

628)

SCSL-04-16-T  
(23025-23678)



23025

## SPECIAL COURT FOR SIERRA LEONE

---

### TRIAL CHAMBER II

**Before:** Justice Julia Sebutinde, Presiding Judge  
Justice Richard Lussick  
Justice Teresa Doherty

**Registrar:** Herman von Hebel

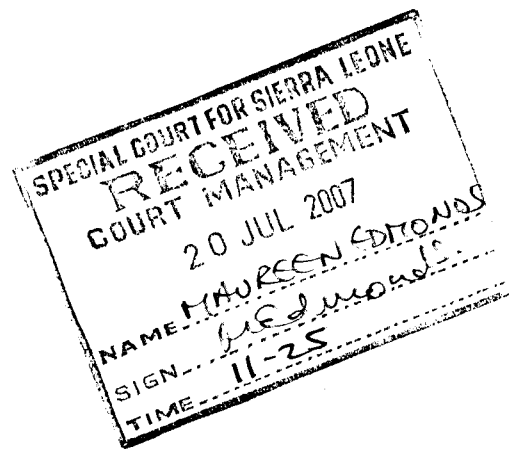
**Date:** 20 June 2007

**Case No.:** SCSL-04-16-T

### PROSECUTOR

**Against**

**Alex Tamba BRIMA  
Brima Bazy KAMARA  
Santigie Borbor KANU**



---

### JUDGEMENT

---

**Office of the Prosecutor:**

Karim Agha  
Christopher Staker  
Charles Hardaway  
Lesley Taylor  
Melissa Pack  
Vincent Wagona  
Shyamala Alagendra

**Defence Counsel for Alex Tamba Brima:**

Kojo Graham  
Glenna Thompson

**Defence Counsel for Brima Bazy Kamara:**

Andrew Daniels  
Mohamed Pa-Momo Fofanah

**Defence Counsel for Santigie Borbor Kanu:**

Geert-Jan Alexander Knoops  
Agibola E. Manly-Spain  
Carry Knoops

TABLE OF CONTENTS

23026

I. INTRODUCTION .....21

II. ALLEGED DEFECTS IN THE FORM OF THE INDICTMENT .....25

III. CONSIDERATIONS REGARDING THE EVALUATION OF EVIDENCE .....49

IV. CONTEXT OF THE ALLEGED CRIMES .....65

V. GENERAL REQUIREMENTS FOR ARTICLES 2, 3 AND 4 OF THE STATUTE .....80

VI. POLITICAL STRUCTURE OF THE AFRC GOVERNMENT .....98

VII. ROLE OF THE ACCUSED .....108

VIII. MILITARY STRUCTURE OF THE AFRC FIGHTING FORCE .....167

IX. APPLICABLE LAW .....195

X. FACTS AND FINDINGS .....247

XI. RESPONSIBILITY OF THE ACCUSED .....450

XII. CUMULATIVE CONVICTIONS .....564

XIII. DISPOSITION .....568

SEPARATE CONCURRING OPINION OF THE HON. JUSTICE JULIA SEBUTINDE  
APPENDED TO JUDGEMENT PURSUANT TO RULE 88 (C) .....573

PARTLY DISSENTING OPINION OF JUSTICE DOHERTY ON COUNT 7 (SEXUAL  
SLAVERY) AND COUNT 8 ('FORCED MARRIAGES')..... 581

ANNEX A: PROCEDURAL HISTORY .....596

ANNEX B: GLOSSARY .....618

ANNEX C: MAP OF SIERRA LEONE .....630

**DETAILED TABLE OF CONTENTS**

<b>I. INTRODUCTION .....</b>	<b>21</b>
A. THE SPECIAL COURT FOR SIERRA LEONE .....	21
B. PROCEDURAL HISTORY .....	21
C. THE ACCUSED .....	23
D. SUMMARY OF THE CHARGES .....	23
<b>II. ALLEGED DEFECTS IN THE FORM OF THE INDICTMENT .....</b>	<b>25</b>
A. HISTORY OF INDICTMENTS .....	25
B. SCOPE OF REVIEW .....	26
C. APPLICABLE PLEADING PRINCIPLES .....	27
D. DISCUSSION.....	29
1. Particulars of Victims and Locations.....	29
(a) Victims .....	29
(b) Locations.....	30
(c) Offences of a Continuous Nature .....	31
2. Alleged Failure to Plead that Crimes were <i>Committed</i> by the Accused.....	32
(a) Pleading Principles When the Mode of ‘Committing’ is Alleged.....	32
(b) Findings.....	35
3. Objections Relating to Joint Criminal Enterprise (“JCE”) .....	36
(a) Submissions of the Parties.....	36
(b) Pleading Principles.....	37
(c) Deliberations .....	39
(d) Findings.....	43
4. Alleged Failure to Specify Factual Foundation of Responsibility Pursuant to Article 6(3) of the Statute.....	45
5. Alleged Failure to Distinguish Between Individual Criminal Responsibility Under Article 6(1) and 6(3) of the Statute .....	46
6. Pleading of Count 7: Sexual Slavery and Any Other Form of Sexual Violence (Article 2(g) of the Statute).....	46
(a) Submissions of the Parties.....	46
(b) Findings.....	47
<b>III. CONSIDERATIONS REGARDING THE EVALUATION OF EVIDENCE .....</b>	<b>49</b>
A. LAW APPLICABLE TO THE ASSESSMENT OF EVIDENCE .....	49
1. Burden and Standard of Proof.....	49
2. Admission of Evidence .....	50
B. FORMS OF EVIDENCE UNDER REVIEW .....	50
1. Witness Testimony.....	51
(a) Discrepancies Between the Evidence of Various Witnesses, or Between the Evidence of a Particular Witness and a Previous Statement.....	53
(b) Crimes Involving Sexual Violence .....	54
(c) Names of Locations.....	54
(d) Testimony of Accused in his own Defence.....	55
(e) Alibi of Accused Brima.....	55
(f) Witnesses Implicated in the Commission of the Crimes .....	57
(g) ‘Incentives’ for Witnesses.....	57
(h) Putting the Defence Case to Prosecution Witnesses .....	58
2. Documentary Evidence.....	59
(a) Introduction .....	59

(b) Copies and Internet Sources.....	60
(c) Radio Broadcasts and Transcripts Thereof.....	61
(d) Documents Used in Cross-Examination by the Prosecution.....	61
3. Expert Testimony and Reports.....	62
4. Facts of which Judicial Notice was Taken.....	63
5. Agreed Facts .....	64
<b>IV. CONTEXT OF THE ALLEGED CRIMES.....</b>	<b>65</b>
A. POLITICAL PRECURSORS.....	65
B. THE ARMED CONFLICT IN SIERRA LEONE FROM 1991 TO 1997 .....	65
C. THE ARMED CONFLICT IN SIERRA LEONE FROM 1997 TO 1998 .....	67
1. The AFRC/RUF Government Period (May 1997 to February 1998).....	67
(a) The 25 May 1997 Coup and the AFRC/RUF Government .....	67
(b) Territorial Control of the AFRC/RUF Government.....	67
(c) Relationship between the AFRC and RUF.....	68
(d) Military Pressure on the AFRC Government.....	70
(e) The February 1998 ECOMOG attack on Freetown and the retreat of AFRC/RUF forces ....	70
D. THE ARMED CONFLICT IN SIERRA LEONE FROM 1998 TO 2001 .....	71
1. Post AFRC/RUF Government period (February 1998 to May 1998).....	71
(a) Restructuring of the AFRC/RUF troops in the Districts (February 1998) .....	71
(b) Planning the attack on Koidu Town (end February 1998) .....	71
2. Kono District (March 1998 to May/June 1998).....	72
3. Koinadugu and Kailahun District (February 1998 – November 1998) .....	73
4. Koinadugu and Bombali Districts (May 1998 – November 1998).....	74
(a) Retreat from Kono District (April/May 1998) .....	74
(b) AFRC Troop Movement from East to West (May 1998 – November 1998).....	74
5. Advance on Freetown (November to December 1998) .....	76
6. Attack on Freetown (January 1999).....	77
7. Retreat from Freetown (January/February 1999) .....	78
8. Port Loko District (February 1999 – April 1999).....	78
E. THE 1999 LOMÉ PEACE ACCORD AND THE CESSATION OF HOSTILITIES IN SIERRA LEONE IN 2001 .....	79
<b>V. GENERAL REQUIREMENTS FOR ARTICLES 2, 3 AND 4 OF THE STATUTE.....</b>	<b>80</b>
A. ARTICLE 2 OF THE STATUTE: CRIMES AGAINST HUMANITY .....	80
1. The Law .....	80
(a) There must be an attack.....	81
(b) The attack must be widespread or systematic .....	81
(c) The attack must be directed against any civilian population.....	82
(d) The acts of the perpetrator must be part of the attack .....	84
(e) The perpetrator must have knowledge that his acts constitute part of a widespread or systematic attack directed against a civilian population .....	84
2. Submissions of the Parties .....	85
3. Findings.....	85
(a) AFRC/RUF Government period.....	86
(b) Post AFRC/RUF Government Period (February 1998 January 200).....	88
B. ARTICLE 3 OF THE STATUTE: VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II.....	92
1. The Law .....	92
(a) There must have been an armed conflict whether non-international or international in character at the time the offences were allegedly committed .....	93
(b) There must be a nexus between the armed conflict and the alleged offence .....	94

(c) The victims were not directly taking part in the hostilities at the time of the alleged violation .....	94
2. Findings.....	94
C. ARTICLE 4 OF THE STATUTE: OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW .....	96
1. The Law .....	97
2. Findings.....	97
<b>VI. POLITICAL STRUCTURE OF THE AFRC GOVERNMENT .....</b>	<b>98</b>
A. INTRODUCTION.....	98
B. THE ARMED FORCES REVOLUTIONARY COUNCIL GOVERNMENT .....	99
1. The Governing Council of the AFRC Government.....	102
2. Information Available to the Governing Council .....	105
3. Principal Liaison Officers (“PLOs”).....	105
4. Honourables .....	107
C. CONCLUSION .....	107
<b>VII. ROLE OF THE ACCUSED.....</b>	<b>108</b>
A. INTRODUCTION.....	108
B. ALEX TAMBA BRIMA.....	108
1. Allegations and Submissions .....	108
2. Personal Background of Brima.....	109
3. The Identity of Brima.....	110
4. Positions of Responsibility in the AFRC Government (25 May 1997 – 14 February 1998).....	111
(a) Involvement in the 25 May 1997 Coup.....	112
(b) Council Membership.....	112
(c) Principal Liaison Officer 2 .....	113
(d) Mining Supervision in Kono and Kenema Districts .....	114
(e) Findings .....	116
5. Brima’s Alleged Arrest in Kono and Kailahun Districts (February – May 1998).....	116
(a) Brima’s Alibi for Kono District .....	116
(b) Return to Kono District.....	117
(c) Findings.....	118
6. Brima’s Alleged Arrest in Koinadugu and Bombali Districts (February – November 1998).....	118
(a) Brima’s Alibi for Koinadugu and Bombali Districts.....	119
(b) Command of the Advance Troops from Mansofinia to Rosos.....	121
(i) The Credibility of Witnesses.....	121
a. Prosecution Witnesses .....	121
i. TF1-334.....	122
ii. TF1-184.....	122
iii. TF1-033.....	123
iv. TF1-153 .....	124
v. George Johnson .....	125
b. Defence Witnesses.....	125
(c) Findings .....	127
(d) Brima’s Alleged Detention at ‘Colonel Eddie Town’.....	129
(e) Advance on Freetown.....	130
7. Brima’s Role in Freetown and the Western Area (January 1999 – February 1999).....	130
(a) Prosecution Witnesses .....	131
(b) Defence Witnesses .....	134
(c) Findings.....	137
8. Brima’s Role in Port Loko District (February 1999 – July 1999) .....	138
(a) Findings.....	138

C. IBRAHIM BAZZY KAMARA .....	139
1. Allegations and Submissions .....	139
2. Personal Background of Kamara .....	140
3. Positions of Responsibility in the AFRC Government (25 May 1997 – 14 February 1998).....	140
(a) Involvement in the 25 May 1997 Coup .....	141
(b) Council Membership .....	141
(c) Principal Liaison Officer 3 .....	141
(d) Findings .....	142
4. Kamara’s Role in Kono and Kailahun Districts (14 February – 30 June 1998).....	142
(a) Kamara’s Role prior to the Departure of Johnny Paul Koroma from Kono District.....	143
(b) Kamara’s Role after the Departure of Johnny Paul Koroma from Kono District.....	144
(i) Prosecution Witnesses .....	144
(ii) Defence Witnesses .....	145
(c) Findings .....	147
(d) The Return of the Accused Brima.....	147
5. Kamara’s Role in Koinadugu and Bombali Districts (June 1998 – November 1998).....	147
(a) Kamara’s Command Position within the AFRC Troops from Mansofinia to Rosos .....	148
(b) Kamara’s Alleged Detention in ‘Colonel Eddie Town’ .....	149
6. Kamara’s Role in Freetown and the Western Area (January 1999 – February 1999).....	149
(a) Findings .....	150
7. Kamara’s Role in Port Loko District (February 1999 – July 1999) .....	150
(a) The Presence of the Accused in Port Loko District .....	151
(i) Prosecution Witnesses .....	151
(ii) Defence Witnesses .....	152
(iii) Findings .....	153
(b) Command of the AFRC troops in the ‘West Side’ .....	153
(i) Prosecution Witnesses .....	153
(ii) Defence Witnesses .....	154
(iii) Findings .....	157
D. SANTIGIE BORBOR KANU .....	158
1. Allegations and Submissions .....	158
2. Personal Background of Kanu .....	158
3. Positions of Responsibility in the AFRC Government (25 May 1997 – 14 February 1998).....	159
(a) Involvement in the 25 May 1997 Coup .....	159
(b) Council Membership .....	160
(c) Other Activities .....	160
4. Kanu’s Role in Kono and Kailahun Districts (February 1998 – May 1998).....	161
5. Kanu’s Role in Koinadugu and Bombali Districts (June 1998 – November 1998).....	161
(a) Kanu’s Position within the AFRC Troops from Mansofinia to Rosos.....	162
(i) Prosecution Witnesses .....	162
(ii) Defence Witnesses .....	162
(b) Findings.....	163
(c) Kanu’s Alleged Detention in ‘Colonel Eddie Town’ .....	164
6. Kanu’s Role in Freetown and the Western Area (January 1999 – February 1999).....	164
(a) Findings .....	166
7. Kanu’s Role in Port Loko District (February 1999 – July 1999) .....	166
<b>VIII. MILITARY STRUCTURE OF THE AFRC FIGHTING FORCE.....</b>	<b>167</b>
A. PRELIMINARY REMARKS .....	167
B. SUBMISSIONS OF THE PARTIES .....	168
C. MILITARY UNIFORMS .....	169
D. EVIDENTIARY CONSIDERATIONS .....	170
(a) Military Expert Witnesses .....	170

(b) Factual Witnesses .....	174
E. FINDINGS ON THE MILITARY STRUCTURE OF THE AFRC FIGHTING FORCE .....	175
(a) Kono District (14 February 1998 through 30 June 1998) .....	175
(i) The Chain of Command .....	175
(ii) Planning and Orders Process .....	177
(iii) Disciplinary System .....	178
(iv) Conclusion .....	178
(b) Bombali District (May 1998-November 1998) .....	178
(i) The Chain of Command .....	178
(ii) Planning and Orders Process .....	181
(iii) Disciplinary System .....	183
(iv) Conclusion .....	185
(c) Freetown and the Western Area (January 1999) .....	185
(i) Chain of Command .....	185
(ii) Planning and Orders Process .....	189
(iii) Disciplinary System .....	190
(iv) Conclusion .....	191
(d) Port Loko District (February through April 1999) .....	191
(i) Chain of Command .....	192
(ii) Planning and Orders Process .....	193
(iii) Disciplinary System .....	193
(iv) Conclusion .....	194
<b>IX. APPLICABLE LAW .....</b>	<b>195</b>
A. INTRODUCTION .....	195
B. THE 'GREATEST RESPONSIBILITY REQUIREMENT' .....	196
1. Jurisdictional Requirement or Prosecutorial Discretion .....	196
(a) Submissions .....	196
(b) Findings .....	198
2. Scope of "the greatest responsibility requirement" .....	200
C. LAW ON THE CHARGES .....	201
1. Count 1: Acts of Terrorism (Article 3(d) of the Statute) .....	201
(a) Elements of the Crime .....	204
2. Count 2: Collective Punishments (Article 3(b) of the Statute) .....	206
(a) Elements of the Crime .....	207
3. Counts 3, 4 and 5: Unlawful Killings .....	209
(a) Count 3: Extermination (Article 2(b) of the Statute) .....	209
(b) Count 4 (Article 2(a) of the Statute) and Count 5 (Article 3(a) of the Statute): Murder .....	211
4. Counts 6, 7, 8 and 9: Sexual Crimes .....	212
(a) Count 6: Rape (Article 2(g) of the Statute) .....	212
(b) Count 7: Sexual Slavery and Any Other Form of Sexual Violence (Article 2(g) of the Statute) .....	214
(c) Count 8: Other Inhumane Acts (Article 2(i) of the Statute) .....	214
(i) Elements of the Crime .....	214
(ii) Submissions on the alleged crime of 'forced marriage' .....	215
(iii) Findings .....	216
(iv) Elements of the Crime of Sexual Slavery .....	217
(d) Count 9: Outrages Upon Personal Dignity (Article 3(e) of the Statute) .....	220
(i) Elements of the Crime .....	220
(ii) Findings .....	221
5. Counts 10 and 11: Crimes Relating to Physical Violence (Articles 3(a) and 2(i) of the Statute) .....	223
(a) Count 10 – Violence to Life, Health and Physical or Mental Well-Being of Persons, in Particular Mutilation .....	223

(i) Elements of the Crime of ‘Mutilation’ .....	223
(b) Count 11 – Other Inhumane Acts.....	224
6. Count 12: Crimes Relating to Child Soldiers (Article 4(c) of the Statute).....	224
(a) Elements of the Crime .....	225
(b) Submissions.....	225
(c) Findings .....	226
7. Count 13: Abductions and Forced Labour (Article 2(c) of the Statute) .....	228
(a) Introduction .....	228
(b) Elements of the crime.....	229
8. Count 14: Pillage (Article 3(f) of the Statute) .....	231
(a) Elements of the Crime .....	232
(b) Submissions.....	233
(c) Findings.....	233
<b>D. LAW ON INDIVIDUAL CRIMINAL RESPONSIBILITY .....</b>	<b>234</b>
1. Introduction.....	234
2. Individual Criminal Responsibility Pursuant to Article 6(1) of the Statute.....	234
(a) Committing.....	235
(b) Planning.....	236
(c) Instigating.....	237
(d) Ordering .....	237
(e) Aiding and abetting .....	238
(f) Participation in a Joint Criminal Enterprise.....	239
3. Individual Criminal Responsibility Pursuant to Article 6(3) of the Statute.....	239
(a) Elements of Superior Responsibility .....	240
(i) Existence of a Superior-Subordinate Relationship .....	241
(ii) Actual or Imputed Knowledge.....	243
a. Actual Knowledge .....	243
b. Imputed Knowledge .....	244
(iii) Failure to Prevent or Punish.....	245
4. Relationship Between Article 6(1) and 6(3) of the Statute.....	246
<b>X. FACTS AND FINDINGS .....</b>	<b>247</b>
<b>A. UNLAWFUL KILLINGS (COUNTS 3-5).....</b>	<b>247</b>
1. Allegations and Submissions .....	247
2. Evidence and Deliberations .....	248
(a) Bo District (1 June 1997 – 30 June 1997) .....	248
(i) Tikonko.....	248
(ii) Gerihun .....	250
(iii) Findings .....	252
(b) Kenema District (25 May 1997 – 19 February 1998).....	252
(i) Kenema Town.....	252
(ii) Findings .....	255
(c) Kono District (14 February 1998 – 30 June 1998).....	255
(i) Koidu.....	256
(ii) Tombodu.....	256
(iii) Mortema.....	258
(iv) Findings.....	258
(d) Kailahun District (14 February 1998 – 30 June 1998).....	259
(i) Kailahun Town.....	259
(ii) Findings .....	260
(e) Koinadugu District (14 February 1998 – 30 September 1998).....	260
(i) Kabala .....	261
(ii) Koinadugu Town .....	262
(iii) Fadugu .....	262

(iv) Findings.....	263
(f) Bombali District (1 May 1998 - 30 November 1998).....	263
(i) Bornoya.....	264
(ii) Karina.....	265
(iii) Mateboi.....	267
(iv) Gbendembu.....	267
(v) Findings.....	267
(g) Freetown and the Western Area (6 January 1999 – 28 February 1999).....	268
(i) Freetown.....	268
a. East End Police.....	268
b. State House Area.....	269
c. Kingtom.....	272
d. Fourah Bay.....	273
e. Guard Street.....	275
(ii) Kissy.....	275
a. Good Shepherd Hospital.....	275
b. Rogbalan Mosque.....	276
c. Kissy Mental Home.....	278
d. Rowe Street.....	279
e. Fatamaran Street.....	280
(iii) Calaba Town.....	280
(iv) Wellington.....	280
(v) Findings.....	281
(h) Port Loko District.....	281
(i) Manaarma.....	281
(ii) Nonkoba.....	284
(iii) Findings.....	284
B. RAPE (COUNT 6).....	285
1. Allegations and Submissions.....	285
2. Evidence and Deliberations.....	285
(a) Kono District (14 February 1998 – 30 June 1998).....	285
(i) Koidu.....	286
(ii) Foendor / Foendu.....	286
(iii) Wonededu.....	287
(iv) Findings.....	288
(b) Koinadugu District (14 February 1998 – 30 September 1998).....	288
(i) Kabala.....	288
(ii) Koinadugu Town.....	289
(iii) Fadugu.....	297
(iv) Findings.....	298
(c) Bombali District (1 May 1998 – 30 November 1998).....	298
(i) Rosos.....	299
(ii) Findings.....	302
(d) Freetown and Western Area (6 January 1999 – 28 February 1999).....	302
(i) State House.....	302
(ii) PWD.....	305
(iii) Greater Freetown.....	306
(iv) Findings.....	307
C. OUTRAGES ON PERSONAL DIGNITY (COUNT 9).....	308
1. Preliminary Remarks.....	308
2. Allegations and Submissions.....	308
3. Evidence of Witnesses TF1-094, DAB-156 and TF1-085.....	309
(a) Prosecution Witness TF1-094.....	309
(b) Defence Witness DAB-156.....	311

(c) Prosecution Witness TF1-085 .....	312
4. Evidence and Deliberations by District .....	315
(a) Kono District (14 February 1998 – 30 June 1998).....	315
(i) Findings.....	317
(b) Koinadugu District (14 February 1998 – 30 September 1998).....	317
(i) Findings.....	322
(c) Bombali District (1 May 1998 – 30 November 1998) .....	323
(i) Findings.....	325
(d) Kailahun (At all times relevant to the Indictment).....	326
(i) Findings.....	326
(e) Freetown and Western Area (6 January 1999 – 28 February 1999).....	326
(i) Findings.....	331
(f) Port Loko District (February, 1999 – April, 1999).....	332
(i) Findings.....	336
5. Findings.....	336
D. PHYSICAL VIOLENCE.....	337
1. Allegations and Submissions .....	337
2. Evidence and Deliberations .....	337
(a) Kenema District (25 May 1997 - 19 February 1998).....	337
(i) Kenema Town.....	338
(ii) Finding .....	339
(b) Kono District (14 February 1998 - 30 June 1998) .....	339
(i) Tombodu.....	339
(ii) Kaima/Kayima .....	341
(iii) Finding.....	343
(c) Koinadugu District (14 February 1998 - 30 September 1998).....	343
(i) Kabala .....	343
(ii) Findings .....	344
(d) Bombali District (1 May 1998 - 30 November 1998).....	344
(i) Rosos.....	344
(e) Freetown and the Western Area (6 January 1999 - 28 February 1999) .....	345
(i) Freetown .....	345
a. Uppun .....	345
b. Kissy Old Road.....	346
c. 'Operation Cut Hand' at PWD .....	346
(ii) Kissy .....	346
a. Rowe Street.....	346
b. Fatamaran Street.....	347
c. Old Road (Locust and Samuels area) .....	347
d. Parsonage Street .....	348
e. Old Shell Road.....	348
f. Kissy Mental Home.....	348
(iii) Wellington .....	350
(iv) Findings.....	350
E. CHILD SOLDIERS.....	351
1. Allegations and Submissions .....	351
2. The Expert Witnesses .....	351
3. The Evidence of Former Child Soldiers .....	353
4. The Evidence of Other Witnesses.....	358
5. Findings.....	362
F. ABDUCTIONS AND FORCED LABOUR (COUNT 13) .....	364
1. Allegations and Submissions .....	364
2. Findings.....	366
(a) Kenema District (about 1 August 1997 - about 31 January 1998).....	366

(i) Tongo Field .....	366
(ii) Findings .....	372
(b) Kono District (about 14 February 1998 – January 2000).....	372
(i) Tombodu .....	373
(ii) Koidu .....	376
(iii) Wonedu.....	377
(iv) Other locations in Kono District.....	377
(v) Findings.....	378
(c) Koinadugu District (about February 1998 – 30 September 1998) .....	378
(i) Kabala .....	379
(ii) Kumala.....	379
(iii) Koinadugu.....	379
(iv) Other locations in Koinadugu District .....	381
(v) Findings.....	382
(d) Bombali District (about May 1998 – 31 November [sic] 1998) .....	383
(i) Journey to Rosos .....	383
(ii) Rosos.....	384
(iii) Findings .....	385
(e) Kailahun District (all times relevant to Indictment).....	386
(i) May 1997 – February 1998.....	386
(ii) February 1998 – January 2000.....	387
(iii) Findings .....	388
(f) Freetown and the Western Area (6 January 1999 – 28 February 1999) .....	388
(i) Freetown .....	389
(ii) Kissy .....	389
(iii) Calaba Town.....	390
(iv) Other locations in Freetown and Western Area .....	391
(v) Findings.....	391
(g) Port Loko District (about February 1999).....	392
(i) Other locations in Port Loko District.....	392
(ii) Findings .....	392
G. COUNT 14 (PILLAGE).....	393
1. Allegations and Submissions .....	393
2. Evidence and Deliberations .....	393
(a) Bo District (1 June 1997 - 30 June 1997).....	394
(b) Koinadugu District (14 February 1998-30 September 1998).....	394
(i) Kabala .....	394
(ii) Finding.....	395
(c) Kono District (14 February 1998 - 30 June 1998) .....	395
(i) Tombodu .....	396
(ii) Yardu Sando .....	396
(iii) Findings .....	396
(d) Bombali District (1 March 1998-31 November 1998).....	396
(e) Freetown and the Western area (6 January 1999-28 February 1999).....	397
(i) State House .....	397
(ii) Kissy .....	398
(iii) Findings .....	398
H. ACTS OF TERRORISM (COUNT 1) AND COLLECTIVE PUNISHMENT (COUNT 2) .....	400
1. Allegations and Submissions .....	401
(a) Evidentiary basis .....	401
(b) Primary purpose .....	403
2. Evidence and Deliberations .....	404
(a) Primary purpose of certain acts of violence .....	404
(i) Child soldiers .....	404

(ii) Abductions and Forced Labour.....	405
(iii) Sexual Slavery .....	407
(iv) Physical Violence: Amputations.....	408
(b) Kenema District (25 May 1997 – 19 February 1998).....	409
(i) Kenema Town.....	410
(ii) Findings .....	411
(c) Bo District (1 June 1997 – 30 June 1997).....	412
(i) Tikonko.....	413
(ii) Gerihun .....	414
(iii) Findings .....	415
(d) Kailahun District (14 February 1998 – 30 June 1998).....	416
(i) Kailahun Town.....	417
(ii) Findings .....	417
(e) Kono District (14 February 1998 – 30 June 1998).....	418
(i) Koidu Town .....	419
(ii) Tombodu.....	420
(iii) Yardu Sando .....	422
(iv) Findings.....	422
(f) Koinadugu District (14 February 1998 – 30 September 1998).....	423
(i) Kabala, Fadugu, Koinadugu Town and Kurubonla .....	424
(ii) Findings .....	426
(g) Bombali District (1 May 1998 – 30 November 1998).....	426
(i) Mansofinia (Koinadugu District) to Camp Rosos (Bombali District).....	428
a. Mansofinia (Koinadugu District).....	428
b. Yaya (Kono District).....	429
c. Kamagbengbeh (Bombali District).....	429
d. Bornoya and Mateboi .....	430
e. Karina .....	430
f. Gbendembu .....	432
g. Rosos .....	432
(ii) Findings .....	433
(h) Freetown and Western Area (6 January 1999 – 28 January 1999) .....	434
(i) State House .....	435
(ii) Kingtom .....	436
(iii) Fourah Bay.....	437
(iv) Kissy .....	438
a. Good Shepherd Hospital.....	438
b. Rogbalan Mosque.....	439
c. Old Shell Road.....	439
d. Kissy Mental Home.....	440
e. Rowe Street.....	441
f. Fatamaran Street.....	441
g. Old Road (Locust and Samuels area).....	441
h. Parsonage Street .....	442
i. PWD .....	442
(v) Findings.....	443
(i) Port Loko District (13 February 1998 – June 1999) (January-April 1999) .....	444
(i) Attacks on the way to and from Gberi Bana.....	444
(ii) Manaarma .....	447
(iii) Nonkoba.....	448
(j) Finding .....	448
3. Finding on Count 1 .....	448
4. Finding on Count 2 .....	449
<b>XI. RESPONSIBILITY OF THE ACCUSED.....</b>	<b>450</b>

A. PRELIMINARY REMARKS .....	450
B. THE ACCUSED BRIMA.....	451
1. Allegations in the Indictment.....	451
2. Bo, Kenema and Kailahun Districts.....	452
(a) Responsibility of the Accused Brima under Article 6(1) of the Statute .....	452
(i) Submissions .....	452
(ii) Findings .....	453
a. Committing.....	453
b. Ordering.....	453
c. Planning.....	454
d. Instigating.....	454
e. Otherwise aiding and abetting .....	454
(b) Responsibility of the Accused Brima under Article 6(3) of the Statute.....	455
(i) Submissions .....	455
(ii) Findings .....	455
a. Existence of a superior-subordinate relationship.....	455
i. Bo District (1 – 30 June 1997).....	458
ii. Kenema District (25 May 1997 – 19 February 1998).....	458
iii. Kailahun District (27 May 1997 – 14 February 1998).....	458
b. Findings .....	459
3. Kono District.....	459
(a) Responsibility of the Accused Brima under Article 6(1) .....	459
(i) Submissions .....	459
(ii) Findings .....	460
(b) Responsibility of the Accused Brima under Article 6(3) of the Statute.....	460
(i) Submissions .....	460
(ii) Findings .....	461
4. Kailahun District.....	462
(a) Responsibility of the Accused Brima under Article 6(1) of the Statute .....	462
(i) Submissions .....	462
(ii) Findings .....	463
(b) Responsibility of the Accused Brima under Article 6(3) of the Statute.....	463
(i) Submissions .....	463
(ii) Findings .....	463
5. Koinadugu District.....	464
(a) Responsibility of the Accused Brima under Article 6(1) of the Statute.....	464
(i) Submissions .....	464
(ii) Findings .....	465
a. Committing.....	465
b. Ordering/Instigating .....	465
i. Order at Mansofinia to terrorise the civilian population .....	465
c. Planning and otherwise aiding and abetting .....	467
(b) Responsibility of the Accused Brima Under Article 6(3) of the Statute.....	467
(i) Submissions .....	467
(ii) Findings .....	467
6. Bombali District.....	468
(a) Responsibility of the Accused Brima Under Article 6(1) of the Statute .....	468
(i) Submissions .....	468
(ii) Findings .....	469
a. Committing.....	469
i. Murder and Extermination at Karina .....	469
b. Ordering.....	471
i. Order to terrorise and kill the civilian population at Karina .....	471
ii. Order to terrorise the civilian population around Rosos .....	472

iii. Order for killings at Mateboi and Gbendembu .....	473
iv. Order at Rosos to recruitment children for military purposes .....	473
c. Planning, Instigating and otherwise aiding and abetting .....	474
(b) Responsibility of the Accused Brima under Article 6(3) of the Statute.....	474
(i) Submissions .....	474
(ii) Findings .....	475
a. Existence of a superior-subordinate relationship.....	475
b. Actual or Imputed Knowledge .....	476
c. Failure to Prevent or Punish .....	478
(iii) Conclusion .....	480
7. Freetown and Western Area.....	480
(a) Responsibility of the Accused Brima under Article 6(1) of the Statute.....	480
(i) Submissions .....	480
(ii) Findings .....	481
a. Committing .....	481
i. Killings of three persons at State House .....	481
ii. Killing of a soldier's wife at the State House Area.....	483
iii. Unlawful killings at Kissy Mental Home/Portee area.....	484
iv. Unlawful killings in the Wellington area .....	484
v. Amputation of a civilian's hand at Old Road area .....	485
b. Ordering/Instigating .....	486
i. Order to kill civilians in Fourah Bay area .....	486
ii. Orders to terrorise and collectively punish the civilian population .....	486
iii. Orders to kill collaborators .....	489
iv. Order to loot UN Vehicles and civilian property .....	489
v. Order to kill 14 captive Nigerian ECOMOG soldiers at State House.....	490
vi. Order to kill three nuns at Kissy Mental Home.....	490
vii. Order to massacre civilians in Rogbalan Mosque.....	491
viii. Order to abduct and enslave civilians including child soldiers.....	492
c. Planning .....	492
d. Otherwise aiding and abetting .....	492
(b) Responsibility of the Accused Brima Under Article 6(3) of the Statute.....	493
(i) Submissions .....	493
(ii) Findings .....	493
a. Existence of a superior-subordinate relationship.....	493
b. Actual or Imputed Knowledge .....	498
c. Failure to prevent or punish.....	498
(iii) Conclusion .....	498
8. Port Loko District .....	499
(a) Responsibility of the Accused Brima under Article 6(1) of the Statute.....	499
(i) Submissions .....	499
(ii) Findings .....	499
(b) Responsibility of the Accused Brima Under Article 6(3) of the Statute.....	499
(i) Submissions .....	499
(ii) Findings .....	500
(iii) Conclusion .....	500
9. Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers .....	501
(a) Responsibility under Article 6(1) for Count 9 (Outrages on Personal Dignity).....	504
(b) Responsibility under Article 6(1) for Count 12 (Child Soldiers).....	504
(c) Responsibility under Article 6(1) for Count 13 (Enslavement) .....	505
(d) Responsibility under Article 6(3) for Counts 9, 12 and 13 .....	505
C. THE ACCUSED KAMARA .....	505
1. Allegations in the Indictment.....	505
2. Bo, Kenema and Kailahun Districts (25 May 1997 – 14 February 1998) .....	506

(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute .....	507
(i) Submissions .....	507
(ii) Findings .....	507
(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute .....	507
(i) Submissions .....	507
(ii) Findings .....	508
a. Existence of a superior-subordinate relationship.....	508
b. Conclusion.....	509
3. Kono District.....	509
(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute .....	510
(i) Submissions .....	510
(ii) Findings .....	510
(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute .....	511
(i) Submissions .....	511
(ii) Findings .....	511
a. Existence of a superior-subordinate relationship.....	511
b. Actual or Imputed Knowledge .....	517
c. Failure to prevent or punish.....	518
(iii) Conclusion .....	518
4. Kailahun District.....	519
(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute .....	519
(i) Submissions .....	519
(ii) Findings .....	519
(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute .....	519
(i) Submissions .....	519
(ii) Findings .....	520
5. Koinadugu District.....	520
(a) Responsibility of the Accused Kamara under Article 6(1) of the Statute .....	520
(i) Submissions .....	520
(ii) Findings .....	521
(b) Responsibility of the Accused Kamara under Article 6(3) .....	521
(i) Submissions .....	521
(ii) Findings .....	521
6. Bombali District.....	522
(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute .....	522
(i) Submissions .....	522
(ii) Findings .....	523
a. Committing.....	523
b. Ordering.....	523
c. Planning.....	523
d. Instigating and otherwise Aiding and Abetting.....	524
(b) Responsibility of the Accused Kamara under Article 6(3) of the Statute .....	524
(i) Submissions .....	524
(ii) Findings .....	524
a. Existence of a superior-subordinate relationship.....	524
7. Freetown and the Western Area.....	526
(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute .....	526
(i) Submissions .....	526
(ii) Findings .....	527
a. Committing.....	527
i. Killings of civilians in the Fourah Bay Area.....	527
ii. Killings of civilians at Wellington .....	527
b. Ordering, Planning and Instigating.....	528
c. Otherwise aiding and abetting .....	528

i. Killings of civilians in Fourah Bay .....	528
ii. "Operation Cut Hand" in Freetown.....	528
(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute .....	529
(i) Submissions .....	529
(ii) Findings .....	529
a. Existence of a superior-subordinate relationship.....	529
b. Knowledge and failure to prevent or punish .....	530
c. Conclusion .....	530
8. Port Loko District .....	530
(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute .....	531
(i) Submissions .....	531
(ii) Findings .....	531
(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute .....	532
(i) Submissions .....	532
(ii) Findings .....	532
a. Existence of a superior-subordinate relationship.....	532
b. Actual or Imputed Knowledge .....	534
c. Failure to prevent or punish .....	534
d. Conclusion.....	534
9. Responsibility of the Accused Kamara for Crimes of Enslavement.....	535
(a) Responsibility Under Article 6(1) of the Statute.....	535
(b) Responsibility Under Article 6(3) of the Statute.....	535
(i) Kono District.....	535
(ii) Port Loko District .....	536
D. THE ACCUSED KANU.....	537
1. Allegations in the Indictment.....	537
2. Bo, Kenema and Kailahun Districts.....	538
(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute .....	538
(i) Submissions .....	538
(ii) Findings .....	539
a. Committing and Ordering.....	539
b. Planning.....	539
c. Instigating .....	540
d. Otherwise aiding and abetting .....	540
(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute .....	540
(i) Submissions .....	540
(ii) Findings .....	540
3. Kono District.....	541
(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute .....	541
(i) Submissions .....	541
(ii) Findings .....	542
(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute .....	542
(i) Submissions .....	542
(ii) Findings .....	543
4. Kailahun District.....	543
(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute .....	543
(i) Submissions .....	543
(ii) Findings .....	544
(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute .....	544
(i) Submissions .....	544
(ii) Findings .....	544
5. Koinadugu District.....	545
(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute .....	545
(i) Submissions .....	545

(ii) Findings .....	545
(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute .....	546
(i) Submissions .....	546
(ii) Findings .....	546
6. Bombali District.....	547
(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute .....	547
(i) Submissions .....	547
(ii) Findings .....	548
a. Committing/Ordering .....	548
b. Planning.....	548
c. Instigating .....	548
d. Otherwise aiding and abetting.....	548
(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute .....	548
(i) Submissions .....	548
(ii) Findings .....	549
a. Existence of a superior-subordinate relationship.....	549
b. Actual or Imputed Knowledge and Failure to Prevent or Punish.....	550
c. Conclusion .....	551
7. Freetown and the Western Area.....	551
(a) Responsibility of the Accused Kanu under Article 6(1) of the Statute .....	552
(i) Submissions .....	552
(ii) Findings .....	552
a. Committing.....	552
i. Fourah Bay: The killing of civilians .....	552
ii. Kissy Road: “Demonstration” of an amputation to the troops.....	553
iii. Upgun: “Demonstration” of an amputation on a civilian.....	553
iv. State House: Looting of vehicles .....	554
b. Ordering.....	554
i. Order at State House to kill captive Nigerian ECOMOG soldiers.....	555
ii. Order to kill civilians at a mosque in Kissy .....	555
iii. Order to commit amputations in Eastern Freetown .....	555
c. Planning .....	556
d. Instigating .....	556
e. Otherwise aiding and abetting .....	556
(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute .....	557
(i) Submissions .....	557
(ii) Findings .....	557
a. Existence of a superior-subordinate relationship.....	557
b. Knowledge.....	559
c. Failure to prevent or punish.....	559
d. Conclusion.....	560
8. Port Loko District .....	560
(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute .....	560
(i) Submissions .....	560
(ii) Findings .....	560
(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute .....	561
(i) Submissions .....	561
(ii) Findings .....	561
9. Responsibility for Crimes of Enslavement under Article 6(1) .....	561
(a) Responsibility under Article 6(1) for Count 9 (Sexual Slavery).....	563
(b) Responsibility under Article 6(1) for Count 12 (Child Soldiers).....	563
(c) Responsibility under Article 6(1) for Count 13 (Enslavement) .....	563
<b>XII. CUMULATIVE CONVICTIONS .....</b>	<b>564</b>

A. INTRODUCTION.....	564
B. SUBMISSIONS OF THE PARTIES.....	564
C. DISCUSSION.....	565
<b>XIII. DISPOSITION.....</b>	<b>568</b>
A. THE ACCUSED BRIMA.....	568
B. THE ACCUSED KAMARA.....	569
C. THE ACCUSED KANU.....	570
<b>SEPARATE CONCURRING OPINION OF THE HON. JUSTICE JULIA SEBUTINDE APPENDED TO JUDGEMENT PURSUANT TO RULE 88 (C).....</b>	<b>573</b>
A. INTRODUCTION.....	573
B. PROCEDURAL HISTORY.....	573
C. EXPERT OPINION ON “FORCED MARRIAGE”.....	575
1. Drawing a distinction between early or arranged marriages of minors in peacetime and ‘forced marriage’ during armed conflict:.....	575
2. Characterisation of ‘forced marriage’ during armed conflict as a crime under International Humanitarian law:.....	578
D. CONCLUSION.....	579
<b>PARTLY DISSENTING OPINION OF JUSTICE DOHERTY ON COUNT 7 (SEXUAL SLAVERY) AND COUNT 8 (‘FORCED MARRIAGES’).....</b>	<b>581</b>
A. COUNT 7.....	581
B. COUNT 8.....	583
1. Submissions of the Parties.....	583
(a) The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act;.....	585
(b) The act was of a gravity similar to the acts referred to in Article 2(a) to (h) of the Statute;.....	585
(c) The perpetrator was aware of the factual circumstances that established the character or gravity of the act;.....	585
(d) The act was committed as part of a widespread or systematic attack directed against a civilian population; and.....	585
(e) The perpetrator knew or had reason to know that his acts or omissions constituted part of a widespread or systematic attack directed against a civilian population.....	585
2. Expert Evidence.....	585
3. Witness Evidence.....	587
4. Forced Marriages as a Crime against Humanity.....	591
5. Non-Criminal International Treaties.....	593
6. Decisions of Other Tribunals.....	594
7. Conclusion.....	594
<b>ANNEX A: PROCEDURAL HISTORY.....</b>	<b>596</b>
A. INDICTMENT, ARREST, TRANSFER AND INITIAL APPEARANCE.....	596
1. Alex Tamba Brima.....	596
2. Brima Bazy Kamara.....	596
3. Santigie Kanu.....	596
B. PRE-TRIAL PROCEEDINGS.....	597
1. Joinder.....	597
2. Trial Chamber Composition.....	598
3. History of Indictments.....	598
4. Assignment of Counsel.....	600
(a) The Accused Brima and Kamara.....	600
(b) The Accused Kanu.....	601

5. Bail .....	602
6. Habeas Corpus .....	602
7. Preliminary Motions .....	603
(a) Constitutionality .....	603
(b) Kamara challenge to jurisdiction: Lomé Accord Amnesty .....	605
(c) Kanu motion challenging jurisdiction and alleging abuse of process .....	606
8. Disclosure Matters .....	607
9. Protective Measures for Witnesses .....	610
10. Pre-trial Briefs and Agreed Facts .....	611
11. Pre-Trial Case Management .....	612
C. TRIAL PROCEEDINGS .....	612
1. Overview .....	612
2. Evidentiary Issues .....	613
(a) Disclosure .....	613
(b) Judicial Notice .....	614
(c) Admission of Documentary Evidence .....	614
(d) Protective Measures and Matters not Subject to Disclosure .....	615
(e) Counsel Issues .....	616
3. Rule 98 Decision .....	617
<b>ANNEX B: GLOSSARY .....</b>	<b>618</b>
D. LIST OF ABBREVIATIONS, ACRONYMS AND SHORT REFERENCES .....	618
E. LIST OF CASES .....	621
1. Special Court .....	621
2. ICTY .....	623
3. ICTR .....	626
4. Domestic Decisions .....	628
5. Others .....	628
F. MAIN ACTORS IN THE CONFLICT .....	629
<b>ANNEX C: MAP OF SIERRA LEONE .....</b>	<b>630</b>

23044

## I. INTRODUCTION

1. This Judgement is rendered by Trial Chamber II of the Special Court for Sierra Leone composed of Justice Julia Sebutinde, Presiding Judge, Justice Richard Lussick and Justice Teresa Doherty.

### A. The Special Court For Sierra Leone

2. The Special Court was established for the prosecution of 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.<sup>1</sup> The Special Court is an independent hybrid Court established under an Agreement between the United Nations and the Government of Sierra Leone<sup>2</sup> pursuant to UN Security Council Resolution 1315 (2000) of 14 August 2000.<sup>3</sup> The Special Court is governed by its Statute<sup>4</sup> and by its Rules of Procedure and Evidence.<sup>5</sup>

3. In particular, the Statute empowers the Special Court to prosecute persons responsible for the commission of certain crimes against humanity;<sup>6</sup> certain serious violations of Article 3 Common to the 1949 Geneva Conventions on the Protection of War Victims and of the 1977 Additional Protocol II thereto;<sup>7</sup> certain other serious violations of international humanitarian law;<sup>8</sup> and certain crimes under Sierra Leonean law.<sup>9</sup>

### B. Procedural History

4. The initial Indictments against the Accused Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu each contained 17 counts of crimes against humanity, violations of Article 3

<sup>1</sup> Article 1(1) of the Statute of the Special Court for Sierra Leone.

<sup>2</sup> Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, signed on 16 January 2002.

<sup>3</sup> U.N. Doc. S/RES/1315 (2000).

<sup>4</sup> Statute of the Special Court for Sierra Leone, annexed to the Agreement.

<sup>5</sup> The Rules of Procedure and Evidence of the Special Court for Sierra Leone, first adopted by the Plenary of Judges on 16 January 2002 and subsequently amended on 7 March 2003; 1 August 2003; 30 October 2003; 14 March 2004; 29 May 2004; 14 May 2005; 13 May 2006 and 24 November 2006. Rule 1 provides for their entry into force, effective from 12 April 2002.

<sup>6</sup> Statute, Article 2.

<sup>7</sup> Statute, Article 3.

<sup>8</sup> Statute, Article 4.

