

(i) Kabala

23285

868. Witness TF1-209 witnessed the killing of her six year old son by a rebel called 'Jabie', loyal to SAJ Musa, at a farm in or near Kabala on an unspecified date in August 1998.<sup>1653</sup> Her husband was beaten to death with a 'mortar pestle' in the same attack by 'Jabie' and a certain 'Allusein', who was loyal to 'Superman's' group.<sup>1654</sup> The witness was sexually assaulted and abducted by the fighters. Her testimony in relation to these events is considered by the Trial Chamber below in its findings on Count 9.<sup>1655</sup>

869. In cross-examination, Defence Counsel referred the witness to a prior statement in which she stated that her son was two, and not six years old. The witness maintained that her child was six years of age when he was killed. She was able to provide a detailed account of the events and explained the inconsistencies with her prior statement.<sup>1656</sup> The Trial Chamber is thus satisfied that the witness's husband and son were killed by fighters loyal to SAJ Musa and 'Superman'.

870. On 17 September 1998, "rebels" attacked Kabala a second time. Witness TF1-147 testified that the rebels engaged in hostilities with loyal government SLA and ECOMOG forces. The witness was not present during those hostilities as he was hiding outside the town.<sup>1657</sup> However, he heard about the killing of many people.<sup>1658</sup> On his return to Kabala the next morning he saw ten corpses with gun shot wounds at the main junction in the centre of town.<sup>1659</sup> During cross-examination, the witness testified that the ten corpses that he saw were killed during the hostilities. The witness was not able to state whether the persons were civilians or by which armed organisation they were killed.<sup>1660</sup> In the absence of more specific evidence, the Trial Chamber is not satisfied that these victims were killed by AFRC or RUF forces or that they were civilians.

871. The Trial Chamber notes the evidence of witness TF1-199, that in the course of the attack on Kabala, ECOMOG were captured. Lieutenant Colonel 'Savage' and his men captured seven ECOMOG and loyal government SLA soldiers, removed their combat uniform, lined them up with

<sup>1653</sup> TF1-209, Transcript 7 July 2005, pp. 35-36.

<sup>1654</sup> TF1-209, Transcript 7 July 2005, p. 35.

<sup>1655</sup> Factual Findings, Outrages on Personal Dignity, paras 1127-1130.

<sup>1656</sup> TF1-209, Transcript 7 July 2005, pp. 49-51.

<sup>1657</sup> TF1-147, Transcript 13 July 2005, pp. 11-12, 21.

<sup>1658</sup> TF1-147, Transcript 13 July 2005, pp. 12.

<sup>1659</sup> TF1-147, Transcript 13 July 2005, pp. 11-12, 20-21.

<sup>1660</sup> TF1-147, Transcript 13 July 2005, pp. 12, 21.

their hands tied behind their back and executed them.<sup>1661</sup> However, this incident occurred outside of the Indictment period for Koinadugu.

(ii) Koinadugu Town

872. AFRC and RUF forces under the command of SAJ Musa and ‘Superman’ attacked and occupied Koinadugu Town in late July 1998.<sup>1662</sup> Many civilians were killed upon the orders of ‘Superman’.<sup>1663</sup> Specifically, Witness DAB-081 testified that more than ten civilians were beaten to death with machetes or sticks by the RUF.<sup>1664</sup>

873. Witness DAB-081 testified that one civilian boy, Lansana Farroo, was guarding a school in Koinadugu where child soldiers were being held. When he denied access to two RUF soldiers, they killed him.<sup>1665</sup>

874. In addition to the specific incidents described above, evidence of dead bodies found in the streets of Koinadugu Town was adduced at trial. The Trial Chamber finds this evidence insufficient to form the basis of findings of unlawful killings.<sup>1666</sup>

(iii) Fadugu

875. Notwithstanding the Defence submission that ECOMOG may be accountable for some of the killings which occurred in Fadugu at the relevant time,<sup>1667</sup> the Trial Chamber is satisfied that the following incidents cannot be attributed to ECOMOG.

876. On 22 May 1998, rebels attacked the town of Fadugu. They shot indiscriminately at civilians and killed an unspecified number.<sup>1668</sup> The Trial Chamber finds this evidence insufficient to form the basis of findings of unlawful killings.

877. Witness DAB-078 saw eight armed soldiers capture a civilian man, whom they believed was a member of the CDF, at a checkpoint in Fadugu on 22 May 1998.<sup>1669</sup> The soldiers beat the man to death, cut open his stomach and removed his intestines. The intestines were displayed openly at the

<sup>1661</sup> TF1-199, Transcript 6 October 2005, pp. 88, 103-104.  
<sup>1662</sup> DAB-081, Transcript 20 July 2006, p. 82.  
<sup>1663</sup> DAB-081, Transcript 20 July 2006, p. 95; TF1-153, Transcript 22 September 2005, pp. 51-52.  
<sup>1664</sup> DAB-081, Transcript 20 July 2006, pp. 99.  
<sup>1665</sup> DAB-081, Transcript 20 July 2006, p. 98; DAB-081, Transcript 21 July 2006, pp. 2, 3.  
<sup>1666</sup> DAB-083, Transcript 21 July 2006, p. 46; TF1-153, Transcript 22 September 2005, pp. 51-52.  
<sup>1667</sup> Brima Final Brief, para. 239; DAB-077, Transcript 19 July 2006, pp. 60, 89.  
<sup>1668</sup> TF1-199, Transcript 6 October 2005, pp. 77-78; DAB-077, Transcript 19 July 2006, pp. 92-94.  
<sup>1669</sup> DAB-078, Transcript 6 September 2006, pp. 10-14.

checkpoint.<sup>1670</sup> In close vicinity to the checkpoint, a teacher and his younger brother were killed.<sup>1671</sup> The Trial Chamber is not satisfied beyond reasonable doubt that the soldiers knew that the killings were part of the attack on the civilian population and therefore the requisite *mens rea* to establish a crime against humanity is lacking. However, on the evidence adduced, the Trial Chamber finds that the perpetrators were aware that the victim was not taking active part in the hostilities and that they acted in furtherance of the armed conflict. However, the witness was not able to provide any details as to which faction the soldiers belonged.

878. During the early hours of 11 September 1998, there was a second attack on Fadugu by “rebels” in a campaign known as “Operation Die.” An unknown number of civilians were killed in the course of this attack, including the local paramount chief of Mabolo who was burnt to death.<sup>1672</sup> This incident is corroborated by documentary evidence.<sup>1673</sup>

(iv) Findings

879. By virtue of the foregoing, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied beyond reasonable doubt that between about 14 February 1998 and 30 September 1998, members of the AFRC/RUF unlawfully killed a minimum of 21 civilians in Kabala, Koinadugu Town and Fadugu in Koinadugu District, amounting to the elements of Counts 4 and 5.

