including whether it was first-hand or removed,[341] whether it emanated from identified or unidentified/anonymous sources,[342] the opportunity to cross-examine the person who made the statement,[343] whether the hearsay statement was corroborated,344 the potential for errors of perception and the circumstantial guarantees of trustworthiness surrounding the statement.[345] The Trial Chamber noted that when assessing the evidence, it considered any motivation to lie as well as the declarant's relationship with Taylor.[346]

(b) Conclusion

10675. para. 152: In conclusion, the Appeals Chamber holds that the Trial Chamber properly considered the law and practice of the Special Court, cautioned itself and carefully articulated the factors it considered in assessing the reliability of hearsay evidence.

2. Reliability of Alleged Uncorroborated Hearsay Evidence

(a) Discussion

10676. para. 156: The Appeals Chamber reiterates that there is no general principle of law precluding the use of uncorroborated hearsay evidence as a sole or decisive basis for a "specific incriminating finding of fact" or for a conviction.[351]

10677. para. 166: The Appeals Chamber reviewed the Trial Judgment for any examples of the Trial Chamber's reliance on uncorroborated hearsay evidence for the Trial Chamber's findings and found none. That review, on the contrary, reveals that the Trial Chamber on several occasions declined to make findings where the only evidence adduced was unsupported or uncorroborated hearsay evidence, including uncorroborated hearsay evidence that arose in the testimony of witnesses it otherwise found generally credible.[387]

(b) Conclusion

10678. para. 167: The Appeals Chamber concludes that the Trial Chamber properly applied the law in regard to the assessment of the reliability of hearsay evidence, including consideration of the presence or absence of other evidentiary support as one of many factors in making its assessment.

3. Reliability of the Sources of Hearsay Evidence

(a) Discussion

10679. para. 171: Benjamin Yeaten, Daniel Tamba, Ibrahim Bah and Sam Bockarie did not testify at the trial. They played significant roles in the acts about which the Trial Chamber received direct testimony. They also appear in the Trial Judgment as persons whom witnesses testified made representations as to Taylor's words and actions.[392] The Appeals Chamber notes that it is not the Defence case that the Prosecution could have reasonably called these individuals but failed to do so. Rather, the Defence avers that the Trial Chamber neglected to analyse their reliability, and that therefore evidence contained in the testimony of witnesses that ascribe statements implicating Taylor to these four declarants is not reliable.

10680. para. 172: On a review of the Trial Judgment, the Appeals Chamber finds that the Trial Chamber specifically reasoned why it accepted or rejected individual hearsay statements allegedly emanating from these four declarants.

10681. para. 174: Because the Defence alleges that this error was "systematic," the Appeals Chamber reviewed the Trial Judgment for hearsay evidence of which these four declarants were the source but which the Defence did not cite. The review reveals nothing "systematic." In fact, not all statements attributed by witnesses to Bockarie and Yeaten were, after analysis of all the evidence, considered by the Trial Chamber to be reliable as to the truth of their content or the fact that they were uttered.[406]

(b) Conclusion

10682. para. 176: The Trial Chamber considered the reliability of the sources of hearsay evidence as one of the factors it considered in its assessment of the reliability of the hearsay statement itself, and decided, based on all of the evidence, whether or not to accept the hearsay and use it in its findings. The evaluation of hearsay evidence by the Trial Chamber was careful and cautious, and in keeping with the rights of the parties preserved by the letter and spirit of the Statute.

4. Inferences drawn from Circumstantial Evidence

(a) Discussion

10683. para. 180:. Consistent with the Special Court's jurisprudence in Fofana and Kondewa it is permissible to base a conviction solely on circumstantial evidence, provided that the only reasonable inference to be drawn from such evidence leads to the guilt of the accused.[420] When the evidence is capable of supporting a reasonable inference consistent with innocence, the accused must be acquitted.[421] As stated in *Sesay et al*., the standard of proof at trial is the same regardless

of the type of evidence, direct or circumstantial.[422] The principle of presumption of innocence, as protected by the standard of proof beyond a reasonable doubt, underpins the requirement that convictions based on inferences drawn exclusively from circumstantial evidence are proper only if the evidence is incapable of giving rise to a reasonable inference consistent with innocence.[423] If the circumstantial evidence on which the inference supporting the conviction relies also gives rise to a reasonable inference consistent with innocence, then there is obviously a reasonable doubt.[424]

10684. para. 181: The Prosecution must prove beyond a reasonable doubt every element of the offence charged. However, the Prosecution need not prove every disputed fact beyond a reasonable doubt. It is settled law that "not each and every fact in the Trial Judgement must be proved beyond a reasonable doubt, but only those on which a conviction or the sentence depends."[425]

(b) Conclusion

10685. para. 182: The principle of law is that it is permissible to base a conviction solely on circumstantial evidence, provided that the only reasonable inference to be drawn from such evidence leads to the guilt of the accused. That principle does not require that circumstantial evidence on disputed facts that are not decisive to the determination of guilt yield only one reasonable inference.