<sup>9</sup> Statute, Article 5.

common to the Geneva Conventions and of Additional Protocol II and other serious violations of international humanitarian law.<sup>10</sup>

5. On 27 January 2004, having ordered a joint trial of the Accused Brima, Kamara and Kanu, Trial Chamber I ordered the Prosecution to file two consolidated indictments and that new case numbers be assigned to the two joint cases.<sup>11</sup> On 5 February 2004, the Prosecution filed a new indictment (“Consolidated Indictment”) in compliance with the Order of Trial Chamber I.<sup>12</sup>

6. On 9 February 2004, the Prosecution applied for leave to amend the Consolidated Indictment and add a count of “other inhumane acts” pursuant to Article 2(i) of the Statute for acts of “forced marriage”. Moreover, the Prosecution moved for other modifications of the Consolidated Indictment.<sup>13</sup>

7. On 6 May 2004, Trial Chamber I granted the proposed amendments to the Consolidated Indictment, which included a new Count 8 of “other inhumane acts”, along with other amendments (“Amended Consolidated Indictment”).<sup>14</sup>

8. On 17 January 2005 the President of the Special Court assigned the trial of the Accused Brima, Kamara and Kanu to the newly created Trial Chamber II.<sup>15</sup>

9. On 7 February 2005, the Prosecution requested leave to withdraw Counts 15-18 from the Amended Consolidated Indictment. On 15 February 2005, the Trial Chamber granted the Prosecution’s request.<sup>16</sup> The operative indictment in this case, the Further Amended Consolidated Indictment, was filed on 18 February 2005.

10. The Prosecution case-in-chief commenced on 7 March 2005 and closed on 21 November 2005. The Prosecution called 59 witnesses. The Defence case-in-chief started on 5 June 2006 and

<sup>10</sup>*Prosecutor v. Brima*, SCSL-03-06-I, Indictment (Annexes: Prosecutor’s Memo to Accompany Indictment, Investigator’s Statement, Draft Order Confirming Indictment), 7 March 2003; *Prosecutor v. Kamara*, SCSL-03-10-PT, Prosecutor’s Memorandum to Accompany the Indictment, 26 May 2003; *Prosecutor v. Kanu*, SCSL-03-13-PT, Indictment, 15 September 2003.

<sup>11</sup>*id.*, Corrigendum – Decision and Order on Prosecution Motion for Joinder, 28 January 2004. See also *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision for the Assignment of a New Case Number, 3 February 2004.

<sup>12</sup>*Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Indictment, 5 February 2004.

<sup>13</sup>*Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Request for Leave to Amend the Indictment, 9 February 2004.

<sup>14</sup>*Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision on Prosecution Request for Leave to Amend the Indictment, 6 May 2004; see also *id.*, Consequential Order and Corrigendum to the Decision on the Prosecution Request for Leave to Amend the Indictment, 12 May 2004.

<sup>15</sup>Order Assigning a Case to the Trial Chamber, SCSL-2004-16-PT, 17 January 2005.

<sup>16</sup>*Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18, 15 February 2005 and Corrigendum to

finished on 26 October 2006. Final briefs were filed on 1 December 2006 and Closing Arguments were heard on 7 and 8 December 2006. The Trial Chamber sat 176 trial days.

### C. The Accused

11. According to the Prosecution Alex Tamba Brima was born on 23 November 1971 in the village of Yarya in Kono District.<sup>17</sup> Brima claims that he was born at Wilberforce Village in Freetown. The Accused also denies that his first name is 'Alex' and he was ever nicknamed 'Gullit.'<sup>18</sup> Brima further asserts that he joined the SLA in June 1991 and retired from the Army in 2001, having risen to the rank of Corporal. According to the Prosecution, Brima joined the Army in April 1985 and attained the rank of Staff Sergeant during the AFRC Government period.<sup>19</sup>

12. Brima Bazy Kamara was born on 7 May 1968 or 1970 at Wilberforce Village in Freetown.<sup>20</sup> On 20 May 1991, he joined the SLA. According to the Prosecution, he was promoted to the rank of Staff Sergeant during the period of AFRC rule. Kamara asserts that he rose only to the rank of Sergeant. According to the Kamara Defence, the Accused served as a military driver during the years before the coup in May 1997.<sup>21</sup>

13. Santigie Borbor Kanu was born in March 1965 either in the county of Maforki in the Port Loko District, or in Freetown. On 27 November 1990, he joined the SLA where he was allegedly promoted to the rank of Sergeant during the period of AFRC rule.<sup>22</sup>

### D. Summary of the Charges

14. The Indictment comprises a total of 14 counts. All three Accused are charged with seven counts of crimes against humanity, namely: murder, extermination, rape, sexual slavery and other forms of sexual violence, other inhumane acts (including physical violence) and enslavement (Counts 3, 4, 6, 7, 8, 11 and 13 respectively). Furthermore, all three Accused are charged with six counts of violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II, namely: acts of terrorism, collective punishments, violence to life, health and physical or mental

---

Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18, 15 February 2005.

<sup>17</sup> Indictment, para. 1

<sup>18</sup> Brima Pre-Trial Brief, para. 5.

<sup>19</sup> Brima Final Brief, para 19, Brima Pre-Trial Brief, para. 6.

<sup>20</sup> The Prosecution assert that the Accused was born in 1968 (Indictment, para. 3), while Kamara states that he was born in 1970 (Kamara Pre-Trial Brief, para. 7).

<sup>21</sup> Kamara Pre-Trial Brief, para. 7-9.

<sup>22</sup> Indictment, paras 5-6.

well-being of persons (in particular murder and mutilation of civilians), outrages upon personal dignity and pillage (Counts 1, 2, 5, 10, 9, and 14 respectively).

15. In addition, all three Accused are charged with an “other serious violation of international humanitarian law”, namely with conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities (Count 12).

16. The crimes underlying the 14 counts of the Indictment are alleged to have taken place in various locations throughout the territory of Sierra Leone within the time period from 25 May 1997 to January 2000.

17. The Accused are charged with acts of terrorism, collective punishment and conscripting or enlisting child soldiers throughout the entire territory of Sierra Leone at all times relevant to the Indictment.

18. The Prosecution alleges that the Accused – by holding senior positions within the AFRC fighting forces during the entire period of the Indictment – are individually responsible for the crimes committed by the forces, pursuant to Article 6(1) of the Statute and, in addition or alternatively, pursuant to Article 6(3) of the Statute. The Prosecution further submits that the Accused participated in a joint criminal enterprise with the Revolutionary United Front of Sierra Leone, with the objective to take any actions in order to gain and exercise political power and control over the territory of Sierra Leone, resulting in the commission of the crimes mentioned above.

## II. ALLEGED DEFECTS IN THE FORM OF THE INDICTMENT

19. All three Accused object to the lack of particularisation in the Indictment and assert that this prejudiced the Accused in the preparation and presentation of their case.<sup>23</sup> The Prosecution argues that alleged defects in the form of the Indictment brought by the Accused Kamara and Kanu by way of preliminary motion pursuant to Rule 72(B)(ii) of the Rules have been adjudged prior to the commencement of trial,<sup>24</sup> and are *res judicata* and not open to fresh litigation at the end of the proceedings when no exceptional circumstances are shown.<sup>25</sup>

### A. History of Indictments<sup>26</sup>

20. All Accused were initially individually charged. The initial indictment against Brima was approved on 7 March 2003,<sup>27</sup> Kamara's on 28 May 2003<sup>28</sup> and Kanu's on 16 September 2003.<sup>29</sup> The indictments were later consolidated,<sup>30</sup> amended<sup>31</sup> and further amended.<sup>32</sup>

21. Only the Kanu and Kamara Defence filed timely motions pursuant to Rule 72(B)(ii) of the Rules. A preliminary motion filed by the Accused Brima less than one week before the trial started was dismissed for having been submitted out of time.<sup>33</sup>

22. On 19 November 2003, Trial Chamber I dismissed the objections by the Kanu Defence with regard to the initial indictment with the exception of the use of language "included but not limited

<sup>23</sup> Brima Final Brief, paras 126-156; Kamara Final Brief, paras 89-103; Kanu Final Brief, paras 291-292.

<sup>24</sup> *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-PT, Decision and Order on Defence Preliminary Motion on Defects in the Form of the Indictment, 1 April 2004 ("Kamara Form of the Indictment Decision"); *Prosecutor v. Santigie Borbor Kanu*, Case No. SCSL-2003-13-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 19 November 2003 ("Kanu Form of the Indictment Decision").

<sup>25</sup> Prosecution Closing Argument, Transcript 7 December 2006, pp. 57-59, referring to *Brđanin* Trial Judgement, para. 48; see also Prosecution List of Authorities Referred to in Oral Closing Submissions, 25 January 2006, point 1.

<sup>26</sup> For a detailed procedural history of the Indictments see Annex B of the Judgement..

<sup>27</sup> *Prosecutor v. Brima*, SCSL-03-06-I, Decision Approving the Indictment and Order for Non-Disclosure, 7 March 2003.

<sup>28</sup> *Prosecutor v. Kamara*, SCSL-2003-10-PT, Decision Approving the Indictment, the Warrant of Arrest, and Order for Non-Disclosure, 28 May 2003.

<sup>29</sup> *Prosecutor v. Kanu*, SCSL-2003-13-I, Decision Approving the Indictment, the Warrant of Arrest and Order for Transfer and Detention and Order for Non-Public Disclosure, 16 September 2003.

<sup>30</sup> *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Indictment, 5 February 2004.

<sup>31</sup> *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Amended Consolidated Indictment, 13 May 2004; see *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision on Prosecution Request for Leave to Amend the Indictment, 6 May 2004; see also *id.*, Consequential Order and Corrigendum to the Decision on the Prosecution Request for Leave to Amend the Indictment, 12 May 2004.

<sup>32</sup> *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Further Amended Consolidated Indictment, 5 February 2004; see *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18, 15 February 2005 and Corrigendum to Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18, 15 February 2005.

<sup>33</sup> *Prosecutor v. Brima, Kamara, Kanu*, Decision on the Defence Motion for Defects in the Indictment, 2 March 2005.

JL

to” and “but not limited to these events”, which it found defective. The Kanu Defence objected to the specificity of the initial indictment regarding different forms of individual criminal responsibility and regarding various counts.<sup>34</sup>

23. On 1 April 2004, Trial Chamber I dismissed the objections by the Kamara Defence with regard to the initial indictment with the exception of the use of language “included but not limited to” and “but not limited to these events”, which it found defective. These objections included (i) lack of precision in the form of the initial indictment, (ii) failure to particularise the mode of participation under Article 6(1) of the Statute, (iii) lack of specificity for joint criminal enterprise, and (iv) failure to particularise responsibility as a superior.<sup>35</sup> The Kamara and Brima Defence raised similar issues in their Pre-Trial Briefs.<sup>36</sup>

### **B. Scope of Review**

24. Preliminary motions pursuant to Rule 72(B)(ii) are the primary instrument through which alleged defects in an indictment should be raised,<sup>37</sup> and the Defence should be limited in raising such objections at a later stage for tactical advantage.<sup>38</sup> In the instant case it cannot, however, be said that the Defence only raised the challenges on the form of the indictment in their Final Trial Brief for tactical purposes. The procedural history, as shown above, demonstrates that the Defence did in fact constantly complain about the vagueness of the Indictment throughout the trial, pursuant to Rule 72(B)(ii), the Pre-Trial Brief, the Motion for Judgement of Acquittal and the Final Brief. The Trial Chamber further notes that the Rules do not afford a right to appeal a decision pursuant to Rule 72(B)(ii), once a Trial Chamber has decided on such a motion.<sup>39</sup> The Trial Chamber 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.<sup>40</sup> It is within the discretion of a Trial Chamber to reconsider a decision previously made if a clear error of reasoning has been

<sup>34</sup> Kanu Form of the Indictment Decision, para. 7, p. 10.

<sup>35</sup> Kamara Form of the Indictment Decision, para. 34, p. 24.

<sup>36</sup> Brima Pre-Trial Brief, paras 28-29.

<sup>37</sup> *Kupreškić* Appeal Judgement, para. 79; *see also* Rule 98 Decision, para. 323.

<sup>38</sup> *Prosecutor v. Hadžihasanović et al.*, Case No. IT-01-47-AR73.3, Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98bis Motions for Acquittal, 11 March 2005, para. 10.

<sup>39</sup> Rule 72(D) of the Rules.

<sup>40</sup> Precedent exists to consider the form of an indictment at the judgement stage: *see Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgement, 15 May 2003 (“*Semanza* Trial Judgement”), paras 41-62; *Prosecutor v. Jean Mpambara*, Case No. ICTR-01-65-T, Judgement, 11 September 2006 (“*Mпамbara* Trial Judgement”), paras 28-35; *Prosecutor v. André Ntagerura, Emmanuel Bagambiki, Samuel Imanishimwe*, Case No. ICTR-99-46-T, Judgement, 25 February 2004 (“*Cyangugu* Trial Judgement”), paras 28-70; *Emmanuel Ndingabahizi*, Case No. ICTR-2001-71-T, Judgement, 15 July 2004 (“*Ndingabahizi* Trial Judgement”), paras 28-29; *Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case No. ICTR-96-10 and ICTR-96-17-T, Judgement, 21 February 2003 (“*Ntakirutimana* Trial

demonstrated or if it is necessary to do so to prevent an injustice.<sup>41</sup> In fact, Rule 26bis provides that a Trial Chamber “shall ensure that a trial is fair and expeditious and that proceedings before the Special Court are conducted in accordance with the Agreement, the Statute and the Rules, with full respect for the rights of the accused [...]”.

25. In the interests of judicial economy the Trial Chamber will limit this review to (1) issues which require clarification in light of evidentiary, procedural, or legal developments arising during the course of the trial, and (2) those exceptional circumstances where a failure to consider an issue is necessary to prevent an injustice.<sup>42</sup>

26. Therefore, due to the paramount importance of ensuring that proceedings are conducted in a fair manner, the Trial Chamber will review the applicable pleadings principles.<sup>43</sup>

### C. Applicable Pleading Principles

27. Article 17(4)(a) of the Statute provides that an accused is entitled to be “informed promptly and in detail [...] of the nature and cause of the charge against him or her.” Rule 47(C) of the Rules specifies that an “indictment shall contain, and be sufficient if it contains, the name and particulars of the suspect, a statement of each specific offence of which the named suspect is charged and a short description of the particulars of the offence.” These provisions translate into an obligation on the part of the Prosecution to plead the material facts underpinning the charges with enough detail to inform an accused clearly of the charges against him so that he or she may prepare a defence, but not the evidence by which such material facts are to be proven.<sup>44</sup>

28. Where the scale of the crimes renders it impractical to require a high degree of specificity regarding, for example, the identity of the victims, the Prosecution does not need to identify every victim in the indictment in order to meet its obligation of specifying the material facts of the case.<sup>45</sup>

---

Judgement”), paras 49-63; *see also Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-PT, Transcript 25 October 2006, p. 8 (Oral Decision on Motion for Judgement of Acquittal).

<sup>41</sup> *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73, Decision on Application by Prosecution for Leave to Appeal, 14 December 2001, para. 13; *Kajelijeli Appeal Judgement*, paras 203 and 204; *Cyangugu Appeal Judgement*, para. 55.

<sup>42</sup> *Prosecutor v. Aloys Simba*, Case No. ICTR-2001-76-T, Judgement, 13 December 2005 (“*Simba Trial Judgement*”), paras 14-40; Kamara Form of the Indictment Decision, para. 47.

<sup>43</sup> *See Semanza Trial Judgement*, para. 42.

<sup>44</sup> *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004 (“*Blaškić Appeal Judgement*”), para. 209 (citing *Prosecutor v. Kupreškić, Kupreškić, Kupreškić, Josipović, and Šantić*, Case No. IT-95-16-A, Judgement, 23 October 2001 (“*Kupreškić et al. Appeal Judgement*”), para. 88); *Simba Trial Judgement*, para. 14.

<sup>45</sup> *Kupreškić Appeal Judgement*, paras 89, 90.

29. The materiality of a particular fact depends on the nature of the Prosecution case and on the context of the alleged criminal conduct with which the accused is charged.<sup>46</sup> Whether the identity of the victims, the time and place of the events and the description of those events are material facts depends upon the proximity of the accused to those events and, therefore, the form of individual responsibility with which the accused is charged.<sup>47</sup> To that end, a distinction has been drawn in the jurisprudence between

- (i) individual criminal responsibility under Article 6(1) in a case where it is *not* alleged that the accused personally carried out the acts underlying the crimes charged;
- (ii) individual criminal responsibility under Article 6(1) where it *is* alleged that the accused personally carried out the acts in question; and
- (iii) individual criminal responsibility under Article 6(3).

30. With regard to the first category, the precise details to be pleaded as material facts are the particular form of participation of the accused, not the acts of those persons for whose acts the accused is alleged to be responsible.<sup>48</sup> Depending on the particular form of participation under Article 6(1), the material facts to be pleaded may vary.<sup>49</sup>

31. Where it is alleged that an accused personally carried out the underlying criminal acts in question, the Prosecution is required to set out “with the greatest precision” the identity of the victims, the means by which the acts were committed and the time and place of the events.<sup>50</sup> But even in cases where personal participation is alleged, the nature or scale of the alleged crimes may render it impracticable to particularise the identity of every victim or the dates of commission.<sup>51</sup>

<sup>46</sup> *Blaškić* Appeal Judgement, para. 210; *Rutaganda* Appeal Judgement, para. 304.

<sup>47</sup> *Blaškić* Appeal Judgement, para. 210, referring to *Prosecutor v. Mrkšić et al.*, Case No.: IT-95-13/1-PT, Decision on Form of Consolidated Amended Indictment and on Prosecution Application to Amend, 23 January 2004 (“*Mrkšić* 23 January 2004 Decision”), para. 52; *Prosecutor v. Brđanin and Talić*, Case No.: IT-99-36-PT, Decision on Objections by Radoslav Brđanin to the Form of the Amended Indictment, 23 Feb. 2001 (“*Brđanin and Talić* 23 February 2001 Decision”), para. 13.

<sup>48</sup> *Blaškić* Appeal Judgement, para. 210, referring to *Brđanin and Talić* 23 February 2001 Decision, para. 10; *Mrkšić* 23 January 2004 Decision, para. 8.

<sup>49</sup> *Prosecutor v. Deronjić*, Case No.: IT-02-61-PT, Decision on Form of the Indictment, 25 October 2002.

<sup>50</sup> *Blaškić* Appeal Judgement, para. 213, referring to *Prosecutor v. Tadić*, Case No.: IT-94-1-T, Decision on the Defence Motion on the Form of the Indictment, 14 November 1995, paras 11-13.

<sup>51</sup> *Kupreškić* Appeal Judgement, paras 89, 90, stating that “[s]uch would be the case where the Prosecution alleges that an accused participated, as a member of an execution squad, in the killing of hundreds of men. The nature of such a case would not demand that each and every victim be identified in the indictment. Similarly, an accused may be charged with having participated as a member of a military force in an extensive number of attacks on civilians that took place over a prolonged period of time and resulted in large numbers of killings and forced removals. In such a case the Prosecution need not specify every single victim that has been killed or expelled in order to meet its obligation of specifying the material facts of the case in the indictment. Nevertheless, since the identity of the victim is information that is valuable to the preparation of the defence case, if the Prosecution is in a position to name the victims, it should do so” (footnotes omitted).

32. An allegation of superior responsibility requires that the Prosecution specify not only what is alleged to have been the superior's own conduct, but also what is alleged to have been the conduct of those persons for which the superior bears responsibility, subject to the Prosecution's ability to provide those particulars.<sup>52</sup>

#### **D. Discussion**

33. The Defence challenge the Indictment on a number of grounds. The Trial Chamber will address these objections in this Chapter only as far as they concern the pleading of the Indictment. Objections raised with regard to the applicable law<sup>53</sup> and the sufficiency of the evidence<sup>54</sup> are matters which will be discussed elsewhere in this Judgement.

##### 1. Particulars of Victims and Locations

###### (a) Victims

34. The Brima Defence complains that the Indictment is impermissibly vague, in particular that no specific dates are given, when and where the crimes occurred and that no particulars were provided with regards to identity of the victims.<sup>55</sup>

35. This issue has been adjudicated in a decision on a preliminary motion by the Accused Kamara:

The Trial Chamber [...] finds no merit in the allegations for the following reasons. [...] [T]here is no applicable magical formula as to the degree of specificity required for the purposes of pleading "an indictment alleging criminality in the international domain as distinct from criminality in the domestic sphere." It is precisely a matter of common sense and what is reasonable, having regard to "the scale or magnitude on which the acts or events allegedly took place" and "the totality of the circumstances surrounding the commission of the alleged crimes".<sup>56</sup>

36. Although this ruling applies only in relation to the Accused Kamara, the Trial Chamber notes that this finding is supported by the *Kupreškić* Appeal Judgement stating that

[...] in a case where the Prosecution alleges that an accused personally committed the criminal acts, the material facts, such as the identity of the victim, the time and place of the events and the means by which the acts were committed, have to be pleaded in detail. Obviously, there may be instances where the sheer scale of the alleged crimes "makes it impracticable to require a high

<sup>52</sup> *Blaškić* Appeal Judgement, para. 216, referring to *Prosecutor v. Krnojelac*, Case No. IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 February 1999, paras 38, 40.

<sup>53</sup> See, e.g., Brima Final Brief, paras 146-152 regarding Counts 7 and 8 of the Indictment.

<sup>54</sup> See, e.g., Kanu Final Brief, paras 295, 299-301, 302-314, 316-323, 325-363 with regard to JCE; and Kamara Final Brief, paras 61-67 with regard to the existence of a superior-subordinate relationship for the purposes of responsibility under Article 6(3) of the Statute.

<sup>55</sup> Brima Final Brief, paras 131-133, 138.

<sup>56</sup> Kamara Form of the Indictment Decision, para. 46 (footnotes omitted).

degree of specificity in such matters as the identity of the victims and the dates for the commission of the crimes”. [footnotes omitted]

Such would be the case where the Prosecution alleges that an accused participated, as a member of an execution squad, in the killing of hundreds of men. The nature of such a case would not demand that each and every victim be identified in the indictment. Similarly, an accused may be charged with having participated as a member of a military force in an extensive number of attacks on civilians that took place over a prolonged period of time and resulted in large numbers of killings and forced removals. In such a case the Prosecution need not specify every single victim that has been killed or expelled in order to meet its obligation of specifying the material facts of the case in the indictment. Nevertheless, since the identity of the victim is information that is valuable to the preparation of the defence case, if the Prosecution is in a position to name the victims, it should do so. [footnotes omitted]<sup>57</sup>

Therefore, the Trial Chamber holds that the above decision, being a statement of law, applies to the other Accused and will not revisit this issue.<sup>58</sup>

(b) Locations

37. The Trial Chamber notes 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.<sup>59</sup> 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.<sup>60</sup> As the Appeals Chamber has stated:

the overriding duty of a Prosecutor – what determines, in fact, his or her professional ability – is to shape a trial by selecting just so many charges that can most readily be proved and which carry a penalty appropriate to the overall criminality of the Accused. In national systems, this is reflected in Prosecution practices of selecting specimen charges or proceeding only on certain counts of a long Indictment. In international courts, where defendants may be accused of command responsibility for hundreds if not thousands of war crimes at the end of a war that has lasted for years, the need to be selective in deciding which charges to include in a trial Indictment is a test of Prosecution professionalism. In this respect, the Trial Chamber must oversee the Indictment, in the interests of producing a trial which is *manageable*.<sup>61</sup> [emphasis added]

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

<sup>57</sup> Kupreškić Appeal Judgement, para. 89-90.

<sup>58</sup> See paras 2-3 *supra*.

<sup>59</sup> Such evidence has been considered for the “General Requirements of Articles 2, 3 and 4 of the Statute” where appropriate, see Rule 98 Decision, para. 19.

<sup>60</sup> Rule 98 Decision, para. 19, 20; *Brđanin* Trial Judgement, para. 397.

<sup>61</sup> *Prosecutor v. Norman*, Case No. SCSL-04-14-AR73, Decision on Amendment of Consolidated Indictment, 16 May 2005, para. 82.

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.<sup>62</sup>

38. In light of the above, the Trial Chamber will not make any finding on crimes perpetrated in locations not specifically pleaded in the Indictment. Such evidence will 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.<sup>63</sup>

(c) Offences of a Continuous Nature

39. The Trial Chamber notes that with regard to the prolonged offences or offences of a continuous nature, i.e. sexual slavery and use of child soldiers, the Prosecution has not pleaded any locations. With respect to enslavement, which is a crime of a similar nature, the Prosecution has specified locations in Kenema, Kono, Koinadugu, Freetown and Western Area and Port Loko Districts but not in Bombali or Kailahun Districts.

40. The Trial Chamber accepts that the prolonged nature of these crimes, especially in the context of the Sierra Leone conflict where the perpetrators were often on the move between villages and Districts for a significant period of time, may make pleading particular locations difficult. However, it is the duty of the Prosecution to provide any material facts on the alleged crimes within their possession so as to enable the Accused to prepare a defence. The Trial Chamber is of the view in the present case that the Prosecution should have pleaded the three continuous crimes with more particularity.

41. Nevertheless, a significant amount of evidence has been adduced by both Prosecution and Defence witnesses in respect of each of these crimes over the course of a lengthy trial. The Defence has not specifically objected to the lack of specificity with respect to locations with relation to enslavement, sexual slavery and child soldier recruitment and Counts 9, 12 and 13. In the interests of justice, the Trial Chamber will treat the pleading of these counts as permissible.

---

<sup>62</sup> *Brđanin* Trial Judgement, para. 397; *Prosecutor v. Brđanin*, Decision for Motion of Acquittal, 28 November 2003, para. 88, referring to *Stakić* Trial Judgement, para. 772; Trial Chamber I in the instant case came to a similar finding, *Prosecutor v. Kanu*, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 19 November 2003, para. 17; Kamara Form of the Indictment Decision, para. 42.

<sup>63</sup> Rule 98 Decision, paras 19, 20; see also *Brđanin* Trial Judgement, para. 397.

## 2. Alleged Failure to Plead that Crimes were Committed by the Accused

42. The Brima Defence submits that the Prosecution has failed to plead with sufficient precision the acts which the Accused Brima allegedly *committed* in person.<sup>64</sup>

43. The Trial Chamber observes that the preliminary motions filed by the Kamara and Kanu Defence before the commencement of trial only generally complained of a lack of specificity in pleading individual criminal responsibility pursuant to Article 6(1) of the Statute, but they did not specifically assert that the particulars are insufficient as regards the *commission* of the crimes by one of the Accused.<sup>65</sup> The Trial Chamber thus does not consider this matter to be *res judicata*. In fact, a previous decision has held

that by no stretch of legal imagination, taking the Indictment as a whole, can it be reasonably inferred that it is doubtful as to what role the Accused is here being charged with. His alleged role is that of a commander [...] not that of a "foot soldier".<sup>66</sup>

The Pre-Trial Brief does not mention the personal commission of a crime by the Accused. The only reference in general terms can be found in the Prosecution Opening Statement:

As the evidence will demonstrate, the accused persons directly took part in these attacks. They killed, they raped, they directed attacks in which these atrocities were committed. They gave orders to rebel forces to engage in hostilities against civilians. But the accused persons, because of their station and rank, were not always the ones on the ground pulling the trigger. The liability for these incredible events is based not only on their own direct conduct, but also on the activities of their subordinates and or the activities of those they associates with in a joint criminal enterprise.<sup>67</sup>

44. The Trial Chamber has heard evidence of the Accused personally committing crimes. Convicting an accused for personal perpetration of a crime without giving adequate notice could seriously question the fairness of the proceedings. The Trial Chamber will therefore address this issue in more detail.

### (a) Pleading Principles When the Mode of 'Committing' is Alleged

45. As stated above, where the Prosecution alleges that the accused committed crimes *in person*, the Prosecution is required to give as many particulars as possible, provided it is in a position to do

<sup>64</sup> Brima Final Brief, para. 133. *See also* Kamara Final Brief, para. 91, where a general objection against lack of specificity in pleading modes of liability pursuant to Article 6(1) is launched.

<sup>65</sup> Kanu Form of the Indictment Decision, para. 7; Kamara Form of the Indictment Decision, paras 47-50, referring to *Prosecutor v. Allieu Kondewa*, Case No. SCSL-03-13-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 19 November 2003, para. 10, where it was held that "whether the Accused, for example, 'planned', or 'instigated', or 'ordered', the commission of any of the crimes specified in Articles 2 to 4 of the Statute is, in the Chamber's view, *pre-eminently an evidentiary matter*, the key determinant of the success or failure of the Prosecution's case" (emphasis added).

<sup>66</sup> Kamara Form of the Indictment Decision, para. 44.

<sup>67</sup> Prosecution Opening Statement, Transcript 7 March 2005, p. 41.

so.<sup>68</sup> As a general rule, an accused can only be convicted of crimes which are charged in the indictment, the prime accusatory instrument.<sup>69</sup>

46. 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.<sup>70</sup> Whether a fact is material depends on the nature of the Prosecution case.<sup>71</sup> There are several factors that can determine the materiality of the facts. Such factors are referred to in both the ICTY and ICTR cases.<sup>72</sup> For example, the Appeals Chamber in the *Ntakirutimana* held that

criminal acts that were physically committed by the accused personally must be set forth in the indictment specifically, including where feasible 'the identity of the victim, the time and place of the events and the means by which the acts were committed.'<sup>73</sup>

47. If the indictment is found defective because it fails to plead material facts or does not plead them with sufficient specificity, a Trial Chamber must consider whether the accused was nonetheless accorded a fair trial.<sup>74</sup> Where an accused has received timely, clear, and consistent information from the Prosecution detailing the factual basis underpinning the charge, the defects in the indictment are considered to be cured and a conviction may be entered.<sup>75</sup> If insufficient notice has violated the accused's right to a fair trial, no conviction may result.<sup>76</sup>

48. In assessing whether a defective indictment was cured, the issue is whether the accused was in a reasonable position to understand the charges against him or her.<sup>77</sup> In making this determination, a Trial Chamber must consider the Prosecution's pre-trial brief, its opening statement, and disclosed evidence such as witness statements or potential exhibits.<sup>78</sup> In the ICTY case of *Naletilić and Martinović*, the Appeals Chamber considered that in some cases, a list of witnesses in a chart, containing a summary of the facts and clearly identifying the charges in the

<sup>68</sup> *Blaškić* Appeal Judgement, para. 213, referring to *Prosecutor v. Tadić*, Case No.: IT-94-1-T, Decision on the Defence Motion on the Form of the Indictment, 14 November 1995, paras 11-13.

<sup>69</sup> *Kvočka* Appeal Judgement, para. 33.

<sup>70</sup> See *Kamuhanda* Appeal Judgement, para. 17, and *Kupreškić* Appeal Judgement, para. 88.

<sup>71</sup> *Kamuhanda* Appeal Judgement, para. 17, referring to *Kupreškić* Appeal Judgement, para. 89.

<sup>72</sup> *Ndindabahizi* Appeal Judgement, para.16; *Ntakirutimana* Appeal Judgement, para. 25 quoting *Kupreskic et al.* Appeal Judgement, para. 89.

<sup>73</sup> *Ntakirutimana* Appeal Judgement, para. 32, quoting *Kupreškić et al.* Appeal Judgement, para. 89.

<sup>74</sup> *Kvočka* Appeal Judgement, para. 33; *Kupreškić* Appeal Judgement, paras 115-123.

<sup>75</sup> *Muhimana* Appeal Judgement, para. 217 quoting *Gacumbtsi* Appeal Judgement, para. 49; *Ntakirutimana* Appeal Judgement, para. 27, referring to *Kupreskic et al.* Appeal Judgement, para. 114; See also *Ntagerura et al.* Appeal Judgement, paras 28, 65.

<sup>76</sup> *Kvočka* Appeal Judgement, para. 33; *Kupreškić* Appeal Judgement, para. 114.

<sup>77</sup> *Kordić* Appeal Judgement, para. 142; *Rutaganda* Appeal Judgement, para. 303.

<sup>78</sup> *Naletilić* Appeal Judgement, para. 27.

indictment as to which each witness will testify, is sufficient to put the accused on notice.<sup>79</sup> However, in the same case, the Appeals Chamber also held that mere service of witness statements by the Prosecution in discharging its disclosure obligations does not automatically provide sufficient notice to the Defence.<sup>80</sup> The Trial Chamber is guided by these principles when determining whether the alleged defect in the Indictment has been cured.

49. The Defence submissions throughout the trial, including final trial briefs and closing arguments may assist in assessing whether the accused was sufficiently put on notice to respond to the allegations by the Prosecution.<sup>81</sup> In case of a lack of notice, the Defence must raise a specific objection at the time the evidence is introduced.<sup>82</sup> As the Appeals Chamber stated in the *Niyitegeka* case:

In general, "a party should not be permitted to refrain from making an objection to a matter which was apparent during the course of the trial, and to raise it only in the event of an adverse finding against that party." Failure to object in the Trial Chamber will usually result in the Appeals Chamber disregarding the argument on grounds of waiver. In the case of objections based on lack of notice, the Defence must challenge the admissibility of evidence of material facts not pleaded in the Indictment by interposing a specific objection at the time the evidence is introduced. The Defence may also choose to file a timely motion to strike the evidence or to seek an adjournment to conduct further investigations in order to respond to the unpleaded allegation. [...] <sup>83</sup> [emphasis added]

The Trial Chamber therefore finds that failure to object to the admissibility of evidence on material facts not pleaded in the Indictment constitutes a waiver and the Defence may not later raise an objection that it was not sufficiently put on notice.<sup>84</sup>

50. The aforesaid may be summarised as follows:

- (i) It must be established whether the Indictment pleaded the particulars in relation to crimes personally committed by the Accused in sufficient detail;
- (ii) If the Indictment does not provide sufficient detail, the Trial Chamber must consider whether this defect prejudiced the Accused in mounting a defence against the charge. In this context, the Trial Chamber will assess whether supplementary information given to the Defence

<sup>79</sup> *Naletilić* Appeal Judgement, para. 27, referring to Rule 65ter(E)(ii) of the ICTY Rules of Procedure and Evidence, which has no equivalent in the Special Court's Rules; *Gacumbtsi* Appeal Judgement, paras 57-58 quoting *Naletilić* Appeal Judgement, para. 45.

<sup>80</sup> *Naletilić* Appeal Judgement, para. 27.

<sup>81</sup> *Kvočka* Appeal Judgement, paras 52, 53; *Kordić* Appeal Judgement, para. 148; *Naletilić* Appeal Judgement, para. 27.

<sup>82</sup> *Kamuhanda* Appeal Judgement, para. 21, referring to *Niyitegeka* Appeal Judgement, para. 199.

<sup>83</sup> *Niyitegeka* Appeal Judgement, para. 199.

<sup>84</sup> *Kayishema* Appeal Judgement, para. 91; *Ntakirutimana* Appeal Judgement, para. 52.

cured the shortcomings in the Indictment, and review the Prosecution Pre-trial Brief and Opening Statement, and in some instances information contained in material disclosed to the Defence;

(iii) If the Defence was not sufficiently put on notice, the Trial Chamber will consider whether an objection was raised when evidence of crimes personally committed by the Accused was adduced at trial.

(b) Findings

51. Concerning the individual criminal responsibility of the Accused, the Indictment alleges generally that

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 [...]<sup>85</sup>

52. Hence, without further specification, the Prosecution alleges that the Accused bear responsibility for the crimes set forth in the Indictment pursuant to *all* modes of liability contained in Article 6(1) of the Statute. No particulars regarding time, location and identity of victims are given in relation to crimes personally ‘committed’ by the Accused. Despite this, the Prosecution has adduced a significant amount of evidence in the course of trial which personally implicates all three Accused.<sup>86</sup>

53. The Trial Chamber finds that this manner of pleading in the Indictment cannot suffice to put the Accused on notice that they will have to answer to the allegations of personal perpetration of crimes, and is therefore defective.

54. The Prosecution Pre-trial Brief does not contain any additional material facts relating to the criminal responsibility of the Accused. Likewise, the Prosecution Opening Statement remained ambiguous at best on this matter.<sup>87</sup>

55. The Trial Chamber observes that almost a year prior to the start of the trial, the Prosecution disclosed material to the Defence which contained an initial witness list and a summary of facts and counts to which each witness would testify.<sup>88</sup> This material, considered in conjunction with witness

<sup>85</sup> Indictment, para. 35 [emphasis added].

<sup>86</sup> See Responsibility of the Accused, *infra*.

<sup>87</sup> See Transcript 7 March 2005, p. 41: “[T]he accused persons, because of their station and rank, were *not always* the ones on the ground pulling the trigger” (emphasis added).

<sup>88</sup> *Prosecutor v. Brima, Kamara, Kanu*, SCSL-2004-16-PT, Material Filed Pursuant to Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial, 1 April 2004, 26 April 2004.

statements disclosed pursuant to Rules 66 and 68 of the Rules, might have put the Defence on notice that evidence personally implicating the Accused would unfold at trial. Lest an injustice be done, before finding an Accused responsible for personal commission of a particular crime, the Trial Chamber will review whether the defect in the Indictment has been cured by the Prosecution providing adequate notice to the Defence of a specific incident. The Trial Chamber will also take into account whether the Defence has raised an objection of lack of untimely notice.

### 3. Objections Relating to Joint Criminal Enterprise (“JCE”)

56. The Defence submissions in relation to JCE can be grouped in three categories: (1) objections to the form of pleading in the Indictment, especially regarding its different forms; (2) legal submissions; and (3) evidentiary submissions. The Trial Chamber will only consider submissions falling into the first category in the section below.

#### (a) Submissions of the Parties

57. The Kamara Defence submits that the common purpose to “take any actions to gain and exercise political power and control over the territory of Sierra Leone”<sup>89</sup> as such does not amount to a specific crime and is thus too broad to prove the existence of a JCE.<sup>90</sup> The Kamara Defence submits in particular that the Prosecution must “establish the existence of a common plan, design, or purpose *specifically* aimed at committing a criminal act within the [Special Court’s] jurisdiction” and show that an accused “joined with others in a plan aimed at achieving an end that constitutes a crime within the indictment.”<sup>91</sup> By contrast, the Prosecution submits that “[w]hile the aim of defeating the enemy and regaining control of territory is not in itself a criminal aim, if the plan *involves* the commission of crimes against civilians in order to achieve that aim, liability may be invoked under the doctrine of JCE.”<sup>92</sup> The Prosecution further addressed this issue in the closing arguments stating that “if the common purpose was to regain control of the country by any means possible, including the commission of crimes, then although the ultimate aim may not have been a crime within the jurisdiction of the Court, the common purpose involved the commission of crimes.”<sup>93</sup>

58. The Kamara Defence further submits that a JCE has only been pleaded *between* members of the AFRC – including the Accused – and members of the RUF, but not among the Accused *inter*

<sup>89</sup> Indictment, para. 33.

<sup>90</sup> Kamara Final Brief, para. 46.

<sup>91</sup> Kamara Final Brief, para. 47 (emphasis in the original); *see also* Brima Final Brief, para. 59.

<sup>92</sup> Prosecution Final Brief, para. 469.

se.<sup>94</sup> The Prosecution responds that “it is clearly alleged that the three Accused in this case were, between themselves, part of a joint criminal enterprise.”<sup>95</sup>

59. The Kanu Defence submits that the “extraordinary broad nature of the case” warrants the dismissal of JCE as a pertinent mode of individual criminal responsibility against Kanu.<sup>96</sup> In support, it refers to the *Brđanin* Trial Judgement which held that in that case, JCE

was not an appropriate mode of liability [...] given the extraordinarily broad nature of this case, where the Prosecution seeks to include within a JCE a person as structurally remote from the commission of the crimes [...] as the Accused.<sup>97</sup>

The Prosecution submits, in response to the Kanu Defence, that “membership in the enterprise may be fluid so long as the common aim remains constant”.<sup>98</sup>

(b) Pleading Principles

60. The Indictment alleges that

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.

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.

61. Before reviewing the pleading requirements for participation in a joint criminal enterprise as a mode of liability, the Trial Chamber will briefly set out the law of this mode of liability as it is not explicitly referred to under Article 6 of the Statute, but an established mode under customary

<sup>93</sup> Prosecution Closing Arguments, 7 December 2007, p. 71.

<sup>94</sup> Kamara Final Brief, paras 41, 45.

<sup>95</sup> Prosecution Closing Argument, Transcript 7 December 2006, para. 71.

<sup>96</sup> Kanu Final Brief, paras 288-290.

<sup>97</sup> *Brđanin* Trial Judgement, para. 355.

<sup>98</sup> Prosecution Final Brief, paras 468, 473, citing, in addition to two irrelevant paragraphs of the *Brđanin* and *Tadić* Trial Judgements at fn. 756, *Blagojević* Trial Judgement, paras 700-701.

international law.<sup>99</sup> Three categories of JCE were identified by the ICTY Appeals Chamber in *Tadić*:

The 'basic' form, consisting of "[c]ases where all co-defendants, acting pursuant to a common design, possess the same criminal intention; for instance, the formulation of a plan among the co-perpetrators to kill, where, in effecting this common design (and even if each co-perpetrator carries out a different role within it), they nevertheless all possess the intent to kill. The objective and subjective prerequisites for imputing criminal responsibility to a participant who did not, or cannot be proved to have, effected the killing are as follows: (i) The accused must voluntarily participate in one aspect of the common design (for instance, by inflicting non-fatal violence upon the victim, or by providing material assistance to or facilitate the activities of his co-perpetrators), and (ii) The accused, even if not personally effecting the killing, must nevertheless intend the result."<sup>100</sup>

The 'systemic' form, which is a variant of the 'basic' form "and embraces the so-called 'concentration camp' cases. The notion of common purpose was applied to instances where the offences charged were alleged to have been committed by members of military or administrative units such as those running concentration camps; *i.e.*, by groups of persons acting pursuant to a concerted plan."<sup>101</sup>

The 'extended' form, encompassing "cases involving a common design to pursue one course of conduct where one of the perpetrators commits an act which, while outside the common design, was nevertheless a natural and foreseeable consequence of the effecting of that common purpose. An example of this would be a common, shared intention on the part of a group to forcibly remove 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 design, 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. Criminal responsibility may be imputed to all participants within the common enterprise where the risk of death occurring was both a predictable consequence of the execution of the common design and the accused was either reckless or indifferent to that risk."<sup>102</sup>

62. As discussed above, the Prosecution is required to plead all material facts, including the precise mode of liability under Article 6 of the Statute it intends to rely on. With regard to JCE, the *Kvočka* Appeal Judgement unambiguously established that failure to plead the category of JCE charged constitutes a defect in the indictment.<sup>103</sup>

63. As for pleadings regarding JCE liability, the Trial Chamber recalls that the *actus reus* of JCE liability comprises three elements:

- (i) A plurality of persons: They need not be organised in a military, political or administrative structure;

<sup>99</sup> *Tadić* Appeal Judgement, para. 190; *Vasiljević* Appeal Judgement, para. 95; *Stakić* Appeal Judgement, para. 62; *Prosecutor v. Milan Milutinović, Nikola Šainović and Dragoljub Ojdanić*, Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction-Joint Criminal Enterprise, 21 May 2003 ("*Ojdanić* Decision"), paras 20, 43.

<sup>100</sup> *Tadić* Appeal Judgement, para. 196.

<sup>101</sup> *Tadić* Appeal Judgement, para. 202.

<sup>102</sup> *Tadić* Appeal Judgement, para. 204.

<sup>103</sup> *Kvočka* Appeal Judgement, paras 28, 42; *Gacumbitsi* Appeal Judgement, para. 162.

- (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: There is no necessity for this plan, design or purpose to have been previously arranged or formulated. The common plan or purpose may materialise extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a joint criminal enterprise.
- (iii) Participation of the accused in the common design involving the perpetration of one of the crimes provided for in the Statute. This participation need not involve commission of a specific crime under one of those provisions (for example murder, extermination, torture, rape, etc.), but may take the form of assistance in, or contribution to, the execution of the common plan or purpose.<sup>104</sup>

64. The *Krnojelac* Trial Chamber distinguished the following four categories of supporting facts which must be present in an indictment charging an accused with JCE:

- (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 as a group;
- (iv) the nature of the participation by the accused in that enterprise.

65. All legal prerequisites to the application of the offences charged constitute material facts and must be pleaded in the indictment.<sup>105</sup> Each of the material facts must usually be pleaded expressly, although it may be sufficient in some circumstances if it is pleaded by necessary implication.<sup>106</sup> However, if a pleading merely assumes the existence of the pre-requisite, this fundamental principle of pleading has not been met.<sup>107</sup>

(c) Deliberations

66. The Kamara Defence has previously challenged the Indictment as being defective in that it failed to provide sufficient particulars regarding the criminal nature of the purpose of the alleged

<sup>104</sup> Rule 98 Decision, paras 310-311, referring to *Tadić* Appeal Judgement, para. 227; see also Prosecution Final Brief, para. 466; Kanu Final Brief, para. 302.

<sup>105</sup> *Prosecutor v. Hadžihasanović et al.*, Case No. IT-01-47-PT, Decision on Form of Indictment, 7 December 2001 (“*Hadžihasanović* Indictment Decision”), para. 10.

<sup>106</sup> *Hadžihasanović* Indictment Decision, para. 10; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decisions on Objections by Momir Talić to the Form of the Amended Indictment, 20 February 2001, para. 48; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decisions on Form of Fourth Amended Indictment, 23 November 2001, para. 12.

<sup>107</sup> *Hadžihasanović* Indictment Decision, para. 10; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decisions on Objections by Momir Talić to the Form of the Amended Indictment, 20 February 2001, para. 48.

joint criminal enterprise.<sup>108</sup> Trial Chamber I dismissed that application, finding that, upon a review of the Indictment as a whole and particularly paragraphs 33 and 34,<sup>109</sup> “the Indictment, in its entirety, is predicated upon the notion of a joint criminal enterprise”, which is reinforced by paragraph 34, and that the nature of the alleged joint criminal enterprise was pleaded “with the degree of particularity as the factual parameters of the case admits,” as alleged in paragraph 33.<sup>110</sup>

67. With the greatest respect, the Trial Chamber does not agree with the decision of our learned colleagues that the Indictment has been properly pleaded with respect to liability for JCE, since the common purpose alleged in paragraph 33, that is,

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

is not a criminal purpose recognised by the Statute. The common purpose pleaded in the Indictment does not contain a crime under the Special Court’s jurisdiction. A common purpose “to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone” is not an international crime and, as the Appeals Chamber has noted

Whether to prosecute the perpetrators of rebellion for their act of rebellion and challenge to the constituted authority of the State as a matter of internal law is for the state authority to decide. There is no rule against rebellion in international law.<sup>111</sup>

68. In international criminal law the concept of JCE is commonly used to refer to an inherently criminal enterprise under the statutes of international tribunals. Examples of such pleading are as follows:

The purpose of the joint criminal enterprise was the *permanent forcible removal* of Bosnian Muslims and Bosnian Croat inhabitants from the territory of the planned Serbian state *by the commission of the crimes alleged in Counts 1 to 12* [emphasis added].<sup>112</sup>

Within the Republic of Bosnia and Herzegovina, the objective was the *permanent removal*, by force or other means, of Bosnian Muslims, Bosnian Croats or other non-Serb inhabitants from large areas of BiH *through the commission of crimes which are punishable under Articles 3, 4 and 5 of the [ICTY] Statute* [emphasis added].<sup>113</sup>

The purpose of the joint criminal enterprise was the *permanent forcible removal* of the Bosnian Muslim and Bosnian Croat inhabitants from the territory of the planned Serbian state, *including a*

<sup>108</sup> See Kamara Form of the Indictment Decision, para. 51.

<sup>109</sup> These paragraphs were referred to in the Kamara Form of the Indictment Decision, para. 52, as “paragraphs 23-24”, which was their numbering in the previous Consolidated Indictment.

<sup>110</sup> See Kamara Form of the Indictment Decision, para. 52.

<sup>111</sup> *Prosecutor v. Kallon and Kamara*, Case No. SCSL-2004-15-AR72(E)/ SCSL-2004-16-AR72(E), Decisions on Challenge to Jurisdiction: Lomé Accord Amnesty (“Lomé Amnesty Decision”), para. 20, referring to M. N. Shaw, *International Law* (5th ed., 2003) p. 1040.