(f) Bombali District (1 May 1998 - 30 November 1998)

880. The Prosecution alleges that “[b]etween about 1 May 1998 and 30 November 1998, in several locations in Bombali District, including Bonyoyo (or Bornoya), Karina, Mafabu, Mateboi and Gbendembu (or Gbendubu or Pendembu), members of the AFRC/RUF unlawfully killed an unknown number of civilians.”<sup>1674</sup>

881. No evidence on unlawful killings was led with respect to Mafabu.<sup>1675</sup>

<sup>1670</sup> DAB-078, Transcript 6 September 2006, pp. 15-17.

<sup>1671</sup> DAB-078, Transcript 6 September 2006, pp. 17-18.

<sup>1672</sup> DAB-085, Transcript 20 July 2006, pp. 7, 38-41; DAB-078, Transcript 6 September 2006, p. 36.

<sup>1673</sup> 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>1674</sup> Indictment, para. 48.

<sup>1675</sup> Decision on Defence Motion for Judgement of Acquittal Pursuant to Rule 98, 31 March 2006, paras 89, 96.

882. In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on Prosecution Witnesses TF1-156, TF1-157, TF1-158, TF1-033, George Johnson and TF1-334 and Defence witnesses DBK-089, DBK-050 and DBK-094.

(i) Borno

883. Witnesses TF1-156, TF1-157 and TF1-158 testified that Borno was attacked by “soldiers” in the morning hours on an unspecified day in May 1998. Defence witnesses testified that the exact date of the attack was 8 May 1998. The assailants were armed and wore combat uniforms and red head bands.<sup>1676</sup> An unspecified number of civilians were killed during the attack.<sup>1677</sup>

884. A man wearing shorts, boots and a jacket uniform, and another man with a head band carrying a cutlass, slit open the stomach of a pregnant woman named Isatta and removed the foetus. Isatta died as a result.<sup>1678</sup> A certain Lansana Mansaray and Sarah Foday were assaulted and seriously wounded and later died as a result of their injuries.<sup>1679</sup> Two children of one Alhaji Sorie Mansaray were intentionally burnt to death under a mattress which was set on fire.<sup>1680</sup> An unspecified number of other civilians were killed in the course of the attack, including Adama Kamara, Jammah Daboh, Sheriff Mansaray and Mohamdu Koroma.<sup>1681</sup> A female soldier called Adama hacked to death the father of witness TF1-158.<sup>1682</sup> Witness DBK-050 watched soldiers hack his younger brother to death with a cutlass, on the orders of a female soldier known to him as 'Adama Cut Hand'.<sup>1683</sup>

885. Witness TF1-158, who was abducted and later used as a child soldier by the troops that attacked Borno, testified that he learned from another abducted boy who had been with the troops since Kono District that the leaders of the troops included ‘Gullit’, ‘Five-Five’, ‘O-Five’ and SAJ Musa.<sup>1684</sup> He testified that he learned about those names during the subsequent attack on the nearby village of Karina. However, witnesses belonging to SAJ Musa’s group testified that SAJ Musa and ‘O-Five’ were not en route with the advance team led by Brima.<sup>1685</sup> Nevertheless, Witness TF1-157, who was also abducted and later used as a child soldier, corroborates the fact that the troops were

<sup>1676</sup> TF1-158, Transcript 26 July 2005, p. 30.  
<sup>1677</sup> TF1-156, Transcript 26 September 2005, pp. 56-58.  
<sup>1678</sup> TF1-158, Transcript 26 July 2005, pp. 35, 50, 87, 95-97.  
<sup>1679</sup> TF1-156, Transcript 26 September 2005, pp. 59, 60.  
<sup>1680</sup> TF1-156, Transcript 26 September 2005, pp. 39, 40.  
<sup>1681</sup> TF1-156, Transcript 26 September 2005, pp. 36-38.  
<sup>1682</sup> TF1-158, Transcript 26 July 2005, pp. 33, 34.  
<sup>1683</sup> DBK-050 Transcript 10 July 2006, pp. 16-17.  
<sup>1684</sup> TF1-158, Transcript 26 July 2005, pp. 30-34.  
<sup>1685</sup> Context of the Alleged Crimes, para. 196-198, *supra*.

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lead by 'Gullit' and 'Five-Five'.<sup>1686</sup> He testified that he only heard about those names once he arrived at Camp Rosos.<sup>1687</sup> The Trial Chamber is satisfied that the attack on Bornoya was conducted by troops associated with the three Accused, as the village was on the route taken by the advance team led by Brima during the same time period.<sup>1688</sup>

(ii) Karina

886. On 8 May 1998 AFRC soldiers attacked Karina, a Mandingo village in Bombali District. Previously, at Kamagbengbe, the Accused Brima ordered his troops to specifically target Karina, as he alleged that it was the home town of President Kabbah.<sup>1689</sup> All three Accused participated in the attack.<sup>1690</sup>

887. In the presence of witness TF1-334, the Accused Kamara and two other "juntas" locked five young girls into a house and subsequently set it ablaze. The five girls were burnt alive.<sup>1691</sup>

888. "Juntas" threw an unspecified number of little children into the flames of burning houses. The children were burnt alive.<sup>1692</sup> Soldiers stabbed a pregnant woman to death.<sup>1693</sup> A certain Saccoh Kankoh Fanta was injured during the attack and subsequently died.<sup>1694</sup> An unspecified number of children were killed during the attack.<sup>1695</sup>

889. 'Cyborg', a security officer to the Accused Kamara, threw at least four children aged between five and ten years from a two-storey building in Karina.<sup>1696</sup> The witness did not clarify whether the four children died as a result. The Trial Chamber therefore is not satisfied beyond a reasonable doubt that the children were killed.

890. A certain Eddie Williams, a.k.a. 'Maf', wrapped into an unknown number of people in a carpet inside a house and thereafter set the house on fire. The people were burnt alive. The Accused

<sup>1686</sup> TF1-157, 22 July 2005, p. 90.

<sup>1687</sup> TF1-157, 22 July 2005, p. 90.

<sup>1688</sup> Exhibit P-30(a), "Map of Sierra Leone", indicating the route of the troops as testified by witness George Johnson, see Transcript 15 September 2005, p. 52; TF1-058, Transcript 14 June 2005, p. 95, testifying that Bonoya [Bornoya] was attacked by the same troops as Karina; Transcript TF1-033, 11 July 2005, p. 18; although TF1-033 testified that the attack on Bornoya occurred around June 1998, this does not discredit his overall testimony of the route taken which is corroborated by other witnesses, *i.e.* witness TF1-058 *supra*.

<sup>1689</sup> TF1-334, 23 May 2005, pp. 56-59.