D. ASSESSMENT OF THE WEIGHT OF THE EVIDENCE

(a) Discussion

10686. para. 191: The Appeals Chamber has repeatedly affirmed that the weight to be given to the evidence is within the Trial Chamber's discretion.[456] Trial Chambers enjoy broad discretion in their assessment of evidence and determination of the weight to accord testimony.[457] This is appropriate since, under the trial system adopted by the Special Court, the ICTY and the ICTR, it is the judges of the Trial Chamber who see and hear the witnesses and can best evaluate the evidence that they experience firsthand.[458] The Trial Chamber's assessment as to whether the weight of the evidence is sufficient to support a particular finding will only be disturbed if the Appeals Chamber determines that no reasonable trier of fact could reach the same conclusion.[459]

10687. para. 192: As the Appeals Chamber has previously emphasised, "an appellant must contest the Trial Chamber's findings and conclusions, and should not simply invite the Appeals Chamber to reconsider issues de novo."[461] Where an appellant merely seeks to substitute his own evaluation of the evidence for that of the Trial Chamber, such submissions may be dismissed without detailed reasoning.[462]

10688. para. 193: Determining the weight to be given to discrepancies between a witness's testimony and his prior statements is part of the Trial Chamber's discretion to assess the weight of the evidence.[463] "It is for the Trial Chamber to determine whether discrepancies discredit a witness' testimony and, when faced with competing versions of events, to determine which one is more credible."[464] A Trial Chamber may accept only part of a witness's testimony.[465] The Trial Chamber set out in its Judgment the method by which it determined and weighed discrepancies between witnesses and within individual witnesses' testimony. It also explained some of the factors it considered when making those determinations.[466]

10689. para. 195: The Appeals Chamber notes that a Trial Chamber is not required to refer to the testimony of every witness or every piece of evidence on the trial record.[469]

(b) Conclusion

10690. para. 196: A Trial Chamber should not abuse its broad discretion in weighing evidence by making findings determinative of guilt in the absence of evidence, or in the absence of reasoned acknowledgment of evidence contrary to the findings. The Appeals Chamber concludes that the Trial Chamber supported its findings with evidence. It identified contradictory evidence, while providing reasons why it was not persuasive.

E. BURDEN OF PROOF

(a) Discussion

10691. para. 200: Article 17(3) of the Statute enshrines the principle of the presumption of innocence in providing that an accused shall be presumed innocent until proved guilty.[480] The principle is reflected in Rule 87(A), which establishes that a finding of guilty may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond a reasonable doubt. In keeping with the spirit of the Statute, the accused has no obligation to prove anything and may rely on the presumption of innocence throughout the trial and the Judges' deliberations; and the burden is placed on the Prosecution to prove beyond a reasonable doubt every element of the crimes and the forms of criminal participation charged.[481]

10692. para. 201: In its Judgment, the Trial Chamber recalled the Statute and the applicable rules establishing the presumption of innocence, the standard of proof and the burden of proof required of the Prosecution.[482] It stated:

> [I]n respect of each count, the Trial Chamber has determined whether it is satisfied, on the basis of the whole of the evidence, that every element of that crime and the criminal responsibility of the Accused for it have been established beyond reasonable doubt. There is no burden on an accused to prove his

innocence. Article 17(4)(g) of the Statute provides that no accused shall be compelled to testify against himself or confess guilt.[483]

10693. para. 202: In addition, it explicitly emphasized that the burden never shifts to the accused:

> The Accused elected to testify in his own defence. In accordance with Rule 85(C) of the Rules, he gave his evidence under oath and thereafter called other witnesses in his defence. By electing to testify and to call witnesses in his Defence, the Accused did not thereby assume the burden of proving his innocence.[484]

10694. para. 203:. The Appeals Chamber holds that these statements are a transparent declaration of the standard applied to determine whether Taylor is guilty as to each element of each count charged. The Trial Chamber need not repeat the law each time it makes a finding that an essential element of the offense or criminal responsibility has been proved.