<sup>112</sup> *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-PT, *Sixth Amended Indictment*, para. 27.1.

<sup>113</sup> *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39&40-PT, *Consolidated Amended Indictment*, para. 4.

*campaign of persecution, through the commission of the crimes alleged in Counts 1 to 8 of the Indictment.* [emphasis added]<sup>114</sup>

The examples above demonstrate that the ICTY indictments allege a common purpose which is a crime under international law and then describe the crimes committed (direct or foreseeable) in pursuing this common purpose.

69. There are further indications in the case law that the ‘common purpose’ must be inherently criminal by purpose. For instance, the ICTY Trial Chamber in *Krajišnik* held that

the mens rea required for the first form is that the JCE participants, including the accused, had a common state of mind, namely the state of mind that the *statutory crime(s)* forming part of the objective should be carried out.<sup>115</sup> [emphasis added]

Further, in the *Vasiljević* Judgement, the ICTY Trial Chamber held that “[t]he Prosecution must establish the existence of an arrangement or understanding amounting to an agreement between two or more persons *that a particular crime* will be committed.” [emphasis added]<sup>116</sup>

70. The principle of the JCE doctrine is to hold an individual accountable for all his actions that fall within, or are a foreseeable consequence of entering into, a criminal agreement. The rationale behind this principle is that a person should not engage in activity that is criminal or foreseeably criminal. Gaining and exercising political power is, however, not inherently a criminal activity.

71. There are considerable difficulties with the Prosecution’s pleading of the JCE in this case. While the Trial Chamber generally concurs with the learned colleagues of Trial Chamber I, when holding that paragraph 33 and 34 have to be read as a whole,<sup>117</sup> these two paragraphs do not clarify what criminal purpose the parties agreed upon at the inception of the agreement. The Prosecution in paragraph 34 alleged that “the crimes in this Indictment [...] were either *actions within* the joint criminal enterprise or were a *reasonably foreseeable consequence* of the joint criminal enterprise.”<sup>118</sup> In general, this language is used to refer to the ‘basic’ (“*actions within*”) and the ‘extended’ (“*reasonably foreseeable consequence*”) form of JCE. The Prosecution has alleged those two forms disjunctively, thereby impeding the Defence ability to know the material facts of the JCE against them, as it appears that the two forms as pleaded logically exclude themselves. If the charged crimes are allegedly within the common purpose, they can logically no longer be a reasonably foreseeable consequence of the same purpose and *vice versa*.

<sup>114</sup> *Prosecutor v. Milomir Stakić*, Case. IT-97-24-PT, Fourth Amended Indictment, para. 26.

<sup>115</sup> *Krajišnik* Trial Chamber, 883, referring to *Tadić* Appeal Judgement, para. 227.

<sup>116</sup> *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-T, Judgement, 29 November 2002 (“*Vasiljević* Trial Judgement”), para. 66.

72. The latter allegation of the Prosecution, that the crimes were a *reasonably foreseeable consequence* of the joint criminal enterprise, is particularly troubling. History has shown that serious violations of international humanitarian law by certain members of armed forces or groups during armed conflict are a foreseeable consequence of such an engagement in conflict. This, however, does not necessarily make the act of engagement in armed conflict in itself an international crime. International humanitarian law strictly distinguishes between the use of force (*jus ad bellum*) and the law applicable in armed conflict (*jus in bello*).<sup>119</sup> By charging the foreseeability of international crimes in a common purpose that is not inherently criminal, the Prosecution appears to blur these two concepts and therefore such a pleading should not be permitted.

73. Even though the contribution to a joint criminal enterprise need not be criminal in nature,<sup>120</sup> the purpose has to be inherently criminal and the perpetrators, including the accused, must have a common state of mind, namely the state of mind that the *statutory crime(s)* forming part of the objective should be carried out.<sup>121</sup>

74. The question remains whether the Prosecution has properly pleaded the ‘basic’ form of JCE in the Indictment and if a conjunctive reading between paragraph 33 and 34 should be allowed, as Trial Chamber I has found. In any event, such a reading bears similar difficulties. The Trial Chamber notes the position taken by the Prosecution that a JCE only needs to “involve” the commission of a crime. This position is indeed supported by jurisprudence.<sup>122</sup> But the fundamental question that arises from this is whether the agreement involved international crimes at the inception of the JCE. The Trial Chamber will refer to some evidence on the point to illustrate its view in this regard.

75. On 25 May 1997, a group of renegade Sierra Leonean Army soldiers staged a coup ousting the government of Tejan Kabbah and installed Johnny Paul Koroma as Chairman of the new government. On 28 May 1997 Koroma contacted the RUF leader Foday Sankoh to invite the RUF

<sup>117</sup> Kamara Form of the Indictment Decision, para. 52.

<sup>118</sup> Indictment, para. 34.

<sup>119</sup> These concepts are usually referred to in international armed conflict, but are equally applicable in non-international armed conflict as it is recognised that every state has the right to use force in order to preserve its territorial integrity and to crush a rebellion and Resolutions of the General Assembly (e.g. 1514 (XV) 1960, 2621 (XXV) 1970, 2625 (XXV) 1970, 2674 (XXV) 1970, 2852 (XXVI) 1971 and 3103 (XXVIII) 1973) recognise the right to self determination (see François Bugnion, “Jus ad Bellum, Jus in Bello and Non-International Armed Conflict”, *Yearbook of International Humanitarian Law*, T.M.C. Asser Press, Vol. VI, 2003, pp. 167-198.

<sup>120</sup> *Kvočka* Trial Judgement, para. 189.

<sup>121</sup> *Krajišnik* Trial Chamber, 883, referring to *Tadić* Appeal Judgement, para. 227.

<sup>122</sup> *Vasiljević* Appeal Judgement, para. 99: “a common purpose which amounts to *or involves* the commission of a crime provided for in the Statute is required [...]” (emphasis added).

*me*

into his Government.<sup>123</sup> As the founders of the AFRC all belonged to the Sierra Leone Army and therefore had been fighting the RUF since 1991, the coalition between the two factions following the 1997 coup was not one based on longstanding common interests. Both factions officially declared that they were joining forces to bring peace and political stability to Sierra Leone.<sup>124</sup> On 18 June 1997, the RUF issued an official apology to the nation for its crimes and went on to praise Johnny Paul Koroma's government.<sup>125</sup> Apart from these formal pronouncements, little information has been adduced regarding the motives of the two factions in forming this alliance, but it appears that the AFRC had the intention to bring lasting peace to Sierra Leone after six years of civil strife.

76. From that evidence at least it does not appear that the JCE was criminal from its inception and that it "involved" the commission of international crimes to gain and exercise control political power over the territory of Sierra Leone.

(d) Findings

77. The Trial Chamber notes the Prosecution submission that "membership in the enterprise may be *fluid* so long as the common aim remains constant." However, this only illustrates yet another difficulty in the pleading of the Prosecution, *i.e.* the second pleading requirement that the indictment shall contain the "time at which or the period over which the enterprise is said to have existed". The indictment fails to provide a specific time period over which the JCE is supposed to have existed,<sup>126</sup> but it has been argued by the Prosecution that the time frame applied should be "all times relevant to the Indictment". If such a proposition is accepted then it follows that the common purpose was inherently criminal from its inception.

78. The Trial Chamber agrees that a common purpose and its objectives might change over time. This has been expressed in the *Blagojević* Trial Judgement:

If the objective of the joint criminal enterprise changes, such that the objective is fundamentally different in nature and scope from the common plan or design to which the participants originally agreed, then a new and distinct joint criminal enterprise has been established. For this joint criminal enterprise, like the original joint criminal enterprise, the three elements must be established for criminal responsibility to attach. It may be that members of [the] second joint criminal enterprise are the same as those in the original enterprise.

<sup>123</sup> Gibril Massaquoi, Transcript 7 October 2005, pp. 46-47; exhibit P-54, Amnesty International, Sierra Leone, 1998 – A Year of Atrocities against Civilians", p. CMS 15799.

<sup>124</sup> Exhibit P-77, "Address by Major Johnny Paul Koroma, Head of State and Chairman of the Armed Forces Revolutionary Council, Freetown, 1 June 1997."

<sup>125</sup> Exhibit P-61, "Revolutionary United Front's Apology to the Nation", delivered on SLBS radio, 18 June 1997.

<sup>126</sup> The Trial Chamber does not consider that "at all times relevant to the Indictment" in para. 32 refers to the JCE between the RUF and AFRC in para. 33.

Alternatively, it may be that only some of the original members of the first joint criminal enterprise joined the second joint criminal enterprise, and thus entail criminal liability for this enterprise. A person will only be held liable for that joint criminal enterprise to which he agreed to participate in under the first category of joint criminal enterprise, and the natural and foreseeable consequences thereof for the third category of joint criminal enterprise.<sup>127</sup>

79. It is not in dispute that a new JCE may emerge from a common purpose fundamentally different in nature and in scope from the initial common purpose, and that members in the initial JCE may also be members to this new JCE, if they adhere to this new common purpose. However, it is more important for the Prosecution to provide material facts of this new or changed common purpose in the Indictment. Having heard the evidence in this case, the Trial Chamber can merely state that an alleged common purpose between the AFRC and RUF may have well changed over time and that the members of the JCE may have ascribed to the involvement of international crimes to fulfil the purpose of exercising power and control. But at the same time it is clear that the purpose has changed and that effectively the allegations may have involved a new or different purpose.

80. The Prosecution is required to know its case before the start of the trial and to know of the changing nature and purposes of the enterprises either between the AFRC and the RUF or within the AFRC.<sup>128</sup> All those new and different purposes have to be pleaded in the indictment and the Prosecution cannot be permitted to mould the case against the Accused as the trial progresses.

81. Further, the Trial Chamber rejects the Prosecution argument that it has sufficiently pleaded a joint criminal enterprise between the three Accused in paragraph 35.<sup>129</sup> If one would accept that the Prosecution has indeed pleaded a separate JCE between the three Accused, which is not directly related to the previous JCE between the AFRC and RUF, then it follows that the Prosecution has not specifically identified the nature or purpose of such alleged JCE.

82. As with other pleading failures, such a defect may be cured by the provision of timely, clear, and consistent information, for example in a pre-trial brief.<sup>130</sup> No such timely, clear or consistent

<sup>127</sup> *Blagojević* Trial Judgement, paras 700-701 (footnotes omitted).

<sup>128</sup> The Trial Chamber notes that the Indictment does not mention an JCE between the AFRC inter se as para. 33 states: "The AFRC [...] and the RUF [...] 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." [emphasis added].

<sup>129</sup> Prosecution Closing Arguments, Transcript 7 December 2006, pp. 71-72.

<sup>130</sup> *Krnojelac* Appeal Judgement, para. 138.

information was provided to the Defence and the Defence has specifically objected to the pleading of the JCE in the Indictment.<sup>131</sup>

83. The Prosecution has submitted that the issue of specificity in the pleadings of JCE has already been litigated at the pre-trial stage and that the sufficiency of pleading a JCE was accepted by the Trial Chamber in its Rule 98 Decision.<sup>132</sup> The latter statement is not correct as the Trial Chamber held that “whether the Indictment has been sufficiently pleaded or is defective in form is not a matter which falls within the scope of Rule 98”<sup>133</sup> and has therefore not pronounced itself on these issues. Furthermore, and as mentioned above, it is accepted that even after the conclusion of the trial proceedings a Trial Chamber may in certain circumstances exceptionally reconsider a decision it, or another Judge or Trial Chamber acting in the same case, has previously made.<sup>134</sup>

84. The Trial Chamber has considered with great care the consequences of its decision and has considered reopening the hearing to allow the Prosecution to make fresh submissions or to argue that any defects had since been remedied. However, the Trial Chamber does not believe that a reopening of the case is necessary, as the Prosecution did make submissions in response on this objection in their Final Trial Brief and closing arguments.<sup>135</sup>

85. For these reasons, the Trial Chamber finds with respect to Joint Criminal Enterprise as a mode of criminal liability, the Indictment has been defectively pleaded. Therefore, the Trial Chamber will not consider JCE as a mode of criminal responsibility in this case.

#### 4. Alleged Failure to Specify Factual Foundation of Responsibility Pursuant to Article 6(3) of the Statute

86. The Brima Defence submits that the Indictment remains impermissibly vague regarding the conduct of subordinates for whom the Accused allegedly bears individual criminal responsibility.<sup>136</sup>

87. The Trial Chamber observes that the same complaint has been made by the Kamara Defence in a preliminary motion, and dismissed as being without merit:

<sup>131</sup> In its Pre-Trial Brief the Prosecution merely repeated the wording of the Indictment without further clarification and simply referred to the three categories of JCE, see Pre-Trial Brief, para. 209. Restating the law is not clear and consistent notice to the Defence.

<sup>132</sup> Prosecution Final Brief, para. 464.

<sup>133</sup> Rule 98 Decision, para. 323.

<sup>134</sup> *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73, Decision on Application by Prosecution for Leave to Appeal, 14 December 2001, at para. 13.

<sup>135</sup> See Prosecution Final Trial Brief, paras 460-497; Prosecution Closing Arguments, Transcript 7 December 2006, pp. 70-71; SCSL-04-16-608, Prosecution List of Authorities Referred to in Oral Closing Submissions, 25 January 2007, item 6.

<sup>136</sup> Brima Final Brief, paras 135-136.

Jm

[P]aragraphs 28-64 set out *in extenso* the acts or crimes of the subordinates for which the Accused, in his superior capacity, is alleged to be responsible, for example armed attacks on civilians [...], terrorizing of the civilian population (to wit, unlawful killings, physical and sexual violence against civilian men, women and children, abductions, lootings and destruction of civilian property [...])<sup>137</sup>

88. Although this ruling applies only in relation to the Accused Kamara, the Trial Chamber finds that the rationale of that decision is also applicable to the other Accused and will therefore not revisit the matter.<sup>138</sup>

5. Alleged Failure to Distinguish Between Individual Criminal Responsibility Under Article 6(1) and 6(3) of the Statute

89. The Brima and Kamara Defence submit that the Prosecution failed to distinguish the acts giving rise to responsibility of the Accused under Article 6(1) from those under 6(3) of the Statute.<sup>139</sup> Moreover, the Brima Defence alleges that the Prosecution charged the Accused with mutually exclusive modes of liability under Article 6(1) and Article 6(3) for the same conduct.<sup>140</sup>

90. The Trial Chamber observes that the same issue has been adjudicated in a decision on a preliminary motion by the Accused Kamara:

Individual criminal responsibility under Article 6(1) and criminal responsibility as a superior under Article 6(3) are not mutually exclusive and can be properly charged both cumulatively and alternatively based on the same set of facts.<sup>141</sup>

91. Although this ruling applies only in relation to the Accused Kamara, the Trial Chamber finds that the rationale of that decision is also applicable to the other Accused and will therefore not revisit the matter.

6. Pleading of Count 7: Sexual Slavery and Any Other Form of Sexual Violence (Article 2(g) of the Statute)

(a) Submissions of the Parties

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.<sup>142</sup> The Prosecution

<sup>137</sup> Kamara Form of the Indictment Decision, para. 55(iv).

<sup>138</sup> Paras 28-64 of the initial Indictment against the Accused Kamara, referred to in the Kamara Form of the Indictment Decision, para. 55(iv), correspond to paras 41-79 in the Indictment.

<sup>139</sup> Brima Final Brief, paras 143-144; Kamara Final Brief, para. 92, referring to *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Decision on Defence Preliminary Motion for Defects in the Form of the Indictment, 31 May 2000, paras 5.11 and 5.23; *but see* Prosecution Closing Argument, Transcript 7 December 2006, p. 8.

<sup>140</sup> Brima Final Brief, para. 129.

<sup>141</sup> Kamara Form of the Indictment Decision, para. 33(xii) (footnote omitted).

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 *Brđanin* Trial Judgement, which held that “normally, an allegation pertaining to the vagueness of an indictment is dealt with at the pre-trial stage.”<sup>143</sup>

(b) Findings

93. This argument has not been previously raised by the Defence and although an alleged defect in 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.<sup>144</sup> 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.<sup>145</sup> 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.”<sup>146</sup> 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.<sup>147</sup> Since then, the Prosecution has not availed itself of Justice Sebutinde’s suggested remedy.

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.<sup>148</sup> 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.<sup>149</sup> 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.

<sup>142</sup> Brima Final Brief, paras 146-149; Kamara Final Brief, paras 94-96, 239; both submissions rely on the Separate Concurring Opinion of Justice Julia Sebutinde to the Trial Chamber’s Rule 98 Decision, paras 3-9.

<sup>143</sup> *Brđanin* Trial Judgement, para. 48, citing the *Kupreskic* Appeal Judgement, para. 70

<sup>144</sup> *Cyangugu* Appeal Judgement, para. 50; *Kajelijeli* Appeal Judgement, paras 203-204.

<sup>145</sup> Rule 98 Decision, “Separate Concurring Opinion of Hon. Justice Julia Sebutinde”.

<sup>146</sup> Rule 98 Decision, “Separate Concurring Opinion of Hon. Justice Julia Sebutinde”, para. 8.

<sup>147</sup> Rule 98 Decision, “Separate Concurring Opinion of Hon. Justice Julia Sebutinde”, paras 8, 9.

<sup>148</sup> See Rule 98 Decision, para. 163.

<sup>149</sup> Brima Final Brief, para. 149; Kamara Final Brief, para. 96.

23072

95. The Trial Chamber by majority finds that Count 7 is bad for duplicity and is accordingly dismissed in its entirety.<sup>150</sup>

---

<sup>150</sup> Justice Doherty dissenting.

### III. CONSIDERATIONS REGARDING THE EVALUATION OF EVIDENCE

#### A. Law Applicable to the Assessment of Evidence

96. The Trial Chamber has assessed the probative value and weight of the evidence in this case in accordance with the Statute and the Rules. In accordance with Rule 89(A) of the Rules, the rules of evidence governing the proceedings before the Trial Chamber shall be the rules set forth in Section 3 of the Rules,<sup>151</sup> and the Trial Chamber “shall not be bound by national rules of evidence”. Where no guidance is given by the Rules, the Trial Chamber, pursuant to Rule 89(B) of the Rules, has assessed the evidence in such a way as will best favour a fair determination of the case and which is consistent with the spirit of the Statute and the general principles of law.

##### 1. Burden and Standard of Proof

97. Article 17(3) of the Statute enshrines the presumption of innocence, i.e. that an accused shall be presumed innocent until proved guilty.<sup>152</sup> This presumption places on the Prosecution the burden of establishing the guilt of each Accused, a burden which remains on the Prosecution throughout the entire trial.

98. In respect of each count charged against each Accused, the standard to be met for a conviction to be entered is that of proof beyond reasonable doubt. Rule 87(A) of the Rules provides, in its relevant part: “A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.” Accordingly, in respect of each count charged against each of the Accused, 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. In making that determination, the Trial Chamber has been careful to consider whether more than one inference was reasonably open from the facts and, if so, whether there was an inference inconsistent with the guilt of the Accused. If so, the onus and the standard of proof require that an acquittal be entered in respect of that particular count.<sup>153</sup>

<sup>151</sup> Rule 89(A) provides that “[t]he rules of evidence set forth in this Section shall govern the proceedings before the Chambers...” The Section referred to is Section 3 (“Rules of Evidence”) of Part VI (“Proceedings Before Trial Chambers”) and the rules of evidence referred to are contained in Rules 89 to 98.

<sup>152</sup> This provision is in accordance with all major human rights instruments, *see* International Covenant on Civil and Political Rights, Art. 14(2); African (Banjul) Charter on Human and Peoples’ Rights, Article 7(1)(b).

<sup>153</sup> *See Prosecutor v. Zejnir Delalić, Zdravko Mucić aka “Pavo”, Hazim Delić aka “Zenga” and Esad Landžo*, Case No. IT-96-21-A, Judgement, 20 February 2001 (“*Čelebići* Appeal Judgement”), para. 458.

## 2. Admission of Evidence

99. Rule 89(C) of the Rules states the general principle of admissibility that a Trial Chamber “may admit any relevant evidence”.<sup>154</sup> The Appeals Chamber has made it clear that this provision favours the admission of all relevant evidence, the probative value and weight of which are only to be assessed at the end of the trial and in the context of the entire record.<sup>155</sup>

100. In addition to evidence of facts within the testifying witness’s own knowledge, the Trial Chamber has also admitted hearsay evidence.<sup>156</sup> Under Rule 89(C) of the Rules, the Trial Chamber has a broad discretion to admit relevant hearsay evidence. However, before determining whether to rely on hearsay evidence, the Trial Chamber has carefully examined such evidence, taking into account that its source has neither been tested in cross-examination nor been the subject of an oath or solemn declaration.<sup>157</sup>

101. In some instances, the Trial Chamber relied upon circumstantial evidence, *i.e.*, evidence surrounding an event from which a fact at issue may be reasonably inferred,<sup>158</sup> in order to determine whether or not a certain conclusion could be drawn. While individual pieces of evidence standing alone may well be insufficient to establish a fact, their cumulative effect may be revealing and decisive.<sup>159</sup> Therefore, it is “no derogation of evidence to say that it is circumstantial.”<sup>160</sup>

### **B. Forms of Evidence Under Review**

102. For the purposes of the trial, ‘evidence’ has been taken to mean the information which has been put before the Trial Chamber in order to prove the facts at issue.

<sup>154</sup> Rule 89(C) is thus different from its counterpart in the ICTY Rules, which provides that “[a] Chamber may admit any relevant evidence *which it deems to have probative value*” (emphasis added).

<sup>155</sup> *Prosecutor v. Moinina Fofana*, Case No. SCSL-04-14-AR65, Fofana – Appeal Against Decision Refusing Bail, 11 March 2005 (“Fofana Bail Decision”), para. 26; *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T, Decision on Joint Defence Motion to Exclude all Evidence from Witness TF1-277 Pursuant to Rule 89(C) and/or Rule 95, para. 14; Oral Decision, Transcript 6 July 2005, pp. 44-46; Oral Decision, Transcript 29 June 2006, pp. 77, 78.

<sup>156</sup> *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60, Judgement, 17 January 2005 (“Blagojević Trial Judgement”), para. 21; *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 February 1999, para. 14. See also *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T, Decision on Joint Defence Motion to Exclude all Evidence from Witness TF1-277 Pursuant to Rule 89(C) and/or Rule 95, para. 24.

<sup>157</sup> *Prosecutor v. Moinina Fofana*, Case No. SCSL-2004-14-AR73, Fofana – Decision on Appeal Against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence”, Separate Opinion of Justice Robertson, 16 May 2005, para. 6. See also *Prosecutor v. Krnojelac*, Case No. IT-97-25-T, Judgement, 15 March 2002 (“Krnojelac Trial Judgement”), para. 70; *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 February 1999, para. 15.

<sup>158</sup> *Brđanin* Trial Judgement, para. 35; *Blagojević* Trial Judgement, para. 21.

<sup>159</sup> *Čelibići* Appeal Judgement, para. 458.

<sup>160</sup> *Prosecutor v. Orić*, IT-03-68-T, Order Concerning Guidelines on Evidence and the Conduct of Parties During Trial Proceedings, p. 7, referring to *Taylor, Weaver and Donovan* (1928) 21 Cr. App. R. 20, 21, *per* Lord Hewart C.J.

103. Evidence was admitted in the following forms: (i) oral evidence, (ii) documentary evidence, including such evidence provided in lieu of oral testimony pursuant to Rule 92*bis*, (iii) testimony of expert witnesses, (iv) facts of which judicial notice was taken and (v) facts agreed by the Parties.

#### 1. Witness Testimony

104. The Trial Chamber heard the direct testimony of a total of 148 witnesses: 59 called by the Prosecution, 88 called by the Defence<sup>161</sup> and one called by the Trial Chamber.<sup>162</sup>

105. Rule 85 of the Rules, which governs the presentation of evidence, provides:

(A) Each party is entitled to call witnesses and present evidence. Unless otherwise directed by the Trial Chamber in the interests of justice, evidence at the trial shall be presented in the following sequence:

Evidence for the prosecution;

Evidence for the defence;

Prosecution evidence in rebuttal, with leave of the Trial Chamber;

Evidence ordered by the Trial Chamber;

(B) Examination-in-chief, cross-examination and re-examination shall be allowed in each case. It shall be for the party calling a witness to examine him in chief, but a Judge may at any stage put any question to the witness.

(C) The accused may, if he so desires, appear as a witness in his own defence. If he chooses to do so, he shall give his evidence under oath or affirmation and, as the case may be, thereafter call his witnesses.

(D) Evidence may be given directly in court, or via such communications media, including video, closed-circuit television, as the Trial Chamber may order.

106. Rule 90 of the Rules governs the testimony of witnesses in court. Rule 90 states:

(A) Witnesses may give evidence directly, or as described in Rules 71<sup>163</sup> and 85(D).

(B) Every adult witness shall, before giving evidence, make one of the following solemn declarations:

“I solemnly declare that I will speak the truth, the whole truth and nothing but the truth.”

Or

<sup>161</sup> This includes the Accused Alex Tamba Brima who gave evidence in his own defence.

<sup>162</sup> Gilbert Morrisette, Chief of Investigations at the Special Court for Sierra Leone, was called in order to provide background information with regard to exhibit D-39.

<sup>163</sup> Rule 71 deals with evidence by deposition.

Jns

"I solemnly swear on the [insert holy book] that I will speak the truth, the whole truth and nothing but the truth."

- (C) A child shall be permitted to testify if the Chamber is of the opinion that he is sufficiently mature to be able to report the facts of which he had knowledge, that he understands the duty to tell the truth, and is not subject to undue influence. However, he shall not be compelled to testify by solemn declaration.
- (D) A witness, other than an expert, who has not yet testified may not be present without leave of the Trial Chamber when the testimony of another witness is given. However, a witness who has heard the testimony of another witness shall not for that reason alone be disqualified from testifying.
- (E) A witness may refuse to make any statement which might tend to incriminate him. The Chamber may, however, compel the witness to answer the question. Testimony compelled in this way shall not be used as evidence in a subsequent prosecution against the witness for any offence other than false testimony under solemn declaration.
- (F) The Trial Chamber shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to:
- (i) Make the interrogation and presentation effective for the ascertainment of the truth; and
  - (ii) Avoid the wasting of time.

107. In accordance with Rule 90(B), witnesses gave evidence under a solemn declaration or oath, and were cross-examined and re-examined in accordance with Rule 85(B).

108. When evaluating the credibility of witnesses who gave evidence *viva voce*, the Trial Chamber has taken into account a variety of factors, including their demeanour, conduct and character (where possible),<sup>164</sup> their knowledge of the facts to which they testified, their proximity to the events described, their impartiality, the lapse of time between the events and the testimony, their possible involvement in the events and the risk of self-incrimination, and their relationship with the Accused<sup>165</sup>.

109. In some instances, only one witness gave evidence on a material fact. As a matter of law, the testimony of a single witness on a material fact does not require corroboration.<sup>166</sup> Nevertheless, the Trial Chamber has examined the evidence of a single witness with particular care before attaching any weight to it<sup>167</sup>.

<sup>164</sup> *Blagojević* Trial Judgement, para. 23.

<sup>165</sup> *Prosecutor v. Halilović*, Case No. IT-01-48-T, Judgement, 16 November 2005 ("*Halilović* Trial Judgement"), para. 17.

<sup>166</sup> *Tadić* Appeal Judgement, para. 65; *Aleksovski* Appeal Judgement, para. 62; *Kupreškić* Appeal Judgement, para. 33.

<sup>167</sup> *Limaj* Trial Judgement, para. 21; *Brđanin* Trial Judgement, para. 27.

(a) Discrepancies Between the Evidence of Various Witnesses, or Between the Evidence of a Particular Witness and a Previous Statement

110. It is the responsibility of the Trial Chamber to resolve any inconsistencies that may arise within and/or amongst witnesses' testimonies. In doing so, the Trial Chamber has discretion to evaluate any inconsistencies, to consider whether the evidence taken as a whole is reliable and credible and to accept or reject the 'fundamental features' of the evidence.<sup>168</sup> In this context, the Trial Chamber endorses the statement of the ICTY Appeals Chamber in *Kupreškić* that

[t]he presence of inconsistencies in the evidence does not, *per se*, require a reasonable Trial Chamber to reject it as being unreliable. Similarly, factors such as the passage of time between the events and the testimony of the witness, the possible influence of third persons, discrepancies, or the existence of stressful conditions at the time the events took place do not automatically exclude the Trial Chamber from relying on the evidence.<sup>169</sup>

111. A number of witnesses gave evidence of horrific events in which they personally suffered the amputation of one or both arms, or were raped, or saw such atrocities inflicted on members of their families, or who witnessed family members being tortured and killed. Recounting this evidence in court evoked strong emotional reactions in all of these witnesses, many of whom broke down in tears. As a result, the Trial Chamber took the view that there may have been memories which prevented the witnesses from giving a full account of their experiences to the Court, or which prevented them from articulating in detail what they had endured.<sup>170</sup> The Trial Chamber also took into consideration the possibility that any observations made by the witnesses at the relevant time may have been affected by terror or stress<sup>171</sup>. While these circumstances do not necessarily mean that such evidence is not reliable, the Trial Chamber has weighed it with particular scrutiny.

112. During the trial, both the Prosecution and the Defence made use of pre-trial statements from witnesses – and sometimes of interview notes – for the purpose of cross-examination. In many instances both parties alleged inconsistencies and contradictions between the pre-trial statements of witnesses and their evidence at trial. The Trial Chamber accepts that the information given in such a statement will not always be identical to the witness's oral evidence. This may be because the witness was asked questions at trial not previously asked, or may in his or her testimony remember details previously forgotten<sup>172</sup>. The Trial Chamber has also taken into account that the six to eight years that have passed since the events in the Indictment have, in all likelihood, affected the

<sup>168</sup> *Kupreškić* Appeal Judgement, para. 31.

<sup>169</sup> *Ibid.*

<sup>170</sup> See *Čelebići* Appeal Judgement, para. 496.

<sup>171</sup> *Limaj* Trial Judgement, para. 15.

<sup>172</sup> *Brđanin* Trial Judgement, para. 26.

je

accuracy and reliability of the memories of witnesses. Another factor considered by the Trial Chamber was that interviews with witnesses were usually conducted in one of the native languages of Sierra Leone, whereas the resulting witness statements used in court were a summarised English translation of the original statement or interview notes.

113. Thus, in general, the Trial Chamber has not treated minor discrepancies between the evidence of various witnesses, or between the evidence of a particular witness and a statement previously made by that witness, as discrediting their evidence where the essence of the incident had nevertheless been recounted in acceptable detail.<sup>173</sup>

(b) Crimes Involving Sexual Violence

114. Where a count charges sexual violence, the Trial Chamber has noted and applied, where appropriate, the principles prescribed by Rule 96, which states:

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) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of sexual nature of the prior or subsequent conduct of a victim or witness.

(c) Names of Locations

115. Although not raised as an issue in the Parties' Final Trial Briefs, the Trial Chamber reiterates that names of locations mentioned by witnesses which are similar, but not identical, may refer to the same location:

We are mindful of the fact that due to the variety of vernacular languages and dialects generally spoken in Sierra Leone and particularly by the Prosecution witnesses in this case, the names of some locations were sometimes pronounced and/or spelt differently, depending on the dialect spoken by the witness. At other times, some of the witnesses were illiterate and could not spell the

---

<sup>173</sup> *Krnojelac* Trial Judgement, para. 69.

*JL*

names of certain locations. In the latter case the Trial Chamber often resorted to the phonetic spelling of such a location.<sup>174</sup>

(d) Testimony of Accused in his own Defence

116. There is no burden whatsoever 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.

117. The Accused Brima 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. His election to give evidence does not mean that he accepted any onus to prove his innocence; nor does it mean that a choice must be made between his evidence and that of the Prosecution witnesses. Rather, the Trial Chamber has to determine whether the evidence of the Prosecution witnesses should be accepted as establishing beyond reasonable doubt the facts alleged, notwithstanding the evidence of the Accused Brima and that of the other Defence witnesses.<sup>175</sup>

118. The Accused Kamara and the Accused Kanu did not give evidence in their own defence. No adverse inferences were drawn from the fact that they did not testify.

119. Given that this is a joint trial of three accused, the Trial Chamber has been careful to consider the charges against each of the Accused in the light of the entirety of the evidence adduced by the Prosecution and each of the Accused.<sup>176</sup>

(e) Alibi of Accused Brima

120. The Accused Brima relied in part on an alibi defence. So long as there is a factual foundation in the evidence for that alibi, an accused bears no onus to establish that alibi; it is for the Prosecution to “eliminate any reasonable possibility that the evidence of alibi is true”.<sup>177</sup> Further, a finding that an alibi is false does not in itself “establish the opposite to what it asserts”.<sup>178</sup> The Prosecution must not only rebut the validity of the alibi but also establish beyond reasonable doubt the guilt of the Accused as alleged in the Indictment.<sup>179</sup>

<sup>174</sup> Rule 98 Decision, para. 25.

<sup>175</sup> *Prosecutor v. Vasiljević*, Case No. IT-98-32-T, Judgement, 29 November 2002 (“*Vasiljević* Trial Judgement”), para. 13; *Limaj* Trial Judgement, para. 22.

<sup>176</sup> *Simić* Trial Judgement, para. 18; *Blagojević* Trial Judgement, para. 20.

<sup>177</sup> *Vasiljević* Trial Judgement, para. 15; *Čelebići* Appeal Judgement, para. 581.

<sup>178</sup> *Vasiljević* Trial Judgement, fn. 7.

<sup>179</sup> *Limaj* Trial Judgement, para. 11.

*Jre*

121. Although the Brima Defence alluded to the defence of alibi in its Pre-Trial Brief<sup>180</sup>, the Trial Chamber found in an earlier decision that the Brima Defence had failed to comply with Rule 67(A)(ii)(a) of the Rules, in that it had not provided the notification required by that Rule.<sup>181</sup>

122. Rule 67(A)(ii)(a) of the Rules requires that:

(A) As early as reasonably practicable and in any event prior to the commencement of the trial:

(i) [...]

(ii) The Defence shall notify the Prosecutor of its intent to enter:

(a) The defence of alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi.

123. Failure of the Brima Defence to provide such notice under Rule 67(A)(ii)(a) does not limit the right of the Accused Brima to rely on the defence of alibi.<sup>182</sup> Nevertheless, the Trial Chamber held that

[i]f the defence deliberately ignores its obligations under Rule 67(A)(ii), it can expect to be sanctioned by the Trial Chamber. Failure to provide timely disclosure may impair the interests of fair trial proceedings and undermine the prosecution's ability to prepare its case and investigate the evidence on which the alibi defence rests. Therefore, failure by the defence to observe its obligations under Rule 67(A)(ii) will entitle the Trial Chamber to take such failure into account when weighing the credibility of the defence of alibi.<sup>183</sup>

<sup>180</sup> SCSL-04-16-PT-145, Defence Pre Trial Brief for Tamba Alex Brima, 17 February 2005, para. 11: "The Prosecution has asserted that Tamba Brima was 'in direct control of AFRC/RUF forces in Kono District.' This is denied by the Accused. For the reasons given elsewhere in this pre-trial brief the Accused could not have been in command of any forces. In any event, the Defence will seek to call evidence, if required, to show that Mr. Brima was held in custody by the RUF between February and July 1998. Accordingly it is submitted that he had an alibi for the period relating to the allegations."; para. 28(e): "[...] the Defence will rely on alibi or partial alibi in that it is asserted that the Accused was placed under arrest by the RUF in Kailahun in mid February 1998 and that he was incarcerated until around 8 July 1998 whereupon he fled and stayed with family until October 1998. He will assert that he was not engaged in any operations or hostilities during that time."

<sup>181</sup> *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T, Decision on Prosecution Motion for Relief in Respect of Violations of Rule 67, 26 July 2006. The notice of alibi was not filed until 3 August 2006 in compliance with an Order in the mentioned decision, *see* SCSL-04-16-T-526, Confidential Brima Defense Alibi Notice pursuant to Article 67(A)(ii) of the Rules of Procedure and Evidence, 3 August 2006.

<sup>182</sup> Rule 67(B) provides: "Failure of the defence to provide such notice under this Rule shall not limit the right of the accused to rely on the above defences".

<sup>183</sup> *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T, Decision on Prosecution Motion for Relief in Respect of Violations of Rule 67, 26 July 2006, para. 18 (Footnotes omitted).

*me*

(f) Witnesses Implicated in the Commission of the Crimes

124. The Defence calls into issue the credibility of certain Prosecution witnesses because these individuals have allegedly been implicated in crimes under the jurisdiction of the court<sup>184</sup> or in domestic crimes<sup>185</sup>, or that they were informants to the police<sup>186</sup>, or admitted taking drugs.<sup>187</sup> The Brima Defence specifically alleges that Witness George Johnson killed Brima's brother and that this was reason enough for the witness to "attempt to fabricate evidence" against the Accused.<sup>188</sup>

125. A witness with a self-interest to serve may seek to inculpate others and exculpate himself, but it does not follow that such a witness is incapable of telling the truth.<sup>189</sup> Hence, the mere suggestion that a witness might be implicated in the commission of crimes is insufficient for the Trial Chamber to discard that witness's testimony. Moreover, none of these Prosecution witnesses has been charged with any crimes and their evidence cannot, therefore, be described as "accomplice evidence." Furthermore, having heard the evidence of the witnesses concerned, the Trial Chamber found no reason to give undue consideration to any of the defence allegations above.

(g) 'Incentives' for Witnesses

126. The Defence alleges that the evidence of some of the Prosecution witnesses is suspect because they allegedly received incentives to testify against the Accused, such as financial incentives<sup>190</sup> or the promise of relocation to another country<sup>191</sup>.

127. With regard to alleged 'financial incentives', 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. The Practice Direction provides for a wide range of allowances to be paid to witnesses testifying before the Special Court. These include an attendance allowance as compensation for earnings and time lost as a result of testifying, accommodation, meals, transport, medical treatment, childcare and other allowances. No distinction is made between witnesses for the Prosecution and Defence.

<sup>184</sup> George Johnson, Transcript 20 September 2005, p. 78.

<sup>185</sup> George Johnson, Transcript 21 September 2005, pp. 70, 71.

<sup>186</sup> Brima Final Brief, para. 200; George Johnson, Transcript 19 September 2005, pp. 34-35.

<sup>187</sup> George Johnson, Transcript 19 September 2005, p. 37.

<sup>188</sup> Brima Final Brief, para. 199.

<sup>189</sup> *Kordić* Trial Judgement, paras 628-629.

<sup>190</sup> Cross-examination of witness TF1-282, Transcript 14 April 2005, pp. 14-26; *see also* Brima Final Brief, para. 188.

<sup>191</sup> Cross-examination of witness George Johnson, Transcript 19 September 2005, pp. 30-31.

128. The Practice Direction requires the Special Court's Witnesses and Victims Section ("WVS") to provide records of payments to the Special Court's Finance Section, and vice versa.<sup>192</sup> In the present case, records of disbursements to Prosecution witnesses were disclosed to the Defence pursuant to Rule 68 of the Rules,<sup>193</sup> and disbursement forms concerning witnesses for both Parties have been admitted into evidence.<sup>194</sup> The Trial Chamber is satisfied that these payments have been made in a transparent way and in accordance with the applicable Practice Direction. Allegations to the contrary are therefore without merit.

129. Relocation to another country is a protective measure employed by WVS pursuant to its responsibility to provide appropriate protection for witnesses and victims who are at risk on account of the testimony given by them.<sup>195</sup> The mere fact that a witness has received protection in that form is not in itself reason to doubt his or her evidence.

130. Accordingly, the Trial Chamber has not given undue weight to these alleged 'incentives' when assessing the credibility of the witnesses in question.

(h) Putting the Defence Case to Prosecution Witnesses

131. The Prosecution submits that "the Trial Chamber should refuse to accept, or give less weight to, Defence evidence that presents a line of defence that has not been put to Prosecution witnesses - for example the evidence of the First Accused that he was maltreated in the presence of Lieutenant Colonel Petrie - in the interests of fairness to the witnesses and overall considerations of justice."<sup>196</sup>

132. In contrast to its ICTY and ICTR counterparts,<sup>197</sup> the Rules of the Special Court do not oblige a Party to put its case to a witness. However, before such a Rule was adopted at the ICTR, the ICTR Appeals Chamber held that

when weighing the [Defence's] allegation going to the credibility of the Prosecution witnesses, the Trial Chamber was entitled to take into account the fact that the [Defence] did not put such allegations to the witnesses for their reactions. Indeed, without the benefit of observing the

<sup>192</sup> Practice Direction on Allowances for Witnesses and Expert Witnesses, Article 2(D).

<sup>193</sup> *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL16-04-16-T, Decision on Kanu Motion to Disclose Prosecution Material and/or other Information Pertaining to Rewards to Prosecution Trial Witnesses and Brima's Motion in Support, 16 March 2005.

<sup>194</sup> Exhibit D-6, "All Disbursements for Witness" (confidential); exhibit P-23a, "Interoffice Memorandum - Witness Payment Policy - Payments made to TF1-004"; exhibit D-6, "All Disbursements for Witness".

<sup>195</sup> Statute, Article 16(4) and Rule 34 of the Rules; see also witness George Johnson, Transcript 19 September 2005, pp. 34, 35; the witness complained: "I'm presently under threat", and "My life is at stake, I just have to be protected well."

<sup>196</sup> Prosecution Trial Brief, para. 63.

<sup>197</sup> Rule 90(H)(ii) of the ICTY Rules of Procedure and Evidence and Rule 90(G)(ii) of the ICTR Rules of Procedure and Evidence provide that "[i]n the cross-examination of a witness who is able to give evidence relevant to the case for the cross-examining party, counsel shall put to that witness the nature of the case of the party for whom that counsel appears which is in contradiction of the evidence given by the witness."

JWS

witnesses' reaction to such allegations, the Trial Chamber was not in a position to determine whether there was merit in the [Defence] charges.<sup>198</sup>

133. As claimed by the Prosecution, the Defence did lead evidence in the Defence case which was not put to Prosecution witnesses in cross-examination. This was not an oversight by the Defence, but a deliberate strategy devised by Defence counsel. As explained in the Defence Closing Arguments: “would it be in our interests to show our hands by cross-examining on a point which the Prosecution can come later to correct? It is only a matter of strategy.”<sup>199</sup> In the circumstances, the Trial Chamber considers that it would not be in the interests of justice to set aside the testimony of the relevant Defence witnesses. However, in assessing the weight to be given to such evidence, the Trial Chamber will take into account that the evidence was not put to the Prosecution witnesses, with the result that the Trial Chamber did not have the benefit of observing their reactions.

## 2. Documentary Evidence

### (a) Introduction

134. In the course of the trial, the Trial Chamber admitted a total of 155 exhibits: 109 were tendered by the Prosecution, and 46 by the Defence.

135. Rule 92*bis* of the Rules is entitled “Alternative Proof of Facts” and provides that

(A) A Chamber may admit as evidence, in whole or in part, information in lieu of oral testimony.

(B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.

(C) A party wishing to submit information as evidence shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.

136. The effect of Rule 92*bis* was held by the Appeals Chamber to be as follows:

SCSL Rule 92*bis* is different to the equivalent Rule in the ICTY and ICTR and deliberately so. The judges of this Court, at one of their first plenary meetings, recognised a need to amend ICTR Rule 92*bis* in order to simplify this provision for a court operating in what was hoped would be a short time-span in the country where the crimes had been committed and where a Truth and Reconciliation Commission and other authoritative bodies were generating testimony and other information about the recently concluded hostilities. The effect of the SCSL Rule is to permit the reception of “information” – assertions of fact (but not opinion) made in documents or electronic

<sup>198</sup> *Prosecutor v. Kajelijeli*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, para. 26.

<sup>199</sup> Defence Closing Arguments, (Mr. Manly-Spain for the Accused Kanu), Transcript 8 December 2006, pp. 34-35.

communications – if such facts are relevant and their reliability is “susceptible of confirmation”. This phraseology was chosen to make clear that proof of reliability is not a condition of admission: all that is required is that the information should be capable of corroboration in due course.”<sup>200</sup>

137. The Trial Chamber has assessed the weight and reliability of documentary evidence admitted pursuant to Rule 92*bis* in the light of all the evidence in the case.<sup>201</sup>

138. In compliance with an order of the Trial Chamber, the Prosecution indicated in the margin of documents submitted as evidence under Rule 92*bis* the passages claimed by it to be relevant,<sup>202</sup> and only those passages were admitted into evidence.

139. Many documents tendered by the Prosecution have been contested by the Defence. The Trial Chamber admitted the documents into evidence on the basis of relevance, leaving their reliability and probative value to be assessed at the end of the trial. The individual objections raised by the Defence are discussed below.

(b) Copies and Internet Sources

140. The Trial Chamber relied on a copy of a document if the original was unavailable.<sup>203</sup> Similarly, the Trial Chamber has accepted printouts from internet sources as accurate reproductions of the originals.

141. The Defence raised concerns regarding the authenticity of particular printouts, specifically those tendered by the Prosecution originating from the website [www.sierra-leone.org](http://www.sierra-leone.org).<sup>204</sup> The Defence argued that the website did not originate from a government or a respected non-governmental organisation, and that the actual source and its authenticity could not be verified.<sup>205</sup>

<sup>200</sup> *Prosecutor v. Norman, Kondewa, Fofana*, Case No. SCSL-04-14-AR73, Fofana – Decision on Appeal against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’, 16 May 2005, para. 26.

<sup>201</sup> *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-PT, Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence, 25 October 2005, para. 70; see also *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T, Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92*bis*, 18 November 2005.

<sup>202</sup> *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T, Decision on Prosecution Motion for Judicial Notice and Admission of Evidence, 25 October 2005, para. 75 referring to *Prosecutor v. Moinina Fofana*, Case No. SCSL-2004-14-AR73, Fofana – Decision on Appeal Against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence”, Separate Opinion of Justice Robertson, 16 May 2005, para. 30; see as well *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T, Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92*bis*, 18 November 2005, Annex A.

<sup>203</sup> Fofana Bail Decision, para. 24.

<sup>204</sup> See Exhibit P-53, “Statement on the historic return to Freetown, Sierra Leone, of the Leaders of the Alliance of the Revolutionary United Front of Sierra Leone and the Armed Forces Revolutionary Council, 3 October 1999”; Exhibit P-60, “Personal Statement by Lt. JP Koroma on 1 October 1999”; Exhibit P-61, “Revolutionary United Front’s Apology to the Nation - delivered on SLBS, 18 June 1997”; Exhibit P-77, “Address by Major Johnny Paul Koroma, Head of State and Chairman of the Armed Forces Revolutionary Council, Freetown, 1 June 1997”.

<sup>205</sup> SCSL-04-16-T-430, Joint Defence Objections to the Prosecution Notice Pursuant to Rule 92*bis* to Admit Information into Evidence, 15 November 2005, paras 36, 37.

JR

Moreover, those documents were not put to any witness, as they were introduced through Rule 92bis. The Prosecution provided some background information on the website and explained that the documents were gathered and compiled by a journalist during the conflict in Sierra Leone.<sup>206</sup> However, in the absence of any reliable evidence as to authenticity, the Trial Chamber has regarded these exhibits as being of little weight unless corroborated.