<sup>1690</sup> TF1-334, Transcript 23 May 2005, pp. 57-65; George Johnson, Transcript 15 September 2005, pp. 53-54, 58; TF1-033, Transcript 11 July 2005, pp. 18, 19; DBK-094, Transcript 11 July 2006, p. 26, 27.

<sup>1691</sup> TF1-334, Transcript 23 May 2005, pp. 65-67.

<sup>1692</sup> TF1-334, Transcript 23 May 2005, pp. 67.

<sup>1693</sup> TF1-055, Transcript 12 July 2005, pp. 132, 136.

<sup>1694</sup> TF1-058, Transcript 14 July 2005, p. 83.

<sup>1695</sup> TF1-055, Transcript 12 July 2005, p. 137.

<sup>1696</sup> George Johnson, Transcript 15 September 2005, p. 56.

Kamara was watching from outside the house, together with Witness George Johnson and several personal security guards of the Accused Kamara.<sup>1697</sup>

891. Prosecution Witnesses TF1-334, George Johnson, TF1-199 and TF1-055 testified that civilians were killed at the Karina mosque, including the Imam.<sup>1698</sup> Witness TF1-334 testified that the Accused Brima was at the mosque and accused the Imam of supporting President Kabbah. Brima allegedly said to the Imam: "You, you are the one that pray for people. You are one of Pa Kabbah's family...[s]o you are the worst people here." The Witness stated that the Accused Brima then shot and killed the Imam, along with six men and five women with his 'Magnum' pistol.<sup>1699</sup> Witness George Johnson testified that the civilians at the mosque were killed by Halaji Kamanda aka 'Gun Boot'. However, Witness George Johnson did not see the civilians being killed, but rather observed dead bodies with gun shot wounds inside and outside the mosque subsequently.<sup>1700</sup>

892. The Defence presented a different version of events. The Defence adduced evidence in closed session that established beyond reasonable doubt that the Imam was not killed in the attack on Karina mosque.<sup>1701</sup> Defence Witnesses DBK-089 and DBK-094 gave evidence that the Imam left Karina three days prior to the attack, leaving the Imam's elder brother in charge of the mosque.<sup>1702</sup> The Imam's elder brother appointed someone to lead the prayers in the absence of the Imam.<sup>1703</sup>

893. Defence witnesses DBK-089 and DBK-094 did not dispute the killing of civilians at the mosque. The Brima Defence submits that the testimony of witness TF1-334 is unreliable based on his assertion that the Imam was killed.<sup>1704</sup> The Trial Chamber notes that when asked to whom Brima spoke at the mosque, Witness TF1-334 responded "It was the imam -- the imam that was in charge of the mosque who was leading prayers."<sup>1705</sup> The Trial Chamber is thus satisfied that the Witness referred to the person killed as the 'Imam' on the basis that this person was leading the prayers when the troops arrived at the mosque. This mistake on the part of the witness does not undermine the credibility of his evidence that the Accused Brima killed the person leading the prayers, along with 11 other civilians at the mosque.

<sup>1697</sup> George Johnson, Transcript 15 September 2005, pp. 54-56.

<sup>1698</sup> TF1-334, Transcript 23 May 2005, pp. 68-69; George Johnson, Transcript 15 September 2005, pp. 56, 57; TF1-199, Transcript 6 October 2005, para. 75; TF1-055, Transcript 12 July 2005, p. 142.

<sup>1699</sup> TF1-334, Transcript 23 May 2005, pp. 68-69.

<sup>1700</sup> George Johnson, Transcript 15 September 2005, pp. 56-57.

<sup>1701</sup> DBK-094, Transcript 11 July 2006, pp. 98-100 [closed session]; Exhibit D-15, under seal.

<sup>1702</sup> DBK-089, Transcript 14 July 2006, pp.15-18; DBK-094, Transcript 11 July 2006, pp. 29-30, 43-44.

<sup>1703</sup> DBK-089, Transcript 14 July 2006, p.15.

<sup>1704</sup> See Brima Final Brief, para. 247.

<sup>1705</sup> TF1-334, Transcript 23 May 2005, p. 68.

894. In light of the above evidence, the Trial Chamber considers the testimony of witness DBK-094, who claimed to have only seen seven dead bodies in Karina after the attack to be unreliable.<sup>1706</sup> The Trial Chamber is satisfied that in fact civilians were killed on a massive scale in Karina.<sup>1707</sup> One witness estimated that at least 200 civilians were killed in the attack on Karina.<sup>1708</sup> Even though other witnesses have not estimated any total figures for the event, the figure of 200 civilians killed is corroborated by the totality of the evidence given, the massiveness of the attack on the village and the general destruction caused.

(iii) Mateboi

895. At an unspecified time in 1998, the Accused Brima sent an AFRC “advance team” under the command of ‘Captain Arthur’ to Mateboi, a village close to Camp Rosos.<sup>1709</sup> Upon return to Camp Rosos, ‘Captain Arthur’ brought the decapitated head of the chief of Mateboi and handed it over the commanders at headquarters, which included the Accused Brima and Kamara.<sup>1710</sup>

(iv) Gbendembu

896. In or around August 1998, ‘Gullit’ ordered two AFRC commanders, one Salifu Mansaray and ‘Arthur’ to attack Gbendembu, on the basis that ECOMOG and loyal SLA troops were purportedly stationed there.<sup>1711</sup> Witness TF1-033 heard that 25 civilians were killed in the attack on Gbendembu and that ‘Gullit’ commended his men for “a job well done”.<sup>1712</sup>

(v) Findings

897. By virtue of the foregoing, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied that between 1 May 1998 and 30 November 1998, members of the AFRC unlawfully killed an unknown number of civilians in Bornoya, Mateboi and Gbendembu in Bombali District. Consequently, the Trial Chamber finds that the material elements in relation to Counts 4 and 5 have been established.

<sup>1706</sup> DBK-094, Transcript 11 July 2006, pp. 38-40.

<sup>1707</sup> George Johnson, Transcript 15 September 2005, p. 55; TF1-033, Transcript 11 July 2005, pp. 19-20; TF1-058, Transcript 14 July 2005, pp. 78-82; DBK-089, Transcript 14 July 2006, pp. 11-13; Exhibit P-54, Amnesty International, “Sierra Leone, A Year of Atrocities against Civilians”, 1998, p. 15810.

<sup>1708</sup> TF1-055, Transcript 12 July 2005, p. 80.

<sup>1709</sup> George Johnson, Transcript 15 September 2005, pp. 60-61.

<sup>1710</sup> George Johnson, Transcript 15 September 2005, pp. 61-63.

<sup>1711</sup> TF1-033, Transcript 11 July 2005, pp. 32-33; TF1-334, Transcript 23 May 2005, pp. 81, 84.