F. STANDARD OF PROOF BEYOND A REASONABLE DOUBT

(a) Discussion

10695. para. 227: As the Appeals Chamber stated above,[539] the standard of proof beyond a reasonable doubt is applied to the elements of the crime or the form of responsibility alleged against the accused, as well as with respect to the facts which are indispensable for entering a conviction.[540] Consequently, not every fact in the Trial Judgement must be proved beyond a reasonable doubt, but only those facts on which a conviction or the sentence depends.[541].

(b) Conclusion

10696. para. 235: The Appeals Chamber concurs with the ICTY Appeals Chamber that:

> The task of a trier of fact is that of assessing all the relevant evidence presented with a holistic approach and that a trier of fact should render a reasoned opinion on the basis of the entire body of evidence and without applying the standard of proof beyond reasonable doubt with a piecemeal approach.[553]

G. REASONED OPINION

10697. para. 246: A reasoned opinion ensures that the accused can exercise his right of appeal and that the Appeals Chamber can carry out its statutory duty under Article 20 to review the Parties' appeals.[569] In general, a Trial Chamber "is not required to articulate every step of its reasoning for each particular finding it makes, nor is it required to set out in detail why it accepted or rejected a particular testimony."[570] Nonetheless, in this case, the Trial Judgment extensively set out the Parties' submissions at trial on each allegation (in the sections entitled "Submissions of the Parties"),[571] the evidence relevant to each allegation (in the sections entitled "Evidence"),[572] the

Trial Chamber's evaluation of that evidence (in the sections entitled "Deliberations")[573] and the Trial Chamber's ultimate findings based on its assessment of the relevant evidence (in the sections entitled "Findings").[574] This deliberate and detailed approach has unquestionably facilitated the Appeals Chamber's review of the Trial Chamber's reasoning and findings in light of the Parties' submissions,[575] and the Appeals Chamber commends the Trial Chamber's methodology as a best practice.

10698. para. 247: An appellant claiming an error of law on the basis of lack of a reasoned opinion must identify the specific issues, factual findings or arguments which the appellant submits the Trial Chamber omitted to address and explain why this omission invalidated the decision.[576] As a general rule, a Trial Chamber is only required to make findings on those facts that are essential to the determination of guilt in relation to a particular count.[577]

H. GENERAL CONCLUSIONS ON EVIDENCE

10699. para. 250: The Statute and Rules create a framework for evidentiary assessment that is flexible while principled. Under this Court's jurisprudential application of the constitutive framework, the Trial Chamber has the primary obligation to assess and weigh evidence, and is given broad discretion to do so. However, that discretion is not limitless, as the Trial Chamber is required to carefully and cautiously assess the totality of the evidence on the record, in accordance with the fundamental principles of the presumption of innocence and the fairness of the proceedings. It is the Trial Chamber's essential obligation to rigorously evaluate evidence for its credibility and reliability, and strictly apply the standard of proof beyond a reasonable doubt when determining the sufficiency of the evidence supporting a conviction. Flexibility in evidentiary assessment places the responsibility on the Trial Chamber to approach all evidence cautiously and carefully, and to reason its evaluation of evidence cogently, rather than relying on formulas and proscriptions that lead to unreasoned or categorical acceptance or rejection of evidence.

ANNEX C – TABLE OF AUTHORITIES

Annex C reproduces the table of authorities referenced in each of the four Trial and Appellate Judgments.

A. CHARLES TAYLOR

1. Trial Judgment

The Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-T, Judgement, 18 May 2012

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AFRC Appeal Judgement	Prosecutor v. Brima, Kamara and Kanu, SCSL-04-16-A675, Judgement (AC), 22 February 2008
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Taylor Admission of Documents Decision	Prosecutor v. Taylor, SCSL-03-01-T, Decision on Public with Annexes A and B Defence Motion for Admission into Evidence of 301 Documents and Photographs Marked for Identification During the Cross-Examination of the Accused and on Prosecution List of Documents Marked for Identification During the Testimony of Charles Taylor Sought to be Admitted into Evidence, 18 March 2010
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Prosecutor v. Bagilishema

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