(c) Radio Broadcasts and Transcripts Thereof

142. The Prosecution has tendered several transcripts of radio broadcasts.<sup>207</sup> Among other things, the Defence challenged the accuracy of broadcasts transcribed by the editor of the website where the transcripts were published.<sup>208</sup> At one point during the Trial, the Prosecution conceded that the transcript had to be amended by members of the Prosecution team after listening to the broadcast.<sup>209</sup> As the Trial Chamber has no information with regard to source and authenticity, it relied on the exhibits in question only if corroborated by other evidence.<sup>210</sup>

(d) Documents Used in Cross-Examination by the Prosecution.

143. It is important to emphasise that the admission of a document into evidence in the course of the trial has no bearing on the weight, if any, subsequently attached to it by the Trial Chamber.

144. Exhibits P-81 to P-99 were used by the Prosecution to cross-examine the Accused Brima. These documents had either not been served on the Accused beforehand, or were served not long before their use in cross-examination<sup>211</sup>. However, the documents were not used to “introduce new evidence, but to challenge evidence of the witness [Brima] that is already on record.”<sup>212</sup> After each document was used in cross-examination, it was tendered in evidence by the Prosecution. All of the

<sup>206</sup> Transcript 16 May 2005, p. 50; Transcript 7 October 2005, p. 61;

<sup>207</sup> See Exhibit P-73, “SLBS Radio Broadcast - 25 May 1997, 18:42 GMT”; exhibit P-74, “SLBS Radio Broadcast, 25 May 1997, 19:30 GMT”; exhibit P-75, “SLBS Radio Broadcast, 29 May 15:26 GMT”; exhibit P-76, “SLBS Radio Broadcast, 30 May 19:22 GMT”, exhibit P-53, “Statement on the historic return to Freetown, Sierra Leone, of the Leaders of the Alliance of the Revolutionary United Front of Sierra Leone and the Armed Forces Revolutionary Council, 3 October 1999”; exhibit P-60, “Personal Statement by Lt. JP Koroma on 1 October 1999”; exhibit P-61, “Revolutionary United Front’s Apology to the Nation - delivered on SLBS, 18 June 1997”; exhibit P-77, “Address by Major Johnny Paul Koroma, Head of State and Chairman of the Armed Forces Revolutionary Council, Freetown, 1 June 1997”.

<sup>208</sup> SCSL-04-16-T-430, Joint Defence Objections to the Prosecution Notice Pursuant to Rule 92bis to Admit Information into Evidence, 15 November 2005, paras 36, 37.

<sup>209</sup> Transcript 7 October 2005, p. 61.

<sup>210</sup> The exhibits concerned are Exhibit P-73, “SLBS Radio Broadcast - 25 May 1997, 18:42 GMT”; exhibit P-74, “SLBS Radio Broadcast, 25 May 1997, 19:30 GMT”; exhibit P-75, “SLBS Radio Broadcast, 29 May 15:26 GMT”; exhibit P-76, “SLBS Radio Broadcast, 30 May 19:22 GMT”.

<sup>211</sup> Transcript 29 June 2006, pp. 47, 48.

<sup>212</sup> Transcript 29 June 2006, p. 48.

*Jae*

documents were admitted into evidence, mostly with the consent of the Defence, although some (Exhibits P-85, P-88, P-89 and P-90) were objected to.

145. In the case of Exhibits P-81, P-82, P-83, P-86 (statements claimed by the Accused Brima to have been signed by him under duress), P-88, and P-89 (confessional statements made respectively by Abu Sankoh and Tamba Gborie, who were both subsequently executed) the Trial Chamber had some doubt that the statements had been made voluntarily.

146. None of the authors of the documents were called to prove the documents or be cross-examined (in the case of Exhibits P-88 and P-89 the authors were said to be dead). In the absence of any proof, the Trial Chamber had some doubt as to the authenticity of Exhibits P-84 (a press list by the Security Council Committee for Sierra Leone), P-85 (a magazine article), P-90 (a copy of the death certificate of the father of the Accused Brima – objected to by the Defence), P-91 (an extract from the Registry of Birth, Deaths and Marriages, showing the death of the father of the Accused Brima, who disputed the details), P-92 (Hospital records disputed by the Accused Brima), P-93, P-94, P-95, P-96, (newspaper articles disputed by the Accused Brima), P-98 (a declaration of means which the Accused Brima denied signing), and P-99 (a document giving details of the detention of the Accused Brima, which he denied).

147. In all the circumstances, although Exhibits P-81 to P-99 were admitted into evidence on the basis of their relevance, the Trial Chamber places no probative value on them.

### 3. Expert Testimony and Reports

148. Rule 94*bis* of the Rules governs the testimony of expert witnesses:

(A) Notwithstanding the provisions of Rule 66(A), Rule 73*bis* (B)(iv)(b) and Rule 73*ter* (B)(iii)(b) of the present Rules, the full statement of any expert witness called by a party shall be disclosed to the opposing party as early as possible and shall be filed with the Trial Chamber not less than twenty-one days prior to the date on which the expert is expected to testify.

(B) Within fourteen days of filing of the statement of the expert witness, the opposing party shall file a notice to the Trial Chamber indicating whether:

- (i) It accepts the expert witness statement; or
- (ii) It wishes to cross-examine the expert witness.

(C) If the opposing party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

TJS

149. The Trial Chamber heard the testimony of five expert witnesses, three for the Prosecution<sup>213</sup> and two for the Defence.<sup>214</sup> They were cross-examined and their reports admitted into evidence. Pursuant to Rule 94bis(C), the report of a third expert witness for the Defence was admitted into evidence without calling the expert in person.<sup>215</sup>

150. The Trial Chamber has evaluated the probative value of the expert evidence taking into account the professional competence of the expert, the methodology used and the credibility of the findings made in the light of all the other evidence in the trial.<sup>216</sup>

151. Where an expert report went beyond its parameters by drawing conclusions touching upon the ‘ultimate issue’ in this case, *i.e.*, the individual criminal responsibility of the Accused, the Trial Chamber disregarded its findings.<sup>217</sup>

#### 4. Facts of which Judicial Notice was Taken

152. Rule 94 of the Rules is entitled “Judicial Notice” and provides as follows:

(A) A Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.

(B) 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.

153. On 25 October 2005, the Trial Chamber issued a “Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence”, taking judicial notice of 11 facts pursuant to Rule 94(A) of the Rules. These facts have been relied upon in this Judgement as indicated.

<sup>213</sup> Expert witnesses called by the Prosecution: (1) Mrs. Zainab Bangura: Exhibit P-31, “Curriculum Vitae of Mrs. Zainab Bangura”; exhibit P-32, “Expert Report of on phenomenon of ‘forced marriages’ in the context of the conflict in Sierra Leone and, more specifically, in the context of the trials against the RUF and AFRC Accused only”, May 2005., prepared by Zainab Bangura and Christina T. Solomon; (2) TF1-296: Exhibit P-33, “Report on the Situation in Relation to Children with the Fighting Forces” (confidential); (3) Colonel Richard Iron: Exhibit P-35, “Curriculum Vitae of Colonel Richard Iron”; exhibit P-36, “Military Expert Witness Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone”, August 2005.

<sup>214</sup> Expert witnesses called by the Defence: (1) Major General (retired) W. A. J. Prins: Exhibit D-36, “Military Expert Report on the Armed Forces Revolutionary Council Faction”, July 2006; (2) Dr. Dorte Thorsen: Exhibit D-38, “Expertise on West Africa in Case before the Special Court for Sierra Leone”, 26 July 2006.

<sup>215</sup> SCSL-04-16-572, Notice of Acceptance of the Expert Report on Child Soldiers by Mr. Gbla, 18 October 2006; exhibit P-37, “The Use of Child Soldiers in the Sierra Leone Conflict”, 11 October 2006.

<sup>216</sup> *Vasiljević* Trial Judgement, para. 20; *Orić* Trial Judgement, paras 59-71; *Prosecutor v. Galić*, Case No. IT-98-29-T, Decision on the Expert Witness Statement Submitted by the Defence, 27 January 2003, p. 3.

<sup>217</sup> See Oral Decision, Transcript 12 October 2005, pp. 42, 43; Transcript 13 October 2005, p. 2; Oral Decision, Transcript 14 October 2005, pp. 38, 39; Oral Decision, Transcript 24 October, pp. 110, 112: “[The Trial Chamber] shall disregard any material which in [the Trial Chamber’s] judgment goes to the ultimate issue or provides opinions on

## 5. Agreed Facts

154. A number of facts in this case were admitted in whole or in part by the Defence.<sup>218</sup> There is no provision in the Rules pertaining to agreed facts. Nonetheless, it follows from the very nature of adversarial proceedings that the Parties may stipulate to any fact on which they reach consensus.<sup>219</sup> Before relying on these agreed facts as indicated in this Judgement, the Trial Chamber has subjected them, as all other evidence, “to the tests of relevance, probative value and reliability”.<sup>220</sup>

---

matters upon which the Trial Chamber is going to have to rule, or draws any conclusions or inferences which the Trial Chamber will have to draw, or makes any judgments which the Trial Chamber will have to make.”

<sup>218</sup> See Prosecutor v. Brima, Kanu and Kamara, SCSL-2004-16-PT-28, Prosecutor’s Request to Admit, 4 March 2004; SCSL-16-04-PT-35, [Brima]-Defence Response to Prosecutor’s Request to Admit, 18 March 2004; SCSL-16-04-PT-160, [Brima]-Defence Response to Prosecutors [sic] Request to Admit, 2 March 2005; SCSL-16-04-PT-37, Kanu-Defence’s Response to Prosecution Request to Admit, 19 March 2004; SCSL-16-04-PT-165, Kanu-Defence Additional Response to Prosecution Request to Admit, 4 March 2005; SCSL-16-04-PT-173, Kamara-Defence Response to Prosecutor’s Request to Admit, 7 March 2005.

<sup>219</sup> See also Rule 92 of the Rules (“Confessions”) which has however a different scope of applicability.

<sup>220</sup> *Simić* Trial Judgement, para. 21; *Blagojević* Trial Judgement, para. 28; *Halilović* Trial Judgement, para. 20.

## IV. CONTEXT OF THE ALLEGED CRIMES

### A. Political Precursors

155. On 27 April 1961, Sierra Leone gained independence from colonial rule. In the years that followed, there were a number of military coups and Sierra Leone went into economic decline.<sup>221</sup>

156. The Revolutionary United Front (RUF) was established in the late 1980s as an organised armed opposition group. Its aim was to overthrow the government of Sierra Leone. The leader of the RUF was Foday Saybana Sankoh, a former Colonel in the Sierra Leone Army (“SLA”). Sankoh had been dishonourably discharged from the SLA after serving a seven year prison sentence for his alleged involvement in a foiled coup in 1971.<sup>222</sup>

### B. The Armed Conflict in Sierra Leone from 1991 to 1997

157. The RUF initiated armed operations in Sierra Leone in March 1991.<sup>223</sup> By the end of 1991 the RUF held consolidated positions in Kailahun District and occupied small parts of Pujehun District.<sup>224</sup>

158. In 1992 junior ranks of the SLA staged a coup under the command of Captain Valentine Strasser and established the National Provisional Ruling Council (NPRC) Government.<sup>225</sup>

159. In the years that followed, the RUF took control over Bo and Bonthe Districts.<sup>226</sup> The military advance of the RUF and the inability of the SLA to drive back the RUF triggered the emergence of local militias consisting primarily of traditional hunters. The main regional groups were the Kamajors in the east and the south, the Donzos in the far east, the Gbettis or Kapras in the north and the Tamaboros in the far north of Sierra Leone.<sup>227</sup> These militias were known as the Civil Defence Forces (CDF) and fought on behalf of the Government.

<sup>221</sup> *Prosecution v. Norman, Fofana, Kondewa*, SCSL-2004-14-AR73, Appeals Chamber, Fofana - Decision on Appeal against Decision on Prosecution Motion for Judicial Notice and Admission of Evidence (“Fofana Judicial Notice Appeal Decision”), 16 May 2005, Fact A.

<sup>222</sup> Gibril Massaquoi, Transcript 7 October 2005, p. 11.

<sup>223</sup> Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence, 25 October 2005, [hereinafter “Judicial Notice Decision”], Fact E.

<sup>224</sup> Exhibit P-57, No Peace Without Justice, “Conflict Mapping Program”, 9 March 2004 [hereinafter “NPWJ Report”] CMS p. 16362.

<sup>225</sup> Exhibit P-57, NPWJ Report, CMS p. 16393.

<sup>226</sup> Exhibit P-57, NPWJ Report, CMS pp. 16132, 16197.

<sup>227</sup> Exhibit P-57, NPWJ Report, CMS p. 16210.

160. By early 1995 the RUF was in control of large parts of Sierra Leone and had established a stronghold in the north of the country.<sup>228</sup> In March 1995, due to its continuing inability to defeat the RUF, the Government employed the services of a private South African security company called Executive Outcomes. Executive Outcomes trained the SLA and was able to dislodge the RUF from most of its positions.<sup>229</sup>

161. In March 1996 elections were held from which the Sierra Leone People's Party, headed by Ahmad Tejan Kabbah, emerged victorious. Around the same time, the Government's support of the CDF resulted in tensions between it and the SLA, as the SLA believed that the Government was neglecting the Army. These tensions reached a peak in 1996 when the SLA lost control of two districts to the Kamajors, one of the groups within the CDF. In late 1996 and early 1997, there were a number of armed clashes between the two groups. In September 1996, a retired SLA officer named Johnny Paul Koroma staged an unsuccessful coup against President Kabbah and was jailed.<sup>230</sup>

162. Ongoing peace negotiations between the Government and the RUF resulted in the Abidjan Peace Agreement, signed on 30 November 1996.<sup>231</sup> The Agreement called for the cessation of hostilities on both sides. In return for peace with the RUF, the Government agreed to grant amnesty to RUF members for any crimes committed before the signing of the Peace Agreement, and to terminate its relationship with Executive Outcomes. The parties further committed themselves to the disarmament, demobilisation and reintegration of RUF combatants.<sup>232</sup>

163. In early 1997, hostilities erupted between the SLA/CDF and the RUF and the peace process broke down.<sup>233</sup> Foday Sankoh was arrested in Nigeria on 1 March 1997, allegedly for a weapons violation, and placed under house arrest by the Nigerian authorities.<sup>234</sup>

<sup>228</sup> Exhibit P-57, NPWJ Report, CMS p. 16331.

<sup>229</sup> Exhibit P-57, NPWJ Report, CMS p. 16210; George Johnson, Transcript 15 September 2005, p.6; Transcript 19 September 2005, pp. 11, 109.

<sup>230</sup> Exhibit P-57, NPWJ Report, CMS p. 15928.

<sup>231</sup> Exhibit P-63, "Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone", 30 November 1996 [hereinafter "Abidjan Peace Accord"]; Judicial Notice Decision, Fact G.

<sup>232</sup> Exhibit P-63, Abidjan Peace Accord, CMS p.16510.

<sup>233</sup> Judicial Notice Decision, Fact H.

<sup>234</sup> Gibril Massaquoi, Transcript 7 October 2005, pp. 32-33.

### C. The Armed Conflict in Sierra Leone from 1997 to 1998

#### 1. The AFRC/RUF Government Period (May 1997 to February 1998)

##### (a) The 25 May 1997 Coup and the AFRC/RUF Government

164. On 25 May 1997, members of the SLA seized power from the elected Government of President Kabbah via a coup d'état.<sup>235</sup> The overthrow of the SLPP government was planned and executed by 17 junior rank soldiers, who were disgruntled with poor pay and discontented with the Government allocation of resources, which they believed favoured the CDF over the Army.<sup>236</sup> Johnny Paul Koroma was released from prison by the coup plotters<sup>237</sup> and appointed Chairman of the new Government, which was called the Armed Forces Revolutionary Council (AFRC).<sup>238</sup> Immediately thereafter, Koroma invited the RUF to join the AFRC Government.<sup>239</sup> Although still detained in Nigeria, Foday Sankoh accepted the offer and RUF fighters and commanders streamed into the capital from the provinces and joined the government.

165. Upon taking power, the AFRC government suspended the 1991 Constitution of Sierra Leone, dissolved the democratically elected Government and banned political parties.<sup>240</sup> Pursuant to their agreement, Foday Sankoh was appointed Johnny Paul Koroma's deputy. As Sankoh was still absent, his post remained *de facto* vacant.<sup>241</sup> At a later stage, SAJ Musa, a senior member of the SLA, became *de facto* deputy to Johnny Paul Koroma.<sup>242</sup>

##### (b) Territorial Control of the AFRC/RUF Government

166. When the AFRC government took power in May 1997, it was not immediately able to exercise control over the entire territory of Sierra Leone. Bo and Kenema Districts were controlled by the CDF. Thus the armed forces of the AFRC government, comprising both AFRC soldiers and RUF fighters, undertook operations to gain control over these two districts. Bo Town was captured by the joint government forces from the CDF in approximately June 1997.<sup>243</sup> Two military

<sup>235</sup> Judicial Notice Decision, Fact I.

<sup>236</sup> Exhibit P-57, NPWJ Report, CMS p. 15761.

<sup>237</sup> Exhibit P-57, NPWJ Report, CMS p. 16011.

<sup>238</sup> Judicial Notice Decision, Fact J. Throughout the transcripts, the parties and witnesses refer to the AFRC troops interchangeably as "Juntas," "soldiers," "SLAs," "ex-SLAs," "People's Party" and "rebels." The Trial Chamber uses the term 'AFRC' throughout the judgement, although it refers on occasion to members of the AFRC as 'former soldiers' or 'renegade soldiers'.

<sup>239</sup> Exhibit P-57, NPWJ Report, CMS p. 15910.

<sup>240</sup> Exhibit P-4, "Proclamation of the AFRC Government", 28 May 1997.

<sup>241</sup> George Johnson, Transcript 15 September 2005, p. 18.

<sup>242</sup> TF1-334, Transcript 16 May 2005, pp. 92-93.

<sup>243</sup> TF1-004, Transcript 23 June 2005, pp. 8, 35-36, 96-99.

*Jue*

operations were conducted on 24 or 25 June 1997 on Tikonko village in Bo District.<sup>244</sup> AFRC/RUF troops under the command of RUF Sam Bockarie ('Mosquito') took control over Kenema District in approximately May 1997.<sup>245</sup> AFRC Government forces maintained control over Kenema until February 1998, but hostilities with the CDF continued in the District throughout the period of the AFRC Government.<sup>246</sup>

167. From June 1997 the AFRC Government controlled most parts of Freetown and the Western Area, as well as Bo, Kenema, Kono, Bombali and Kailahun Districts. However, the Government remained under constant threat from the CDF and the forces of the Economic Community of West African States Monitoring Group (ECOMOG).<sup>247</sup>

168. ECOMOG forces maintained control of the international airport at Lungi (Port Loko District), which is on the north bank of the Sierra Leone River opposite Freetown.<sup>248</sup> ECOMOG forces launched attacks against the AFRC Government in June, July and at the end of 1997.

(c) Relationship between the AFRC and RUF

169. As the founders of the AFRC belonged to the Sierra Leone Army and therefore had been fighting the RUF since 1991, the coalition between the two factions following the 1997 coup was not based on longstanding common interests. Both factions officially declared that they were joining forces to bring peace and political stability to Sierra Leone.<sup>249</sup> On 18 June 1997, the RUF issued an official apology to the nation for its crimes and went on to praise Johnny Paul Koroma's government.<sup>250</sup>

170. In the initial stages of the AFRC Government period, there was a high degree of cooperation between the upper ranks of the AFRC and the RUF. Commanders of both factions

<sup>244</sup> TF1-004, Transcript 23 June 2005, pp. 8, 35-36, 96-99.

<sup>245</sup> TF1-062, Transcript 27 June 2005, pp. 9, 15, 42, 53; TF1-045, Transcript 19 July 2005, pp. 32, 79; George Johnson, Transcript 19 September 2005, p. 55; DAB-147, Transcript 3 October 2006, p. 27; TF1-122, Transcript 24 June 2005, p. 5.

<sup>246</sup> TF1-062, Transcript 27 June 2005, p. 3; TF1-122, Transcript 24 June 2005, p. 71; TF1-122, Transcript 24 June 2005, p. 7.

<sup>247</sup> Exhibit P-57, NPWJ Report, CMS p. 15910-15911.

<sup>248</sup> See Exhibit P-30(a), "Map of Sierra Leone".

<sup>249</sup> Exhibit P-77, "Address by Major Johnny Paul Koroma, Head of State and Chairman of the Armed Forces Revolutionary Council, Freetown, 1 June 1997."

<sup>250</sup> Exhibit P-61, "Revolutionary United Front's Apology to the Nation", delivered on SLBS radio, 18 June 1997.

*JK*

attended coordination meetings at which they planned operations<sup>251</sup> and organised joint efforts to obtain arms and ammunition.<sup>252</sup>

171. Nonetheless, from the earliest days there were tensions between the two factions and relations deteriorated over time.<sup>253</sup> In October 1997, Johnny Paul Koroma ordered the arrest of two RUF leaders on charges that they were plotting with the CDF to overthrow his government.<sup>254</sup> Not long after this incident, Koroma ordered the arrest of Issa Sesay, another top RUF commander, for his part in looting the Iranian Embassy in Freetown. In response the RUF stopped attending joint meetings.<sup>255</sup> In January 1998 Sam Bockarie, formally Vice-Chairman of the AFRC government in Foday Sankoh's absence, left Freetown for Kenema District because of his discontent with AFRC commanders.<sup>256</sup>

172. Outside of Freetown, AFRC and RUF troops engaged in joint operations in Bo<sup>257</sup> and Kenema<sup>258</sup> Districts and also cooperated with regards to diamond mining, a critical government resource.<sup>259</sup> However, as in Freetown, the relationship began to deteriorate<sup>260</sup> and each faction began hoarding its own share of proceeds from diamond operations.<sup>261</sup> On one occasion Sam Bockarie refused an instruction from Johnny Paul Koroma to attack Nigerian soldiers arriving through Liberia saying that no one would tell him how to fight.<sup>262</sup>

<sup>251</sup> Gibril Massaquoi, Transcript 7 October 2005, pp. 83, 86, 93-94; TF1-045, Transcript 19 July 2005, pp. 57-66; George Johnson, Transcript 15 September 2005, p. 23; TF1-334, Transcript 17 May 2005, p. 56; Exhibit P-34, "Minutes of an Emergency Council Meeting of the AFRC Held at State House on Monday 11<sup>th</sup> August 1997"; Exhibit P-48, "Sierra Leone Humanitarian Situation Report 04, 5 June 1997"; Exhibit P-49, "United Nations Department of Humanitarian Affairs, Situation Report, 8-14 July 1997", CMS pp. 15688-15689.

<sup>252</sup> TF1-334, Transcript 17 May 2005, pp. 55-56; Gibril Massaquoi, Transcript 7 October 2005, pp. 72-73; TF1-045, Transcript 19 July 2005, pp. 64-75.

<sup>253</sup> TF1-045, Transcript 19 July 2005, pp. 57-62; TF1-045, 21 July 2005, pp. 27-31; Gibril Massaquoi, Transcript 11 October 2005, p. 53.

<sup>254</sup> TF1-045, Transcript 22 July 2005, pp. 42-45; Gibril Massaquoi, Transcript 7 October 2005, pp. 108-109.

<sup>255</sup> TF1-334, Transcript 17 May 2005, pp. 58, 69; George Johnson, Transcript 19 September 2005, p. 54-55.

<sup>256</sup> TF1-334, Transcript 17 May 2005, p. 57; Gibril Massaquoi, Transcript 11 October 2005, p. 53; DAB-142, Transcript 19 September 2006, pp. 12-13, 16 (although the witness refers to the year 1987, the Trial Chamber is satisfied that he was describing events that took place in 1997); DBK-129, Transcript 9 October 2006, p. 63.

<sup>257</sup> Exhibit P-66, U.S. Department of State, "Sierra Leone Country Report on Human Rights Practises for 1997", CMS p. 16528; TF1-004, Transcript 23 June 2005, pp. 96-99 testifying about crimes committed in the village of Tikonko; TF1-054, Transcript 19 April 2005, pp. 87-95 testifying about the killing of Paramount Chief Demby by 'soldiers', two of whom, at least, were known SLAs; TF1-053, Transcript 18 April 2005, pp. 104-107, saying that he saw 'soldiers' enter Chief Demby's house just before he heard shots.

<sup>258</sup> Gibril Massaquoi, Transcript 7 October 2005, pp. 106-107; TF1-062, Transcript 27 June 2005, pp. 15-16, 20-21, 26. TF1-122, Transcript 24 June 2005, pp. 35-49, 71-72; DAB-033, Transcript 25 September 2006, p. 43.

<sup>259</sup> TF1-062, Transcript 27 June 2005, pp. 11-15, 20-25; TF1-045, Transcript 19 July 2005, pp. 35-37.

<sup>260</sup> DBK-063, Transcript 2 August 2006, p. 24.

<sup>261</sup> DAB-033, Transcript 25 September 2006, pp. 43, who believed that mining proceeds were going only to the RUF; DBK-063, Transcript 2 August 2006, p. 24.

<sup>262</sup> George Johnson, Transcript 19 September 2005, pp. 55-58.

MS

(d) Military Pressure on the AFRC Government

173. In addition to regional military pressure from ECOMOG, the AFRC government was subjected to international political pressure. Both regional and international institutions passed resolutions pressing for the restoration of democracy. The pressure increased as human rights violations within Sierra Leone escalated.<sup>263</sup> On 8 October 1997, the United Nations imposed international sanctions on the AFRC government.<sup>264</sup>

174. On 23 October 1997, political, military and economic pressure on the AFRC Government forced it to accept the ECOWAS Six-Month Peace Plan, also known as the Conakry Accord. The Conakry Accord called for an immediate cessation of hostilities throughout Sierra Leone and the restoration of the constitutional Government by 22 May 1998.<sup>265</sup>

(e) The February 1998 ECOMOG attack on Freetown and the retreat of AFRC/RUF forces

175. Soon after the Conakry Accord was signed, hostilities resumed. ECOMOG forces attacked Freetown on 13 and 14 February 1998. The AFRC forces were not able to hold their positions and escaped through the Freetown peninsula.<sup>266</sup> The government of former President Kabbah was reinstated in March 1998.<sup>267</sup>

176. The retreat from Freetown was uncoordinated and without any semblance of military discipline.<sup>268</sup> AFRC soldiers and RUF fighters fled with their families using either civilian cars or army vehicles.<sup>269</sup> The fleeing troops passed through the villages of Lumley, Goderich, York and Tumbo. From Tumbo they crossed Yawri Bay to Fo-gbo. They then proceeded to Newton and Masiaka (Port Loko District).<sup>270</sup> It took three to four days for the troops to reach Masiaka.<sup>271</sup> This period is often referred to as “the intervention”.<sup>272</sup>

<sup>263</sup> Exhibit P-38, Security Council Resolution 1181 (13 July 1998) Concerning the Ongoing Conflict in Sierra Leone.

<sup>264</sup> Exhibit P-37, Security Council Resolution 1132 (8 October 1997) Concerning Sierra Leone and the AFRC; Exhibit P-66, U.S. Department of State, “Sierra Leone Country Report on Human Rights Practices for 1997”, Released by the Bureau of Democracy, Human Rights and Labor, January 30 1998, CMS p. 16525.

<sup>265</sup> Exhibit P-64, “ECOWAS Six-Month Peace Plan for Sierra Leone”, 23 October 1997, CMS p. 16518.

<sup>266</sup> Exhibit P-57, NPWJ Report, CMS p. 16012; TF1-334, Transcript 17 May 2005, p. 68; Exhibit P-36, Colonel Richard Irons, “Military Expert Witness Report on the AFRC of Sierra Leone”, August 2005 [hereinafter “Iron Report”], para. C2.1.

<sup>267</sup> Judicial Notice Decision, Fact P.

<sup>268</sup> TF1-334, Transcript 17 May 2005, p. 68; exhibit P-36, Iron Report, C2.2.

<sup>269</sup> Exhibit P-36, Iron Report, para. C2.1.

<sup>270</sup> George Johnson, Transcript 15 September 2005, p. 24; *see also* exhibit P-30(a), “Map of Sierra Leone”, as marked by witness George Johnson.

<sup>271</sup> Exhibit P-36, Iron Report, C2.1.

<sup>272</sup> *See* Annex C, Map of the Routes taken by AFRC troops throughout the Indictment period.

**D. The Armed Conflict in Sierra Leone from 1998 to 2001**

**1. Post AFRC/RUF Government period (February 1998 to May 1998)**

**(a) Restructuring of the AFRC/RUF troops in the Districts (February 1998)**

177. After the chaotic retreat from Freetown, the AFRC and RUF troops gathered in Masiaka but organisation and control remained minimal.<sup>273</sup> At Masiaka senior AFRC and RUF officers discussed the future of their movement. An initiative to recapture Freetown was abandoned due to insufficient arms and ammunition.

178. At Masiaka, Johnny Paul Koroma announced “Operation Pay Yourself” over the BBC. Koroma informed his troops that they he could no longer pay them and they would therefore have to fend for themselves.<sup>274</sup> Immediately thereafter the rebels began a widespread campaign of looting.<sup>275</sup>

**(b) Planning the attack on Koidu Town (end February 1998)**

179. In the days that followed, the troops moved without any obvious strategic aim except survival. Johnny Paul Koroma retreated to his native village Magbonkineh in Bombali District.<sup>276</sup> A large group of former soldiers, AFRC officials and RUF fighters travelled to Kabala in Koinadugu District.<sup>277</sup> At Kabala the senior commanders met to discuss strategies. SAJ Musa called for an attack on Kono District. He believed that, given the strategic importance of the District, such an operation would lead to international recognition.<sup>278</sup>

180. After the commanders agreed to the plan to recapture Kono District, Koroma arrived in Kabala and held a muster parade at which he explained to his soldiers that he could no longer pay them and that henceforth they would be subordinate to RUF command.<sup>279</sup> When SAJ Musa learned about Koroma’s decision, he was furious. He would not accept the notion that untrained RUF

<sup>273</sup> Exhibit P-36, Iron Report, pp. C2-C4.  
<sup>274</sup> TF1-334, Transcript 17 May 2005, p. 73.  
<sup>275</sup> TF1-334, Transcript 17 May 2005, pp. 73-74, 84.  
<sup>276</sup> TF1-334, Transcript 17 May 2005, p. 84.  
<sup>277</sup> TF1-334, Transcript 17 May 2005, p. 81.  
<sup>278</sup> TF1-334, Transcript 17 May 2005, pp. 82-83.  
<sup>279</sup> DAB-018, Transcript 7 September 2006, pp. 7-9.

fighters could be in charge of former soldiers,<sup>280</sup> and insisted that the purpose of his group was to reinstate the army and that the RUF could not lead such a mission.<sup>281</sup>

181. In addition, before the operation to recapture Kono took place, a dispute erupted over command and control issues resulting in hostilities between the two factions and the deaths of several fighters.<sup>282</sup> As a result, SAJ Musa, and a significant number of AFRC troops loyal to him, opted not to participate in or support the operation.<sup>283</sup>

182. The remaining AFRC/RUF troops travelled towards Koidu Town. At Njema Sewafe the advancing troops were forced to retreat by the CDF. Johnny Paul Koroma and his fighters returned to Makeni. Another group of AFRC/RUF rebels launched a second successful attempt to capture Koidu Town on 1 March 1998. Johnny Paul Koroma arrived in Koidu town shortly thereafter.

## 2. Kono District (March 1998 to May/June 1998)

183. Johnny Paul Koroma took overall command of the AFRC/RUF troops.<sup>284</sup> Koroma and other former soldiers and RUF commanders attended a meeting at RUF commander Denis Mingo's house. The discussion, chaired by Mingo, revolved around the relative positions of the AFRC and RUF. Koroma agreed with Mingo that the AFRC troops would be subordinate to the RUF, a decision which was unpopular with some of his own commanders.<sup>285</sup>

184. Once larger parts of Kono District fell to rebel control, Johnny Paul Koroma announced that he would travel abroad, via Kailahun District, in order to organise logistics for the troops.<sup>286</sup> Prior to his departure, he announced that the civilians had betrayed the troops by calling for support from the Kamajors (CDF) and that Kono should therefore become a 'civilian no go area'.<sup>287</sup> Rebels were ordered to execute weak civilians and force stronger ones to join the movement. Koroma further ordered that civilian housing in the areas surrounding rebel headquarters was to be burned to

<sup>280</sup> TF1-184, Transcript 27 September 2005, p. 9.

<sup>281</sup> TF1-184, Transcript 27 September 2005, p. 6-8. *See also:* TF1-153, Transcript 23 September 2005, pp. 62-63.

<sup>282</sup> George Johnson, Transcript 15 September 2005, pp. 30-32; George Johnson, Transcript 19 September 2005, pp. 58-60; TF1-184, Transcript 27 September 2005, pp. 16-18.

<sup>283</sup> George Johnson, Transcript 15 September 2005, pp. 30-32; TF1-184, Transcript 27 September 2005, p. 6-8; *See also:* TF1-153, Transcript 23 September 2005, pp. 62-63.

<sup>284</sup> TF1-334, Transcript 17 May 2005, p. 117.

<sup>285</sup> George Johnson, Transcript 15 September 2005, pp. 33-34.

<sup>286</sup> TF1-334, Transcript 18 May 2005, p. 3.

<sup>287</sup> TF1-334, Transcript 18 May 2005, p. 3.

prevent civilians from settling in Koidu Town.<sup>288</sup> Rebel fighters immediately began implementing Koroma's orders.<sup>289</sup>

185. Within three days of his arrival in Koidu Town, around 4 March 1998, Johnny Paul Koroma departed for Kailahun.<sup>290</sup> The majority of AFRC fighting forces remained in Kono District alongside the RUF troops. Although the AFRC were subordinate to the RUF,<sup>291</sup> there was cooperation between them and the two factions planned and participated in joint operations.<sup>292</sup>

186. The villages targeted by the rebels in Kono District during the Indictment period included Koidu Geya, Koidu Buma, Paema, Penduma, Tombodu,<sup>293</sup> Kaima (or Kayima),<sup>294</sup> Ko:du Town,<sup>295</sup> Foendor,<sup>296</sup> Bomboafuidu,<sup>297</sup> Yardu Sandu,<sup>298</sup> Penduma<sup>299</sup> and Mortema.<sup>300</sup>

### 3. Koinadugu and Kailahun District (February 1998 – November 1998)

187. The other faction of AFRC soldiers, under the command of SAJ Musa, remained in Koinadugu District throughout this period, working on and off together with RUF rebels there. However, the main stronghold of the RUF was Kailahun District, which was under the control of Sam Bockarie ('Mosquito').<sup>301</sup>

188. When Johnny Paul Koroma departed for Kailahun District he was given to believe that he would be welcomed there by the RUF.<sup>302</sup> However, when he arrived in Kailahun he encountered a hostile RUF leadership. He was arrested by Sam Bockarie, Issa Sesay and other RUF fighters.<sup>303</sup> He

<sup>288</sup> TF1-334, Transcript 18 May 2005, pp. 4-6.

<sup>289</sup> TF1-334, Transcript 18 May 2005, p. 9.

<sup>290</sup> TF1-334, Transcript 18 May 2005, pp. 15-16, 18-19; TF1-045, Transcript 19 July 2005, p. 93.

<sup>291</sup> TF1-334, Transcript 21 June 2005, pp. 18-19.

<sup>292</sup> TF1-334, Transcript 18 May 2005, pp. 24-33; Transcript 19 May 2005, pp. 3-4.

<sup>293</sup> George Johnson, Transcript 15 September 2005, pp. 44-45; DAB-023, Transcript 3 August 2006, pp. 75, 78; TF1-334, Transcript 20 May 2005, pp. 14-15; DAB-098, Transcript 4 September 2006, pp. 33, 45; TF1-033, Transcript 11 July 2005, pp. 11-13; TF1-216, Transcript 27 June 2005, p. 92; TF1-217, Transcript 17 October 2005, pp. 17-21, 36-37, 46-47.

<sup>294</sup> TF1-074, Transcript 5 July 2005, pp. 11, 14-15.

<sup>295</sup> TF1-334, Transcript 20 May 2005, pp. 4, 7, 8; Exhibit P-54, Amnesty International Report, "Sierra Leone 1998: A year of Atrocities Against Civilians", CMS p. 15806-15807; TF1-217, Transcript 17 October 2005, pp. 4-5; DAB-131, Transcript 14 September 2006, p. 38.

<sup>296</sup> TF1-076, Transcript 27 June 2005, pp. 101-108.

<sup>297</sup> TF1-206, Transcript 28 June 2005, pp. 90-98; DAB-123, Transcript 11 September 2006, pp. 59-67, 76-85; DAB-123 Transcript 12 September 2006 p. 29.

<sup>298</sup> TF1-019, Transcript 30 June 2005, pp. 90-91.

<sup>299</sup> TF1-217, Transcript 17 October 2005, pp. 12-23, 46.

<sup>300</sup> DAB-025, Transcript 28 July 2006, pp. 95, 107-108; DAB-101, Transcript 12 September 2006, pp. 81-88, 96-98.

<sup>301</sup> TF1-114, Transcript 18 July 2005, pp. 12, 59; TF1-113, Transcript 18 July 2005, pp. 73-74.

<sup>302</sup> TF1 045, Transcript 19 July 2005, pp. 94-96.

<sup>303</sup> TF1 045, Transcript 19 July 2005, pp. 97.

was then stripped and searched for diamonds and his wife was sexually assaulted.<sup>304</sup> Bockarie placed Koroma under house arrest in Kagama village near Buedu where he remained until mid 1999.<sup>305</sup> No evidence was adduced suggesting that Koroma had any form of contact whatsoever with any of his former associates during the remaining period covered by the Indictment.

#### 4. Koinadugu and Bombali Districts (May 1998 – November 1998)

##### (a) Retreat from Kono District (April/May 1998)

189. AFRC troops maintained control over Kono District until April 1998 when ECOMOG forces advanced into Kono District.<sup>306</sup> Tensions between the AFRC and RUF forces in Kono had been escalating. As a result of the enemy advance and the exacerbating tensions between the two factions, the majority of the AFRC troops moved north to Mansofinia in Koinadugu District. Some former soldiers remained in Kono District and chose to operate independently or work more closely with the RUF, most notably a former soldier named ‘Savage’, who remained in Tombodu where he was the commander.<sup>307</sup>

190. At a meeting in Koinadugu District, various AFRC commanders met with SAJ Musa to discuss the future and develop a new military strategy. The commanders agreed that the troops who had arrived from Kono District should act as an advance troop which would establish a base in north western area Sierra Leone in preparation for an attack on Freetown. The purpose was to “restore the Sierra Leone Army”. There is no evidence that the RUF was involved in these deliberations.

191. The split with the RUF had considerable consequences for the AFRC troops. They no longer controlled diamond mining areas, meaning that they had no revenue sources. Consequently, they had difficulty accessing new supplies of weapons and ammunitions. The only source available to them was stocks captured from ECOMOG or the CDF.<sup>308</sup>

##### (b) AFRC Troop Movement from East to West (May 1998 – November 1998)

192. The advance team returned to Mansofinia and started a three month journey through Sierra Leone to Rosos, which is located in eastern Bombali District. From Mansofinia they travelled south

<sup>304</sup> TF1 045, Transcript 19 July 2005, pp. 98-100.

<sup>305</sup> George Johnson, Transcript 19 September 2005, pp. 62- 63; TF1-153, Transcript 23 September 2005, pp. 62-63; TF1 045, Transcript 19 July 2005, p. 97; DAB-059, Transcript 27 September 2006, pp. 81-82.

<sup>306</sup> Exhibit P-57, NPWJ Report, CMS p. 16211.

<sup>307</sup> Also known as Tombodu.

<sup>308</sup> Exhibit P-36, Iron Report, para. C5.4.

into Kono District and passed Kondea, Worodu and Yarya, the hometown of the Accused Brima. From there the troops headed north east, back into Koinadugu District to Yifin,<sup>309</sup> and then moved eastwards passing Kumala and Bendugu toward the area near Bumbuna (Tonkolili District). From there the troops headed further north east into Bombali District, passing Kamagbengbeh,<sup>310</sup> Bonoya, Karina, Pendembu<sup>311</sup> and Mateboi before finally arriving at Rosos.<sup>312</sup> The civilian population was routinely targeted and attacked by soldiers and fighters on that route.<sup>313</sup> Villages attacked by the troops on their path included Yifin,<sup>314</sup> Yiraye<sup>315</sup> and Kumalu<sup>316</sup> in Koinadugu District and Mandaha,<sup>317</sup> Rosos,<sup>318</sup> Bornoya,<sup>319</sup> Mateboi,<sup>320</sup> Gbendembu,<sup>321</sup> Madina Loko,<sup>322</sup> Kamadogbo,<sup>323</sup> Kamagbengbe<sup>324</sup> and Batkanu in Bombali District.<sup>325</sup>

193. Much of the journey was conducted by foot. The troops were accompanied not only by their families but also by hundreds of civilians abducted from targeted villages. The troops settled in Rosos, where they remained for around three months (July – September 1998).<sup>326</sup> However, following ECOMOG discovery and bombardment of the camp, they travelled west to a village known as ‘Colonel Eddie Town.’<sup>327</sup> From ‘Colonel Eddie Town’ the troops staged a number of attacks on ECOMOG positions in order to supplement their dwindling stocks of arms and ammunition.<sup>328</sup>

194. While the advance team of the AFRC fighting forces travelled across the country from east to west, RUF troops under the command of Sam Bockarie maintained control over Kailahun

<sup>309</sup> Also referred to as Yifin.

<sup>310</sup> Also referred to as Magbengbeh.

<sup>311</sup> Also referred to as Gbendembu.

<sup>312</sup> Exhibit P-30(a), “Map of Sierra Leone”.

<sup>313</sup> See General Requirements of Articles 2, 3 and 4 of the Statute.

<sup>314</sup> TF1-033, Transcript 11 July 2005, pp. 16, 86; TF1-033 Transcript 12 July 2005, pp. 26-31; TF1-153, Transcript 22 September 2005, p. 33; DAB-090, Transcript 24 July 2006, pp. 73, 96-105; DAB-086, Transcript 25 July 2006, pp. 11-23.

<sup>315</sup> TF1-153, Transcript 22 September 2005, pp. 48-50.

<sup>316</sup> TF1-133, Transcript 7 July 2005, pp. 81-82.

<sup>317</sup> TF1-033, Transcript 12 July 2005, p. 5-8; TF1-334, Transcript 23 May 2005, p. 77.

<sup>318</sup> TF1-269, Transcript 14 July 2005, pp. 41-43; TF1-267, Transcript 27 July 2005, pp. 4-7, 10, 12-13, 16-17.

<sup>319</sup> TF1-158, Transcript 26 July 2005, p. 30; TF1-156, Transcript 26 September 2005, pp. 59, 60

<sup>320</sup> George Johnson, Transcript 15 September 2005, pp. 60, 61; TF1-334, Transcript 23 May 2005, p. 87.

<sup>321</sup> TF1-033, Transcript 11 July 2005, pp. 32-34.

<sup>322</sup> TF1-199, Transcript 6 October 2005, p. 73.

<sup>323</sup> TF1-058, Transcript 14 July 2005, p. 94; TF1-157, Transcript 22 July 2005, p. 68.

<sup>324</sup> TF1-334, Transcript 23 May 2005, pp. 55-56.

<sup>325</sup> TF1-179, Transcript 27 July 2005, pp. 34-35, 50-56.

<sup>326</sup> TF1-334, Transcript 23 May 2005, p. 103.

<sup>327</sup> ‘Colonel Eddie Town’ was also referred to by witnesses as ‘Major Eddie Town’. The town is actually known by the name Gberi or Gberimatmatank. The troops renamed it after one of the commanders of the AFRC forces. It was never clear on the evidence adduced whether ‘Colonel Eddie Town’ is located in Port Loko or Bombali Districts.

<sup>328</sup> TF1-334, Transcript 25 May 2005, pp. 49-54.

District and parts of Kono District.<sup>329</sup> Villages attacked by RUF fighters in Kailahun District included Kailahun Town,<sup>330</sup> Daru<sup>331</sup> and Buedu.<sup>332</sup>

195. The faction of AFRC fighting forces under the command of SAJ Musa remained in Koinadugu District where they worked together with RUF troops loyal to RUF commander Denis Mingo, also known as ‘Superman’. Significant evidence was adduced regarding the commission of crimes by the troops under the command of SAJ Musa and Denis Mingo including at Koinadugu Town,<sup>333</sup> Kabala,<sup>334</sup> Yomadugu,<sup>335</sup> Bafodeya,<sup>336</sup> Kurubonla,<sup>337</sup> Bambukura<sup>338</sup> and Fadugu.<sup>339</sup>

##### 5. Advance on Freetown (November to December 1998)

196. As the different factions were unable to communicate with each other, SAJ Musa sent a second advance group to locate the first advance team in or about September 1998. The route taken by this second group is not clear, but it appears that they travelled along a route similar to the one taken by the first advance team.

197. In October 1998, following an armed clash with Dennis Mingo, SAJ Musa left Koinadugu District to join the advance team and prepare for an attack on Freetown. SAJ Musa did not follow the same route taken by the advance teams in his journey to the west.

198. Upon his arrival in ‘Colonel Eddie Town’ in November 1998, SAJ Musa assumed command. He emphasised his disenchantment with the RUF and stressed that it was vital that his troops arrive in Freetown before the RUF.<sup>340</sup> SAJ Musa reorganised the troops and began the advance towards Freetown. The troops passed through the villages of Mange, Lunsar, Masiaka and

<sup>329</sup> TF1-113, Transcript 18 July 2005, p. 73, 76; DAB-140, Transcript 19 September 2006, p. 93; DAB-147, Transcript 3 October 2006, p. 49.

<sup>330</sup> TF1-113, Transcript 18 July 2005, p. 87-90.

<sup>331</sup> TF1-045, Transcript 19 July 2004, pp. 84-86.

<sup>332</sup> DAB-140, Transcript 19 September 2006, pp. 72-76, 80-83; TF1-114, Transcript 14 July 2005, pp. 119, 126-130; DAB-131, Transcript 14 September 2006, pp. 42-43.

<sup>333</sup> DAB-081, Transcript 20 July 2006, p. 82, 98-99.

<sup>334</sup> TF1-147, Transcript 13 July 2005, pp. 7-8, 10-12, 14; TF1-199, Transcript 6 October 2005, p. 88; DAB-156, Transcript 29 September 2006, pp. 39-40, 43, 77-78; DAB-083, Transcript 21 July 2006, p. 33; TF1-209, Transcript 7 July 2006, pp. 36-38; DAB-079, Transcript 28 July 2006, pp. 7-8, 41-43, 46-49.

<sup>335</sup> TF1-094, Transcript 13 July 2005, pp. 28-29, 49.

<sup>336</sup> TF1-199, Transcript 6 October 2005, pp. 69-70, 75, 90-91.

<sup>337</sup> TF1-133, Transcript 7 July 2005, pp. 93-95, 118. Kurubonla is also known as Krubola.

<sup>338</sup> DAB-088, Transcript 24 July 2006, pp. 20-25; DAB-089, Transcript 24 July 2006, pp. 43-57.

<sup>339</sup> TF1-199, Transcript 6 October 2005, pp. 77-78; DAB-077, Transcript 19 July 2006, pp. 92-94; DAB-078, Transcript 6 September 2006, pp. 10-18, 36; DAB-078, Transcript 11 September 1998, p. 40; DAB-085, Transcript 20 July 2006, pp. 7, 38-39, 41; Exhibit P-57, Conflict Mapping Report, “No Peace without Justice”, 10 March 2004, p. 16056; Exhibit P-54, Amnesty International “Sierra Leone. A year of atrocities against civilians, 1998”, p. 15811; Exhibit D-24 (under seal).