<sup>1712</sup> TF1-033, Transcript 11 July 2005, p. 34.

898. The Trial Chamber is further satisfied that each of the killings in Karina was part of a large scale killing which in its totality satisfies the element of massiveness for the crime of extermination as charged under Count 3 of the Indictment. The indiscriminate manner in which the victims were targeted and the fact that the killings occurred over a relatively short period of time establishes that the perpetrators of the individual killings intended to contribute to the overall and massive result of these killings.

(g) Freetown and the Western Area (6 January 1999 – 28 February 1999)

899. The Prosecution alleges that “[b]etween 6 January 1999 and 28 February 1999, AFRC/RUF conducted armed attacks throughout the city of Freetown and the Western area. These attacks included large scale unlawful killings of civilian men, women and children at locations throughout the city and the Western Area, including Kissy, Wellington, and Calaba Town”.<sup>1713</sup>

900. The Prosecution has led evidence from witnesses who heard of killings of civilians and witnessed dead bodies in various locations in Freetown and the Western Area.<sup>1714</sup> While the Trial Chamber accepts this evidence as credible, given its general nature, the Trial Chamber relies on it to corroborate its findings on the more specific incidents described below.

901. The Trial Chamber has considered the available evidence and, in arriving at the following findings of fact, relies on the evidence of Prosecution witnesses TF1-033, TF1-184, Gibril Massaquoi, TF1-334, TF1-024, TF1-104, TF1-083, TF1-157, TF1-021, TF1-153 and TF1-084.

(i) Freetown

a. East End Police

902. Witness TF1-157 testified that when the troops entered Freetown, police officers and their families were specifically targeted and killed.<sup>1715</sup> The targeting of police officers followed a specific reminder by the Accused Kanu, who reiterated a previous order given to the troops by SAJ Musa at Newton, ordering that the troops should kill Nigerian soldier, Nigerian civilians, police officers and SLPP party members.<sup>1716</sup> The Accused Kanu reminded the troops of that order at a meeting near

<sup>1713</sup> Indictment, para. 49.

<sup>1714</sup> TF1-033, Transcript 11 July 2005, pp. 63-65; TF1-153, Transcript 22 September 2005, p. 100; TF1-334, Transcript 14 June 2005, pp. 28, 64-65; George Johnson, Transcript 16 September 2005, p. 38; Gibril Massaquoi, Transcript 10 October 2005, pp. 12, 13; TF1-083, Transcript 8 April 2005, pp. 54-56, 62; TF1-227, Transcript 8 April 2005, p. 101.

<sup>1715</sup> TF1-157, Transcript 25 July 2005, pp. 19, 20.

<sup>1716</sup> George Johnson, Transcript 16 September 2005, p. 4.

Orugu Village<sup>1717</sup> on the eve of the attack on Freetown. The Accused Brima, Kamara, the witness George Johnson, Hassan Papah Bangura and other battalion commanders were present at that meeting.<sup>1718</sup>

903. No suggestion has been made that the regular police were involved in the hostilities during the armed conflict in Sierra Leone. The Trial Chamber is therefore satisfied that the killed officers were civilians.

b. State House Area

904. Witness TF1-033 testified that on 6 January 1999, while he was seated on a bench at State House with Gibril Massaquoi, fighters including 'Junior Sheriff' brought one boy to State House. The witness saw the boy's ID card, from which the witness learnt that he was from Guinea-Bissau. Witness TF1-033 testified that 'Junior Sheriff' then shot and killed the boy.<sup>1719</sup>

905. Witness TF1-033 also testified that on 6 January 1999 and the subsequent four or five days thereafter, he observed civilians being killed around State House by AFRC fighters on the orders of 'Gullit'.<sup>1720</sup> The witness stated that people perceived to be Nigerians and civilians suspected of harbouring Nigerians were brought to State House and killed. Given the more detailed evidence of killings at State House considered below, some of which involved the Accused Brima, the Trial Chamber makes no additional findings on this general evidence of witness TF1-033.

906. On 6 January 1999, at State House, witness TF1-184 watched the Accused Brima shoot dead a woman, who was the girlfriend of one of the soldiers.<sup>1721</sup> Witness TF1-334 also described an incident wherein the Accused Brima shot and intentionally killed a woman at State House on that same day, whom he referred to as the wife of one of the soldiers.<sup>1722</sup>

907. Witness Gibril Massaquoi testified that when he entered State House on 6 January 1999, he saw sixteen persons in civil attire sitting on the ground inside the compound. The witness overheard 'Five-Five' talking to the men, who were explaining that they were not soldiers but Nigerian businessmen. 'Gullit' then arrived and told 'Five-Five' that the men were Nigerian ECOMOG soldiers who had removed their uniforms and were posing as civilians. Several of the Nigerians

<sup>1717</sup> Marked as location (H) on exhibit P-30(a), Transcript 16 September 2005, p. 18.

<sup>1718</sup> TF1-George Johnson, Transcript 16 September 2005, 17, 18.

<sup>1719</sup> TF1-033, Transcript 11 July 2005, pp. 63-65.

<sup>1720</sup> TF1-033, Transcript 11 July 2005, pp. 63-65.

<sup>1721</sup> TF1-184, Transcript 27 September 2005, p. 62.

<sup>1722</sup> TF1-334, Transcript 14 June 2005, p. 22.

denied this. 'Gullit' then told his soldiers to "get rid" of the Nigerians.<sup>1723</sup> The witness testified that he saw 'Five-Five' and other soldiers take "some of them" across the road from State House to "a place now they are referring to as the Defence Building. It was formerly a hotel."<sup>1724</sup> The witness testified that 'Five-Five' shot and killed one man. Three others were shot and killed, although the witness does not state by whom. The four corpses and the remaining Nigerians, who were still alive, were then loaded into a white four wheel drive and taken away from State House.<sup>1725</sup>

908. The Trial Chamber has considered the cross-examination of witness Gibril Massaquoi on this point.<sup>1726</sup> It emerged that in a prior statement concerning the incident, the witness stated that he saw two persons being killed at "the defence building". He states that neither 'Gullit' nor 'Five-Five' personally killed anyone, but that "they gave orders to their men" to execute the Nigerians.<sup>1727</sup>

909. Witness TF1-184 gave the following evidence regarding killings he witnessed at State House on 6 January 1999:

A. [...] So by this I left him and came inside State House. They came with four men --

Q. Mr Witness, who is they? They came?

A. We, our soldiers, junior soldiers, went to the defence. By then it was Paramount Hotel. They used to call it Paramount Hotel. That is where they brought this four civilian, including one woman. As they said, these people were Nigerians. Gullit shot at them. Five-Five took the woman. We left there. I came down. I came inside again.<sup>1728</sup>

The witness was not cross-examined on this evidence, which the Trial Chamber finds somewhat imprecise.

910. The Trial Chamber is satisfied that witnesses Gibril Massaquoi and TF1-184 describe the same incident, as their accounts are substantially similar and over six years passed between the event in question and their testimony. It is plausible that the discrepancies between the witnesses' accounts are explicable on the basis that the witnesses arrived at State House at a different point in time and described the incident from their various perspectives. The Trial Chamber is satisfied that the Accused Brima gave an order to his subordinates, including Kanu, to execute the civilians. The Trial Chamber is further satisfied that Kanu shot and killed one civilian near State House and ordered his men to execute another three civilians.

<sup>1723</sup> Gibril Massaquoi, Transcript 7 October 2005, pp. 115-116.

<sup>1724</sup> Gibril Massaquoi, Transcript 7 October 2005, p. 117.

<sup>1725</sup> Gibril Massaquoi, Transcript 7 October 2005, p. 116.

<sup>1726</sup> Gibril Massaquoi, Transcript 10 October 2005, pp. 101-112.

<sup>1727</sup> Gibril Massaquoi, Transcript 10 October 2005, p. 111.

<sup>1728</sup> TF1-184, Transcript 27 September 2005, pp. 61-62.

911. Witness TF1-334 testified that on the same day, he observed 'Tito' bringing fourteen captured Nigerian ECOMOG soldiers, in uniform, to State House. 'Gullit' questioned these soldiers about their commander and where their "military hardware" was stored. The witness stated that 'Gullit' became irritated when the soldiers did not give adequate responses and he took a pistol and shot and killed two of them. He then ordered 'Tito' to execute the remaining soldiers. 'Tito' took the remaining twelve Nigerians "out the back of the State House" where they were executed by him and his men.<sup>1729</sup> The Trial Chamber observes, from the evidence of witness TF1-024, that the Defence building, formerly the Paramount Hotel, is situated behind State House but close by it.<sup>1730</sup> Witness TF1-334 was not cross-examined on this incident.

912. As there is a possibility that the victims were combatants, the Trial Chamber is not satisfied that they belonged to the civilian population. The Trial Chamber is satisfied that at least four persons *hors de combat* were executed by AFRC soldiers who were acting in furtherance of the armed conflict.

913. On 6 January 1999, at Garrison Street outside State House, witness TF1-334 observed a AFRC named Lieutenant Colonel Kido shoot and kill approximately six civilians because they had "overlooked" him,<sup>1731</sup> meaning that they did not pay him sufficient respect.

914. Prior to the departure of the AFRC troops from State House, while Witness TF1-024 was in captivity there, he overheard a commander whom the others called 'Gullit' telling his fighters to force captured civilians to join the AFRC troops on their retreat, in order to replace those fighters killed by ECOMOG. Civilians who refused to join were shot in the presence of 'Gullit' and their dead bodies were thrown out the back of State House. The witness was unable to specify the number of civilians who were killed, but estimated that there were more than thirty.<sup>1732</sup> The Trial Chamber thus finds that at least thirty civilians were killed.

915. The Brima Defence submits that witness TF1-024's identification of 'Gullit' at State House was a mere guess, intended to favour the Prosecution case.<sup>1733</sup> In cross-examination it emerged that the witness, in a prior written statement, described 'Gullit' as a man of medium height, 'not too black' but rather 'fair in complexion'. The witness clarified that he did not intend to suggest that the

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<sup>1729</sup> TF1-334, Transcript 14 June 2005, pp. 22-24, 27.

<sup>1730</sup> TF1-024, Transcript 7 March 2005, pp. 71-73.

<sup>1731</sup> TF1-334, Transcript 14 June 2005, pp. 28-29.

<sup>1732</sup> TF1-024, Transcript 7 March 2005, pp. 46-48, 72-74.

<sup>1733</sup> Brima Defence Final Brief, para. 182.

person to whom he referred as 'Gullit' was white.<sup>1734</sup> The Trial Chamber accepts the evidence of the witness, contained in a pre-trial written statement and repeatedly asserted in oral testimony, that he knew the person to be 'Gullit' by the fact that people called him by that name and he responded.<sup>1735</sup> Further, there is corroborating evidence from other witnesses that 'Gullit' was present at State House in the first week after the invasion.<sup>1736</sup>

916. The Brima Defence also challenge the witness's description of State House, submitting that it is contradicted by the description given by the Accused Brima in evidence.<sup>1737</sup> The Trial Chamber has reviewed the evidence of both witness TF1-024 and the First Accused in relation to the layout of State House and especially the kitchen.<sup>1738</sup> The Trial Chamber is of the view that the discrepancies between the two descriptions of the building are minor and explicable on the basis that the First Accused worked in the building for a number of years while on the witness's account he spent a short and stressful period in captivity there.

c. Kingtom

917. In the second week that the troops were in Freetown, while the headquarters was still at State House, the 5<sup>th</sup> Battalion Commander 'Basky', aka Saidu Kambolai, came to State House and reported that he needed reinforcements at Kingtom, near Ascension Town, as ECOMOG had taken over the area.<sup>1739</sup> Witness TF1-334 was at State House in the presence of the three Accused, his superior Commander A<sup>1740</sup>, Colonel Woyoh and some of the military supervisors when 'Basky' made this report. In response, the witness, his superior, Commander Basky and Colonel Woyoh gathered some men and returned to State House, where they introduced the men to 'Gullit'. 'Gullit' told the Operations Commander in front of the men that he needed the ground at Kingtom captured.

918. The troops, led by Operations Commander, Commander Basky and Colonel Woyoh and accompanied by the witness, went to Kingtom.<sup>1741</sup> The witness stated that the soldiers broke into houses and killed the civilians inside because they perceived them as 'traitors' who were collaborating with ECOMOG.<sup>1742</sup> The witness testified that the soldiers would knock on the door of

<sup>1734</sup> TF1-024, Transcript 7 March 2005, pp. 69-70.

<sup>1735</sup> TF1-024, Transcript 7 March 2005, pp. 44-45

<sup>1736</sup> TF1-334, Transcript 14 June 2005, pp. 21-22; Gibril Massaquoi, Transcript 7 October 2006, p. 115; George Johnson, Transcript 16 September 2005, p. 27.

<sup>1737</sup> Brima Defence Final Brief, para. 182.

<sup>1738</sup> First Accused Brima, Transcript 6 June 2006, pp. 27-28; TF1-024, Transcript 7 March 2005, pp. 70-73.

<sup>1739</sup> TF1-334, Transcript 14 June 2005, p. 40.

<sup>1740</sup> Name mentioned on exhibit P-12.

<sup>1741</sup> TF1-334, Transcript 14 June 2005, pp. 41-42.