<sup>340</sup> George Johnson, Transcripts 15 September 2005, p. 81; 19 September 2005, p. 81.

Newton before arriving in Benguema in the Western Area in December 1998. Throughout the advance, the troops withstood frequent attacks by ECOMOG. Little evidence was adduced that the troops targeted civilians during this period, rather, they concentrated on purely military targets.

199. While the AFRC troops were advancing on Freetown, RUF troops in the east recaptured Koidu and planned an advance on Makeni in Bombali District. They reached Makeni in the final days of 1998.<sup>341</sup>

200. On one occasion during the advance, SAJ Musa and the AFRC troops heard the British Broadcasting Corporation (BBC) interview Sam Bockarie over the radio. Bockarie revealed the position of the AFRC fighting forces and explained that it was RUF troops who were approaching Freetown. Soon after, ECOMOG bombarded the area.<sup>342</sup> Musa immediately contacted Sam Bockarie, insulted him and told him that he had no right to claim that the troops approaching Freetown were RUF troops.<sup>343</sup>

201. On 23 December 1998, shortly after the arrival in Benguema, SAJ Musa was killed in an explosion during an attack on an ECOMOG weapons depot.

#### 6. Attack on Freetown (January 1999)

202. Following the death of SAJ Musa, the troops reorganised. On 6 January 1999, they invaded Freetown. From Benguema, the troops passed through the villages of Waterloo, Hastings, Wellington and Kissy. During the advance, the civilian population was increasingly targeted. The AFRC troops were able to capture the seat of government at State House on the morning of the 6<sup>th</sup> of January.<sup>344</sup> That same day, Sam Bockarie announced over Radio France International (RFI) that the troops had taken Freetown and that “they” would continue to defend Freetown.<sup>345</sup>

203. One of the first acts of the invading troops upon reaching Freetown was to attack the city’s central prison at Pademba Road and release all the prisoners. The release of the prisoners into the general population contributed to a general breakdown of order amongst the troops.<sup>346</sup> However, during the three days following the capture of State House, the AFRC fighting forces were able to control large areas of Freetown.

<sup>341</sup> Exhibit P-36, Iron Report, D-5.

<sup>342</sup> TF1-334, 13 June 2005, pp. 46-48.

<sup>343</sup> TF1-334, 13 June 2005, p. 48.

<sup>344</sup> George Johnson, Transcript 15 September 2005, p. 21.

<sup>345</sup> TF1-334, Transcript 14 June 2005, p. 20.

<sup>346</sup> Exhibit P-36, Iron Report, D-11.

204. From State House, senior AFRC officers established radio contact with Sam Bockarie and asked for reinforcement. Bockarie instructed them to burn down Freetown if they could not hold the city.<sup>347</sup> Bockarie then announced over the BBC that if ECOMOG did not stop attacking troop positions the whole of Freetown would be burnt down.<sup>348</sup> In a second communication, Bockarie promised to send manpower, arms and ammunition, and arranged a location at which the AFRC troops should meet the RUF reinforcements. However, the support never arrived.<sup>349</sup>

205. The AFRC troops remained in Freetown for around three weeks, although they were not able to advance into the western part of the city. This period is often referred to as the “Freetown invasion”.

#### 7. Retreat from Freetown (January/February 1999)

206. Following heavy assaults from ECOMOG, the troops were forced to retreat from Freetown. This failure marked the end of the AFRC offensive as the troops were running out of ammunition.<sup>350</sup> While the AFRC managed a controlled retreat, engaging ECOMOG and Kamajor troops who were blocking their way, RUF reinforcements arrived in Waterloo. However, the RUF troops were either unwilling or unable to provide the necessary support to the AFRC troops.<sup>351</sup>

207. Most of the damage to Freetown, especially the damage to infrastructure and civilian housing, was inflicted by the retreating AFRC forces. The AFRC were also responsible for massive civilian casualties.<sup>352</sup>

#### 8. Port Loko District (February 1999 – April 1999)

208. The AFRC forces withdrew, reorganised and established bases in the Western Area, including at in Newton and Benguema. They remained there until approximately early April 1999, when the AFRC divided. One group travelled to Makeni in Bombali District to support one of several RUF factions involved in internecine battle. A smaller group moved to Port Loko District and settled in the region of the Okra Hills near Rogberi. This group became known as the “West Side Boys” and frequently targeted and attacked the civilian population. Towns and villages

<sup>347</sup> TF1-334, Transcript 14 June 2005, pp. 48-49. George Johnson, Transcript 16 September, 2005, pp. 40-41. TF1-184, Transcript 27 September 2005, pp. 76-77.

<sup>348</sup> George Johnson, Transcript 16 September, 2005, pp. 40-41.

<sup>349</sup> George Johnson, Transcript 16 September 2005, pp. 49-51.

<sup>350</sup> Exhibit P-36, Iron Report, D-15.

<sup>351</sup> Exhibit P-36, Iron Report, D-15.

<sup>352</sup> See General Requirements of Articles 2, 3 and 4 of the Staute, para. 236, *infra*.

attacked included Masiaka,<sup>353</sup> Gberibana,<sup>354</sup> Manaarma,<sup>355</sup> Sumbuya,<sup>356</sup> Nonkoba<sup>357</sup> and Tendakum.<sup>358</sup> These troops remained in Port Loko District until the negotiation of the Lomé Peace Accord.

**E. The 1999 Lomé Peace Accord and the Cessation of Hostilities in Sierra Leone in 2001**

209. Following the atrocities committed in Freetown in January 1999, the Kabbah Government was under pressure to enter into a peace agreement with the warring factions. The AFRC was not represented during the negotiations. On 7 July 1999, the Sierra Leone Government of Tejan Kabbah and the RUF signed a peace agreement known as the Lomé Peace Accord.<sup>359</sup> The Accord resulted in a power-sharing arrangement between the Kabbah Government and the RUF. Foday Sankoh, who until this time remained under house arrest in Nigeria, returned to Sierra Leone and became Vice-President. Hostilities resumed shortly thereafter, a final cessation of which only occurred in January 2002.<sup>360</sup>

<sup>353</sup> TF1-085, Transcript 7 April 2005, pp. 35-36.

<sup>354</sup> TF1-334, Transcript 15 June 2005, pp. 51-74; TF1-334, Transcript 22 June 2005, pp. 12, 21-28.

<sup>355</sup> TF1-253, Transcript 15 April 2005, pp. 80-81; TF1-320, Transcript 8 April 2005, pp. 13-15, 38-40.

<sup>356</sup> TF1-282, Transcript 13 April 2005, pp. 15-18; Transcript 14 April 2005, p. 39.

<sup>357</sup> TF1-256, Transcript 14 April 2005, pp. 53-55; 72-82, 90-91, 97-98; DBK-111, Transcript 18 September 2006, pp. 43-45.

<sup>358</sup> DBK-111, Transcript 18 September 2006, pp. 46-47. Tendakum is also known as Chendakum.

<sup>359</sup> Exhibit P-62, "Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone", 7 July 1999 [hereinafter "Lomé Peace Accord"].

<sup>360</sup> Judicial Notice Decision, Fact A.

## V. GENERAL REQUIREMENTS FOR ARTICLES 2, 3 AND 4 OF THE STATUTE

### A. Article 2 of the Statute: Crimes Against Humanity

210. The Accused are charged with seven counts of crimes against humanity pursuant to Article 2 of the Statute: extermination (Count 3), murder (Count 4), rape (Count 6), sexual slavery and other forms of sexual violence (Count 7), enslavement (Count 13) and other inhumane acts (Count 8 and 11).

#### 1. The Law

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.

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<sup>361</sup>), or “on national, political, ethnic, racial or religious grounds” (unlike its ICTR counterpart<sup>362</sup>), or with the perpetrator’s “knowledge of the attack” (unlike its ICC counterpart<sup>363</sup>).

---

<sup>361</sup> ICTY Statute, Article 5.

<sup>362</sup> ICTR Statute, Article 3.

<sup>363</sup> ICC Statute, Article 7; *see also* United Nations Transitional Administration in East Timor (UNTAET) Regulation No. 2000/15, Section 5.

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.<sup>364</sup>

(a) There must be an attack

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”.<sup>365</sup> 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.<sup>366</sup> 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.<sup>367</sup>

(b) The attack must be widespread or systematic

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.<sup>368</sup> Proof that the attack occurred either on a widespread basis or in a systematic manner is sufficient to exclude isolated or random acts.<sup>369</sup> 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”.<sup>370</sup> 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.<sup>371</sup> In the context of

<sup>364</sup> Rule 98 Decision, para. 41.

<sup>365</sup> *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23-A & IT-96-23/1-A, Judgement, 12 June 2002 (“*Kunarac* Appeal Judgement”), paras 82-89; *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998 (“*Akayesu* Trial Judgement”), para. 581; *Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu*, Case No. IT-03-66-T, Judgement, 30 November 2005 (“*Limaj* Trial Judgement”), para. 182; *Prosecutor v. Naletilić and Martinović*, Case No. IT-03-66-T, Judgement, 31 March 2003, (“*Naletilić and Martinović* Trial Judgement”), para. 233.

<sup>366</sup> *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-T, Judgement, 29 November 2002 (“*Vasiljević* Trial Judgement”), para. 30; *Kunarac* Appeal Judgement, para. 86.

<sup>367</sup> Rule 98 Decision, para. 42; *Limaj* Trial Judgement, para. 182; *Kunarac* Appeal Judgement, para. 86; *Prosecutor v. Duško Tadić (aka “Dule”)*, Case No. IT-94-1-A, Judgement, 15 July 1999 (“*Tadić* Appeal Judgement”), para. 251; *Prosecutor v. Duško Tadić (aka “Dule”)*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 (“*Tadić* Jurisdiction Decision”), para. 141; *Kunarac* Appeal Judgement, para. 86.

<sup>368</sup> *Kunarac* Appeals Judgement, para. 93.

<sup>369</sup> *Prosecutor v. Tadić*, ICTY IT-94-1-T, Trial Chamber Judgement, 7 May 1997, (“*Tadić* Trial Judgement”) para. 646.

<sup>370</sup> *Kunarac* Appeals Chamber Judgement, paras 96-97.

<sup>371</sup> *Tadić* Trial Judgement, para. 649.

JLQ

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.”<sup>372</sup> 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.<sup>373</sup> Patterns of crimes, *i.e.*, the non-accidental repetition of similar criminal conduct on a regular basis, are a common expression of ‘systematic’ occurrence.<sup>374</sup> 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-à-vis this civilian population.<sup>375</sup>

(c) The attack must be directed against any civilian population

216. There is an absolute prohibition against targeting civilians in customary international law.<sup>376</sup> 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.<sup>377</sup> 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.<sup>378</sup> The term “directed against” connotes that the civilian population must be the primary object of the attack and in

<sup>372</sup> *Akayesu* Trial Judgement, para. 580; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Trial Chamber Judgement, 21 May 1999, (“*Kayishema and Ruzindana* Trial Judgement”), para. 123; *Kunarac* Appeals Judgement, para.94; *Tadić* Trial Judgement, para. 648.

<sup>373</sup> *Limaj* Trial Judgement, para. 184; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004 (“*Blaškić* Appeal Judgement”), paras 100, 120; *Kunarac* Appeal Judgement, para. 98: “neither the attack nor the acts of the accused needs to be supported by any form of ‘policy’ or ‘plan’ [...] It may be useful in establishing that the attack was directed against a civilian population and that it was widespread or systematic (especially the latter) to show that there was in fact a policy or plan, but it may be possible to prove these things by reference to other matters.”

<sup>374</sup> *Kunarac* Trial Judgement, para. 429; *Kunarac* Appeal Judgement, para. 94.

<sup>375</sup> *Kunarac* Appeal Judgement, para. 95 (footnotes omitted).

<sup>376</sup> *Blaškić* Appeal Judgement, para 109; *Limaj* Trial Judgement, para. 186.

<sup>377</sup> *Akayesu* Appeal Judgement, para. 582; *Tadić* Appeal Judgement, paras 637-638.

<sup>378</sup> *Tadić* Appeal Judgement, paras 644.

*Jul*

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.<sup>379</sup>

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,<sup>380</sup> although the targeting of only a limited and randomly selected number of individuals cannot satisfy the requirements of Article 2.<sup>381</sup>

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.”<sup>382</sup> 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.

219. Referring to principles of international humanitarian law, the Galić and Blaškić 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]<sup>383</sup>

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

<sup>379</sup> *Kunarac* Appeal Judgement, para.91.

<sup>380</sup> *Limaj* Trial Judgement, para. 187; *Kunarac* Appeal Judgement, para. 90; *Blaškić* Appeal Judgement, para. 105; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgement, 5 December 2003 (“*Galić* Trial Judgement”), para 143.

<sup>381</sup> *Limaj* Trial Judgement, para. 187; *Kunarac* Appeal Judgement, para. 90.

<sup>382</sup> Indictment, para. 20.

*Jue*

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 be part of the attack

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.<sup>384</sup> 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.<sup>385</sup>

(e) The perpetrator must have knowledge that his acts constitute part of a widespread or systematic attack directed against a civilian population

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.<sup>386</sup> 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.<sup>387</sup> 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.<sup>388</sup>

222. It does not suffice that an accused knowingly took the risk of participating in the implementation of a policy, plan or ideology.<sup>389</sup> Nevertheless, the accused need not know the details of the attack or approve of the context in which his or her acts occur;<sup>390</sup> the accused merely needs to

<sup>383</sup> *Galić* Appeal Judgement, footnote 437; *Blaškić* Appeal Judgement, fn. 220.

<sup>384</sup> *Akayesu* Trial Judgement, para. 579

<sup>385</sup> *Tadić* Appeal Judgement, paras 632.

<sup>386</sup> *Kunarac* Appeal Judgement, para. 121; *Tadić* Appeal Judgement, para. 255.

<sup>387</sup> *Blaškić* Appeals Judgement, para. 126.

<sup>388</sup> *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Judgement, 3 March 2000 (“*Blaškić* Trial Judgement”), paras 254-257.

<sup>389</sup> *Limaj* Trial Judgement, para. 190; *Blaškić* Appeal Judgement, paras 125-126.

<sup>390</sup> *Limaj* Trial Judgement, para. 190; *Kunarac* Appeal Judgement, para. 102.

JO

understand the overall context in which his or her acts took place.<sup>391</sup> 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.<sup>392</sup>

## 2. Submissions of the Parties

223. The Prosecution submits that the evidence adduced at trial suffices to prove the general requirements for crimes against humanity.<sup>393</sup> 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.<sup>394</sup>

## 3. Findings

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.<sup>395</sup> 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.

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

<sup>391</sup> *Limaj* Judgement, para. 190; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001 (“*Kordić* Trial Judgement”), para. 185.

<sup>392</sup> *Limaj* Trial Judgement, para. 190; *Tadić* Appeal Judgement, paras 248, 252; *Kunarac* Appeal Judgement, para 103: “[a]t most, evidence that [acts were committed] for purely personal reasons could be indicative of a rebuttable assumption that he was not aware that his acts were part of that attack.”

<sup>393</sup> Prosecution Final Brief, paras 956-964.

<sup>394</sup> Joint Legal Part of the Rule 98 Motion, para. 47.

<sup>395</sup> See Context of the Alleged Crimes, *supra*.

02

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.<sup>396</sup>

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’.<sup>397</sup> 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

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.<sup>398</sup> 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.<sup>399</sup> 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.<sup>400</sup>

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, Sembahun and Telu Bongor in June 1997.<sup>401</sup> Kenema District was controlled by the AFRC/RUF from Kenema Town and frequent beatings and killings of civilians took place there throughout the

<sup>396</sup> Exhibit P-66, “US Department of State Sierra Leone Country Report on Human Rights Practices for 1997”, p. 16526-16527, 16539; Exhibit P-59, “No Peace Without Justice Conflict Mapping Report”, p. 15910.

<sup>397</sup> See *Limaj* Trial Judgement, para. 191.

<sup>398</sup> Exhibit P-66, “US Department of State Sierra Leone Country Report on Human Rights Practices for 1997”, p. 16526.

<sup>399</sup> Exhibit P-66, “US Department of State Sierra Leone Country Report on Human Rights Practices for 1997”, p. 16527-16528; TF1-122, Transcript 24 June 2005, pp. 23-26, 101-102, 114-115; TF1-122, Transcript 24 June 2005, pp. 35-37.

<sup>400</sup> Exhibit P-66, “US Department of State Sierra Leone Country Report on Human Rights Practices for 1997”, p. 16530.

<sup>401</sup> TF1-004, Transcript 23 June 2005, pp. 13-15, 18, 96-99 (Tikonko); TF1-053, Transcript 18 April 2005, pp. 103, 107, 108, TF1-053, Transcript 19 April 2005, p. 94 (Gerihun); exhibit P-66, “U.S. Department of State, Sierra Leone Country Report on Human Rights Practises for 1997”, CMS p. 16528 (Gerihun, Sembahun and Telu Bongor).

junta period.<sup>402</sup> 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.<sup>403</sup>

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.<sup>404</sup> Witnesses testified that many civilians were assaulted or killed during this process.<sup>405</sup> This testimony is corroborated by documentary evidence from the US Department of State describing physical violence inflicted on civilian miners near Tongo Field.<sup>406</sup>

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.<sup>407</sup> 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.<sup>408</sup> A similar incident occurred in Kailahun District, where at least 57 alleged Kamajor supporters were arrested and shot by AFRC/RUF officials.<sup>409</sup>

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.<sup>410</sup> 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.

<sup>402</sup> DAB-147, Transcript 3 October 2006, p. 27; TF1-122, Transcript 24 June 2005, pp. 5, 7, 12, 29-30, 35-37, 44-48, 63-68; George Johnson, Transcript 19 September 2005, p. 55.

<sup>403</sup> TF1-122, Transcript 24 June 2005, pp. 32-33.

<sup>404</sup> TF1-062, Transcript 27 June 2005, pp. 22-27; TF1-122, Transcript 24 June 2005, p.72; TF1-334, Transcript 17 May 2005, pp.54-55; TF1-045, Transcript 20 July 2005 pp. 88-89; DAB-033, Transcript 25 September 2006, p. 43, Transcript 2 October 2006, pp. 109-110.

<sup>405</sup> TF1-062, Transcript 27 June 2005, p. 33; TF1-045, Transcript 19 July 2005, p. 55, Transcript 20 July 2005, pp. 16-18.

<sup>406</sup> Exhibit P-66, "US Department of State Sierra Leone Country Report on Human Rights Practices for 1997" p. 16530.

<sup>407</sup> TF1-053, Transcript 18 April 2005, pp. 98-99.

<sup>408</sup> TF1-122, Transcript 24 June 2005, pp. 35-49.

<sup>409</sup> TF1-113, Transcript 18 July 2005, pp. 89-90.

<sup>410</sup> Factual Findings, Enslavement, paras 1289-1308 *infra*.

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.<sup>411</sup>

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 200)

233. The retreat of the AFRC/RUF from Freetown in 1998 was characterised by the infliction of violence against civilians.<sup>412</sup> Documentary evidence authored by the United Nations and Human Rights Watch reports that attacks in villages across Sierra Leone continued regularly throughout the year.<sup>413</sup> 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”.<sup>414</sup> Numerous instances appear in the oral evidence of pregnant women being killed, beaten or raped in these attacks.<sup>415</sup> Civilians suffered amputations including arms, hands, feet, breasts, lips and ears.<sup>416</sup> The abducted civilians, numbered in their thousands<sup>417</sup>, were forced to serve the AFRC/RUF as “porters, potential recruits or sex slaves”.<sup>418</sup> Women were actively targeted through sexual violence.<sup>419</sup> The phenomenon of the ‘bush wives’ witnessed thousands of women forcibly married to rebels.<sup>420</sup>

<sup>411</sup> Prosecution Final Brief, paras 484-485.

<sup>412</sup> Exhibit P-41, “Fourth Report of the Secretary General on the Situation in Sierra Leone” (18 March 1998), p. 15576.

<sup>413</sup> Exhibit P-38, “Security Council Resolution 1181 (13 July 1998), p. 15555; Exhibit P-45, “Third Progress Report of the UN Observer Mission in Sierra Leone” (16 October 1998), p. 15647; Exhibit P-52, “Sowing Terror, Atrocities against Civilians in Sierra Leone” (Human Rights Watch Report, July 1998), p. 15727.

<sup>414</sup> Exhibit P-45, “Third Progress Report of the UN Observer Mission in Sierra Leone” (16 October 1998), p. 15641.

<sup>415</sup> TF1-253, Transcript 15 April 2005, pp. 68-69, 71, 80-81; TF1-158, Transcript 26 July 2005, p. 35; TF1-198, Transcript 28 June 2005, p. 12; TF1-004, Transcript 23 June 2005, pp. 18-21; TF1-055, Transcript 12 July 2005, pp. 132, 136; TF1-209, Transcript 7 July 2005, pp. 28-36; TF1-094, Transcript 13 July 2005, pp. 41, 55-57; DAB-101, Transcript 12 September 2006, p. 93.

<sup>416</sup> Exhibit P-26, “MSF 1998 Report: Atrocities Against Civilians in Sierra Leone”, pp. 3787-3792; exhibit P-42, “Fifth Report of the Secretary General on the Situation in Sierra Leone” (9 June 1998), p. 15590; exhibit P-54 “Sierra Leone. 1998 – A Year of Atrocities Against Civilians” (Amnesty International Report), p. 15798.

<sup>417</sup> Exhibit P-52, “Sowing Terror, Atrocities against Civilians in Sierra Leone” (Human Rights Watch Report, July 1998), p. 15727.

<sup>418</sup> Exhibit P-47, “Sixth Progress Report of the UN Observer Mission in Sierra Leone” (4 June 1999), p. 15672.

<sup>419</sup> Exhibit P-52, “Sowing Terror, Atrocities against Civilians in Sierra Leone” (Human Rights Watch Report, July 1998), p. 15727.

<sup>420</sup> Exhibit P-32, “Expert Report on the Phenomenon of “Forced Marriage” in the Context of the Conflict in Sierra Leone and, more specifically, in the context of the Trials Against the RUF and the AFRC Accused only”, p. 15265.

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.<sup>421</sup> The stated aim of the attack was to shock the entire country and the international community.<sup>422</sup> In addition to Karina, AFRC and/or RUF forces attacked civilians in a number of other villages in Bombali District, including Mandaha,<sup>423</sup> Rosos,<sup>424</sup> Bornoya,<sup>425</sup> Mateboi,<sup>426</sup> Gbendembu,<sup>427</sup> Madina Loko,<sup>428</sup> Kamadogbo,<sup>429</sup> Kamalu,<sup>430</sup> Kamagbengbe<sup>431</sup> and Batkanu.<sup>432</sup>

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.<sup>433</sup> 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,<sup>434</sup> Kaima (or Kayima),<sup>435</sup> Koidu Town,<sup>436</sup> Foendor,<sup>437</sup> Bomboafuidu,<sup>438</sup> Yardu Sandu,<sup>439</sup> Penduma<sup>440</sup> and Mortema.<sup>441</sup> In Koinadugu District, civilians were attacked in Koinadugu Town,<sup>442</sup> Kabala,<sup>443</sup> Yifin,<sup>444</sup> Yiraye,<sup>445</sup>

<sup>421</sup> TF1-157, Transcript 25 September 2005, pp. 29-30, 58-60; TF1-157 Transcript 26 September 2005, pp. 9, 23-24, 30; George Johnson, Transcript 15 September 2005, pp. 53-54.

<sup>422</sup> TF1-334, Transcript 23 May 2005, pp. 56-60, 61, 64-65.

<sup>423</sup> TF1-033, Transcript 12 July 2005, p. 5-8; TF1-334, Transcript 23 May 2005, p. 77.

<sup>424</sup> TF1-269, Transcript 14 July 2005, pp. 41-43; TF1-267, Transcript 27 July 2005, pp. 4-7, 10, 12-13, 16-17.

<sup>425</sup> TF1-158, Transcript 26 July 2005, p. 30; TF1-156, Transcript 26 September 2005, pp. 59, 60

<sup>426</sup> George Johnson, Transcript 15 September 2005, pp. 60, 61; TF1-334, Transcript 23 May 2005, p. 87.

<sup>427</sup> TF1-033, Transcript 11 July 2005, pp. 32-34.

<sup>428</sup> TF1-199, Transcript 6 October 2005, p. 73.

<sup>429</sup> TF1-058, Transcript 14 July 2005, p. 94; TF1-157, Transcript 22 July 2005, p. 68.

<sup>430</sup> Exhibit P-54, "Amnesty International 'Sierra Leone 1998 – a year of atrocities against civilians'", p. 15811.

<sup>431</sup> TF1-334, Transcript 23 May 2005, pp. 55-56.

<sup>432</sup> TF1-179, Transcript 27 July 2005, pp. 34-35, 50-56.

<sup>433</sup> Exhibit P-51, "Sierra Leone Victims of Violence: Summary Report" (UNHCR) pp. 15707-15720.

<sup>434</sup> George Johnson, Transcript 15 September 2005, p. 44-45; DAB-023, Transcript 3 August 2006, pp. 75, 78; TF1-334, Transcript 20 May 2005, pp. 14-15; DAB-098, Transcript 4 September 2006, p. 33, 45; TF1-033, Transcript 11 July 2005, pp. 11-13; TF1-216, Transcript 27 June 2005, p. 92; TF1-217, Transcript 17 October 2005, pp. 17-21, 36-37, 46-47.

<sup>435</sup> TF1-074, Transcript 5 July 2005, pp. 11, 14-15

<sup>436</sup> TF1-334, Transcript 20 May 2005, pp. 4, 7, 8; Exhibit P-54, "Amnesty International Report on Sierra Leone, A year of atrocities against civilians", p. 15806-15807; TF1-217, Transcript 17 October 2005, pp. 4-5; DAB-131, Transcript 14 September 2006, p. 38.

<sup>437</sup> TF1-076, Transcript 27 June 2005, pp. 101-108.

<sup>438</sup> TF1-206, Transcript 28 June 2005, pp. 90-98; DAB-123, Transcript 11 September 2006, pp. 59-67, 76-85; DAB-123 Transcript 12 September 2006 p. 29.

<sup>439</sup> TF1-019, Transcript 30 June 2005, pp. 90-91.

<sup>440</sup> TF1-217, Transcript 17 October 2005, pp. 12-23, 46.

<sup>441</sup> DAB-025, Transcript 28 July 2006, pp. 95, 107-108; DAB-101, Transcript 12 September 2006, pp. 81-88, 96-98.

<sup>442</sup> DAB-081, Transcript 20 July 2006, p. 82, 98-99.

Yomadugu,<sup>446</sup> Bafodeya,<sup>447</sup> Krubola,<sup>448</sup> Bambukura<sup>449</sup> and Fadugu.<sup>450</sup> In Kailahun District, civilians were attacked in Kailahun Town,<sup>451</sup> Daru<sup>452</sup> and Buedu.<sup>453</sup> 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.

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”.<sup>454</sup> 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.<sup>455</sup> Eyewitnesses described the execution of members of religious orders<sup>456</sup> and civilians in mosques were also killed on suspicion that they had been harbouring ECOMOG soldiers.<sup>457</sup> A military expert testified that the damage to Freetown during the subsequent retreat appeared to have

<sup>443</sup> TF1-147, Transcript 13 July 2005, pp. 7-8, 10-12, 14; TF1-199, Transcript 6 October 2005, p. 88; DAB-156, Transcript 29 September 2006, pp. 39-40, 43, 77-78; DAB-083, Transcript 21 July 2006, p. 33; TF1-209, Transcript 7 July 2006, pp. 36-38; DAB-079, Transcript 28 July 2006, pp. 7-8, 41-43, 46-49.

<sup>444</sup> TF1-033, Transcript 11 July 2005, pp. 16, 86; TF1-033 Transcript 12 July 2005, pp. 26-31; TF1-153, Transcript 22 September 2005, p. 33; DAB-090, Transcript 24 July 2006, pp. 73, 96-105; DAB-086, Transcript 25 July 2006, pp. 11-23.

<sup>445</sup> TF1-153, Transcript 22 September 2005, pp. 48-50.

<sup>446</sup> TF1-094, Transcript 13 July 2005, pp. 28-29, 49.

<sup>447</sup> TF1-199, Transcript 6 October 2005, pp. 69-70, 75, 90-91.

<sup>448</sup> TF1-133, Transcript 7 July 2005, pp. 93-95, 118.

<sup>449</sup> DAB-088, Transcript 24 July 2006, pp. 20-25; DAB-089, Transcript 24 July 2006, pp. 43-57.

<sup>450</sup> TF1-199, Transcript 6 October 2005, pp. 77-78; DAB-077, Transcript 19 July 2006, pp. 92-94; DAB-078, Transcript 6 September 2006, pp. 10-18, 36; DAB-078, Transcript 11 September 1998, p. 40; DAB-085, Transcript 20 July 2006, pp. 7, 38-39, 41; exhibit P-57, Conflict Mapping Report, “No Peace without Justice”, 10 March 2004, p. 16056; exhibit P-54, Amnesty International “Sierra Leone. A year of atrocities against civilians, 1998”, p. 15811; exhibit D-24 (under seal).

<sup>451</sup> TF1-113, Transcript 18 July 2005, p. 87-90.

<sup>452</sup> TF1-045, Transcript 19 July 2004, pp. 84-86.

<sup>453</sup> DAB-140, Transcript 19 September 2006, pp. 72-76, 80-83; TF1-114, Transcript 14 July 2005, pp. 119, 126-130; DAB-131, Transcript 14 September 2006, pp. 42-43.

<sup>454</sup> Exhibit P-53, “We’ll Kill You if You Cry, Sexual Violence in the Sierra Leone Conflict” (Human Rights Watch Report January 2003) 15762

<sup>455</sup> Exhibit P-46, “Fifth Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone”, p. 15653, 15657-15659; Exhibit P-53, “We’ll Kill You if You Cry, Sexual Violence in the Sierra Leone Conflict” (Human Rights Watch Report January 2003) 15762; exhibit P-68, “Women Waging Peace and the Policy Commission “from Combat to Community” Women and Girls of Sierra Leone”, p. 16578. *See also* testimony of Prosecutic n es TF1-083, Transcript 8 April 2005, p. 62 and TF1-334, Transcript 14 June 2005, p. 86.

<sup>456</sup> Gibril Massaquoi, Transcript 10 October 2005, p. 28; TF1-334, Transcript 14 June 2005, pp. 95-97; George Johnson, Transcript 16 September 2005, p. 55; TF1-184, Transcript 27 September 2005, pp. 82-84; TF1-153, Transcript 23 September 2005, pp. 20-22; Gibril Massaquoi, Transcript 10 October 2005, pp. 27-28.

<sup>457</sup> TF1-083, Transcript 8 April 2005, pp. 69, 70; *see also* exhibit P-46, “Fifth report of the Secretary General on the UN Observer Mission in Sierra Leone”, 4 March 1999, p. 15659.

been a policy driven by spite as there was little military justification for the crimes committed.<sup>458</sup> Witnesses testified that violence against civilians continued over the following months in Port Loko, at locations including Masiaka,<sup>459</sup> Gberibana,<sup>460</sup> Manaarma,<sup>461</sup> Sumbuya,<sup>462</sup> Nonkoba<sup>463</sup> and Tendakum.<sup>464</sup>

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.

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 pre-conceived 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.<sup>465</sup> ‘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.<sup>466</sup> 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.<sup>467</sup>

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.

<sup>458</sup> Exhibit P-36, Iron Report, para. D.17.

<sup>459</sup> TF1-085, Transcript 7 April 2005, pp. 35-36.

<sup>460</sup> TF1-334, Transcript 15 June 2005, pp. 51-74; TF1-334, Transcript 22 June 2005, pp. 12, 21-28.

<sup>461</sup> TF1-253, Transcript 15 April 2005, pp. 80-81; TF1-320, Transcript 8 April 2005, pp. 13-15, 38-40.

<sup>462</sup> TF1-282, Transcript 13 April 2005, pp. 15-18; Transcript 14 April 2005, p. 39.

<sup>463</sup> TF1-256, Transcript 14 April 2005, pp. 53-55; 72-82, 90-91, 97-98; DBK-111, Transcript 18 September 2006, pp. 43-45.

<sup>464</sup> DBK-111, Transcript 18 September 2006, pp. 46-47.

<sup>465</sup> TF1-334, Transcript 17 May 2005, pp. 72-73; TF1-045, Transcript 19 July 2005, p. 82; TF1-334, Transcript 20 May 2005, pp. 4, 7, 8; Exhibit P-54, “Amnesty International Report on Sierra Leone, A year of atrocities against civilians”, p. 15806; exhibit P-59 “No Peace Without Justice Conflict Mapping Report”, p. 15913.

<sup>466</sup> TF1-033, Transcript 11 June 2005, pp. 12-14.

<sup>467</sup> TF1-334, Transcript 23 May 2005, pp. 100-106; 24 May 2005, pp. 2-5.

**B. Article 3 of the Statute: Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II**

240. The Accused are charged with six counts of violations of Article 3 Common to the Geneva Conventions (“Common Article 3”) and of Additional Protocol II, pursuant to Article 3 of the Statute: acts of terrorism (Count 1), collective punishments (Count 2), violence to life, health and physical or mental well-being of persons, in particular murder (Count 5), outrages upon personal dignity (Count 9), violence to life, health and physical or mental well-being of persons, in particular mutilation (Count 10), and pillage (Count 14).

1. The Law

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.

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.<sup>468</sup>

---

<sup>468</sup> Rule 98 Decision, para. 44.

(a) There must have been an armed conflict whether non-international or international in character at the time the offences were allegedly committed

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.”<sup>469</sup> 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.”<sup>470</sup> 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”.<sup>471</sup>

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.<sup>472</sup> 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”.<sup>473</sup>

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.<sup>474</sup>

<sup>469</sup> See *Prosecutor v. Fofana*, Case No. SCSL-04-14-PT, Decision on Preliminary Motion on Lack of Jurisdiction *Materiae*: Nature of the Armed Conflict, 25 May 2004 (“Appeal Decision on Nature of Armed Conflict”), para. 25; see also *Milošević* Rule 98bis Decision, para. 21; *Limaj* Trial Judgement, para. 90.

<sup>470</sup> *Tadić* Jurisdiction Decision, para. 70.

<sup>471</sup> *Kunarac* Appeal Judgement, para. 58.

<sup>472</sup> *Tadić* Trial Judgement, para. 562; *Limaj* Trial Judgement, paras 84, 89;

<sup>473</sup> *Tadić* Trial Judgement, para. 562 [emphasis added]; *Limaj* Trial Judgement, paras 84, 89.

<sup>474</sup> *Tadić* Appeal Decision on Jurisdiction, para. 70; *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-T, Judgement, 16 November 2005 (“*Halilović* Trial Judgement”), para. 26; *Kunarac* Appeal Judgement, para. 64.

(b) There must be a nexus between the armed conflict and the alleged offence

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.<sup>475</sup> 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.<sup>476</sup>

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.<sup>477</sup>

(c) The victims were not directly taking part in the hostilities at the time of the alleged violation

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.<sup>478</sup> 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.<sup>479</sup>

## 2. Findings

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

<sup>475</sup> See *Tadić Appeals Chamber Jurisdiction Decision*, para. 70; *Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T, Judgement, 7 June 2001 ("*Bagilishema Trial Judgement*"), para. 105; *Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Judgement, 27 January 2000 ("*Musema Trial Judgement*"), para. 259; *Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, Judgement and Sentence, 6 December 1999 ("*Rutaganda Trial Judgement*"), para. 104; *Kayishema and Ruzindana Trial Judgement*, para. 185; *Akayesu Trial Judgement*, para. 643.

<sup>476</sup> Rule 98 Decision, para. 44; *Kunarac Appeal Judgement*, para. 58; *Tadić Appeals Chamber Jurisdiction Decision*, para. 70; *Rutaganda Appeal Judgement*, para. 570.

<sup>477</sup> *Kunarac Appeal Judgement*, paras 58-59. The nexus does not imply the requirement that the perpetrator be related or linked to one of the parties to the conflict: *Akayesu Appeal Judgement*, paras 443-444. See also *Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-A, Judgement, 26 May 2003 (*Rutaganda Appeal Judgement*), para. 570.

<sup>478</sup> Common Article 3; Article 4(1) of Additional Protocol II.

<sup>479</sup> *Tadić Trial Judgement*, para. 616; *Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Trial Judgement (*Orić Trial Judgement*), para. 258; *Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgement and Sentence, 15 May 2003 ("*Semanza Trial Judgement*"), para. 365; *Halilović Trial Judgement*, para. 32.

Leone lasted from March 1991 until January 2002 and involved the RUF, AFRC and CDF.<sup>480</sup> 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.<sup>481</sup>

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.<sup>482</sup> While the distinction between non-international and international armed 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.

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.<sup>483</sup> 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.

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.<sup>484</sup> After the coup, the armed conflict continued but was now conducted by RUF and former SLA troops, on

<sup>480</sup> Judicial Notice Decision, Facts A and D.

<sup>481</sup> "Defence Response to Prosecutors Request to Admit" (Brima), 2 March 2005, p. 6728; "Kamara - Defence Response to Prosecutor's Request to Admit", SCSL-2004-16-PT, 7 March 2005, p. 6826; "Kanu - Defense Additional Response to Prosecution Request to Admit", SCSL-2004-16-PT, 4 March 2005. The Trial Chamber notes that the Kanu Defence denied the fact in part. The Trial Chamber finds this immaterial as the denial did not go to whether a state of armed conflict existed, but rather whether the conflict was best characterised as a 'war of aggression' or a 'civil war': Kanu Pre-Trial Brief, para. 12.

<sup>482</sup> Prosecution Final Brief, para. 968, referring to Norman Nature of the Armed Conflict Decision, para. 25.

<sup>483</sup> *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeal Chamber, Judgement, 15 July 1999 at para. 84; *Prosecutor v. Naletilić*, Case No. IT-98-34-T, Trial Chamber, Judgement, 31 March 2003 at para. 182; *Prosecutor v. Kordić*, Case No. IT-95-14/2-T, Trial Chamber, Judgement, 26 February 2001 at para. 66.

<sup>484</sup> Exhibit P-63, "Peace Agreement Between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone", p. 16508.

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.<sup>485</sup>

253. The armed conflict continued along the same lines after the ECOMOG intervention which saw the Kabbah government reinstated.<sup>486</sup> The May 1999 Ceasefire Agreement and the July 1999 Lomé Peace Treaty both provided for the cessation of the armed conflict,<sup>487</sup> which did not eventuate.<sup>488</sup> Although these agreements referred only to the RUF, it is apparent from documentary evidence that the AFRC/RUF staged joint attacks periodically throughout 1999.<sup>489</sup> In addition, AFRC and RUF leaders made a joint public statement in October 1999 which referred repeatedly to the prior state of 'war' and proclaimed their unified commitment to implementing the Lomé Treaty.<sup>490</sup> The Trial Chamber is therefore satisfied that the AFRC remained actively engaged in hostilities until the end of the Indictment period in January 2000.<sup>491</sup>

254. The Trial Chamber finds that the crimes were closely related to this conflict.<sup>492</sup> 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.

### **C. Article 4 of the Statute: Other Serious Violations of International Humanitarian Law**

255. The Accused are 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 15 years into armed forces or groups, or using them to participate actively in hostilities (Count 12).

<sup>485</sup> Exhibit P-66, "US Department of State Sierra Leone Country Report on Human Rights Practices for 1997", pp. 16527, 16534-16535; Exhibit P-59, "No Peace Without Justice Conflict Mapping Report", p. 15910-15912.

<sup>486</sup> Exhibit P-59, "No Peace Without Justice Conflict Mapping Report", p. 15912-15916.

<sup>487</sup> Exhibit P-65, "Agreement on Ceasefire in Sierra Leone", p. 16522; exhibit P-62, "Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone" pp. 16480.

<sup>488</sup> Exhibit P-59, "No Peace Without Justice Conflict Mapping Report", p. 15918; exhibit P-67, "First Report on the United Nations Mission in Sierra Leone (UNAMSIL)" (6 December 1999) p. 16549.

<sup>489</sup> Exhibit P-59, "No Peace Without Justice Conflict Mapping Report", p. 15916-15918; exhibit P-67, "First Report on the United Nations Mission in Sierra Leone (UNAMSIL)" (6 December 1999) pp. 16548-16549.

<sup>490</sup> Exhibit P-59, "Statement on the Historic Return to Freetown, Sierra Leone, of the leaders of the Alliance of the Revolutionary United Front of Sierra Leone and the Armed Forces Revolutionary Council", p. 16470-16471.

<sup>491</sup> The Trial Chamber took judicial notice of the fact that the conflict in Sierra Leone occurred from March 1991 until January 2002: Judicial Notice Decision, Fact A.

<sup>492</sup> See Context of the Alleged Crimes, *supra*.

*Jne*

## 1. The Law

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.

257. The crimes listed in Article 4 of the Statute possess the same chapeau requirements as those in Article 3 of the Statute.<sup>493</sup>

## 2. Findings

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.<sup>494</sup> 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.

---

<sup>493</sup> See also Rule 98 Decision, para. 45.

<sup>494</sup> See Context of Alleged Crimes, *supra*.

*Jul*

## VI. POLITICAL STRUCTURE OF THE AFRC GOVERNMENT

### A. Introduction

259. The Trial Chamber will review the evidence on the AFRC Government structure in order to assess the authority of those government bodies to which one or all Accused are alleged to have belonged during the AFRC Government period between May 1997 and February 1998. Establishing the influence and authority exercised by the Accused will precede any findings on their role<sup>495</sup> and their responsibility<sup>496</sup> for the crimes allegedly committed in this period.<sup>497</sup>

260. The Indictment alleges that the three Accused were “senior members of the AFRC/Junta”.<sup>498</sup> Specifically, it alleges that all three Accused were members of the “Junta governing body”<sup>499</sup> and that the Accused Brima and Kamara were “Public [sic] Liaison Officers” (PLOs) in the AFRC government.<sup>500</sup>

261. In its Final Brief, the Prosecution argues that as members of the governing council of the AFRC Government, the three Accused were responsible for the day-to-day decision making of the government,<sup>501</sup> and that the Accused Brima and Kamara, as PLOs, were superior to all other members of the governing council save Johnny Paul Koroma and SAJ Musa.<sup>502</sup> It further submits that the governing council and its members had political authority over the military<sup>503</sup> and that Regional Secretaries (or Ministers) acted as links between the governing council and the military forces deployed in the provinces.<sup>504</sup> Finally, the Prosecution contends that the Accused derived authority by virtue of the rule that political appointment superseded military rank during the AFRC Government period.<sup>505</sup>

262. The Brima and Kamara Defence argue that the AFRC was a military government and that military governments tend to appoint soldiers to political office, but that this does not mean that those soldiers holding political offices are necessarily involved in formulating military strategy. They further contend that during the AFRC Government period, Johnny Paul Koroma was the

<sup>495</sup> See Role of the Accused, *infra*.

<sup>496</sup> See Responsibility of the Accused, *infra*.

<sup>497</sup> Indictment, paras 41, 43-44, 65, 67, 75.

<sup>498</sup> Indictment paras 22, 25, and 28.

<sup>499</sup> Indictment paras 23, 26, 29. Para. 29, relating to the Accused Kanu, is the only paragraph which refers to the Junta governing body as the “AFRC Supreme Council.”

<sup>500</sup> Indictment paras 23, 26. The Trial Chamber notes that the correct title of this position was Principal Liaison Officer.

<sup>501</sup> Prosecution Final Brief, para. 299.

<sup>502</sup> Prosecution Final Brief, paras 332, 336.

<sup>503</sup> Prosecution Final Brief, para. 337.

<sup>504</sup> Prosecution Final Brief, para. 345.

*Ju*

commander-in-chief of an army with a functioning chain of command that included Colonels and a Brigadier.<sup>506</sup> They submit that Colonel Avivavo Kamara was the Deputy Defence Minister and a member of the Supreme Council and that in that role he was the individual responsible for assisting the commander-in-chief and the Supreme Council in initiating defence and security policies.<sup>507</sup> In addition, the Brima and Kamara Defence submit that there were AFRC Ministers in charge of Kenema and Bo Districts, which are the two Districts where crimes were allegedly committed during the AFRC Government period.<sup>508</sup>

263. Further submissions of the Parties will be addressed below as they arise with regards to specific contested facts.

### **B. The Armed Forces Revolutionary Council Government**

264. On 25 May 1997, the SLPP Government of President Kabbah was overthrown by low level soldiers of the Sierra Leone Army (“SLA”) belonging to the ‘other/lower ranks.’<sup>509</sup> Those involved in the coup immediately released Major Johnny Paul Koroma from the prison in Freetown where he had been held on charges of participating in an earlier coup attempt against the Government. Johnny Paul Koroma was appointed Chairman of the new government which was named the *Armed Forces Revolutionary Council* (“AFRC”).<sup>510</sup>

265. On 28 May 1997, the AFRC suspended the 1991 Constitution of Sierra Leone, dissolved the Sierra Leone Parliament, and banned membership of political parties.<sup>511</sup> In place of the former government, a proclamation signed by Johnny Paul Koroma was issued announcing the establishment of the *Armed Forces Revolutionary Council*. According to the Proclamation, the AFRC would consist of (a) a Chairman, (b) a Deputy Chairman, and (c) between 27 and 40 “other members.”<sup>512</sup> The Proclamation also declared that the AFRC would have the power to make laws “for purposes as it may think fit, and in the national interest.”<sup>513</sup>

<sup>505</sup> Prosecution Final Brief, para. 351.

<sup>506</sup> Brima Final Brief, para. 118; Kamara Defence Closing Statement, 7 December 2006, p. 126.

<sup>507</sup> Brima Final Brief, para. 121; Brima Defence Closing Statement, 7 December 2006, p. 109, also noting that Colonel SO Williams was the Army Chief of Staff responsible for running the Sierra Leone army under the AFRC Government, and that Brigadier Mani was the Director of Military Operations in the AFRC Government.

<sup>508</sup> Kamara Final Brief, para. 84; Kamara Defence Closing Statement, 7 December 2006, p. 12- 126.

<sup>509</sup> Agreed Fact: Kamara- Response to Prosecutor’s Request to Admit, Fact 14.

<sup>510</sup> See Context of the Alleged Crimes, paras 164-165, *supra*.

<sup>511</sup> Exhibit P-4, “Proclamation: Administration of Sierra Leone (Armed Forces Revolutionary Council), Proclamation 1997”.

<sup>512</sup> Exhibit P-4, “Proclamation: Administration of Sierra Leone (Armed Forces Revolutionary Council), Proclamation 1997”, setting the number of council members at 27. Exhibit P-5.1, “AFRC Decree Number 4 Administration of Sierra

266. Subsequently, Johnny Paul Koroma invited the Revolutionary United Front (“RUF”) leadership to join the Government.<sup>514</sup>

267. The AFRC Government was composed of a Chairman<sup>515</sup>, a Deputy Chairman<sup>516</sup>, a Secretary-General,<sup>517</sup> a governing council,<sup>518</sup> Principal Liaison Officers (PLOs),<sup>519</sup> the Armed Forces,<sup>520</sup> a Police and a Defence Council,<sup>521</sup> Secretaries of State (Regional Ministers),<sup>522</sup> and other Ministers.<sup>523</sup>

268. The Chairman of the AFRC Government and Head of State was Johnny Paul Koroma, who was also the Chairman of the *Supreme Council* and Commander-in-Chief of the Armed Forces.<sup>524</sup> Although under house arrest in Nigeria, RUF leader Foday Sankoh was appointed Deputy Chairman of the AFRC Government and member of the Governing Council.<sup>525</sup> At an unknown time he was replaced by SAJ Musa, an AFRC commander, who also held the positions of Secretary of

---

Leone (Armed Forces Revolutionary Council) Proclamation”, issued on 14 July 1997, expanding the maximum number of Council members from 27 to 40.