<sup>1742</sup> TF1-334, Transcript 14 June 2005, pp. 43-44.

the house and if the door was not opened, they would force it open and “[t]he first person who came out was a dead person.”<sup>1743</sup> The witness was unable to estimate the number of civilians killed in this manner.

d. Fourah Bay

919. Witness TF1-334 testified that in Freetown in January 1999, after the troops lost State House and Eastern Police and while the troops were at Savage Square, ‘Gullit’ received information that the people of Fourah Bay had killed one of his soldiers. ‘Gullit’ announced that he would lead the AFRC troops to Fourah Bay to burn houses and kill people in retaliation. The witness testified that troops including himself, ‘Gullit’, ‘Bazzy’, ‘Five-Five’, the Operation Commander, the Deputy Operation Commander and his superior “Commander A” moved to Fourah Bay. The troops attacked Fourah Bay and he observed a number of civilians being killed. The witness testified that all of the commanders participated in the attack, naming specifically ‘Gullit’ and ‘Five-Five’. The troops then moved to Ugun.<sup>1744</sup>

920. Witness George Johnson corroborated the evidence of the Accused Brima ordering retaliatory killings of civilians in Fourah Bay, although he stated that Brima and the other commanders were at State House when they received the report about the soldier allegedly killed. The witness testified that he went on the attack, along with around one hundred AFRC soldiers, led by one Saidu Kambolia.<sup>1745</sup> “A lot of civilians” were killed, including men, women and children burned inside houses. Soldiers shot people who attempted to escape from burning houses.<sup>1746</sup> The attack was not limited to Fourah Bay Road but encompassed the entire Fourah Bay area. When asked to estimate the number of civilians killed, the witness replied that “I couldn't estimate because I could not go round the whole Fourah Bay to count each and every body.”<sup>1747</sup> After the operation, the soldiers returned to State House where Brima was present.<sup>1748</sup>

921. Witness TF1-184 gave the most detailed account of an attack on Fourah Bay ordered by Brima in retaliation for the alleged killing of one of the soldiers by civilians in that area. He testified that he was at Ferry Junction, after the troops lost State House, with ‘Gullit’ and ‘Five-Five’ and

<sup>1743</sup> TF1-334, Transcript 14 June 2005, p. 45.

<sup>1744</sup> TF1-334, Transcript 14 June 2005, pp. 66-67.

<sup>1745</sup> George Johnson, Transcript 16 September 2005, pp. 42-44.

<sup>1746</sup> George Johnson, Transcript 16 September 2005, p. 44.

<sup>1747</sup> George Johnson, Transcript 16 September 2005, p. 44.

<sup>1748</sup> George Johnson, Transcript 16 September 2005, p. 45.

Kamara was nearby.<sup>1749</sup> Upon receiving this information, ‘Gullit’ ordered a soldier named “Mines” to go to the SLRA to collect cutlasses. “Mines” subsequently returned with cutlasses, which he distributed to the troops with the assistance of one of the battalion commanders ‘Changabulanga’.<sup>1750</sup> He described a demonstration of an amputation that ‘Five-Five’ gave for the troops at this point.<sup>1751</sup>

922. Brima then ordered the soldiers to move to the Upgun roundabout via Kissy Road. The witness testified that upon arrival at Upgun, the troops were summoned in a muster parade. ‘Five-Five’ and ‘Gullit’ held a discussion and then ‘Five-Five’ told the troops that ‘Gullit’ had said that the civilians should be taught a lesson. ‘Five-Five’ then ordered that any civilian the troops saw from Ross Road until Fourah Bay Road should be amputated and killed and the entire area should be burned down.<sup>1752</sup> The witness stated that it was normal practice for the commanders to have a discussion, after which ‘Five-Five’, whom the witness referred to as the “army chief commander”, would inform the troops on the details of the operation.<sup>1753</sup>

923. According to the witness, the troops were then divided for the attack on Fourah Bay, with ‘Five-Five’ as the commander of one group and ‘Bazzy’ at Kissy Road. He then stated that after carrying out the orders, the troops were called back to where ‘Gullit’ was near Kissy Road.<sup>1754</sup>

924. The Kamara Defence submits that the testimonies of witnesses TF1-334, George Johnson and TF1-184 on the attack on Fourah Bay are inconsistent.<sup>1755</sup> The Trial Chamber accepts that there are discrepancies between the three accounts. Nonetheless, this does not mandate the dismissal of the entire testimony of each witness in relation to the attack on Fourah Bay. The Trial Chamber is of the view that the variations in the three accounts are explicable due to the passage of years since the events in question and the chaotic and stressful atmosphere existing at the relevant time, rather than bias on the part of witnesses George Johnson and TF1-334, as suggested by the Kamara Defence.<sup>1756</sup> However, the Trial Chamber notes that neither witness George Johnson nor TF1-334 were cross-examined on their testimony regarding the incident. In addition, witness TF1-184’s evidence was more detailed.

<sup>1749</sup> TF1-184, Transcript 27 September 2005, pp. 71-72; 30 September 2005, p. 78.

<sup>1750</sup> TF1-184, Transcript 27 September 2005, p. 73.

<sup>1751</sup> See Factual Findings, Physical Violence, para. 1230, *infra*.

<sup>1752</sup> TF1-184, Transcript 27 September 2005, pp. 74-75.

<sup>1753</sup> TF1-184, Transcript 27 September 2005, p. 75.

<sup>1754</sup> TF1-184, Transcript 27 September 2005, pp. 75-76.

<sup>1755</sup> Kamara Final Brief, paras 207-209.

<sup>1756</sup> Kamara Final Brief, para. 209.

925. The Trial Chamber further finds it has not been established beyond reasonable doubt that the Accused Brima personally killed any civilians. However, the Trial Chamber is satisfied beyond reasonable doubt, based on the consistent testimony of all three witnesses, that Brima ordered the attack on Fourah Bay.

926. The Trial Chamber further finds, based on the detailed eye-witness account of witness TF1-184 which was not shaken in cross-examination in this regard, that the Accused Kanu reiterated the order to the assembled troops prior to the attack. While both witnesses TF1-334 and TF1-184 testified that the Accused Kanu went on the attack, the Trial Chamber is not satisfied that the Accused Kanu personally killed any civilians.

e. Guard Street

927. At an unspecified point during the AFRC retreat from Freetown, witness TF1-334 encountered ‘Captain Blood’, who was a bodyguard of the Accused Kamara, with seven captured civilians at Guard Street. The witness watched ‘Captain Blood’ shoot and kill three of the civilians and kill the remaining four using a machete.<sup>1757</sup>

(ii) Kissy

a. Good Shepherd Hospital

928. Witness TF1-104 was working as a nurse at the Good Shepherd Hospital in Kissy in January 1999.<sup>1758</sup> He testified that on 18 January 1999, a group of “juntas” went to the Good Shepherd Hospital in Kissy and accused personnel there of treating ECOMOG and Kamajors. They forced everybody out of the hospital – patients, nurses, staff, and visitors – and beat them with a large stick called a ‘coboko’, which has a rope tied to it.<sup>1759</sup>

929. The “juntas” then took Witness TF1-104, along with other civilians, to a certain Pa Zubay’s house a short distance away. At this house there were a number of juntas and commanders including ‘Captain Shepherd’, whom the witness had met previously, and an individual to whom the other juntas called ‘Captain Blood’. The civilians were made to stand against a wall and the juntas opened fire and began shooting randomly from different directions. The witness was injured

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<sup>1757</sup> TF1-334, Transcript 14 June 2005, pp. 72-73.

<sup>1758</sup> TF1-104, Transcript 30 June 2005, pp. 5-9.

<sup>1759</sup> TF1-104, Transcript 30 June 2005, pp. 22-24.

and indicated wounds on his elbow, knee and right hip for the record during his examination-in-chief. He testified that fifteen civilians were killed as a result of the shooting.<sup>1760</sup>

930. The Trial Chamber finds the elements in relation to Counts 4 and 5 (murder as a crime against humanity and a war crime respectively) have been established beyond reasonable doubt in respect of the shooting by 'juntas' at the house of 'Pa Zubay'.

b. Rogbalan Mosque

931. Witness TF1-334 testified that while the troops were at Kissy Mental Home during the retreat from Freetown in January 1999, 'Gullit' called the Operation Commander and one Lieutenant Colonel named 'Gunboot' and "other commanders" to him. 'Gullit' told the assembled commanders that he had received information that civilians were harbouring ECOMOG forces in mosques. 'Gullit' further stated that AFRC troops should shoot and kill people they encounter in mosques, as these people were enemies.<sup>1761</sup> The witness stated that while the area had many mosques, 'Gullit' referred in particular to a mosque "down towards Shell Old Road, towards the junction" that was housing "collaborators".<sup>1762</sup> 'Gullit' chose 'Five-Five' to lead a group of men including the witness, his superior 'Supervisor A' and others to the mosque. As the troops approached the mosque, 'Five-Five' instructed them to start shooting at it. The witness stated that the mosque was big and there were many people inside. The troops opened the door and started shooting. The witness observed many people die in the mosque. The troops then withdrew.<sup>1763</sup>

932. On or about 22 January 1999, witness TF1-083 sought refuge from fighting between "rebels" and ECOMOG in Rogbalan Mosque. He encountered many corpses on the premises of the mosque, both inside the mosque itself and within the fenced area surrounding it. The witness estimated that there would have been seventy corpses. He stated that the dead included elderly people, men, women and children.<sup>1764</sup>

933. Witness TF1-021 testified that on a Friday afternoon in January 1999, around half past twelve to one o'clock, unarmed civilian worshippers were gathered at Rogbalan Mosque in Windsor St, Kissy. Over fifteen men armed with guns and machetes, stormed into the compound of the mosque. The men asked the civilians if they were praying, to which the civilians responded

<sup>1760</sup> TF1-104, Transcript 30 June 2005, pp. 24-29.

<sup>1761</sup> TF1-334, Transcript 14 June 2005, pp. 87-88.

<sup>1762</sup> TF1-334, Transcript 14 June 2005, p. 88.

<sup>1763</sup> TF1-334, Transcript 14 June 2005, pp. 88-89.

<sup>1764</sup> TF1-083, Transcript 8 April 2005, pp. 69-70, 82-83.

affirmatively. The witness stated that the men told the civilians "As you are here now, you are people who voted for Tejan Kabbah. We are going to kill all of you." The civilians collected money and offered it to their assailants so that they would leave. The men took the money and then began firing indiscriminately, killing people throughout the mosque. According to the witness, the men stated that the killings were not their fault, as they came in peace, but that of President Kabbah, since he did not recognise the People's Army.

934. The witness testified that he did not know to which group the men belonged as they did not wear identifying clothing and it was difficult to distinguish between the factions. He stated that he was thrown to the ground and the rebels stepped on him, telling him that he would die that way as they did not have any bullets left in their magazines. After the men departed, the witness counted the bodies. He testified that approximately 71 were killed, with 36 bodies inside the mosque, 7 at the back of the mosque, 7 in the toilet and 21 outside the mosque. The witness knew several of the victims personally and gave their names to the Trial Chamber.<sup>1765</sup>

935. In cross-examination, the Brima Defence put to witness TF1-021 a prior written statement in which he said that the attackers of Rogbalan Mosque identified themselves as belonging to the RUF, which the witness did not deny at trial.<sup>1766</sup> Specifically, the witness stated "I know this because when they were addressing us, they told us that they were RUF rebels and that they were People's Army."<sup>1767</sup>

936. The Trial Chamber finds the evidence of witness TF1-021 regarding the killings of civilians at the mosque to be clear, consistent and well corroborated by the evidence of TF1-083. The Brima Defence did not challenge either witness on the killing of civilians, but argued that the men responsible were members of the RUF and there is therefore no nexus with any of the Accused.<sup>1768</sup>

937. The Trial Chamber observes that witness TF1-021 testified that the mosque was attacked by RUF rebels, or members of the 'People's Army'. Although individual RUF members may have been active in Freetown, the Trial Chamber has found that the fighters present in Freetown in January 1999 were largely members of the AFRC and entirely under AFRC command. The term 'People's Army' was also used by members of the AFRC, particularly during the AFRC government period. The Trial Chamber also recalls that the lack of distinguishing insignia worn by

<sup>1765</sup> TF1-021, Transcript 15 April 2005, pp. 25-34.

<sup>1766</sup> TF1-021, Transcript 15 April 2005, p. 45; Brima Final Brief, para. 249, referring to Exhibits D-05.A and D-05.B.

<sup>1767</sup> Statement of Witness TF1-021 dated 25 February 2003, CMS p. 6378 [confidential].

<sup>1768</sup> Brima Final Brief, paras 248-249.

the AFRC and RUF made it difficult for members of the public to identify the perpetrators of crimes by sight.