<sup>513</sup> *Ibid.*, Article 3 (1).

<sup>514</sup> Exhibit P-57, NPWJ Report, CMS p. 15910.

<sup>515</sup> Exhibit P-4, “Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation,” 28 May 1997, para 1. (2). a.

<sup>516</sup> Exhibit P-4, “Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation,” 28 May 1997, para. 1. (2).b.

<sup>517</sup> Exhibit P-4, “Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation,” 28 May 1997, para. 1. (4).

<sup>518</sup> Exhibit P-6, “The Sierra Leone Gazette,” 4 September 1997. Exhibit P-7, “The Sierra Leone Gazette,” 18 September 1997.

<sup>519</sup> Exhibit P-5.2., “Armed Forces Revolutionary Council Decree. Establishment of Office of Principal Liaison Officer, 1997,” 10 July 1997.

<sup>520</sup> TF1-184, Transcript 30 September 2005, pp. 47-48; TF1-045, Transcript 19 July 2005, p.61; TF1-334, Transcript 17 May 2005, pp. 18- 22; Gibril Massaquoi, Transcript 7 October 2005, p.73. TF1-334, Transcript 16 May 2005, pp. 88-101.

<sup>521</sup> Exhibit P-8, “The Constitution of Sierra Leone, 1991 (Amendment) Decree, 1997” establishing both a Police Council and a separate Defence Council. Pursuant to para. 2.167 of the Decree, the Defence Council consisted of: i) the Chairman of the Armed Forces Revolutionary Council, ii) the Chief Secretary of State, iii) the Under Secretary of State for Defence, iv) the Chief of Defence Staff, v) the Commanders of the Armed Forces (Army, Navy and Air Force) and their Deputies, vi) the Secretary of State for Internal Affairs, and vii) two other persons appointed by the Chairman.

<sup>522</sup> Exhibit P-5.3. “Armed Forces Revolutionary Council Decree. Establishment of Council of Secretaries, 1997,” 1997. Also Prosecution Exhibit 9. “Change of Titles Order, 1997,” in which the title of “Minister” is changed to the title of “Secretary of State.”

<sup>523</sup> TF1-334, Transcript 16 May 2005, pp. 81-82.

<sup>524</sup> Exhibit P-5.1, “Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation (amendment) Decree, 1997. Exhibit P-6, “Sierra Leone Gazette, 4 September 1997. exhibit P-7, “Sierra Leone Gazette, 18 September 1997.. Exhibit P-8, “Constitution of Sierra Leone, 1991 (amendment) Decree.” TF1-334, Transcript 16 May 2005, pp. 88-90.

<sup>525</sup> Exhibit P-6, “The Sierra Leone Gazette,” 4 September 1997. exhibit P-7, “The Sierra Leone Gazette,” 18 September 1997.

Mineral Resources and Chief Secretary of the AFRC *Council*.<sup>526</sup> The AFRC Secretary-General was AK Sesay.<sup>527</sup>

269. The AFRC Government also included positions known as Principal Liaison Officers (PLOs) who supervised specific ministries.<sup>528</sup> TF1-334 testified that PLOs reported directly to Johnny Paul Koroma.<sup>529</sup> On the question of the chain of command, there was evidence from TF1-334 that PLO 1 was immediately subordinate to the AFRC Vice-Chairman, SAJ Musa.<sup>530</sup>

270. A Council of Secretaries was established on 10 July 1997 which was “directly and collectively responsible for the Armed Forces Revolutionary Council.”<sup>531</sup> The Council of Secretaries consisted of the Chief Secretary of State, who was the head of the Council of Secretaries, and other Secretaries of State which the Armed Forces Revolutionary Council from time to time appointed.<sup>532</sup> SAJ Musa, as Chief Secretary of State, was appointed as the head of the Council of Secretaries.<sup>533</sup> The three Accused were not members of the Council of Secretaries.<sup>534</sup> Apart from the membership of SAJ Musa, no other member of that body was mentioned in evidence.

271. The AFRC Government also included three Regional Ministers, also known as Regional Secretaries: for the North (Mr. Kamara aka ‘Bushfall’); South (AF Kamara, aka ‘Ambush’); and East (Eddie Kanneh). These men reported directly to the Chairman and were also supervised by the Deputy Chairman.<sup>535</sup>

272. The most complete evidence on the military command and reporting structure within the AFRC government was provided by Witness TF1-334, whose testimony on this point was not contested by the Defence in cross-examination. The Commander-in-Chief of the Armed Forces was Johnny Paul Koroma. Avivavo Kamara, the Deputy Defence Minister, reported directly to Koroma but was also subordinate to SAJ Musa.<sup>536</sup> Avivavo Kamara’s immediate subordinate was the Director of Defence, Brigadier Mani. Brigadier Mani’s subordinate was SFY Koroma, Johnny Paul

<sup>526</sup> TF1-334, Transcript 16 May 2005, pp. 92, 98.

<sup>527</sup> TF1-334, Transcript 16 May 2005, pp. 90, 96; Alex Tamba Brima, Transcript 20 June 2006, p. 44.

<sup>528</sup> See Role of the Accused.

<sup>529</sup> TF1-334, Transcript 16 May 2005, p. 57

<sup>530</sup> TF1-334, Transcript 16 May 2005, pp. 99-101.

<sup>531</sup> Exhibit P-5.3, “AFRC Decree No. 2, Armed Forces Revolutionary Council (Establishment of Council of Secretaries) Decree, [10 July]1997”; TF1-334, Transcript 20 June 2005, p. 94.

<sup>532</sup> Exhibit P-5.3, “AFRC Decree No. 2, Armed Forces Revolutionary Council (Establishment of Council of Secretaries) Decree, [10 July]1997”.

<sup>533</sup> TF1-334, Transcript 16 May 2005, p. 77; Alex Tamba Brima, Transcript 3 July 2006, p. 71.

<sup>534</sup> TF1-334, Transcript 20 June 2005, pp. 95, 96; Alex Tamba Brima, Transcript 20 June 2006, p. 38.

<sup>535</sup> TF1-334, Transcript 17 May 2005, pp. 16-17.

<sup>536</sup> TF1-334, Transcript 16 May 2005, pp. 99, 102.

*True*

Koroma's brother and the Chief of Defence Staff. SFY Koroma's immediate subordinate was the Chief of Army Staff, Brigadier SO Williams, also known as Kowas.<sup>537</sup>

### 1. The Governing Council of the AFRC Government

273. The Prosecution contends that the *Supreme Council* was the sole executive and legislative authority within Sierra Leone during the AFRC Government period<sup>538</sup> and that "[t]he Supreme Council and its members had political authority over the military [command], which fell under the ultimate authority of Major Johnny Paul Koroma."<sup>539</sup>

274. The Brima Defence argues that there was no body called the *Supreme Council*, and notes that while the Prosecution was able to produce several Government Gazettes it was unable to produce one referring to a *Supreme Council*.<sup>540</sup> It points to Exhibit P-78 arguing that there were three bodies: 1) the Armed Forces Revolutionary Council; 2) the Supreme Council; and 3) the Armed Forces.<sup>541</sup> The Accused Brima testified that there were two bodies, the *Council* and the *Supreme Council*. The latter, he said, was the body responsible for taking decisions and making laws, while the former only made recommendations to the *Supreme Council*.<sup>542</sup>

275. Thus the issue arising is whether there was one body known as the "*Supreme Council*" or "*Council*," or whether there were two distinct bodies with distinct functions.

276. Exhibit P-4, a copy of a proclamation issued by the new AFRC Government on 28 May 1997, states that the *Armed Forces Revolutionary Council* would consist of (a) a Chairman, (b) a Deputy Chairman, and (c) "other members" not exceeding 27 in number.<sup>543</sup>

277. Exhibits P-6 and P-7, both Government Gazettes, name 34 persons as members of the *Armed Forces Revolutionary Council*, including Johnny Paul Koroma, Foday Sankoh, SAJ Musa

<sup>537</sup> TF1-334, Transcript 17 May 2005, pp. 18-19.

<sup>538</sup> Indictment, para. 14.

<sup>539</sup> Prosecution Final Brief, para. 337.

<sup>540</sup> See Brima Defence Closing Statement, 7 December 2006, pp. 105-106, 107.

<sup>541</sup> See Brima Defence Final Trial Brief, para. 163; Brima Defence Closing Statement, 7 December 2006, p. 106.

<sup>542</sup> Defence Pre-Trial Brief for Alex Tamba Brima, 17 February 2005, paras 9, 14; Brima Final Defence Brief, para. 121; Alex Tamba Brima, Transcript 6 June 2006, pp. 69-70; Brima Defence Closing Statement, 7 December 2006, pp. 106-107.

<sup>543</sup> Exhibit P-4, "Proclamation: Administration of Sierra Leone (Armed Forces Revolutionary Council), Proclamation 1997", setting the number of council members at 27; exhibit P-5.1, "AFRC Decree Number 4 Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation", issued on 14 July 1997 expanding the maximum number of Council members from 27 to 40; The prosecution has tendered several exhibits which, under the authority of the Proclamation, formally nominated members of the *Armed Forces Revolutionary Council*, see specifically for the Accused Brima exhibit P-70, "Government Notice 272 (P.N. No. 3 of 1997), Sierra Leone (SL) Gazette No. 69"; exhibit P-6, "The Sierra Leone Gazette" 4 September 1997; exhibit P- 7, "The Sierra Leone Gazette," 18 September 1997.

*Jo*

and the three Accused, as well as members of the RUF such as Sam Bockarie, Morris Kallon, Issa Sesay, Gibril Massaquoi, Mike Lamin and Eldred Collins. The Gazettes name no military commanders apart from Johnny Paul Koroma, SAJ Musa and Flight Lieutenant King.<sup>544</sup> However, many of the names the Accused Brima referred to in his testimony as having been members of the “lower” *Council* overlap with the names in exhibits P-6 and P-7.<sup>545</sup>

278. Exhibit P-78 is an AFRC Press release dated 3 January 1998. It announces that “the following People’s Revolutionary Leaders and State Monitors have been sacked from the *Supreme Council of State*, the *Armed Forces Revolutionary Council*, and the armed forces with immediate effect ...”,<sup>546</sup> suggesting that these were at least two distinct and separate bodies.

279. In addition to the documentary evidence, several witnesses testified on the subject of the governing council.

280. Gibril Massaquoi testified that the *Supreme Council* was the body overseeing law making and decision making of the AFRC,<sup>547</sup> but also said there were occasions on which the *Supreme Council* simply endorsed decisions made by yet another body known as *The High Table*, a group composed exclusively of Johnny Paul Koroma, SAJ Musa, SFY Koroma, Abu Sankoh and Sam Bockarie, or Issa Sesay in Sam Bockarie’s absence.<sup>548</sup> The Trial Chamber notes that Gibril Massaquoi is the only witness who admits to having been a member of the *Supreme Council*,<sup>549</sup> and therefore accords particular weight to his testimony regarding that body.

281. Witness TF1-334 testified that during the Junta period the terms *Council* and *Supreme Council* were used synonymously,<sup>550</sup> and that this body was responsible for carrying out the day-to-day activities of the Government.<sup>551</sup> Although the witness never personally attended meetings of the governing council, he assisted his supervisor who was illiterate to review and discuss the documents distributed at the meetings, including minutes.<sup>552</sup> The Trial Chamber is satisfied that given the witness’ explanation, together with the degree of precision with which he was able to

<sup>544</sup> Exhibit P-6, “The Sierra Leone Gazette. 4 September 1997”, listing members of the Armed Forces Revolutionary Council *Secretariat*; exhibit P- 7, “The Sierra Leone Gazette,” 18 September 1997, listing members of the Armed Revolutionary *Council*.

<sup>545</sup> Alex Tamba Brima, Transcript 6 June 2006, pp. 70-72.

<sup>546</sup> Exhibit P-78, “AFRC Press Release,” 3 January 1998.

<sup>547</sup> Gibril Massaquoi, Transcript 7 October 2005, pp. 72-73.

<sup>548</sup> Gibril Massaquoi, Transcript 7 October 2005, pp. 81.

<sup>549</sup> The Accused Brima denied having been a member of that body, Accused Alex Tamba Brima, Transcript 6 September 2006, p.70.

<sup>550</sup> TF1-334, Transcript 7 October 2005, p. 72.

<sup>551</sup> TF1-334, Transcript 16 May 2005, p. 57.

<sup>552</sup> TF1-334, Transcript 16 May 2005, pp. 11-13.

TF

describe details of the government structure, and the fact that the witness was not shaken on cross-examination, that Witness TF1-334 is credible and reliable on the subject of the AFRC political structure.

282. The Trial Chamber notes that in addition to the aforementioned Prosecution witnesses, one Defence witness, DBK-012, also testified that the *Supreme Council* was the key decision-making body within the AFRC government.<sup>553</sup>

283. The Accused Brima, on the other hand, testified that the *Supreme Council* was the body responsible for taking decisions and making laws, while the *Council* only made recommendations to the *Supreme Council*.<sup>554</sup> The existence of a second body is supported by Gibril Massaquoi's testimony about a *High Table*, a group composed exclusively of Johnny Paul Koroma, SAJ Musa, SFY Koroma, Abu Sankoh and Sam Bockarie, or Issa Sesay in Sam Bockarie's absence.<sup>555</sup> The Trial Chamber notes, however, that the composition of the *Supreme Council* as described by the Accused Brima does not match *The High Table* described by Massaquoi. According to the Accused Brima, in addition to Johnny Paul Koroma and SAJ Musa, members of the *Supreme Council* included top military commanders and the regional ministers, as well as senior leaders of the RUF.<sup>556</sup>

284. Exhibit P-69 is a copy of minutes of a meeting of the *AFRC Secretariat* held on 9 December 1997 at which the Accused Brima and the Accused Kamara were present along with twelve other persons.<sup>557</sup> Exhibit P-34 shows minutes of an Emergency "*Council Meeting of the AFRC*" held on 11 August 1997 at which the Accused Brima and Accused Kamara as well as 13 others, including members of the RUF, were present. These minutes conclude: "it was noted that as Members of the *Highest Council* in the Land, members should conduct themselves appropriately."<sup>558</sup>

285. The Trial Chamber finds that the Prosecution has established beyond a reasonable doubt that the Government headed by Johnny Paul Koroma was named the *Armed Forces Revolutionary Council*, colloquially known as the 'Junta'. Within that Government, there was a governing body, called interchangeably the *Council* or the *Supreme Council*. This council had both legislative and

<sup>553</sup> DBK-012, Transcript 18 October 2006, pp. 30-31. The Witness testified however that he did not know whether the Accused Brima was a Supreme Council member but said that the Accused Kamara and Kanu were not members.

<sup>554</sup> Defence Pre-Trial Brief for Alex Tamba Brima, 17 February 2005, paras 9,14; Alex Tamba Brima, Transcript 6 June 2006, pp. 69-70.

<sup>555</sup> Gibril Massaquoi, Transcript 7 October 2005, pp. 81-82.

<sup>556</sup> Alex Tamba Brima, Transcript 6 June 2006, pp. 63-68.

<sup>557</sup> Exhibit P-69, "AFRC- Secretariat. Minutes of Meeting held on 9 December 1997"

<sup>558</sup> Exhibit P-34, "Minutes of an Emergency Council Meeting of the AFRC Held at State House on Monday 11<sup>th</sup> August 1997," para. 14.

JTB

executive powers, and it was the body responsible for the day-to-day decision making of the AFRC government. The Trial Chamber also finds it established beyond a reasonable doubt that as “the Highest Council in the Land”, the Governing Council exercised political control over the military branch of the government.

## 2. Information Available to the Governing Council

286. The Prosecution contends that minutes of Supreme Council meetings were circulated to all members.<sup>559</sup> From this fact it asks the Trial Chamber to infer that *Supreme Council* members were aware of all developments around the country.<sup>560</sup>

287. The Trial Chamber notes that minutes of two other Council meetings held in August and December 1997 were apparently circulated to all Council members.<sup>561</sup> Witness TF1-045 described attending two meetings, one in September 1997 and the other in October/November of the same year, attended by high-ranking members of both the AFRC and RUF, and chaired by the Army Chief of Staff. Those present discussed relations between the two factions, the supply of ammunitions and weapons, and methods with which to prevent government forces from harassing the civilian population.<sup>562</sup> Those present at the second meeting also discussed international pressure on the AFRC regime to restore the Kabbah government, and the formation of a delegation to attend peace talks in Conakry.<sup>563</sup>

288. The Trial Chamber is satisfied on the evidence that security issues and other urgent matters were discussed at these meetings. Therefore, the Trial Chamber finds that *Supreme Council* members were apprised of all major developments around the country.

## 3. Principal Liaison Officers (“PLOs”)

289. In its Final Brief, the Prosecution contends that “[t]he PLO’s position in government was an extremely important one. They were members of the Supreme Council and superior to all members of that Council, save Johnny Paul Koroma, SAJ Musa and AK Sesay.”<sup>564</sup>

<sup>559</sup> Prosecution Final Brief, para. 368, citing Gibril Massaquoi, Transcript 7 October 2005, p. 101.

<sup>560</sup> Prosecution Trial Brief, para. 368.

<sup>561</sup> Exhibit P-34, “Minutes of an Emergency Council Meeting of the AFRC Held at State House on Monday 11<sup>th</sup> August 1997; Exhibit P-69, “AFRC- Secretariat. Minutes of Meeting held on 9 December 1997”.

<sup>562</sup> TF1-045, Transcript 19 July 2005, p. 57-70

<sup>563</sup> TF1-045, Transcript 19 July 2005, 71.

<sup>564</sup> Prosecution Final Brief, paras 332, 399.

290. The Kamara Defence submits that even if it is established that an Accused was a Principal Liaison Officer, this only suggests that he held “some kind of government position,” and does not establish that the Accused had military powers or that the position gave him any powers of command and control over the rank and file of the Sierra Leonean army.<sup>565</sup>

291. According to a Government Decree establishing the office of the Principal Liaison Officer, PLOs were to be responsible for “supervising, monitoring and coordinating the operations of any Department of State or such other business of Government, as may from time to time be assigned to him.”<sup>566</sup> However, the only evidence of such a task being assigned to the PLOs appears in exhibit P-34. According to the minutes of an emergency meeting of the *Council* held on 11 August 1997, a decision was made that “[a]ll Principal Liaison Officer must have effective control over the Honourable Members of the Council.”<sup>567</sup> This suggests that Principal Liaison Officers were superior to other members of the *Council*.

292. The Prosecution further argues that “based on the evidence as a whole regarding the Supreme Council and the PLOs, there can be no doubt that PLOs in the AFRC hierarchy [were senior to other council members] and were only beneath Johnny Paul Koroma and SAJ Musa in the AFRC chain of command.”<sup>568</sup> It further points to exhibit P-5.3, a Decree establishing a *Council of Secretaries* “which was to be directly and collectively responsible to the AFRC” to suggest that the PLOs had a status above that of the Regional Secretaries.<sup>569</sup>

293. The Decree referred to by the Prosecution prescribes the duties of the Council of Secretaries as follows

be responsible for the preparation and consideration of policy papers or matters and shall advise the Armed Forces Revolutionary Council and make recommendations on matters of good governance

execute the policies and directive of the Armed Forces Revolutionary Council.

294. These duties are clearly subordinate to the duties of a PLO which are to supervise and monitor ministries.

295. The Trial Chamber finds that the PLOs were superior to the Regional Secretaries.

<sup>565</sup> Kamara Defence Closing Statement, 7 December 2006, p. 124.

<sup>566</sup> Exhibit P-5.2, “Armed Forces Revolutionary Council (Establishment of Office of Principal Liaison Officer) Decree,” 12 July 1997, para. 3.

<sup>567</sup> Exhibit P-34, “Minutes of an Emergency Council Meeting of the AFRC Held at State House on Monday 11 August 1997,” para. 16.

<sup>568</sup> Prosecution Final Brief, paras 336.

Jae

#### 4. Honourables

296. In its Final Trial Brief, the Prosecution submits that all the coup plotters were known as ‘honourables’, with this position superseding rank and giving them power, influence and command over more senior officers in the SLA.<sup>570</sup>

297. The position of the Brima Defence is that the title of ‘Honourable’ was an honorific akin to ‘Doctor’ or ‘Professor’ in certain other countries, and that numerous individuals apart from the Accused and the coup plotters held this title.<sup>571</sup>

298. Witness DAB-156 testified that it was possible to acquire the title of ‘Honourable’ in other ways.<sup>572</sup> Witness DBK-131 also testified that numerous individuals who had not taken part in the coup were given the title of ‘Honourable’, including the witness himself. He added that over 200 soldiers were referred to as Honourables and that wealthy individuals were also often able to acquire the title of ‘Honourable’.<sup>573</sup> However, this assertion was never put to Prosecution witnesses and in the view of the Trial Chamber it is not persuasive.

299. The Trial Chamber is satisfied that the title of ‘Honourable’ was conferred on all 17 Coup plotters and was not merely a title denoting respect.<sup>574</sup>

#### C. Conclusion

300. The Trial Chamber is satisfied that the governing council of the AFRC government was the *Supreme Council*, sometimes simply referred to as the “*Council*.” It had both legislative and executive powers and was responsible for the day-to-day decision making of the AFRC Government. It further finds that the Principal Liaison Officers were members of that Council, that they were responsible for supervising various ministries, and that they were superior to other members of the Supreme Council and the Council of Secretaries.’

<sup>569</sup> Prosecution Final Brief, para. 341, citing Exhibit P-5.3, “Armed Forces Revolutionary Council (Establishment of the Council of Secretaries) Decree 1997,” 12 July 1997.

<sup>570</sup> Prosecution Final Trial Brief, para. 76.

<sup>571</sup> Brima Defence Closing Statement, p. 108.

<sup>572</sup> DAB-156, Transcript 2 October 2006.

<sup>573</sup> DBK-131, Transcript 26 October, pp. 20-21.

<sup>574</sup> TF1-334, Transcript 17 May 2005, p. 12; DAB-023, Transcript 3 August 2006, pp. 39, 40.

JR

## VII. ROLE OF THE ACCUSED

### A. Introduction

301. In this Chapter, the Trial Chamber will examine the personal backgrounds of each Accused and their functions, positions and whereabouts within the Indictment period from May 1997 to January 2000. Establishing the influence and authority exercised by the Accused during this period will precede any findings of the Trial Chamber on their criminal responsibility for the crimes alleged during this time period.<sup>575</sup>

### B. Alex Tamba Brima

#### 1. Allegations and Submissions

302. The Indictment alleges that the Accused Brima “at all times relevant to the Indictment was a senior member of the AFRC, Junta and AFRC/RUF forces”.<sup>576</sup> It also alleges that he was a “Public [sic] Liaison Officer (PLO)”<sup>577</sup> and “member of the Junta governing body” within the AFRC government.<sup>578</sup> It further charges that the Accused Brima was “in direct command of AFRC/RUF forces in Kono District” between mid February 1998 and about 30 April 1998<sup>579</sup> and “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”.<sup>580</sup> Finally, it alleges that the Accused Brima “was in command of AFRC/RUF forces which attacked Freetown on 6 January 1999”.<sup>581</sup>

303. The Defence presented by the Accused involved claims of alibi, illness and mistaken identity. Regarding the mistaken identity, the Accused asserted: 1) That he was named “Tamba Brima” and not “Alex Tamba Brima”; 2) In addition, that he did not play football and therefore was not nicknamed ‘Gullit’ after a Dutch footballer of the same name.

304. Regarding the AFRC Government period, the Accused Brima asserts that while he was formally a member of a governing council called “the Council” and held the position of PLO 2,<sup>582</sup>

<sup>575</sup> See Responsibility of the Accused, *infra*.

<sup>576</sup> Indictment para. 22.

<sup>577</sup> Indictment para. 23.

<sup>578</sup> Indictment para. 23.

<sup>579</sup> Indictment para. 24.

<sup>580</sup> Indictment para. 24.

<sup>581</sup> Indictment para. 24.

<sup>582</sup> Brima Final Brief, paras 121, 175.

JTS

he was often too ill to carry out his functions.<sup>583</sup> Moreover, while the Accused concedes that he did spend some time in Kono District during the AFRC Government period, he states that he did so for personal reasons and was not involved in diamond mining for the government in that district.

305. The alibi of the Accused for the subsequent periods covered by the Indictment can be summarised as follows: (1) immediately following the fall of the AFRC Government in February 1998, he left Kono District for Kailahun District where he was detained by the RUF until July 1998. Therefore, he was not present in Kono District during the period February through June 1998, nor was he in Koinadugu District during the first part of the Indictment period (February through July 1999);<sup>584</sup> (2) upon his release from detention in Kailahun, the Accused Brima returned to his family's hometown in Kono District where he went into hiding for two months;<sup>585</sup> (3) in September 1998, he was again arrested and detained, this time by members of the AFRC. These men took the Accused from his family's village in Kono District to 'Colonel Eddie Town' in Bombali or Port Loko District and kept him in detention as they moved towards Freetown;<sup>586</sup> (4) at Goba Water in the Western Area, days before the troops invaded Freetown on 6 January 1999, the Accused was able to escape and make his way to Makeni in Bombali District.<sup>587</sup> Thus, the Accused did not participate in the commission of any of the crimes alleged in the Indictment.<sup>588</sup>

306. The Brima Defence also contends that key Prosecution witnesses were unreliable<sup>589</sup> and that other named persons were responsible for the campaign of atrocities depicted by the evidence.<sup>590</sup>

307. The Trial Chamber will address the alibi of the Accused Brima and the Prosecution and Defence submissions and evidence in detail when reviewing the allegations regarding his various roles over the Indictment period.

## 2. Personal Background of Brima

308. According to Brima, he was born on 23 November 1971 at Wilberforce in Freetown.<sup>591</sup> Brima notes, however, that Yarya in Kono District is his family's native village.<sup>592</sup> He is Christian and married with two wives, Margaret Brima and Nenneh Galleh Brima. He married the latter after

<sup>583</sup> Brima Final Brief, para. 218.

<sup>584</sup> Brima Final Brief, para. 209.

<sup>585</sup> Brima Final Brief, paras 207-208, 216.

<sup>586</sup> Brima Final Brief, paras 219-221.

<sup>587</sup> Brima Final Brief, para. 211.

<sup>588</sup> Brima Final Brief, para. 23.

<sup>589</sup> Brima Final Brief, paras 39, 47, 187-203.

<sup>590</sup> Brima Final Brief, para. 211.

<sup>591</sup> Alex Tamba Brima, Transcript 5 June 2006, p. 52.

<sup>592</sup> Alex Tamba Brima, Transcript 5 June 2006, p. 52; Brima Final Trial Brief, para. 20.

the death of his brother Komba Brima.<sup>593</sup> Alex Tamba Brima had eleven brothers, four of whom are still alive<sup>594</sup> and were serving in the Sierra Leone Army in 1997 and continue to do so, including two also named Tamba Brima.<sup>595</sup>

309. Brima enlisted into the Sierra Leone Military Forces at Lungi Garrison on 5 June 1991,<sup>596</sup> and not in April 1985 as the Indictment alleges.<sup>597</sup> He rose to the rank of Corporal, a rank which he held until May 1997.<sup>598</sup> During the AFRC/RUF Government period he was promoted to the rank of Staff Sergeant.<sup>599</sup>

310. Brima retired from the army on 10 August 2001.<sup>600</sup> The Accused Brima testified that he was a petty trader after his resignation from the army.<sup>601</sup> The Prosecution has adduced evidence that he was a miner and politician at the time of his arrest in 2003.<sup>602</sup>

### 3. The Identity of Brima

311. The Accused Brima denies that his first name is 'Alex' and claims that he is a victim of mistaken identity.<sup>603</sup> During Brima's initial appearance on 15 and 17 March 2003, the Presiding Judge asked the Accused to confirm that he was "Alex Tamba Brima" and he did so.<sup>604</sup> Many witnesses, Prosecution and Defence, referred to the Accused as 'Alex' Tamba Brima.<sup>605</sup> Official

<sup>593</sup> Alex Tamba Brima, Transcript 5 June 2006, p. 53.

<sup>594</sup> Alex Tamba Brima, Transcript 5 June 2006, p. 63.

<sup>595</sup> Alex Tamba Brima, Transcript 28 June 2006, pp. 5-7; Exhibit D-13, naming the rank and names of his brothers who serve in the Sierra Leone Army.

<sup>596</sup> Exhibit D-14, "Discharge Book".

<sup>597</sup> Indictment, para. 2.

<sup>598</sup> Exhibit D-14, "Discharge Book".

<sup>599</sup> Exhibit P-70, "Government Notice 272 (P.N. No. 3 of 1997), Sierra Leone (SL) Gazette No. 69", 31 December 1997.

<sup>600</sup> Alex Tamba Brima, Transcript 6 June 2006, p. 14; Exhibit D-14, "Discharge Book".

<sup>601</sup> Alex Tamba Brima, Transcript 16 June 2006, pp. 17, 18.

<sup>602</sup> John Petrie, Transcript 5 October 2005, p. 76.

<sup>603</sup> Brima Final Brief, paras 21, 179-182. The Accused Brima raised this issue in a motion at the pre-trial stage, see *Prosecutor v. Brima*, SCSL-2003-06-PT, Defence Motion for Leave to Issue a Writ of Habeas Corpus, 28 May 2003; see also Defence Pre-Trial Brief for Tamba Alex Brima, 17 February 2005, para. 5: "[The Accused] does not accept the name 'Alex' used by the Prosecution as he has never been so named [...]."

<sup>604</sup> Transcript 15 March 2003, p. 2; Transcript 17 March 2003, p. 7, stating that he is named "Tamba Alex Brima". While the first initial appearance was adjourned in order to provide the Accused with an interpreter, the Trial Chamber is satisfied that Brima was sufficiently literate in English to understand the question of Justice Itoe. Brima described himself as reasonably educated and said that he could read, write and speak English: Transcript 28 June 2006, p. 4.

<sup>605</sup> Prosecution witnesses: TF1-114, 14 July 2005, p. 119; George Johnson, 15 September 2005, p. 9; John Petrie, Transcript 6 October 2005, p. 44; TF1-153, Transcript 22 September 2005, p. 56. Defence witnesses: DAB-079, Transcript 28 July 2006, p. 62; DBK-037, Transcript 4 October 2005, p. 61; DBK-117, 16 October 2006, p. 28; TRC-01, 16 October 2006, p. 101.

AFRC governmental decrees also refer to “Alex T. Brima”.<sup>606</sup> The Trial Chamber is therefore satisfied that the full name of the Accused is “Alex Tamba Brima.”

312. In his Pre-Trial Brief and in his testimony, the Accused denied having the nickname ‘Gullit’ after a former Dutch football player.<sup>607</sup> Although he did not mention it in his Pre-Trial brief, at trial he testified that it was his brother, Komba Brima, who was known as “Gullit.”<sup>608</sup> He further testified that he played volleyball and not football as a hobby.<sup>609</sup> Numerous witnesses, both for the Prosecution<sup>610</sup> and for the Defence,<sup>611</sup> confirmed that because Alex Tamba Brima was a respected football player, he was commonly known as ‘Gullit’, after the former Dutch football player Ruud Gullit.<sup>612</sup> The Trial Chamber is accordingly satisfied that the Accused was commonly referred to by the nickname ‘Gullit’.

#### 4. Positions of Responsibility in the AFRC Government (25 May 1997 – 14 February 1998)

313. The Indictment alleges that the Accused Brima “at all times relevant to this Indictment, Alex Tamba Brima was a senior member of the AFRC, Junta and AFRC/RUF forces.”<sup>613</sup> It further alleges that the Accused “was a member of the group which staged the coup and ousted the government of President Kabbah” and a “Public [sic] Liaison Officer (PLO) within the AFRC”.<sup>614</sup> In addition, Alex Tamba Brima was a member of the junta governing body.<sup>615</sup> In its Final Brief, the Prosecution argues that by virtue of these positions, the Accused Brima played a fundamental role in the AFRC Government, that he regularly attended Supreme Council meetings and that he 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 government period, and that he was aware of the government’s policy of forced mining.<sup>616</sup>

314. The Brima Defence submits that whether or not the Accused Brima was a member of the group that organised the 25 May 1997 coup has no bearing on the allegations against him, and notes

<sup>606</sup> Exhibit P-7, “Armed Forces Revolutionary Council Secretariat”.

<sup>607</sup> Alex Tamba Brima, Transcript 5 June 2006, p. 61; Brima Final Brief, para. 179.

<sup>608</sup> Alex Tamba Brima, Transcript 6 June 2006, pp. 16-17.

<sup>609</sup> Alex Tamba Brima, Transcript 6 June 2006, pp. 29-31.

<sup>610</sup> TF1-153, Transcript 22 September 2005, pp. 12; TF1-184, Transcript 27 September 2005, p. 19; TF1-334, Transcript 16 May 2005, p. 21; TF1-114, Transcript 14 July 2005, pp. 118-119; TF1-033, Transcript 11 July 2005, p. 6; George Johnson, Transcript 15 September 2005, pp. 9-10.

<sup>611</sup> DAB-025, Transcript 28 July 2006, p. 62; DAB-063, Transcript 2 August 2006, p. 70; TRC-01, Transcript 16 October 2006, p. 101.

<sup>612</sup> John Petrie, Transcript 5 October 2005, p. 67.

<sup>613</sup> Indictment para. 22.

<sup>614</sup> Indictment para. 23.

<sup>615</sup> Indictment para. 23.

<sup>616</sup> Prosecution Final Brief, paras 501-504.

that while 24 military personnel were charged with the offence of treason by the Government of Sierra Leone, he was not one of them.<sup>617</sup> The Defence adds while the Accused was PLO 2 in the Junta Government,<sup>618</sup> he was too ill to carry out his functions.<sup>619</sup> In addition, it contends that the Accused was a member of a governing council, but not the ultimate decision making body within the AFRC government.<sup>620</sup>

315. The Accused denied that he was involved in the 25 May 1997 coup, and explained that he was awarded a government position in recognition of his father's good service to the Army.<sup>621</sup> The Accused testified that he was in and out of the hospital during the AFRC Government period and that he was too ill during this period to perform his official duties.<sup>622</sup> He added that he did travel to Kono District during this period but only on personal business: in October 1997 to visit his mother, for a week in December 1997 to marry, and again in February 1998 to consult a local healer. He was in Kono when ECOMOG ousted the AFRC regime in Freetown.<sup>623</sup>

(a) Involvement in the 25 May 1997 Coup

316. The Trial Chamber notes that although the Accused Brima denies that he was involved in the coup,<sup>624</sup> numerous witnesses, both for the Prosecution and for the Defence, testified that he was one of the individuals who planned and took part in the coup.<sup>625</sup> Thus, the Trial Chamber is satisfied that the Accused Brima was involved in the 1997 coup.

317. The Trial Chamber is satisfied that in return for his participation in the coup, the Accused Brima was rewarded with specific functions in the AFRC Government. He remained in those positions until that government was ousted by the ECOMOG forces in February 1998.

(b) Council Membership

318. While the Accused argued that there were two decision-making councils in the AFRC government, and that he was only a member of the body with less power and influence, the Trial

<sup>617</sup> Brima Defence Final Trial Brief, para. 167.

<sup>618</sup> Brima Pre-Trial Brief, paras 9, 14.

<sup>619</sup> Alex Tamba Brima, Transcript 6 June 2006, pp. 58-61.

<sup>620</sup> Brima Pre-Trial Brief, para. 14; Alex Tamba Brima, 6 June 2006, pp. 69-70.

<sup>621</sup> Alex Tamba Brima, Transcript 6 June 2006, pp. 47-50.

<sup>622</sup> Alex Tamba Brima, Transcript 6 June 2006, pp. 58-61; Transcript 8 June 2006, pp. 18-20.

<sup>623</sup> Alex Tamba Brima, Transcript 8 June 2006, pp. 18-24.

<sup>624</sup> Alex Tamba Brima, 6 June 2006, p. 32-33. Brima Final Brief, paras 167-169.

<sup>625</sup> TF1-033, Transcript 11 July 2005, p. 6; Gibril Massaquoi, Transcript 7 October 2006, p. 76; TF1-334, Transcript 17 June 2005, p. 69; TF1-114, Transcript 14 July 2005, p. 118-119; DAB-079, Transcript 28 July 2006, p. 62, DAB-025, Transcript 28 July 2006, p. 112; TRC-01, Transcript 16 October 2006, p. 101; DAB-085, Transcript 20 July 2005, p.

Chamber found that there was only one governing council, namely the Supreme Council.<sup>626</sup> Both Prosecution and Defence witnesses testified that the Accused was on this Council<sup>627</sup> and indeed the Accused himself concedes that he was on a governing council. The Trial Chamber is therefore satisfied that the Accused was a member of the AFRC Supreme Council and that he obtained his seat in return for his participation in the coup. As a council member, Brima attended coordination meetings between high-ranking members of the AFRC and RUF.<sup>628</sup>

319. The testimony of the Accused Brima regarding his title as ‘Honourable’ is ambiguous. He denies that he was known as an “Honourable,” but allows that persons may have referred to him as such.<sup>629</sup> In its closing arguments, the Brima Defence clarified that the Accused only said “If people call me that, fine, but I have never called myself Honourable”.<sup>630</sup> The Trial Chamber is satisfied that the Accused was referred to by the title of “Honourable”, as this title was conferred on all 17 coup plotters and was not merely a title denoting respect.<sup>631</sup>

(c) Principal Liaison Officer 2

320. The Accused does not dispute that he was appointed to the position of Principal Liaison Officer in the AFRC Government,<sup>632</sup> but said that he was too ill to perform his duties.<sup>633</sup>

321. The office of the Principal Liaison Officer (PLO) was established by the AFRC government on 10 July 1997.<sup>634</sup> According to the Decree establishing the office, the PLOs were responsible for “supervising, monitoring and coordinating the operations of any Department of State or such other business of Government, as may from time to time be assigned to [them].”<sup>635</sup> The Trial Chamber is

52; DAB-079, Transcript 28 July 2006, pp. 62, 68, 69; DAB-085, Transcript 20 July 2006, p. 52; DAB-063, Transcript 2 August 2006, pp. 60-62.

<sup>626</sup> Political Structure of the AFRC, paras 273-285 *supra*.

<sup>627</sup> TRC-01, Transcript 16 October 2006, p. 16; DAB-005, Transcript 12 October 2006, pp. 18-19.

<sup>628</sup> TF1-045, Transcript 19 July 2005, pp. 71-72; Gibril Massaquoi, Transcript 7 October 2005, p. 83, 93; TF1-334, Transcript 16 May 2005, p. 57. Exhibit P- 34, “Minutes of an Emergency Council Meeting of the AFRC Held at State House on Monday 11 August 1997.” Exhibit P-69, “AFRC-Secretariat Minutes of Meeting held on 9 December 1997”.

<sup>629</sup> Alex Tamba Brima, Transcript 3 July 2006 pp. 40-41.

<sup>630</sup> Brima Defence Closing Statement, 7 December 2006, p. 108.

<sup>631</sup> DAB-063, Transcript 2 August 2006, pp. 60-62; DAB-00512 October 2006, pp. 17-18.

<sup>632</sup> Alex Tamba Brima, Transcript 6 June 2006, p. 56; Brima Defence Closing Statement, 7 December 2006, p. 104.

<sup>633</sup> Alex Tamba Brima, Transcript 6 June 2006, pp. 41-42, 59.

<sup>634</sup> Exhibit P-5.2, “Armed Forces Revolutionary Council (Establishment of Office of Principal Liaison Officer) Decree”, 1997, para. 3: “A Principal Liaison Officer shall be responsible for supervising, monitoring and co-ordinating the operations of any Department of State or such business of Government, as may from time to time be assigned to him by the Armed Forces Revolutionary Council”.

<sup>635</sup> Exhibit P-5.2, “Armed Forces Revolutionary Council (Establishment of Office of Principal Liaison Officer) Decree”, 12 July 1997, para. 3.

satisfied that the Accused Brima was assigned to supervise the Ministries of Works and Labour; Customs and Excise, and the parastatals Sierratel and SALPOST.<sup>636</sup>

322. As a PLO 2, the Accused Brima reported to PLO 1, Abu Sankoh, and ultimately to SAJ Musa<sup>637</sup> and the Chairman, Johnny Paul Koroma.<sup>638</sup>

323. Only one witness testified that he saw the Accused in the hospital shortly after the coup. However, he said that the Accused was suffering from malaria and not recovering from a road accident, as the Accused himself claimed. While the witness said that he visited the Accused in the hospital in March and April 1997, he added that the visits took place after the coup.<sup>639</sup> Thus, his testimony on the dates of his visits to the Accused in the hospital is inconsistent.

324. The Accused did not deny that he attended council meetings.<sup>640</sup> Indeed, he testified that he attended many meetings during this period.<sup>641</sup>

325. Thus, the Trial Chamber is satisfied on the Prosecution evidence adduced that while the Accused may have been ill during the AFRC Government period, he did not suffer from any illness that prevented him from performing his duties.

(d) Mining Supervision in Kono and Kenema Districts

326. The Indictment is silent on the role of the Accused in diamond mining activities. In its Pre-Trial Brief however, the Prosecution alleges that the Accused was in charge of diamond mining in Kono District.<sup>642</sup> The Accused concedes that he was in Kono District on several occasions during the Junta period, but states that he was there on personal business.<sup>643</sup>

327. Witness TF1-153 was appointed as a mines monitor by SAJ Musa.<sup>644</sup> He testified that the Accused Brima came to Kono with Sam Bockarie on one occasion to introduce the mines monitors to the community.<sup>645</sup> He added that Brima came to Koidu Town several other times, on one occasion staying for about a week, and that he would report back to SAJ Musa about any

<sup>636</sup> Alex Tamba Brima, Transcript 6 June 2006, pp. 56-61.

<sup>637</sup> TF1-334, Transcript 16 May 2005, pp. 99-101.

<sup>638</sup> TF1-334, Transcript 16 May 2005, pp. 57, 99-101.

<sup>639</sup> DAB-059, Transcript 27 September 2006, pp. 63-64.

<sup>640</sup> Alex Tamba Brima, Transcript 6 June 2006, pp. 47-50, 56-58, 63.

<sup>641</sup> Alex Tamba Brima, Transcript 6 June 2006, p. 76.

<sup>642</sup> Prosecution Supplemental Pre-Trial Brief, 21 April 2004, paras 22.c, 30. c, 250.b.

<sup>643</sup> Alex Tamba Brima, Transcript 8 June 2006, pp. 18-24.

<sup>644</sup> TF1-153, Transcript 22 September 2005, pp. 18-19. On cross-examination, the witness denied that the Accused Brima had been involved in the decision to send him to Kono, Transcript 23 September 2005, p. 38.

<sup>645</sup> TF1-153, Transcript 23 September 2005, pp. 60-61.

difficulties regarding the mines monitors and the mining.<sup>646</sup> While the Brima Defence raised issues with regards to the witness's credibility and reliability,<sup>647</sup> the Trial Chamber notes that the witness was not shaken on cross-examination on this point.

328. The evidence indicates that Brima did not hold executive powers in this position in Kono District. Witness TF1-153 testified that as a mines monitor he was directly responsible to the Mines Ministry and SAJ Musa as Mines Minister rather than to the Accused Brima.<sup>648</sup> In addition, Resident Minister East, Eddie Kanneh, was heavily involved in diamond mining and had overall control of the diamond mining areas in Kono, Kenema and Kailahun Districts and reported directly to Johnny Paul Koroma.<sup>649</sup> Sam Bockarie was also a major player in diamond mining activities, particularly in eastern Sierra Leone, during the AFRC regime and worked closely with Eddie Kanneh.<sup>650</sup> Thus, the evidence shows that the Accused Brima performed the role of overseer of the mining activities of the AFRC Government and reported directly to SAJ Musa.

329. The Trial Chamber has considered the evidence of witness TF1-045 that he encountered the PLO 2 in Kenema District during the AFRC government period. However, the Trial Chamber notes that the witness said that he knew the Accused Brima well<sup>651</sup> but that he did not know the name of PLO 2.<sup>652</sup> The Trial Chamber therefore concludes that the person that the witness referred to as "PLO 2" was not the Accused Brima and dismisses his testimony on this point.

330. Regarding the whereabouts of the Accused Brima during the AFRC government period, the Trial Chamber is satisfied that Brima was in Freetown on 25 May 1997, and that either he later moved to Kono District or travelled frequently between Kono and Freetown. For example, there is evidence that on 9 December 1997 he attended a meeting in Freetown,<sup>653</sup> but Witness DAB-059 saw Brima in Koidu Town sometime in December 1997.<sup>654</sup> Witness TF1-153 also indicated that Brima's visits to Kono District were sporadic.<sup>655</sup>

<sup>646</sup> TF1-153, Transcript 22 September 2005, pp. 19-23; Transcript 23 September 2005, p. 61.

<sup>647</sup> Brima Final Brief, para. 191.

<sup>648</sup> TF1-153, Transcript 22 September 2005, pp. 60-61.

<sup>649</sup> TF1-045, Transcript 19 July 2005, pp. 30-32; TF1-334, Transcript 17 May 2005, p. 17; DBK-063, Transcript 2 August 2006, pp. 68-69.

<sup>650</sup> TF1-334, Transcript 17 May 2005, pp. 56-57; TF1-045, Transcript 19 July 2005, p. 32; George Johnson, Transcript 15 September 2005, p. 17.

<sup>651</sup> TF1-045, Transcript 19 July 2005, p. 100.

<sup>652</sup> TF1-045, Transcript 19 July 2005, p. 39.

<sup>653</sup> Exhibit P-69, "AFRC-Secretariat, Minutes of Meeting held on the 9<sup>th</sup> December", 1997.

<sup>654</sup> DAB-059, Transcript 27 September 2006, p. 65.

<sup>655</sup> TF1-153, Transcript 22 September 2005, p. 22.

*Jue*

331. The Trial Chamber is satisfied that Brima travelled to Kono on diamond mining business rather than exclusively on personal business. On the evidence it is not possible to establish the frequency or length of time of these visits, although it is clear that he was in Kono when ECOMOG ousted the AFRC government in Freetown.

(e) Findings

332. The Trial Chamber is satisfied that the Accused Brima was a member of the group that organised the 25 May 1997 coup, that he was a member of the AFRC Supreme Council, and that he was an "Honourable." It is further satisfied that he was Principal Liaison Officer 2 in the AFRC government and was responsible for overseeing mining activities and reporting to SAJ Musa, the Mines Minister, in Freetown.

5. Brima's Alleged Arrest in Kono and Kailahun Districts (February – May 1998)

333. The Prosecution alleges that "[b]etween mid February 1998 and about 30 April 1998, Alex Tamba Brima was in direct command of AFRC/RUF forces in the Kono District".<sup>656</sup> In its Pre-Trial Brief, the Prosecution further alleges that the Accused was liable for crimes committed during this period by virtue of his position as "the SLA in charge of Kono post ECOMOG intervention within the AFRC/RUF collaboration".<sup>657</sup>

334. In its Final Brief, the Prosecution concedes that for a short period of time in either Kailahun or Buedu the Accused Brima may have been under house arrest, but argues that this lasted no more than a week, after which he was able to move around Kailahun freely and even visited and ate with Sam Bockarie. The Prosecution argues that around the end of April or beginning of May 1998 the Accused was sent by Sam Bockarie to cement the relationship between the RUF and the AFRC in Kono.<sup>658</sup> In its closing arguments, the Prosecution conceded that only the Accused Kamara was present when the crimes were committed in Kono District.<sup>659</sup>

(a) Brima's Alibi for Kono District

335. In his Pre-Trial Brief, the Accused Brima argued that he was not in charge of the AFRC and RUF troops in Kono between 14 February and 30 June 1998, but on the contrary was in RUF

<sup>656</sup> Indictment, para. 24.

<sup>657</sup> Prosecution Supplemental Pre-Trial Brief, para. 38.b, 87.b, 136.b, 201.b.

<sup>658</sup> Prosecution Final Brief, para. 1051.

<sup>659</sup> Prosecution Closing Statement, Transcript 7 December 2006, pp. 34-35.

*The*

custody in Kailahun from February 1998 until July 1998.<sup>660</sup> At trial, Brima testified that he left Kono for Kailahun at approximately the time of the ECOMOG intervention in Freetown, and that when he arrived in Kailahun District he was forcibly detained by the RUF throughout the Indictment period for Kono.<sup>661</sup> He escaped in July 1998 and made his way back to Kono immediately thereafter.<sup>662</sup>

336. Witnesses for both the Prosecution and the Defence confirmed that the Accused Brima was detained for an indeterminate period by the RUF in Kailahun in or about February 1998.<sup>663</sup> He was captured in the village of Bendu in Kailahun District by RUF fighters including Prosecution witness TF1-045 and the RUF commander Issa Sesay. They disarmed the Accused, searched him for diamonds and then brought him to the house of Mike Lamin, an RUF commander, in the village of Buedu.<sup>664</sup>

337. During the same period, the RUF commander Sam Bockarie arrested Johnny Paul Koroma in Kailahun District.<sup>665</sup> The Accused Brima testified that he was present when Bockarie issued the order to arrest Koroma, his wife, children and bodyguards, and that he saw Koroma's bodyguards disarmed but that he did not see what happened to them subsequently.<sup>666</sup>

338. The legal impact of Brima's detention on his responsibility for crimes committed by his troops in Kono District will be discussed elsewhere in this Judgement.<sup>667</sup>

(b) Return to Kono District

339. The Prosecution argues that the Accused Brima was released from detention in Kailahun and returned to Kono by late April or early May 1998.<sup>668</sup> The Prosecution contends that any disagreement between the Accused and the RUF faction under Sam Bockarie only lasted a few

<sup>660</sup> Brima Pre-Trial Brief, para. 11.

<sup>661</sup> Alex Tamba Brima, Transcript 8 June 2006, pp. 39-73.

<sup>662</sup> Alex Tamba Brima, Transcript 8 June 2006, pp. 77-78. The witness did not specify the day on which he escaped but said that he immediately fled for Kono District. The journey took his three days and he arrived in Kono on 17 July 1998.

<sup>663</sup> TF1-045, Transcript 19 September 2005, p. 100; TF1-334, Transcript 17 May 2005 p.83, Transcript 19 May 2005, p. 8; DAB-033, Transcript 25 September 2006, pp. 49-51; DAB-059, Transcript 27 September 2006, pp. 70-72; DAB-142, Transcript 19 September 2006, pp. 18-19.

<sup>664</sup> TF1-045, Transcript 19 July 2005, pp. 98-100.

<sup>665</sup> TF1-045, Transcript 19 July 2005, pp. 98-100; DAB-059, Transcript 27 September 2006, pp. 81-82.

<sup>666</sup> Alex Tamba Brima, Transcript 8 June 2006, pp. 67-69.

<sup>667</sup> Responsibility of the Accused, Brima, *infra*.

<sup>668</sup> Prosecution Final Brief, para. 1214.

*me*

days, after which the Accused was “back on good terms with Sam Bockarie and other RUF commanders in Kailahun.”<sup>669</sup>

340. The Accused Brima maintains his alibi for this period, specifically testifying that he did not return to Kono District until 17 July 1998.<sup>670</sup>

341. Prosecution witnesses put the Accused Brima in Kono District in late April and early May 1998.<sup>671</sup> Witnesses for the Defence confirmed that the Accused was detained and mistreated in Kailahun but could not say for how long he was detained.<sup>672</sup>

(c) Findings

342. The Trial Chamber is satisfied that in February 1998, the Accused Brima was detained for an indeterminate period by the RUF in Kailahun District.<sup>673</sup> In late April or early May 1998, he travelled from Kailahun to Kono District.<sup>674</sup> Upon arrival Brima took overall command of the AFRC troops based in Kono District.<sup>675</sup> Brima’s arrival in Kono District marked the departure of the AFRC troops from Kono District towards Mansofinia in Koinadugu District.<sup>676</sup>

343. The Prosecution evidence adduced relates entirely to crimes committed in Kono District prior to the Accused Brima’s return. There is no evidence that he supported or assisted the AFRC and/or RUF troops operating in Kono District during his stay in Kailahun District.

6. Brima’s Alleged Arrest in Koinadugu and Bombali Districts (February – November 1998)

344. The Indictment states that the Accused Brima “was in direct command of AFRC/RUF forces which conducted armed operations throughout the north eastern and central areas of the Republic of

<sup>669</sup> Prosecution Final Brief, para. 601.

<sup>670</sup> Brima Final Brief, paras 209-210; Alex Tamba Brima, Transcript 8 June 2006, pp. 77-78, Transcript 12 June 2006, p. 16.

<sup>671</sup> TF1-334, Transcript 20 June 2005, pp. 14-15; TF1-184, Transcript 27 September 2005, pp. 19-21; George Johnson, Transcript 15 September 2005, pp. 39-48; TF1-153, Transcript 22 September 2005, pp. 32, 57.

<sup>672</sup> DAB-033, Transcript 25 September 2006, pp. 49-51; DAB-059, Transcript 27 September 2006, pp. 70-72; DAB-142, Transcript 19 September 2006, pp. 18-19.

<sup>673</sup> TF1-334, Transcripts 17 June, 2005, pp. 45-46, 20 June 2005, pp. 14, 15; TF1 184, Transcript 27 September 2006, pp. 19-21; George Johnson., Transcript 15 September 2005, pp. 39-47.

<sup>674</sup> TF1-334, Transcript 19 May 2005, pp. 7-8; Transcript 20 May 2005, pp. 27, 51; Transcript 17 June 2005, pp. 45-46; Transcript 20 June 2005, pp. 14-15.

<sup>675</sup> TF1 334, Transcript 19 May 2005, pp. 7-8, Transcript 20 June 2005, pp. 14- 15; George Johnson, Transcript 15 September 2005, pp. 39-47; TF1 184, Transcript 27 September 2006, pp. 19-21.

<sup>676</sup> TF1-334, Transcript 20 May 2005, pp. 20, 38; George Johnson, Transcript 15 September 2005, p. 39.

*me*

Sierra Leone, including but not limited to, attacks on civilians in Bombali District between about May 1998 and 31 July 1998.”<sup>677</sup>

345. In its Final Brief, the Prosecution submits that the Accused Brima maintained his position as overall commander of the AFRC soldiers that arrived in Koinadugu District in late April or early May 1998 as this group moved through Koinadugu and Bombali Districts.<sup>678</sup>

(a) Brima’s Alibi for Koinadugu and Bombali Districts

346. The Brima Defence introduced an alibi covering the period between May 1998 and around November 1998 when the AFRC troops were in Koinadugu and Bombali Districts.<sup>679</sup> The Accused testified that following his release from RUF detention in Kailahun, he spent a short time in Koidu Town before moving on to his family’s village of Yarya in Kono District, where he went into hiding from July until September 1998.<sup>680</sup>

347. The Accused further testified that in September 1998 approximately 110 men in uniforms carrying weapons and led by AFRC commander ‘O-Five’ came to Yarya and arrested him. According to the Accused, he was told that SAJ Musa had ordered the arrest of all ‘Honourables’ and said that the AFRC was extinct but that the Sierra Leone Army remained. The Accused further testified that following his arrest ‘O-Five’ established radio contact with Musa, who was in Koinadugu District, and Musa instructed ‘O-Five’ to take the Accused with him to ‘Colonel Eddie Town’.<sup>681</sup>

348. The Accused Brima testified that Witness DBK-012 was one of the guards who arrested him in his family’s home town of Yarya in Kono District. Witness DBK-012 testified that he was a member of a group of AFRC soldiers who travelled from Koinadugu District to ‘Colonel Eddie Town’.<sup>682</sup> However, this witness did not state that he arrested Brima in Kono District. Instead, he testified that when he reached ‘Colonel Eddie Town’ he was informed that the Accused Brima was in detention, and that he had been arrested by other AFRC soldiers.<sup>683</sup>

349. The Defence called three other witnesses to testify regarding the alleged arrest of the Accused, but their evidence was inconsistent. Witness DAB-109 testified that the Accused Brima

<sup>677</sup> Indictment, para. 24.

<sup>678</sup> Prosecution Final Brief, para. 626.

<sup>679</sup> Brima Defence Final Brief, para. 208.

<sup>680</sup> Alex Tamba Brima, Transcript 12 June 2006, p. 42.

<sup>681</sup> Alex Tamba Brima, Transcript 12 June 2006, pp. 43-51.

<sup>682</sup> DBK-012, Transcript 5 October 2006, pp. 107.

<sup>683</sup> DBK-012, Transcript 5 October 2006, pp. 107-108; DBK-012, Transcript 9 October 2006, pp. 12-13.

was in Yarya during the rainy season of 1998 and that he was arrested by a group of men. However, the witness testified that the Accused Brima was arrested in June or July of 1998, not in September as claimed by the Accused. In addition, the witness said that the Accused was arrested by four men, two wearing combat clothing and two wearing civilian clothes, and not by scores of soldiers as claimed by the Accused. Finally, the witness testified that he did not see any weapons on these men.<sup>684</sup>

350. Witness DAB-111 testified that there were two men named 'Tamba Brima' in Yarya. One was the Accused and the second was the elder brother of the Accused.<sup>685</sup> One day during the rainy season in 1998,<sup>686</sup> the witness was in Yarya with a third brother of the Accused named Komba when a group of soldiers wearing headbands attacked the town and demanded that the civilians hand over their money. The soldiers approached Komba Brima and ordered him to tell them the whereabouts of his elder brother. A soldier named 'Junior' then shot Komba in the knee.<sup>687</sup> Soon after this incident, the witness saw the Accused arrive in a vehicle looking for his brother Komba.<sup>688</sup> The witness did not see the Accused again, but he later heard that the Accused had been arrested. He could not say precisely when the Accused was arrested, but said it was "some months" after his arrival in Yarya.<sup>689</sup>

351. The Trial Chamber notes that both Defence witnesses DAB-109 and DAB-111 testified that the brother of the Accused, Komba Brima, was shot by a man named 'Junior'. This was corroborated by Prosecution witness TF1-334 who testified that Komba Brima was shot by Prosecution witness George Johnson aka 'Junior Lion'.<sup>690</sup> The Defence argued that George Johnson bore ill will towards the Accused on account of this incident and his evidence is therefore unreliable.<sup>691</sup> The Trial Chamber, however, is of the view that if Johnson did indeed shoot Komba Brima, that is reason for the Accused to bear ill will towards George Johnson but no self-evident rationale for Johnson to do so towards the Accused.

352. Witness DAB-159 testified that she was raped and abducted by witness George Johnson in Kono District and taken to Koinadugu District.<sup>692</sup> She left Koinadugu with a group of soldiers who were travelling to join the advance team. That group included commanders named 'O-Five' and

<sup>684</sup> DAB-109, Transcript 28 September 2006, pp. 87-88.

<sup>685</sup> DAB-111, Transcript 27 September 2005, p. 21.

<sup>686</sup> DAB-111, Transcript 27 September 2005, pp. 21-23.

<sup>687</sup> DAB-111, Transcript 27 September 2005, pp. 23-24.

<sup>688</sup> DAB-111, Transcript 27 September 2005, p. 28.

<sup>689</sup> DAB-111, Transcript 27 September 2005, p. 29.

<sup>690</sup> TF1-334, Transcript 20 June 2005, p. 18.

<sup>691</sup> Brima Defence Final Trial Brief, para. 199.

JR

'Kehforkeh.'<sup>693</sup> The group left from Kurubonla and passed through Mansofinia in Koinadugu District and Yarya in Kono District. When they arrived in Yarya, the soldiers preceded the civilians. The soldiers told the women, including the witness, that they had gone to a farm in Yarya and arrested a soldier. Although the witness did not see the detained soldier, she was told that his name was Tamba Brima.<sup>694</sup>

353. While the discrepancies between the accounts of events in Yarya as described by the Accused and Witnesses DAB-109 and DAB-110 are not significant enough on their own to discredit the alibi of the Accused, witnesses placed the Accused Brima in Koinadugu and Bombali Districts between late April/early May 1998 and July to September 1998, asserting that he was the commander of an advance team sent by SAJ Musa to set up a base camp in Bombali District.<sup>695</sup>

(b) Command of the Advance Troops from Mansofinia to Rosos

354. The Prosecution submits that the Accused was the overall commander of the advance team of AFRC troops that travelled from Mansofinia in Koinadugu District to Rosos in Bombali District.<sup>696</sup> The Defence position is that other known individuals, specifically, FAT Sesay, Colonel Eddie, and others, were the Commanders of this advance team.<sup>697</sup>

355. Before reaching its conclusions, the Trial Chamber will consider the credibility of the following key witnesses.

(i) The Credibility of Witnesses

a. Prosecution Witnesses

356. Several prosecution witnesses provided varying amounts of detail regarding the journey of the advance team from Mansofinia in Koinadugu District to Camp Rosos in Bombali District.

<sup>692</sup> DAB-159, Transcript 29 September 2005, pp. 43-49.

<sup>693</sup> DAB-159, Transcript 29 September 2005, pp. 50-51.

<sup>694</sup> DAB-159, Transcript 29 September 2005, pp. 52-55.

<sup>695</sup> TF1-334, Transcript 23 May 2005, p. 32; TF1-184, Transcript 27 September 2005, pp. 58-59; George Johnson, Transcript 15 September 2005, p. 41; DAB-095, Transcript 20 September 2006, pp. 55-56.

<sup>696</sup> Prosecution Final Brief, paras 1419, 1421. See TF1-334, Transcript 23 May 2005, p. 32; Gibril Massaquoi, Transcript 7 October 2005, p. 115; TF1-184, Transcript 27 September 2005, pp. 58-59; George Johnson, Transcript 15 September 2005, p. 41; corroborated by Defence Witness DAB-095, Transcript 20 September 2006, pp. 55-56.

<sup>697</sup> DBK-113, Transcript 13 October 2006, pp. 18-19, 100; DBK-037, Transcript 3 October 2006, pp. 94-96; DBK-131, Transcript 26 October 2006, p. 41; DBK-012, Transcript 5 October 2006, pp. 105-106; DAB-033, Transcript 25 September 2006, pp. 55-56; DAB-095, Transcript 20 September 2006, pp. 56-58; DAB-156, Transcript 29 September 2006, pp. 78-79.

23146

i. TF1-334

357. The Brima Defence submits that Prosecution witness TF1-334 was not in a sufficiently high position within the AFRC structure to have access to the types of details he described in his evidence.<sup>698</sup> The Defence argues that the witness was not credible because he derived benefits from testifying.<sup>699</sup>

358. The witness revealed that he sought and received an assurance from the Office of the Prosecutor that he would not be prosecuted for any crimes he had committed.<sup>700</sup> The witness explained in detail that he was privy to substantially more information than his rank would suggest because his superior, a high ranking AFRC soldier, was illiterate and relied on the witness to read and understand all relevant documentation.<sup>701</sup> The Trial Chamber notes that the Defence did not raise this issue in its cross-examination of the witness.

359. The Trial Chamber observes that witness TF1-334 spent 16 days on the stand, including five days of cross-examination in which his testimony in chief was not shaken. The witness provided a substantial amount of detail corroborated by other witnesses as well as plausible explanations for his knowledge of such information. The Trial Chamber finds that his evidence throughout was consistent and any discrepancies minor. In addition, the witness presented a truthful demeanour. Thus, the Trial Chamber finds that he was a credible and reliable witness.

360. Witness TF1-334 testified that the Accused Brima was the overall commander of the AFRC advance team that moved from Mansofinia to Camp Rosos.<sup>702</sup>

ii. TF1-184

361. The Brima Defence submits that the Witness TF1-184 is unreliable because there were significant discrepancies between his evidence at trial and the evidence he provided to the Prosecution in a prior statement, and because “he harbour[ed] a deep dislike for the 1<sup>st</sup> Accused which is manifested by his belief that the 1<sup>st</sup> Accused was responsible for the death of SAJ Musa.”<sup>703</sup>

<sup>698</sup> Brima Final Brief, paras 196-197.

<sup>699</sup> Brima Final Brief, para. 197.

<sup>700</sup> TF1-334, Transcript 16 June 2005, p. 17.

<sup>701</sup> TF1-334, Transcript 16 May 2005, pp. 12-13.

<sup>702</sup> TF1-334, Transcript 20 May 2005, pp. 86-88.

<sup>703</sup> Brima Final Brief, para. 192.

362. The Trial Chamber notes that Prosecution witness TF1-184 was one of SAJ Musa's closest associates and that he believed that the Accused Brima deliberately killed SAJ Musa at Benguema because he wanted to regain command over the AFRC troops.<sup>704</sup> The witness further believed that Brima, unlike Musa, was not loyal to the Army.<sup>705</sup> However, numerous witnesses testified that Musa's death was an accident.<sup>706</sup> It is the view of the Trial Chamber that although the evidence in chief of the witness was unclear at times, in its cross-examination of the witness the Defence raised no significant inconsistencies between his evidence in chief and his prior statement to the Prosecution. In addition, the Trial Chamber finds that the witness was not shaken on cross-examination and was generally corroborated by other witnesses.

363. Witness TF1-184 testified that the Accused Brima was the "senior man" of the team that SAJ Musa sent to establish a base camp in Bombali District. He added that 'Bazzy' and 'Five-Five' went with him but did not specify their positions.<sup>707</sup>

iii. TF1-033

364. The Brima Defence argues that the evidence given by Witness TF1-033 "was full of exaggerated accounts," that his evidence was never corroborated by other witnesses and that there were significant discrepancies between his evidence at trial and the evidence he provided to the Prosecution in a prior statement.<sup>708</sup>

365. The Trial Chamber observes that there were occasional significant discrepancies between the evidence witness TF1-033 gave at trial and his prior statements to the Prosecution. For example, the witness testified at trial that he was abducted by the Accused Brima in Kono District following the fall of the AFRC Government. In a prior statement to the Prosecution, however, the witness said that he was concerned for his safety during the ECOMOG recapture of Freetown in February 1998 and decided to flee with the AFRC troops departing Freetown.<sup>709</sup> The witness also testified at trial that the Accused Brima ordered a massacre at Tombodu in Kono District at a time when all other witnesses put the Accused elsewhere. More significantly, in a prior statement to the Prosecution, the witness said that a former soldier named "Savage" ordered the massacre. When asked by the

<sup>704</sup> TF1-184, Transcript 29 September 2005, pp. 56.

<sup>705</sup> TF1-184, Transcript 29 September 2005, p. 61.

<sup>706</sup> TF1-153, Transcript 22 September 2005, pp. 93-94; George Johnson, Transcript 16 September 2005, p. 10; DAB-095, Transcript 21 September 2006, pp. 9-10; DAB-156, Transcript 29 September 2006, pp. 59-61; DAB-023, Transcript 31 July 2006, pp. 77-79; DBK-131, Transcript 10 October 2006, pp. 87-88.

<sup>707</sup> TF1-184, Transcript 27 September 2005, pp. 19-21; Transcript 29 September 2005, p. 40.

<sup>708</sup> Brima Final Brief, para. 189.

<sup>709</sup> TF1-033, Transcript 11 July 2005, pp. 139-142. See further Factual Findings, Enslavement, paras 1319-1322 *infra*.

Prosecution investigator whether “Savage” was the “sole operator” of events at Tombodu and whether he answered to any other commander, Witness TF1-033 said that “Savage” was in charge of Tombodu and that he did not answer to anyone.<sup>710</sup> The Trial Chamber also notes that Prosecution witnesses TF1-334 and George Johnson gave accounts of events at Tombodu, which differed substantially from the account provided by witness TF1-033.<sup>711</sup>

366. The evidence of the witness regarding the troop restructure at Mansofinia suffered from the deficiencies typical in his testimony: it was overly general in comparison to the testimony of other witnesses present at the same events, but became specific when the presence or actions of one of the Accused were concerned. The Trial Chamber is satisfied, however, that while the witness appears on occasion to have exaggerated figures and was unclear on dates, he did not fabricate events. The Trial Chamber further found the witness truthful at trial, and is unwilling to conclude that his evidence overall is not credible or reliable.

367. Witness TF1-033 travelled with the AFRC soldiers as they moved from Kono District to Koinadugu and on to Camp Rosos.<sup>712</sup> The witness described the Accused Brima during this period saying “he was always at the helm of our affairs when he says ‘move’ everybody is on his toes.”<sup>713</sup>

iv. TF1-153

368. The Brima Defence submits that witness TF1-153 was not credible or reliable, arguing that there were significant discrepancies between his evidence at trial and the evidence he provided to the Prosecution in a prior statement.<sup>714</sup> Although the witness was not entirely clear in his examination in chief, the Trial Chamber finds that inconsistencies between the evidence he gave at trial and his prior statement to the Prosecution were not of sufficient gravity to cast doubt as to his credibility.

369. Witness TF1-153, another soldier close to SAJ Musa, was not present during the journey from Mansofinia to Rosos.<sup>715</sup> The witness testified that Musa told him that he had instructed the Accused Brima and Kamara to find a base camp between Makeni and Port Loko<sup>716</sup> and that he had

<sup>710</sup> TF1-033, Transcript 11 July 2005, pp. 144-148.

<sup>711</sup> See Factual Findings, Unlawful Killings, paras 851-854 *infra* for discussion of this evidence.

<sup>712</sup> TF1-033, Transcript 11 July 2005, pp. 9-26.

<sup>713</sup> TF1-033, Transcript 11 July 2005, p. 20.

<sup>714</sup> Brima Final Brief, para. 191.

<sup>715</sup> TF1-153, Transcript 22 September 2005, p. 64.

<sup>716</sup> TF1-153, Transcript 22 September 2005, pp. 55-59.

sent the Accused Kanu along to support them.<sup>717</sup> Musa referred to the Accused Brima as the commander of this advance team.<sup>718</sup>

v. George Johnson

370. The Trial Chamber has considered the objections raised by the Defence on the credibility and reliability of George Johnson.<sup>719</sup> The Trial Chamber observes that the witness provided consistent and detailed evidence during his examination in chief and that he was not shaken on cross-examination. The Trial Chamber further found that his overall demeanour on the stand indicated candour. Thus, it concludes that the witness was generally credible and reliable.

371. George Johnson was present throughout the journey from Mansofinia to Rosos and he described the Accused Brima as overall commander of the advance team.<sup>720</sup>

b. Defence Witnesses

372. DBK-131,<sup>721</sup> DAB-012,<sup>722</sup> DAB-033,<sup>723</sup> DAB-095<sup>724</sup> and DAB-156<sup>725</sup> all testified that the top commanders leading the advance team were FAT Sesay, 'Major Eddie', George Johnson and/or 'O-Five' and 'Captain King'. However, none of these witnesses were part of the advance group and thus their evidence on the command structure during this period constitutes hearsay.

373. Two Defence witnesses - DBK-113 and DBK-037 - were present during the journey from Mansofinia to 'Colonel Eddie Town'.

374. Witnesses DBK-113 testified that FAT Sesay was the senior AFRC soldier at Mansofinia and that he was the overall commander of the AFRC troops during the journey to Rosos.<sup>726</sup> At

<sup>717</sup> TF1-153, Transcript 22 September 2005, p. 57.

<sup>718</sup> TF1-153, Transcript 22 September 2005, p. 57.

<sup>719</sup> Brima Final Brief, paras 198-200.

<sup>720</sup> George Johnson, Transcript 15 September 2005, pp. 50, 59.

<sup>721</sup> DBK-131, Transcript 26 October 2006, p. 41-44. The witness said that FAT Sesay was the overall commander, and that King, Eddie, George Johnson and Tito were part of the group.

<sup>722</sup> DBK-012, Transcript 5 October 2006, pp. 105-106. The witness testified that FAT was the overall commander of the advance team, that Col. Eddie was his adjutant and that Captain King was the third in command.

<sup>723</sup> DAB-033, Transcript 25 September 2006, pp. 55-56. The witness testified that FAT Sesay, George Johnson, and Eddie were the overall commanders of the advance team.

<sup>724</sup> DAB-095, Transcript 20 September 2006, pp. 56-58. The witness testified that Eddie was the overall commander of the advance team, and that he left with George Johnson and O-Five.

<sup>725</sup> DAB-156, Transcript 29 September 2006, pp. 78-79. The witness testified that George Johnson was the overall commander of the advance team.

<sup>726</sup> DBK-113, Transcript 13 October 2006, 28-29.

Rosos, FAT remained the overall commander and Col. Eddie was his Deputy.<sup>727</sup> However, the witness said that the troops were split up into several groups. The first group, the 'fighting force', was followed by a second group of persons carrying supplies. The witness was part of a third group that was made up of civilians and followed the 'fighting force' at a distance. Thus, by the time his group reached villages the population had already fled, meaning that any crimes would have been committed by the first or second groups.<sup>728</sup>

375. In addition, the evidence of witness DBK-113 regarding the journey is much less detailed than that of Prosecution witnesses TF1-334 and George Johnson. The Trial Chamber also has concerns about the witness's credibility because he testified that no child soldiers were abducted between Mansofinia and Rosos, that he did not see child soldiers at Rosos<sup>729</sup> and that he did not hear of rapes or 'bush wives'.<sup>730</sup> The Trial Chamber observes that both Prosecution and Defence witnesses described crimes committed by troops as they advanced from Mansofinia to Rosos. Thus, the Trial Chamber concludes that Witness DBK-113's testimony on the command structure of the advance team is unreliable.

376. Defence witness DBK-037 also testified that the overall commander of the advance team was FAT Sesay. Sesay was deputised by 'Col. Eddie', a man named 'King', and Prosecution witness George Johnson.<sup>731</sup> Although the witness was a member of the advance team, apart from providing this information about the command structure and insisting that the Accused Kamara was not present at Camp Rosos, he provided very little detail about the journey from Mansofinia to 'Colonel Eddie Town'.<sup>732</sup> The witness also testified that he saw no children or civilians at Camp Rosos,<sup>733</sup> although on cross-examination he stated that he saw the children of the fighting forces there.<sup>734</sup> The Trial Chamber therefore concludes that the evidence of witness DBK-037 with regard to the command structure of the advance team is unreliable.

377. The parties have submitted conflicting evidence on the command structure of the advance team, an issue fundamental to both the Prosecution and Defence cases. The Trial Chamber finds the evidence of the Prosecution witnesses who placed the Accused in Koinadugu and Bombali Districts

<sup>727</sup> DBK-113, Transcript 13 October 2006, pp. 25-27, 103. The witness testified that he was at Mandaha with Joseph Tamba, Bioh, FAT, Junior Lion and Arthur.

<sup>728</sup> DBK-113, Transcript 13 October, pp. 20-21.

<sup>729</sup> DBK-113, Transcript 13 October 2006, p. 77.

<sup>730</sup> DBK-113, Transcript 13 October 2006, pp. 78, 84.

<sup>731</sup> DBK-037, Transcript 3 October 2006, pp. 94-96.

<sup>732</sup> DBK-037, Transcript 3 October 2006, pp. 95-97.

<sup>733</sup> DBK-037, Transcript 4 October 2006, p. 57.

<sup>734</sup> DBK-037, Transcript 5 October 2006, p. 26.

during the relevant Indictment period significantly more reliable, consistent and compelling, and thus more persuasive, than that of the Defence witnesses.

(c) Findings

378. The Trial Chamber finds that the Prosecution has proven beyond reasonable doubt its case that the Accused Brima was overall commander of the AFRC advance team that travelled from Mansofinia in Koinadugu District to Camp Rosos in Bombali District.

379. The Trial Chamber is satisfied that upon arrival in Koinadugu District, a number of AFRC commanders including the Accused Brima and Kamara went to meet with SAJ Musa,<sup>735</sup> who had remained in Koinadugu District in the period following the February 1998 intervention. While the witnesses are inconsistent regarding the precise location of the meeting,<sup>736</sup> all agree that it was decided at the meeting that Brima would lead an advance team north east to establish an AFRC base in Bombali District and that SAJ Musa and his troops would follow later.<sup>737</sup> Musa informed Brima that Kanu would accompany the advance team.<sup>738</sup> Numerous witnesses, both for the Prosecution and for the Defence, testified that SAJ Musa's stated purpose in regrouping his forces and planning a new attack on Freetown was to reinstate the Army which had been reorganised by President Kabbah.<sup>739</sup>

380. Following this meeting, the Accused Brima called a muster parade at which he reorganised the troops and promoted individual officers.<sup>740</sup> The promotions were based on the ability of the commanders to control their men.<sup>741</sup> Brima promoted himself and the Accused Kamara to the rank of Brigadier.<sup>742</sup> He also appointed the Accused Kanu as Chief of Staff, and promoted him to the rank of Colonel.<sup>743</sup> The Accused Kamara remained Brima's second in command.<sup>744</sup>

<sup>735</sup> TF1-334, Transcript 20 May 2005, pp. 83-84; George Johnson, Transcript 15 September 2005, pp. 47-48; TF1-184, Transcript 27 September 2005, p. 20; TF1-153, Transcript 22 September, p. 57.

<sup>736</sup> TF1-334 stated that the meeting took place at Mongor Bendu: Transcript 20 May 2005, pp. 86-87. Witnesses George Johnson and TF1-184 recalled the meeting being at Krubola/Kurubonla: George Johnson, Transcript 15 September 2005, pp. 47-48, TF1-184, Transcript 29 September 2005, p. 20; TF1-153 was not present at the time. He testified that SAJ Musa told him that he met 'Gullit' and 'Bazzy' at Krubola but organised to meet them subsequently at Yiraia: Transcript 22 September 2005, p. 57.

<sup>737</sup> TF1-184, Transcript 27 September 2005, pp. 19-21; TF1-334, Transcript 20 May 2005, pp. 86-87.

<sup>738</sup> TF1-334, Transcript 20 May 2005, pp. 86-87; TF1-153, Transcript 22 September 2005, p. 57.

<sup>739</sup> TF1-334, Transcript 13 June 2005, pp. 26-27, 49; TF1-184, Transcript September 2005, p. 8; George Johnson, Transcript 19 September 2005, p. 128; DBK-113, Transcript 13 October 2006, p. 128; DBK-037, Transcript 3 October 2006, p.104; DAB-095, Transcript 20 September 2006, p. 51; DAB-033, Transcript 25 September 2006, p. 89; DBK-012, Transcript 6 October 2006, p.4; DBK-131, Transcript 10 October 2006, p. 43.

<sup>740</sup> TF1-334, Transcript 20 May 2005, pp. 88-99; George Johnson, Transcript 15 September 2005, p. 48.

<sup>741</sup> George Johnson, Transcript 19 September 2005, p. 65.

<sup>742</sup> TF1-334, Transcript 20 May 2005, p. 88.

<sup>743</sup> TF1-334, Transcript 20 May 2005, pp. 92,100-102.

*me*

381. Approximately three days after the meeting with Musa, Brima and the troops under his command left Mansofinia and headed south back into Kono District before heading north-west towards a region in Bombali district bordering Port Loko and Kambia districts.<sup>745</sup> In Kono District, the troops passed through Tombodu, Peyama, Kayima, Kondea, Worodu and Yarya. From Yarya, the 'hometown' of Brima, the troops went back into Koinadugu District to Yifin and from there moved eastwards, passing Kumala and Bendugu towards the area near Bumbuna (Tonkolili district). The troops then headed further north east into Bombali district, passing through Kamagbengbeh,<sup>746</sup> Bornoya, Karina, Pendembu<sup>747</sup> and Mateboi before arriving at Rosos.<sup>748</sup>

382. The evidence suggests that a second group of AFRC troops, led by a commander named 'O-Five,' followed a route similar to the one taken by the Accused Brima's group when it came to reinforce the advance team in July or August 1998.<sup>749</sup> In its factual findings on the crimes committed in Bombali District, the Trial Chamber has made findings only on crimes clearly associated with the advance team led by Brima.

383. While SAJ Musa appears to have been the overall strategist for the AFRC, once Brima left Mansofinia he had no contact with Musa until he reached Camp Rosos and even then communication was cursory.<sup>750</sup> Thus, the Trial Chamber concludes that the Accused Brima was not subject to higher level supervision or command during this period.

384. The Trial Chamber concludes that the AFRC arrived in Camp Rosos in or about July 1998. Following ECOMOG attacks on Camp Rosos in or about September 1998, the troops moved to another base at the village of Gberematmatank, more commonly referred to as 'Colonel Eddie Town,' located either in Bombali or Port Loko Districts.<sup>751</sup>

<sup>744</sup> TF1-334, Transcript 20 May 2005, pp. 89, 94, 100-102.

<sup>745</sup> Exhibit P-30(a), "Map of Sierra Leone", indicating the approximate route of the troops as testified by witness George Johnson, Transcript 15 September 2005, pp. 52, 59. *See also* TF1-033, Transcript 11 July 2005, p. 31.

<sup>746</sup> Also referred to as Magbengbeh.

<sup>747</sup> Also referred to as Gbendembu.

<sup>748</sup> Exhibit P-30(a), "Map of Sierra Leone"; George Johnson, Transcript 15 September 2005, p. 44.

<sup>749</sup> TF1-334, Transcript 24 May 2005, pp. 91-92, 97, 107; George Johnson, Transcript 15 September 2005, p. 74.

<sup>750</sup> TF1-334, Transcript 24 May 2005, pp. 31-32; TF1-153, Transcript 22 September 2005, p. 61.

<sup>751</sup> George Johnson, Transcript 15 September 2005, p. 68; TF1-334, Transcript 24 May 2005, pp. 72-73.

(d) Brima's Alleged Detention at 'Colonel Eddie Town'

385. The joint Defence case is that the three Accused remained under arrest at 'Colonel Eddie Town' until the Accused Brima and Kanu escaped at Goba Water, immediately after SAJ Musa's death at Benguema.<sup>752</sup>

386. The Prosecution submission is that the three Accused maintained their positions during their time at 'Colonel Eddie Town' and that they were never under arrest there. The Prosecution argues in the alternative that if the Accused were under arrest, it was only for a very short period after the arrival of the AFRC commander 'O-Five' and they were released prior to the arrival of SAJ Musa at 'Colonel Eddie Town'.<sup>753</sup>

387. While a number of Defence witnesses testified that the Accused were under arrest in 'Colonel Eddie Town',<sup>754</sup> these witnesses gave substantially different accounts, thereby casting doubt on their credibility and reliability.<sup>755</sup>

388. Prosecution witness George Johnson testified that on an indeterminate date, a group of AFRC soldiers led by 'O-Five' arrived at 'Colonel Eddie Town' and ordered the arrest of the three Accused. The witness was among those charged with implementing the order. SAJ Musa arrived subsequently and became the overall commander of the AFRC troops, followed by 'O-Five' and 'Junior Mavin'.<sup>756</sup> Johnson further testified that in Newton, on the outskirts of Freetown, SAJ Musa held a meeting in which he reinstated "the honourables Alex Tamba Brima, Ibrahim Bazy Kamara [and] Santigie Kanu."<sup>757</sup> The Trial Chamber is satisfied that the witness's account of events is reliable.

<sup>752</sup> Brima Final Brief, paras 219-222; Kamara Final Brief, para. 107; Kanu Final Brief, para. 443.

<sup>753</sup> Prosecution Final Brief, para. 660.

<sup>754</sup> DAB-095, Transcript 20 September 2006, pp. 58-65; Transcript 21 September 2005, pp. 2-5; DAB-156, Transcript 29 September 2006, pp. 55-56; DBK-012, Transcript 5 October 2006, p. 109; DAB-023, Transcript 31 July 2006, pp. 63-66; DBK-131, Transcript 10 October 2006, pp. 58-60.

<sup>755</sup> For example, witness DAB-033 testified that he saw the Accused in a hut blocked by a rice box one day, and that the following day they were released into open detention: Transcript 25 September 2006, pp. 61-62, 66; DBK-131 testified that he saw Brima and Kanu detained in a 'box' at Eddie Town, but that SAJ Musa had them released into open detention: Transcript 10 October 2006, pp. 58-59; DBK-012 said that when he arrived in Eddie Town in August 1998, the three Accused had been tortured and locked in a wooden box for rice bags: Transcript 5 October 2006, pp. 108-109; DBK-037 testified that the Accused were detained in a 'booth house' in August 1998: Transcript 3 October 2007, pp. 98-99. Witness DBK-113 testified that three soldiers were arrested at Eddie Town in October/November 1998: Transcript 13 October 2006, p. 27; DAB-023 testified that George Johnson arrested the three Accused for 'bewitching the movement' and sent them to be held in a dungeon: Transcript 31 July 2006, pp. 63-66; DAB-096 said that George Johnson said that the Accused had been arrested for trying to escape and that they were held in chains: Transcript 18 September 2006, pp. 110, 118.

<sup>756</sup> George Johnson, Transcript 21 September 2005, p. 59.

<sup>757</sup> George Johnson, Transcript 16 September 2005, p. 3.

JAR

(e) Advance on Freetown

389. From Colonel Eddie Town, the AFRC forces moved towards Freetown, passing through Mange, Lunsar, Sumbuya and Masiaka in Port Loko District and then Newton and Benguema in the Western Area.<sup>758</sup>

390. On 23 December 1998, the troops attacked a weapons depot in Benguema. SAJ Musa was killed when a bomb exploded during this operation.<sup>759</sup>

391. The Prosecution submits that following the death of SAJ Musa, the Accused Brima re-established his position as overall commander of the AFRC troops.<sup>760</sup>

392. Brima testified that following Musa's death at Benguema, 'O-Five' ordered him and others to go to a village named Goba Water. According to Brima, he and the Accused Kanu managed to escape from Goba Water and they moved towards Makeni, where they arrived in January 1999<sup>761</sup> and stayed with Brima's family.<sup>762</sup> Therefore, the Accused Brima and Kanu were not in Freetown during the January 1999 invasion.

7. Brima's Role in Freetown and the Western Area (January 1999 – February 1999)

393. The Prosecution submits that the three Accused were the senior commanders of the 6 January 1999 invasion of Freetown. The Accused Brima was the overall commander; the Accused Brima his Deputy; and the Accused Kanu was third in command.<sup>763</sup>

394. The position of the Defence is two-fold: first, that the Accused was not present during the January 1999 invasion of Freetown,<sup>764</sup> and second, that the AFRC troops were led by other known individuals, specifically FAT Sesay,<sup>765</sup> George Johnson also known as 'Junior Lion',<sup>766</sup> or 'O-Five'.<sup>767</sup>

<sup>758</sup> Exhibit P-30(a), "Map of Sierra Leone", indicating the approximate route of the troops as testified by witness George Johnson.

<sup>759</sup> TF1-184, Transcript 27 September 2005, p. 49; TF1-153, Transcript 22 September 2005, pp. 93-94; George Johnson, Transcript 16 September 2005, p. 10; TF1-334, Transcript 13 June 2005, pp. 51-55; DAB-095, Transcript 21 September 2006, pp. 9-10; DAB-156, Transcript 29 September 2006, pp. 59-61; DAB-023, Transcript 31 July 2006, pp. 77-79; DBK-131, Transcript 10 October 2006, pp. 87-88.

<sup>760</sup> Prosecution Final Brief, para. 694.

<sup>761</sup> Alex Tamba Brima, Transcript 15 June 2006, pp. 27-31.

<sup>762</sup> Alex Tamba Brima, Transcript 15 June 2006, pp. 83-85.

<sup>763</sup> Prosecution Final Brief, para. 1576.

<sup>764</sup> DAB-095, Transcript 21 September 2006, p. 21; DAB-156, Transcript 29 September 2006, p. 21.

<sup>765</sup> DAB-033, Transcript 25 September 2006, p. 73; DBK-005, Transcript 5 October 2006, pp. 58-59; DBK-131, Transcript 10 October 2006, pp. 88-91; DBK-012, Transcript 6 October 2006, pp. 22, 36; DBK-037, Transcript 3

395. In addition to the concerns regarding the credibility of Prosecution witnesses discussed above, the Brima Defence submits that Prosecution witness Gibril Massaquoi “painted a false picture” of events “designed to blame others and exonerate himself.”<sup>768</sup>

(a) Prosecution Witnesses

396. Prosecution witness TF1-334 testified that despite rumours among the troops that the Accused Brima had killed SAJ Musa, Brima became overall commander following Musa’s death and began to organise the movement of the troops around the region.<sup>769</sup> On Christmas Day, Brima called his commanders and told them that a woman had had a dream that SAJ Musa was crying in his grave and urging the troops to continue on towards Freetown. He took the opportunity to remind the AFRC soldiers that he was now overall commander and promoted himself to the rank of Lieutenant General.<sup>770</sup> He then restructured the troops.<sup>771</sup> The witness estimated the troop strength to be about 1500 men.<sup>772</sup>

397. George Johnson testified that following the death of SAJ Musa, there was a short power struggle between the Accused Brima and the Accused Kamara, but this was quickly resolved in favour of the Accused Brima, who became overall commander of the troops.<sup>773</sup> The witness corroborated the evidence of witness TF1-334 that Brima restructured the troops. The witness was promoted from the rank of Major to the rank of Lieutenant Colonel.<sup>774</sup>

398. According to witness TF1-334, on 5 January 1999 the Accused Brima gathered the troops in Allen Town and told them the time had come to attack Freetown.<sup>775</sup> At this meeting he further instructed his troops to capture State House, burn police stations, release the prisoners held at Pademba road prison and execute ‘collaborators,’ meaning anyone who did not support the troops. He further informed his troops that as he did not have the wherewithal to pay them, they were free

October 2006, p. 110; DBK-113, Transcript 13 October 2006, pp. 41, 85; DBK-005, Transcript 5 October 2006, pp. 61-63; DBK 113, Transcript 13 October 2006, pp. 42, 52.

<sup>766</sup> George Johnson, Transcript 15 September 2005, p. 4.

<sup>767</sup> DAB-023, Transcript 31 July 2006, pp. 79-81; Transcript 3 August 2006, pp. 103-104.

<sup>768</sup> Brima Final Brief, para. 202.

<sup>769</sup> TF1-334, Transcript 13 June 2005, pp. 57-58.

<sup>770</sup> TF1-334, Transcript 13 June 2005, p. 59.

<sup>771</sup> TF1-334, Transcript 13 June 2005, pp. 60-85; *See* Military Structure of the AFRC Fighting Force, paras 602-608 *infra*.

<sup>772</sup> TF1-334, Transcript 13 June 2005, p. 85.

<sup>773</sup> George Johnson, Transcript 16 September 2005, pp. 11-13.

<sup>774</sup> George Johnson, Transcript 16 September 2005, p. 15.

<sup>775</sup> TF1-334, Transcript 13 June 2005, p. 100.

Jul

to loot from the civilian population although he expected his troops to hand any 'government property', meaning diamonds or dollars, to the Brigade.<sup>776</sup>

399. George Johnson corroborated the evidence that the Accused Brima chaired a meeting prior to the attack on Freetown at which he announced the attack and instructed that certain crimes be committed.<sup>777</sup> While George Johnson testified that this meeting took place at Orugu village rather than Allen Town, the Trial Chamber is satisfied that both witnesses were referring to the same meeting as very little distance separates the two locations.

400. According to Witness TF1-334, State House, the seat of the government, was captured by AFRC troops on 6 January 1999 at 6 a.m and the three Accused arrived there approximately half an hour later.<sup>778</sup> The witness alleged that throughout the time that the AFRC headquarters were at State House, the Accused Brima committed and ordered the commission of crimes, and that his orders were implemented.<sup>779</sup>

401. George Johnson corroborated evidence that crimes were committed by the troops at State House and that the Accused Brima ordered the release of prisoners held at Pademba Road prison.<sup>780</sup> Johnson provided a great deal of detail about troop movements around the city during the invasion.<sup>781</sup> He also corroborated the evidence of the witness TF1-334 that the Accused Brima was the overall commander of the troops, and that as Commander he communicated on at least one occasion with Sam Bockarie<sup>782</sup> while he was at State House. The witness also detailed the commission of crimes by troops associated with the Accused.<sup>783</sup> While there were discrepancies between this witness's evidence and that of witness TF1-334 regarding the commission of these crimes, most were minor.

402. Witness TF1-153 also testified that the Accused Brima became overall commander of the troops at Benguema following the death of SAJ Musa.<sup>784</sup> The witness confirmed that Brima met with the troops at Orugu village before the final onslaught on Freetown and that he ordered the

<sup>776</sup> TF1-334, Transcript 13 June 2005, pp. 101-103.

<sup>777</sup> George Johnson, Transcript 16 September 2005, pp. 16-17.

<sup>778</sup> TF1-334, Transcript 13 June 2005, p. 104.

<sup>779</sup> TF1-334, Transcript 14 June 2005, pp. 4-47, 54-73, 82-89, 96-100, 115-121; Transcript 15 June 2005, pp. 3-4, 14.

<sup>780</sup> George Johnson, Transcript 16 September 2005, pp. 22, 27.

<sup>781</sup> George Johnson, Transcript 16 September 2005, pp. 22-26, 29-34.

<sup>782</sup> George Johnson, Transcript 16 September 2005, p. 41; TF1-334, Transcript 14 June 2005, pp. 48-49.

<sup>783</sup> George Johnson, Transcript 16 September 2005, pp. 21-22, 38, 43-44, 52-57.

<sup>784</sup> TF1-153, Transcript 22 September 2005, p. 94.

release of the prisoners at Pademba Road prison.<sup>785</sup> The witness also testified about the commission of crimes by AFRC troops during this period.<sup>786</sup>

403. Witnesses TF1-184 and TF1-033 also gave evidence that the Accused Brima became Commander in Chief of the AFRC forces at Benguema following the death of SAJ Musa<sup>787</sup> and described the commission of crimes by AFRC troops in Freetown.<sup>788</sup>

404. Prosecution Witness Gibril Massaquoi was incarcerated at Pademba Road Prison from 17 October 1997 until 6 January 1999.<sup>789</sup> Upon his release, he was informed that the Accused Brima had led the troops into Freetown.<sup>790</sup> He then saw the three Accused at State House.<sup>791</sup> The witness participated in a meeting at State House, attended by the Accused, at which he learned that the Accused Brima was the Commander in Chief of the troops, the Accused Kanu was the army chief of staff and the Accused Kamara was the “commander in charge of the men and all their weapons.”<sup>792</sup> The witness corroborated evidence that while at State House the Accused Brima on at least one occasion spoke to Sam Bockarie. Indeed, on this occasion Brima asked the witness to plead with Bockarie to send reinforcements to assist the AFRC soldiers.<sup>793</sup> The witness also corroborated evidence on the commission of crimes in the Freetown area by AFRC troops.<sup>794</sup>

405. The Trial Chamber takes into account that the witness was a high-ranking member of the RUF who may have participated in the commission of crimes during Sierra Leone’s civil war.<sup>795</sup> The Trial Chamber further observes that the witness obfuscated on cross-examination in response to questions about Prosecution promises of immunity in return for the witness’ testimony in proceedings.<sup>796</sup> Moreover, the witness testified that he blamed the AFRC Government for his 14 month imprisonment.<sup>797</sup> However, there is no evidence that the witness held a particular animus against the Accused in this case. The Trial Chamber has no doubt that the witness was released from Pademba Road prison on 6 January 1999 and was thereafter in a position to observe events.

<sup>785</sup> TF1-153, Transcript 22 September 2005, p. 97.

<sup>786</sup> TF1-153, Transcript 22 September 2005, p. 100; Transcript 23 September 2005, pp. 9, 18, 22-25.

<sup>787</sup> TF1-184, Transcript 27 September 2005, p. 56; TF1-033, Transcript 11 July 2005, pp. 53-55.

<sup>788</sup> TF1-184, Transcript 27 September 2005, pp. 61-65, 71-75, 80-84; TF1-033, Transcript 11 July 2005, pp. 63-67.

<sup>789</sup> Gibril Massaquoi, Transcript 7 October 2005, pp. 108-110.

<sup>790</sup> Gibril Massaquoi, Transcript 7 October 2005, p. 114.

<sup>791</sup> Gibril Massaquoi, Transcript 7 October 2005, p. 115.

<sup>792</sup> Gibril Massaquoi, Transcript 7 October 2005, pp. 119-121.

<sup>793</sup> Gibril Massaquoi, Transcript 10 October 2005, pp. 6-9.

<sup>794</sup> Gibril Massaquoi, Transcript 10 October 2005, pp. 12-13, 17-24, 27-28.

<sup>795</sup> Gibril Massaquoi, Transcript 11 October 2005, p. 145.

<sup>796</sup> Gibril Massaquoi, Transcript 11 October 2005, pp. 50-55.

<sup>797</sup> Gibril Massaquoi, Transcript 11 October 2005, p. 101.

(b) Defence Witnesses

406. Witness DAB-095 testified that he did not see the three Accused after the troops left Waterloo, in the weeks prior to the Freetown invasion.<sup>798</sup> However, the Trial Chamber observes that this witness said he was injured on 24 December 1998 and that he was taken to Makeni for medical treatment. He was therefore not present during the invasion of Freetown.<sup>799</sup>

407. Witness DAB-156 testified that she was present during the advance to Freetown and throughout the invasion and that she did not see the Accused after the troops left Waterloo in late December 1998 or early January 1999.<sup>800</sup> On examination in chief, the witness appeared to testify that ‘Junior Lion,’ ‘King’, and ‘O-Five’ were the commanders of the troops leading the Freetown invasion, although her evidence was not clear.<sup>801</sup> In cross-examination, she clearly stated that it was ‘O-Five’ and ‘Eddie.’<sup>802</sup> The Trial Chamber notes that the witness did not provide a great deal of detail about her journey from Koinadugu District to Freetown, but that she was not shaken on cross-examination.

408. Witnesses DBK-113, DBK-037, DBK-113, DAB-095, DAB-033, DBK-005 testified that they did not see any of the three Accused at State House or during the invasion of Freetown.<sup>803</sup> The Trial Chamber will briefly consider the evidence of each of these witnesses on the command structure in Freetown.

409. Witness DBK-113 testified that the commanders in the attack on Freetown were Col. FAT, Junior Lion, Col. Tito, Col. Eddie, Colonel Foday Bah, Colonel Sesay, “Changa Bulunga” and “many more”.<sup>804</sup> He does not refer to any discussion among the troops regarding who took over command after SAJ Musa’s death.<sup>805</sup> Under cross-examination, the witness stated that Colonel FAT was the overall commander and his deputy was Colonel Eddie. The witness testified that he knew this because “during my stay at State House, Colonel FAT was usually at the place, in order to organise soldiers, to put them in the truck, to send them to the various areas where the ECOMOGs

<sup>798</sup> DAB-095, Transcript 21 September 2006, p. 21.

<sup>799</sup> DAB-095, Transcript 21 September 2006, pp. 15-18.

<sup>800</sup> DAB-156, Transcript 29 September 2006, pp. 61, 85.

<sup>801</sup> DAB-156, Transcript 29 September 2006, pp. 62-63.

<sup>802</sup> DAB-156, Transcript 29 September 2006, p. 83.

<sup>803</sup> DBK-113, Transcript 16 October 2006, pp. 46, 49-52; DBK-037, Transcript 4 October 2006, pp. 30, 45; DSK-113, Transcript 12 October 2006, pp. 117-119; DAB-095, Transcript 21 September 2006, pp. 15, 38, 64; DAB-033, Transcript 25 September 2006, pp. 67-68, 70-71; DBK-005, Transcript 12 October 2006, pp. 32-33. *See also* DAB-156, who testified that she did not see the accused after leaving Waterloo, although it is not clear from her evidence precisely where she went after Waterloo: Transcript 29 September 2006, p. 21.

<sup>804</sup> DBK-113, Transcript 16 October 2006, pp. 38-41, 85.

<sup>805</sup> DBK-113, Transcript 16 October 2006, pp. 38-40.

used to attack.”<sup>806</sup> He knew that Colonel Eddie was the deputy because he was close to Colonel FAT and “whenever he would pass an order for something to be done, to take soldiers to the front, to take up responsibilities, it was Colonel Eddie he would pass it on to. Then he would tell the junior soldiers.”<sup>807</sup> The Trial Chamber notes that in a combat situation, any number of commanders may be observed giving orders. The Trial Chamber thus finds these observations vague and insufficient *per se* to substantiate the witness’ conclusion.

410. The Trial Chamber is of the view that the same comment is applicable to the testimony of Witness DBK-005, who testified that he went to State House and that he knew ‘FAT’ was the commander since he saw other men showing him respect and he saw ‘FAT’ give instructions to ‘Junior Lion’.<sup>808</sup> He also testified that ‘Junior Lion’ gave orders during the retreat, although FAT Sesay was there, and then stated that at Benguema he didn’t really know who was in charge because he was concentrating on escaping to Makeni.<sup>809</sup>

411. Witnesses DBK-037 testified that FAT Sesay was made commander of the troops following the death of SAJ Musa and that he was the commander at State House, although ‘O-Five’ led the troops into Freetown.<sup>810</sup> ‘Eddie’ was the Adjutant and ‘O-Five’ was the Operations Commander, while ‘Junior Lion’ was MP Commander.<sup>811</sup> Witness DBK-037 testified that FAT Sesay’s military rank was lieutenant.<sup>812</sup>

412. Witness DAB-095, who claimed to be ‘FAT’s security, testified that at Eddie Town ‘FAT’ was a colonel.<sup>813</sup> The witness testified that ‘Colonel Eddie’ was the ‘main commander’ in Freetown, although the witness subsequently stated that ‘Colonel Eddie’ and FAT Sesay were both commanders in Freetown.<sup>814</sup> He explained that positions would change and admitted that he was not very ‘au fait’ with the details of the positions.<sup>815</sup> The Trial Chamber notes that this witness also asserted that he was one of ‘JPK’s securities, but stated that ‘JPK’s full name was John *Patrick*

<sup>806</sup> DBK-113, Transcript 16 October 2006, p. 85.

<sup>807</sup> DBK-113, Transcript 16 October 2006, p. 85.

<sup>808</sup> DBK-005, 5 October 2006, pp. 58-59.

<sup>809</sup> DBK-005, 5 October 2006, pp. 62-63.

<sup>810</sup> DBK-037, Transcript 3 October 2006, pp. 108-110; DBK-037, Transcript 4 October 2006, pp. 12-14, 16-18.

<sup>811</sup> DBK-037, Transcript 3 October 2006, pp. 108-110.

<sup>812</sup> DBK-037, Transcript 4 October 2006, p. 39.

<sup>813</sup> DAB-095, Transcript 20 September 2006, p. 66.

<sup>814</sup> DAB-095, Transcript 28 September 2006, p. 64.

<sup>815</sup> DAB-095, Transcript 28 September 2006, pp. 60-61.

Koroma rather than Johnny Paul Koroma.<sup>816</sup> He also did not know that the Accused were members of the AFRC.<sup>817</sup>

413. Witness DAB-033's testimony regarding the troop structure was clearer. He testified that following SAJ Musa's death at Benguema, there was a 'shake in the command'. FAT Sesay took command, but 'Junior Lion' initially refused to be subordinate to him.<sup>818</sup> FAT Sesay was ultimately the overall commander to Freetown.<sup>819</sup> The Trial Chamber notes that at trial the witness stated four times that he did not see the three Accused after the death of SAJ Musa,<sup>820</sup> but agreed that in a prior statement that he saw the three Accused in Makeni after the retreat was correct.<sup>821</sup>

414. Witness DBK-012 testified that after SAJ Musa's death, 'FAT' became the overall commander. 'Eddie' was second in command and adjutant, while 'King' was third in command and MP. 'Junior Lion' was fourth in command and task force commander.

415. Witness DAB-023 testified that 'O-Five' became overall commander of the troops in the wake of SAJ Musa's death at Benguema.<sup>822</sup> The witness said that he heard 'O-Five' order the attack on Freetown<sup>823</sup> but that immediately after arriving in Freetown 'O-Five' sent him to the hospital for treatment of a wound. He spent four or five days in the hospital before joining the troops at State House.<sup>824</sup> The witness said that he did not see the three Accused after the troops passed through Masiaka on the way to Freetown.<sup>825</sup>

416. According to Witness DBK-131, FAT Sesay became overall commander of the troops following the death of SAJ Musa at Benguema. 'Eddie' was second in command followed by 'O-Five,' 'Junior Lion,' and 'Tito' in descending order.<sup>826</sup> The witness added that FAT led the troops to State House and then made an announcement over the radio informing the population that his troops had taken Freetown. The witness was with the troops during the week they occupied State House and then retreated to Kissy.<sup>827</sup> The Witness added that he did not see the Accused after the

<sup>816</sup> DAB-095, Transcript 28 September 2006, pp. 15-17.

<sup>817</sup> DAB-095, Transcript 28 September 2006, pp. 57-58.

<sup>818</sup> DAB-033, Transcript 25 September 2006, pp. 66-67, 99-100.

<sup>819</sup> DAB-033, Transcript 25 September 2006, p. 73.

<sup>820</sup> DAB-033, Transcript 2 October 2006, pp. 33-34.

<sup>821</sup> DAB-033, Transcript 25 September 2006, pp. 110-112.

<sup>822</sup> DAB-023, Transcript 31 July 2006, pp. 79-81.

<sup>823</sup> DAB-023, Transcript 31 July 2006, pp. 83-84.

<sup>824</sup> DAB-023, Transcript 31 July 2006, pp. 85-86.

<sup>825</sup> DAB-023, Transcript 31 July 2006, p. 87.

<sup>826</sup> DBK-131, Transcript 10 October 2006, p. 88

<sup>827</sup> DBK-131, Transcript 10 October 2006, pp. 90-91.

troops left Waterloo meaning that he did not see them during the Freetown invasion or at State House.<sup>828</sup>

417. Witnesses DBK-037, DBK-113, DSK-113, DAB-033, DBK-005, DBK-126 and DAB-023 testified that they did not see or hear of any civilians being killed, civilians having their limbs amputated, houses being burned or civilians being raped in Freetown.<sup>829</sup> Witness DBK-012 made similar statements, testifying that he did not see or hear of rapes at State House or burning of houses during the retreat.<sup>830</sup> Witness DBK-037 and DAB-033 stated that AFRC soldiers always aimed for military targets and did not attack civilians.<sup>831</sup>

418. The Trial Chamber has found that extensive evidence proves beyond reasonable doubt that the violence inflicted on civilians and that the destruction of civilian property in Freetown in January 1999 was extreme.<sup>832</sup> The Trial Chamber is of the view that this overwhelming evidence cannot be reconciled with the Defence evidence to the contrary.

419. Witnesses DBK-005, DBK-012 and DBK-131 testified that the crimes committed in Freetown were committed by disgruntled prisoners released from Pademba Road prison on the morning of 6 January 1999, rather than the troops that invaded the city.<sup>833</sup> The Trial Chamber accepts that it is plausible that some of the released prisoners were responsible for some of the damage to Freetown and its inhabitants. However, the Trial Chamber also regards this evidence as one factor which undermines the credibility of these witnesses. It emerged in cross examination that none of these witnesses had mentioned this explanation to the investigators taking their prior written statements. Witness DBK-012 explained that this was because the investigator didn't ask about it. Witness DBK-005 asserted that he had told investigators. Witness DBK-131 explained that it was because if he recounted every aspect of his war experience to investigators, the interview would have taken one to two months.<sup>834</sup> The Trial Chamber is not satisfied with these explanations.

(c) Findings

<sup>828</sup> DBK-131, Transcript 10 October 2006, p. 91.

<sup>829</sup> DBK-037, Transcript 4 October 2006, pp. 32-34, 37; DBK-113, Transcript 16 October 2006, pp. 114-116; DSK-113, Transcript 12 October 2006, p. 110; DAB-033, Transcript 2 October p. 103; DBK-005, Transcript 12 October 2006, pp. 35-36; DBK-126, Transcript 25 October 2006, pp. 57-58; DAB-023, Transcript 3 August 2006, pp. 120-121.

<sup>830</sup> DBK-012, Transcript 9 October 2006, p. 46; DBK-012, Transcript 6 October 2006, p. 80.

<sup>831</sup> DBK-037, Transcript 4 October 2006, pp. 32-34, 37; DAB-033, Transcript 2 October pp. 100-105.

<sup>832</sup> General Requirements of Articles 2, 3 and 4 of the Statute, para 236 *supra*.

<sup>833</sup> DBK-005, 5 October 2006, pp. 53-58; DBK-012, Transcript 6 October 2006, pp. 31-36; DBK-012, Transcript 9 October 2006, pp. 40-43; DBK-131 Transcript 26 October 2006, pp. 53-54.

<sup>834</sup> DBK-005, Transcript 12 October 2006, p. 27; DBK-012, Transcript 18 October 2006, p. 56; DBK-131 Transcript 26 October 2006, pp. 55-56.

420. The Trial Chamber is satisfied that following the death of SAJ Musa in Benguema the Accused Brima became the overall commander of the troops that invaded Freetown in January 1999. He remained in this position throughout the invasion and retreat from Freetown. Both Witness TF1-334 and George Johnson described the subsequent movement of the troops towards State House on 6 January 1999, as a steady, organised advance pursuant to the orders of the Accused Brima.<sup>835</sup> Although the climate became increasingly chaotic once the troops lost State House, the evidence is consistent that the Accused Brima remained the overall commander of the retreating forces.

421. Following the retreat from Freetown, the Accused Brima took part in a second attack on Freetown with the participation of RUF commanders.<sup>836</sup> This operation was unsuccessful. The Accused Brima and his troops then retreated to Newton and Benguema in the Western Area.<sup>837</sup>

#### 8. Brima's Role in Port Loko District (February 1999 – July 1999)

422. The Trial Chamber notes that in its closing arguments the Prosecution conceded that “both Brima and Kanu were absent [from Port Loko District]” when crimes were committed there.<sup>838</sup>

423. The Accused Brima testified that he escaped from the troops before the invasion of Freetown and made his way to Makeni in Bombali District where he remained with his family.<sup>839</sup>

##### (a) Findings

424. On the basis of the evidence of Prosecution witnesses TF1-334,<sup>840</sup> George Johnson,<sup>841</sup> Gibril Massaquoi<sup>842</sup> and TF1-153<sup>843</sup> regarding the movement of AFRC troops after leaving Freetown, the Trial Chamber is satisfied that the three Accused retreated from Freetown to Newton and Benguema in the Western Area in late January 1999. The Trial Chamber is further satisfied that in approximately early April 1999, the AFRC troop separated into two groups, with the Accused Brima and Kanu moving with some fighters to Makeni in Bombali District. Insufficient evidence has been adduced for any findings to be made on the Accused Brima's activities in this period.

<sup>835</sup> TF1-334, Transcript 13 June 2005, pp. 104-112; George Johnson, Transcript 16 September 2005, pp. 20-26.

<sup>836</sup> TF1-334, Transcript 15 June 2005, pp. 108-112.

<sup>837</sup> TF1-334, Transcript 15 June 2005, pp. 108-112; George Johnson, Transcript 15 September 2005, pp. 60-62.

<sup>838</sup> Prosecution Closing Arguments, Transcript 7 December 2006, pp. 46-47.

<sup>839</sup> See Role of Accused, Brima, para 391, *supra*.

<sup>840</sup> TF1-334, Transcript 14 June 2005, pp. 108-133; Transcript 15 June 2005, pp. 10-19, 24-25.

<sup>841</sup> George Johnson, Transcript 16 September 2005, pp. 58-67.

<sup>842</sup> Gibril Massaquoi, Transcript 10 October 2005, pp. 38-44.

<sup>843</sup> TF1-153, Transcript 23 September 2005, pp. 26-28.

### C. Ibrahim Bazy Kamara

#### 1. Allegations and Submissions

425. The Indictment alleges that “at all times relevant to the Indictment” the Accused Kamara was a “senior member of the AFRC, Junta and AFRC/RUF forces..”,<sup>844</sup> and that he was a “Public [sic] Liaison Officer (PLO)”<sup>845</sup> and a member of the “Junta governing body.”<sup>846</sup> It further charges that the Accused Kamara was a “commander of AFRC/RUF based in Kono District,”<sup>847</sup> “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”<sup>848</sup> and “a commander of AFRC/RUF forces which attacked Freetown on 6 January 1999.”<sup>849</sup>

426. In its Pre-Trial Brief, the Kamara Defence submitted that the Accused Kamara was a junior officer on duty, and that “his duties were [...] predominantly confined to the task of receiving and executing orders from his immediate superiors in line with military discipline, not otherwise as claimed by the Prosecution.”<sup>850</sup> In its Final Brief, the Kamara Defence submits that the Accused Kamara played ‘no active part in combat’ during the AFRC government period.<sup>851</sup> It further argues that although it has not presented a defence of alibi, witnesses testified that the Accused was in his village in Port Loko during the period that Prosecution witnesses alleged he was in other areas,<sup>852</sup> and that he was under arrest in ‘Colonel Eddie Town.’<sup>853</sup> It also contends that the Accused Kamara was not present at the ‘Westside’ in Port Loko District, and that the Commander in charge there was Prosecution Witness George Johnson.<sup>854</sup> Finally, the Defence asserts that the main Prosecution witnesses were neither credible nor reliable,<sup>855</sup> and refers to the numerous witnesses who supported the alibi of the Accused Brima thereby challenging the credibility of prosecution witnesses.<sup>856</sup>

---

<sup>844</sup> Indictment para. 26.

<sup>845</sup> Indictment para. 26.

<sup>846</sup> Indictment para. 26.

<sup>847</sup> Indictment para. 27.

<sup>848</sup> Indictment para. 27.

<sup>849</sup> Indictment para. 27.

<sup>850</sup> Kamara Pre-Trial Brief, para. 17.

<sup>851</sup> Kamara Final Brief, para. 105.

<sup>852</sup> Kamara Final Brief, para. 105.

<sup>853</sup> Kamara Final Brief, para. 105.

<sup>854</sup> Kamara Final Brief, para. 105.

<sup>855</sup> Kamara Final Brief, para. 106.

<sup>856</sup> Kamara Final Brief, para. 107.

## 2. Personal Background of Kamara

427. Ibrahim ‘Bazzy’ Kamara was born on 7 May 1968<sup>857</sup> or 1970.<sup>858</sup> He joined the Sierra Leone Army in 1991 and was deployed at Daru Military Barracks in Kailahun District. At the time of the coup in May 1997 he had attained the rank of Sergeant.<sup>859</sup> He is married and has two children.<sup>860</sup>

428. Although the Accused Brima denied that the Accused Kamara was also known as “Bazzy,” the Kamara Defence does not deny that ‘Bazzy’ was the nickname of the Accused.<sup>861</sup> Both Prosecution<sup>862</sup> and Defence witnesses<sup>863</sup> referred to him by this name. The Accused Kamara was also known as ‘IB’<sup>864</sup> and his radio call sign was ‘Dark Angel’.<sup>865</sup>

## 3. Positions of Responsibility in the AFRC Government (25 May 1997 – 14 February 1998)

429. The Indictment states that the Accused Kamara was a senior member of the AFRC Government, a member of the “Junta governing body” and a PLO in that Government.<sup>866</sup>

430. In its Final Brief, the Prosecution argues that the Accused Kamara was superseded in the AFRC hierarchy only by Johnny Paul Koroma, SAJ Musa, the PLO 1 and the Accused Brima (PLO 2). The Prosecution also notes that he had “numerous” ministries under his control and that he attended meetings of the Supreme Council.<sup>867</sup>

431. In its Final Brief, the Kamara Defence argues that the Prosecution failed to adduce evidence suggesting that the Accused Kamara was present in Bo or Kenema Districts during the period of the

<sup>857</sup> Indictment, para. 3.

<sup>858</sup> Kamara Defence Opening Statement, Transcript 5 June 2006, pp. 43-44.

<sup>859</sup> TF1- 334, Transcript 17 May 2005, p.28.

<sup>860</sup> Alex Tamba Brima, Transcript 19 June 2006, p. 38.

<sup>861</sup> Kamara Defence Opening Statement, 5 June 2006, p. 44. The Accused Brima denies that the Accused Kamara was called Ibrahim *Bazzy* Kamara: Transcript 19 June 2006, p. 32; Transcript 20 June 2006, p. 13; Transcript 29 June 2006, p. 71.

<sup>862</sup> See TF1-334, Transcript 16 May 2005, p. 100; TF1-033, Transcript 11 July 2005, pp. 6, 12; George Johnson, Transcript 15 September 2005, pp. 8-9; TF1-184, Transcript 29 September 2005, p. 97; Gibril Massaquoi, Transcript 7 October 2005, p. 77. Documentary evidence also refers to Kamara as ‘Bazzy’: Exhibit P-6, “The Sierra Leone Gazette,” 4 September 1997, listing members of the Armed Forces Revolutionary Council *Secretariat*; Exhibit P- 7, “The Sierra Leone Gazette,” 18 September 1997, listing members of the Armed Forces Revolutionary Council; Exhibit P-34, “Minutes of an Emergency Council Meeting of the AFRC”, 16 August 1997; Exhibit P-34, “Minutes of an Emergency Council Meeting of the AFRC”, 16 August 1997; Exhibit P-69, “AFRC-Secretariat, Minutes of Meeting held on the 9<sup>th</sup> December 1997.”

<sup>863</sup> DAB-018, Transcript 7 September 2006, p. 70; DAB-123, Transcript 12 September 2006, pp. 21-22; DAB-042, Transcript 15 September 2006, p. 90; DAB-096, Transcript 18 September 2006, p. 112; DAB-156, Transcript 29 September 2006, p. 56; DBK-037, Transcript 4 October 2006, p. 73; DBK-129, Transcript 9 October 2006, p. 27; DAB-005, Transcript 12 October 2006, p. 9; DBK-012, Transcript 9 October 2006, pp. 55, 61; TRC-01, Transcript 16 October 2006, p. 104.

<sup>864</sup> TF1-334, Transcript 16 May 2005, p. 75; Alex Tamba Brima, Transcript 19 June 2006, p. 34.

<sup>865</sup> TF1-334, Transcript 18 May 2005, p. 31; George Johnson, Transcript 15 September 2005, p. 9.

<sup>866</sup> Indictment paras 25-26.

AFRC government, or that he planned, instigated, ordered, committed or otherwise aided and abetted the crimes committed in Bo and Kenema Districts. Nor did the Prosecution adduce any evidence that the Accused Kamara had effective control over the perpetrators of these crimes.<sup>868</sup>

(a) Involvement in the 25 May 1997 Coup

432. The Trial Chamber notes that numerous witnesses, both for the Prosecution and for the Defence, testified that the Accused Kamara was one of the individuals who planned and took part in the coup.<sup>869</sup> The Trial Chamber is therefore satisfied that Kamara was involved in the 1997 coup.

433. The Trial Chamber is satisfied that in return for his participation in the coup, the Accused Kamara was rewarded with specific functions in the AFRC Government. He remained in those positions until the Government was ousted by the ECOMOG forces in February 1998.

(b) Council Membership

434. The Trial Chamber finds that the Accused Kamara was a member of the Supreme Council of the AFRC Government.<sup>870</sup> It further concludes that Kamara was an 'Honourable'.<sup>871</sup>

(c) Principal Liaison Officer 3

435. The Accused Kamara does not deny that he held the position of PLO3. The Trial Chamber is satisfied that the Accused Kamara was PLO 3 during the Junta period.<sup>872</sup>

436. As PLO 3, Kamara was responsible for supervising the following ministries: Agriculture, Forestry, Fisheries, Energy and Power, Lotto and Income Tax. The Accused was also responsible for a government office called 'Queen Elizabeth Quay'.<sup>873</sup>

<sup>867</sup> Prosecution Final Brief, para. 508.

<sup>868</sup> Kamara Final Brief, paras 116-117, 134-135.

<sup>869</sup> TF1-033, Transcript 11 July 2005, p. 6; Gibril Massaquoi, Transcript 7 October 2006, p. 76; TF1-334, Transcript 17 June 2005, p. 69; TF1-114, Transcript 14 July 2005, p. 118-119; DAB-079, Transcript 28 July 2006, p. 62, DAB-025, Transcript 28 July 2006, p. 112; TRC-01, Transcript 16 October 2006, p. 101; DAB-085, Transcript 20 July 2005, p. 52; DAB-079, Transcript 28 July 2006, pp. 62, 68, 69; DAB-085, Transcript 20 July 2006, p. 52; DAB-063, Transcript 2 August 2006, pp. 60-62.

<sup>870</sup> Exhibit P-6, "The Sierra Leone Gazette," 4 September 1997, listing members of the Armed Forces Revolutionary Council *Secretariat*; Exhibit P-7, "The Sierra Leone Gazette," 18 September 1997, listing members of the Armed Forces Revolutionary *Council*; Gibril Massaquoi, Transcript 7 October 2005, p. 77.

<sup>871</sup> DAB-063, Transcript 2 August 2006, pp. 60-62; DAB-005, 12 October 2006, pp. 17-18.

<sup>872</sup> Exhibit P-34 "Minutes of an Emergency Council Meeting of the AFRC held at State House on Monday 11 August 1997"; Exhibit P-69 "AFRC-Secretariat Minutes of Meeting held on 9 December 1997"; DBK-012, Transcript 5 October 2006, p. 80; DBK-129, Transcript 9 October 2006, pp. 60-63; DBK-005, Transcript 5 October 2006, p. 36; Alex Tamba Brima, Transcript 3 July 2006, p. 41; George Johnson, Transcript 15 September 2005, p. 20.

<sup>873</sup> George Johnson, Transcript 15 September 2005, p. 20; Transcript 20 September 2005, p. 9.

437. The Trial Chamber is satisfied that that the Accused Kamara attended coordination meetings of high level members of the AFRC and RUF.<sup>874</sup> The Trial Chamber notes that Prosecution witness TF1-045 testified that he attended one such meeting in September 1997 at Wilberforce at which the Accused Kamara and Kanu were present.<sup>875</sup> It emerged in cross-examination that in a prior statement to the Prosecution the witness had omitted any mention of the presence of ‘Bazzy’ and ‘Five-Five’ at the meeting, referring only to the presence of Johnny Paul Koroma, ‘Gullit,’ SFY Koroma, ‘Kowas’ and Tamba Gborie. The witness explained that during his 2003 interview with the Prosecutor he was not concerned about ‘Bazzy’ and ‘Five-Five’ and that he only mentioned “the top commanders, their superiors.”<sup>876</sup>

(d) Findings

438. The Trial Chamber is satisfied that the Accused Kamara was a member of the group that organised the 25 May 1997 coup, that he was a member of the AFRC Supreme Council, that he was an “Honourable” and that he was PLO 3 in the AFRC Government.

439. However, no evidence was adduced regarding his activities, if any, in those positions. The Trial Chamber is therefore unable to establish whether the Accused Kamara had any *de facto* powers beyond his *de jure* titles.

4. Kamara’s Role in Kono and Kailahun Districts (14 February – 30 June 1998)

440. The Indictment alleges that the Accused Kamara was “a commander of the AFRC/RUF forces in Kono District.”<sup>877</sup> In its Final Brief, the Prosecution argues more concretely that the Accused Kamara was present in Kono from around mid-February to mid-May 1998 and that during that period he was not *one of the senior* commanders but *the top* ‘SLA’ Commander in the District, second only in the District wide chain of command to Denis Mingo of the RUF.<sup>878</sup> The Prosecution in its closing arguments stated that “it is the case of the Prosecution that only Kamara was present [in Kono District] when the crimes were committed.”<sup>879</sup>

<sup>874</sup> TF1-045, Transcript 19 July 2005, pp. 71-72; Gibril Massaquoi, Transcript 7 October 2005, pp. 37, 83, 86, 93; Exhibit P-34, “Minutes of an Emergency Council Meeting of the AFRC held at State House on Monday 11 August 1997”; Exhibit P-69, “AFRC Secretariat, Minutes of Meeting held on 9 December 1997.”

<sup>875</sup> TF1-045, Transcript 19 July 2005, pp. 58-59.

<sup>876</sup> TF1-045, Transcript 21 July 2005, pp. 21-24.

<sup>877</sup> Indictment, para. 27.

<sup>878</sup> Prosecution Final Brief, paras 1270-1272.

<sup>879</sup> Prosecution Closing Arguments, Transcript 7 December 2006, p. 34.

441. The Prosecution concedes that the Accused Kamara was not in Kailahun District during this period.<sup>880</sup>

442. Numerous Defence witnesses testified that they were in Kono during the relevant period and did not see or hear of the Accused Kamara.<sup>881</sup> The Prosecution responds that since the Defence has adduced no evidence placing the Accused elsewhere during the relevant period, the testimony of these witnesses is of no consequence.<sup>882</sup>

443. A significant number of Defence witnesses testified that it was the RUF who were in control of Kono District during the relevant period and that if AFRC fighting forces participated in operations in the region, they did so on the orders of the RUF and not of their own volition.<sup>883</sup>

(a) Kamara's Role prior to the Departure of Johnny Paul Koroma from Kono District

444. The Prosecution's case on the role of the Accused Kamara during this period relies exclusively on the testimonies of witnesses George Johnson and TF1-334. George Johnson was the Chief Security Officer to the Accused Kamara during the AFRC government<sup>884</sup> and travelled with the Accused Kamara during the February 1998 retreat from Freetown until the 1999 invasion of Freetown. Witness TF1-334 was a senior assistant to a close associate of the Accused Kamara<sup>885</sup> throughout the period covered in the Indictment. Thus, the witness was familiar with Kamara's activities.

445. While Prosecution witness George Johnson testified that the Accused Kamara participated in the attack on Koidu Town,<sup>886</sup> witness TF1-334 does not place Kamara in Kono District until Johnny Paul Koroma had departed from Kailahun District.<sup>887</sup>

446. Witness TF1-334 testified that the Accused Kamara was present at a meeting of senior AFRC and RUF commanders in early March 1998 in Kabala, Koinadugu District, at which the

<sup>880</sup> Prosecution Final Brief, paras 1397-1405.

<sup>881</sup> DBK-113, Transcript 13 October 2006, p. 48; DAB-098 Transcript 4 September 2006, pp. 47-48; DAB-018, Transcript 7 September 2006, p. 44-45; DAB-023, Transcript 31 July 2006, p. 105; DAB-095, Transcript 28 September 2006, p. 26. The following witnesses were unaware of Kamara's whereabouts: DAB-107, Transcript 8 September 2006, pp. 79-80; DAB-039, Transcript 5 September 2006, p. 90.

<sup>882</sup> Prosecution Final Brief, para. 1275.

<sup>883</sup> DBK-113, Transcript 13 October 2006, p. 66; DAB-098, Transcript 4 September 2006, p. 28; DAB-018, Transcript 7 September 2006, pp. 7-9, 12-15; DAB-023, Transcript 31 July 2006, p. 105.

<sup>884</sup> George Johnson, Transcript 15 September 2005, p. 9.

<sup>885</sup> Name admitted under seal: Exhibit P-12.

<sup>886</sup> George Johnson, Transcript 15 September 2005, p. 31.

<sup>887</sup> TF1-334, Transcript 17 May 2005, pp. 108-114.

takeover of Kono District was planned. The commanders agreed to attack Koidu Town.<sup>888</sup> RUF commander Denis Mingo, the witness, the Accused Kamara and other soldiers then collected Johnny Paul Koroma from his village and moved to Makeni, Bombali District.<sup>889</sup>

447. From Makeni, the troops moved towards Kono District. The witness was in an advance convoy which cleared the way of Kamajor ambushes. He testified that when the troops met Kamajor resistance at Five-Five Spot in Koidu Town, Johnny Paul Koroma withdrew to Masingbeh, a safer location nearby.<sup>890</sup> The witness testified that the AFRC/RUF soldiers captured Koidu Town and that RUF commander Denis Mingo assumed the position of overall commander of both factions.<sup>891</sup>

448. Witness TF1-334 does not mention the presence of the Accused Kamara during the attack on Koidu Town; rather, there is some indication from the Witness's testimony that the Accused Kamara may have remained in Makeni. The witness testified that following the attack, he and other soldiers went to Makeni to collect RUF commander Issa Sesay. He stated that the Accused Kamara was in Makeni when he arrived there and that Kamara remained in Makeni after he returned to Kono.<sup>892</sup>

449. Witness George Johnson also gave evidence on the attack on Koidu Town. He corroborated the testimony of witness TF1-334 regarding the meeting of senior AFRC/RUF commanders in Kabala. However, George Johnson testified that the Accused Kamara and Dennis Mingo attacked Kono together; specifically that Dennis Mingo commanded the troops and the Accused Kamara was his Deputy.<sup>893</sup>

450. The Trial Chamber considers the above evidence regarding the presence and role of the Accused Kamara during this short period to be inconclusive. The Trial Chamber will therefore make no determination on his role during the period in which Johnny Paul Koroma was overall commander in Kono District.

(b) Kamara's Role after the Departure of Johnny Paul Koroma from Kono District

(i) Prosecution Witnesses

<sup>888</sup> TF1-334, Transcript 17 May 2005, pp. 81-83.

<sup>889</sup> TF1-334, Transcript 17 May 2005, pp. 85-86.

<sup>890</sup> TF1-334, Transcript 17 May 2005, pp. 90-100.

<sup>891</sup> TF1-334, Transcript 17 May 2005, pp. 100-103, 108.

<sup>892</sup> TF1-334, Transcript 17 May 2005, pp. 108-114.

<sup>893</sup> George Johnson, Transcript 15 September 2005, pp. 30-32, 38.

451. Both Witnesses TF1-334 and George Johnson testified that following the departure of Johnny Paul Koroma for Kailahun, Denis Mingo aka 'Superman' of the RUF became the overall commander of the rebel forces in Kono District, while the Accused Kamara became the overall commander of the AFRC fighting forces.<sup>894</sup> Although Denis Mingo was superior to the Accused Kamara,<sup>895</sup> witness TF1-334 and the other AFRC soldiers began to receive their orders from him.<sup>896</sup> Kamara remained the most senior commander of the AFRC soldiers in Kono until the arrival of the Accused Brima in mid-May 1998.<sup>897</sup>

452. Witness George Johnson testified that at a meeting held after Koroma's departure to Kailahun, Mingo promoted some of the men in rank, including the witness, with these promotions being endorsed by the Accused Kamara.<sup>898</sup> Witness TF1-334 similarly testified that after the capture of Kono, Kamara took over the authority for giving promotions to AFRC fighters from Johnny Paul Koroma.<sup>899</sup> He gave promotions to Lieutenant Lagah, Lieutenant 'Tito', Lieutenant 'Savage', Lieutenant Kallay, Lieutenant Bakarr and Lieutenant 'Mosquito'.<sup>900</sup>

453. While the AFRC fighting forces in Kono were subordinate to the RUF, Prosecution witnesses provided significant evidence of cooperation between the AFRC troops subordinate to the Accused Kamara and the RUF troops. The two factions planned and participated in joint operations,<sup>901</sup> and Sam Bockarie, who was based in Kailahun, sent weapons and ammunition to the troops in Kono which were distributed among both factions.<sup>902</sup> Thus, according to Prosecution witnesses, the AFRC and the RUF had "cordial relations" and worked together.<sup>903</sup>

(ii) Defence Witnesses

454. In contrast, Defence witnesses suggest that there was less cooperation and greater intimidation and subordination between the AFRC and the RUF during this period.

455. Witness DAB-018 testified that AFRC soldiers in Kono District were completely subordinate to the RUF, and that any AFRC soldier who refused to take orders from the RUF would

<sup>894</sup> George Johnson, Transcript 15 September, p. 38. TF1-334, Transcript 18 May pp. 21-24.

<sup>895</sup> TF1-334, Transcript 18 May 2005, p. 24.

<sup>896</sup> TF1-334, Transcript 18 May 2005, pp. 21-22.

<sup>897</sup> TF1-334, Transcript 19 May 2005, p. 7; Transcript 20 May 2005, p.56; George Johnson, Transcript 15 September 2005, p. 39.

<sup>898</sup> George Johnson, Transcript 15 September 2005, pp. 35-36, 46-47; George Johnson, Transcript 20 September 2005, p. 14.

<sup>899</sup> TF1-334, Transcript 19 May 2005, p. 50.

<sup>900</sup> TF1-334, Transcript 19 May 2005, p. 51.

<sup>901</sup> TF1-334, Transcript 18 May 2005, pp. 24-33; Transcript 19 May 2005, pp. 3-4.

<sup>902</sup> George Johnson, Transcript 15 September 2005, p. 43.

<sup>903</sup> TF1-334, Transcript 19 May 2005, pp. 5-7.

be shot and killed. The witness said he saw the RUF capture members of the AFRC fighting forces and that he later saw their dead bodies. Any former soldier who referred to himself as a 'soldier' rather than as a member of the RUF would "have problems" as an order had been issued saying that there was no "SLA".<sup>904</sup> The RUF would issue passes on which was written United Front of Sierra Leone allowing members of the AFRC fighting force to travel from one area to another.<sup>905</sup>

456. Witness DAB-059 testified that members of the AFRC were unwilling to take orders from the RUF during this period because the RUF had been attacking, disarming, and looting from them. As a result, AFRC soldiers were afraid of the RUF, and while some surrendered others fled to Kabala in Koinadugu District.<sup>906</sup>

457. Witness DAB-095 explained that soon after Johnny Paul Koroma left for Kailahun District there was no relationship at all between the two factions. He asserted that the RUF had harassed AFRC soldiers by disarming its officers and their men and ordering them to the war front. The witness added that this had happened to him among others. The rebel soldiers who went to the front voluntarily were provided with weapons, and those who refused to volunteer were sent without.<sup>907</sup>

458. Witness DBK-117 testified that in Kono District the AFRC had no direct command and that they only took orders from the RUF.<sup>908</sup> In addition, he described an incident in which Denis Mingo discovered a former soldier using a portable communications handset. Believing that they were using it to communicate with ECOMOG, Mingo ordered an attack on the AFRC faction based at Konomanyi Park. The former soldiers fired back but were outnumbered by the RUF.<sup>909</sup> Witness TF1-334 corroborated the evidence regarding use of the communications set, testifying that while former soldiers were allowed to listen in on communications, they were not permitted to engage in communications of their own.<sup>910</sup>

459. Despite their evidence of a period of cooperation, even the Prosecution witnesses point to a deterioration of relations between the two factions during the latter part of the relevant period in Kono District. According to witness TF1-334, on one occasion Morris Kallon (RUF) informed the AFRC fighting force that they could not hold military muster parades and that they had no right to call themselves 'SLAs' because there was only one faction in Kono and it was the RUF. During the

<sup>904</sup> DAB-018, Transcript 7 September 2006, pp. 11-13.

<sup>905</sup> DAB-018, Transcript 7 September 2006, p. 14. *See also* witness DBK-113, who testified that the relationship between the two factions was "complicated": Transcript 13 October 2006, p. 14.

<sup>906</sup> DAB-059, Transcript 27 September 2006, pp. 92-93. *See also* DAB-033, Transcript 25 September 2006, p. 52-53.

<sup>907</sup> DAB-095, Transcript 20 September 2006, pp. 42-44.

<sup>908</sup> DBK-117, Transcript 16 October 2006, pp. 19, 114-116.

<sup>909</sup> DBK-117, Transcript 16 October 2006, pp. 16-17.

ensuing melee Kallon shot two soldiers of the AFRC faction.<sup>911</sup> The witness concluded that although there was no outright fighting between the two factions relationship the rapport was “not good. The relationship was no longer cordial.”<sup>912</sup>

(c) Findings

460. The Trial Chamber finds that the Defence witness evidence is not inconsistent with that of witness TF1-334 who similarly testified that there were a number of RUF commanders operating in Kono District who reported to Denis Mingo.<sup>913</sup>

461. The Trial Chamber concludes that the Accused Kamara was the overall commander of the AFRC forces based in Kono District from early March 1998 to mid-to-late April 1999. While Kamara was subordinate to Denis Mingo, and the AFRC troops were subordinate to those of the RUF, the Trial Chamber is not persuaded by those Defence witnesses who testified that the AFRC troops had no choice but to participate in this arrangement. Whether the Accused Kamara had effective control over the AFRC troops in Kono District will be discussed elsewhere in the Judgement.<sup>914</sup>

(d) The Return of the Accused Brima

462. The Accused Kamara remained overall commander of the AFRC troops until the return of Brima from Kailahun. However, the evidence of crimes committed in Kono District related to crimes committed before Brima assumed command. Upon arrival in Kono District, Brima took overall command of the AFRC troops. The Accused Kamara became Brima’s second in command,<sup>915</sup> and travelled with him to Koinadugu District where both men met with SAJ Musa. There the two Accused and Musa defined the new objectives of the AFRC rebel movement.<sup>916</sup>

5. Kamara’s Role in Koinadugu and Bombali Districts (June 1998 – November 1998)

463. The Indictment alleges that the Accused Kamara was “a commander of the 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

<sup>910</sup> TF1-334, Transcript 19 May 2005, pp. 3-4.

<sup>911</sup> TF1-334, Transcript 19 May 2005, pp. 9-10.

<sup>912</sup> TF1-334, Transcript 21 June 2005, p. 14.

<sup>913</sup> TF1-334, Transcript 19 May 2005, p. 37.

<sup>914</sup> Responsibility of the Accused, Kamara, paras 1864-1887.

<sup>915</sup> George Johnson, Transcript 15 September 2007, p. 39. TF1-334, Transcript 20 May 2005, p. 57.

<sup>916</sup> See Context of the Alleged Crimes, para. 190.

Bombali Districts between mid February 1998 and 31 December 1998.”<sup>917</sup> In its Final Brief, the Prosecution submits that during the advance from Mansofinia to Camp Rosos, the Accused Brima was at all times the commander of the AFRC troops who formed a part of his brigade, whilst the Accused Kamara was his second in command and the Accused Kanu held a senior command position.<sup>918</sup>

464. The Defence submits that another group of named individuals were the Commanders during this journey. This evidence has been assessed in the section of the Judgement on Brima’s role in Koinadugu and Bombali Districts.<sup>919</sup>

(a) Kamara’s Command Position within the AFRC Troops from Mansofinia to Rosos

465. The Prosecution evidence shows that Accused Kamara was Brima’s Deputy at Mansofinia and throughout the journey to Eddie Town.<sup>920</sup>

466. The Prosecution provided little substantive evidence on the *de facto* role, authority, and contributions of the Accused Kamara to the activities of the AFRC troops during this period. However, it did establish that the Accused Kamara was one of the senior AFRC faction commanders present at the meeting with SAJ Musa where the restructuring of the troops was discussed.<sup>921</sup> In the new structure established following the meeting the Operations Commander and the Provost-Marshal were required to report to the Accused Kamara.<sup>922</sup> At Rosos, the Accused Kamara was based at ‘headquarters’, from where operations were planned and orders issued.<sup>923</sup> Witness TF1-334 also testified that the Accused Kamara was one of the commanders who made decisions regarding the brigade.<sup>924</sup>

467. Witness TF1-334 testified that at Rosos, the Accused Kamara oversaw one of the companies of AFRC troops as well as being deputy chief in command, although the witness does not explain further what this supervisory role entailed.<sup>925</sup>

<sup>917</sup> Indictment, para. 27.

<sup>918</sup> Prosecution Final Trial Brief, para. 626.

<sup>919</sup> Role of Accused, Brima, paras 372-377, *supra*.

<sup>920</sup> TF1-334, Transcript 20 May 2005, pp. 87-88; TF1-334, Transcripts 23 and 24 May 2005; George Johnson, Transcript 15 September 2005, pp. 51, 59.

<sup>921</sup> George Johnson, Transcript 15 September 2005, p. 47.

<sup>922</sup> See Military Structure of AFRC Fighting Force, para 576, *supra*; George Johnson, Transcript 15 September 2005, p. 49.

<sup>923</sup> George Johnson, Transcript 15 September 2005, p. 60.

<sup>924</sup> TF1-334, Transcript 20 May 2005, pp. 95, 98-99.

<sup>925</sup> TF1-334, Transcript 23 May 2005, p. 107.

468. In conclusion, the Trial Chamber is satisfied that the Accused Kamara was the Deputy Commander of the AFRC fighting forces in Koinadugu and Bombali Districts. It further recalls its finding in the section of the Judgement on the Military Structure of these forces, that while the structure was not one of a traditional army the forces were nevertheless well-structured and organised.

(b) Kamara's Alleged Detention in 'Colonel Eddie Town'

469. The Trial Chamber has found that, while the three Accused were arrested for an indeterminate period at Colonel Eddie Town, they were released and reinstated by SAJ Musa at Newton, on the outskirts of Freetown.<sup>926</sup>

6. Kamara's Role in Freetown and the Western Area (January 1999 – February 1999)

470. The Prosecution submits that the Accused was the Second in Command of the forces invading Freetown in January 1999.<sup>927</sup>

471. The Kamara Defence submits that other known individuals were the overall commanders of these forces, and that several Defence witnesses who were in Freetown during the invasion said they did not see Kamara during this period.<sup>928</sup>

472. As noted above, the Trial Chamber has found that following the death of SAJ Musa at Benguema, the Accused Brima became the overall commander of the AFRC fighting forces invading Freetown. Based on the same assessment of witness reliability and credibility, the Trial Chamber is satisfied that the Accused Kamara was Brima's Deputy.<sup>929</sup> He remained in this position throughout the Freetown invasion and the retreat of the troops.

473. The Prosecution adduced evidence establishing that on 5 January 1999, the Accused Kamara was present at a meeting chaired by Brima at Orugu Village<sup>930</sup> in which the invasion of Freetown was discussed.<sup>931</sup> The Accused Kamara was present at headquarters at State House immediately following its capture on 6 January 1999.<sup>932</sup> He attended a meeting of senior commanders when an

<sup>926</sup> Role of Accused, Brima, paras 385-388, *supra*.

<sup>927</sup> Prosecution Final Brief, para. 1588.

<sup>928</sup> Kamara Final Brief, paras 210-218.

<sup>929</sup> TF1-334, Transcript 13 June 2005, p. 60. George Johnson, Transcript 16 September 2005, pp. 12-13. TF1-184, Transcript 27 September 2005, p. 56.

<sup>930</sup> Referred to by witness TF1-334 as 'Allentown.'

<sup>931</sup> George Johnson, Transcript 16 September 2005, pp. 16-17.

<sup>932</sup> TF1-334, Transcript 14 June 2005, pp. 3-4; George Johnson, Transcript 16 September 2005, p. 39.