938. Documentary evidence was admitted which suggests that more than one mosque was attacked during the January 1999 invasion and retreat from Freetown.<sup>1769</sup> However, exhibit P-19, a map of Freetown, shows that the mosque attacked by witness TF1-334's group is situated on Whenzle St in Kissy. The Trial Chamber observes that Rogbalan Mosque in Kissy is located on the same street, and is satisfied the reference in the transcript to "Windsor Street" is due to an error. The Trial Chamber is therefore satisfied beyond reasonable doubt that the armed men who attacked Rogbalan Mosque were AFRC fighters as described in the testimony of witness TF1-334.

c. Kissy Mental Home

939. Witness TF1-334 testified that one evening in January 1999, on the day that the AFRC troops arrived at Kissy Mental Home during the retreat from Freetown, the Accused Brima, in the presence of commanders including the Accused Kamara and Kanu, ordered troops to go out from the mental home and "clear up" the area. Brima stated that civilians were to be killed and amputated and houses burned as punishment for their support of ECOMOG.<sup>1770</sup> Specifically, he ordered the witness, 'Pikin', 'Shrimp', 'Hassim' and others to go as far as they could towards "PWD" killing people.<sup>1771</sup>

940. The witness stated that his group accordingly moved from the Kissy Mental Home, along the Old Road, towards Kissy market, where they heard civilians celebrating. The soldiers began firing machine guns at the civilians, killing an unspecified number of them. The troops went as far as Fisher Lane and then retreated to Kissy Mental Home, where they reported to 'Gullit' that the mission had been accomplished.<sup>1772</sup>

941. Witness TF1-334 further testified that in this period the AFRC troops held eight captured nuns at Kissy Mental Home. After ECOMOG began bombarding the troops there, two abducted clerics escaped. 'Gullit' ordered that the nuns should be killed so as to prevent them escaping and leaking information. Pursuant to this order, Foday Bah Marah a.k.a. 'Bulldoze' executed five

<sup>1769</sup> Exhibit P-46, "Fifth report of the Secretary General on the UN Observer Mission in Sierra Leone", 4 March 1999, p. 15659.

<sup>1770</sup> TF1-334, Transcript 14 June 2005, pp. 83-84.

<sup>1771</sup> TF1-334, Transcript 14 June 2005, p. 84.

<sup>1772</sup> TF1-334, Transcript 14 June 2005, pp. 86-87.

nuns.<sup>1773</sup> Witness George Johnson also testified that the troops had eight abducted nuns at the mental home. However, he stated that when ECOMOG attacked the troops, Foday Bah Marah killed three nuns and the others escaped. The witness did not state whether this was pursuant to any order.<sup>1774</sup> Witness TF1-184 corroborated the evidence that three nuns were killed when the Nigerians attacked the mental home. He does not state who killed the nuns, but he testified that it was 'Gullit' who ordered their execution.<sup>1775</sup>

942. On the basis of the testimony of witnesses TF1-334, George Johnson and TF1-184, the Trial Chamber finds beyond reasonable doubt that three nuns were killed on the orders of the Accused Brima.

943. Witness TF1-153 testified that in January 1999 as the AFRC troops and some captured civilians retreated from Kissy Mental Home area towards the Portee area by the Cotton Tree, the Accused Brima, in the presence of witness TF1-153, shot dead a nun because she was not walking quickly enough.<sup>1776</sup>

d. Rowe Street

944. Witness TF1-084 testified that at an unspecified time in January 1999, at Rowe Street in the Kissy area of Freetown, "rebels" in military uniform commanded by a man named Tafaiko captured him, along with seven other civilians, and body-searched them for valuables. The "rebels" then lined up the other seven civilians and shot them dead in front of the witness.<sup>1777</sup>

945. In cross-examination, it emerged that in a prior statement the witness had referred to the rebels in Kissy as 'RUF'.<sup>1778</sup> He explained that the forces he saw in Kissy were mixed, with some wearing military uniform and others civilian attire on which was written 'RUF'.<sup>1779</sup> The Trial Chamber recalls that it was often difficult for members of the public to distinguish between AFRC and RUF fighters. In view of this, the Trial Chamber considers the witness's identification of his attackers to be unreliable.

<sup>1773</sup> TF1-334, Transcript 14 June 2005, pp. 95-97.

<sup>1774</sup> George Johnson, Transcript 16 September 2005, p. 55.

<sup>1775</sup> TF1-184, Transcript 27 September 2005, pp. 82-84.

<sup>1776</sup> TF1-153, Transcript 23 September 2005, pp. 20-22.

<sup>1777</sup> TF1-084, Transcript 6 April 2005, pp. 40-41, 45-47.

<sup>1778</sup> TF1-084, Transcript 6 April 2005, p. 45.

<sup>1779</sup> TF1-084, Transcript 6 April 2005, p. 45.

946. The Trial Chamber notes that while some members of the RUF participated in the attack on Freetown, these individuals were fighting with the AFRC troops.<sup>1780</sup> The Trial Chamber accordingly finds that the perpetrators of the attack were individuals associated with the AFRC troops.

e. Fatamara Street

947. On approximately 18 January 1999, witness TF1-098, his brother and his cousin were forced by rebels at gunpoint to follow them to a school on Fatamara Street.<sup>1781</sup> Upon arrival at the school, four other civilians captured by the rebels were joined with the witness's group. A certain Tommy, one of the rebels, amputated the hands of the seven captured persons.<sup>1782</sup> Witness TF1-098's cousin died as a result of the amputation.<sup>1783</sup>

(iii) Calaba Town

948. Immediately after the withdrawal of the troops from Kissy Mental Home, at Calaba Town, witness Gibril Massaquoi saw a AFRC named "Foday Bah" shoot dead three nuns who supposedly refused to join the retreating troops.<sup>1784</sup> Thereafter, the witness also saw the dead body of a priest lying on the ground. The witness was not present when the priest was shot and does not know who the perpetrator is.<sup>1785</sup>

949. Having carefully considered the evidence of witnesses Gibril Massaquoi, TF1-334, TF1-184 and George Johnson in relation to the killing of three nuns around the time the troops retreated from Kissy Mental Home, the Trial Chamber is not satisfied beyond reasonable doubt that this incident at Calaba Town is different to that described above as taking place at Kissy Mental Home and accordingly makes no additional findings.

(iv) Wellington

950. Witness TF1-085 was abducted by rebels in Wellington in January 1999. She testified that in Wellington, "I saw them burning houses, killing people and looting property."<sup>1786</sup> The Trial Chamber finds this evidence too general to make any additional finding of unlawful killings.

<sup>1780</sup> Gibril Massaquoi, Transcript 7 October 2005, p. 124.

<sup>1781</sup> TF1-098, Transcript 5 April 2005, p. 39.

<sup>1782</sup> TF1-098, Transcript 5 April 2005, pp. 40-42.

<sup>1783</sup> TF1-098, Transcript 5 April 2005, pp. 42-43.

<sup>1784</sup> Gibril Massaquoi, Transcript 10 October 2005, pp. 27-28.

<sup>1785</sup> Gibril Massaquoi, Transcript 10 October 2005, p. 28.

<sup>1786</sup> TF1-085, Transcript 7 April 2005, p. 15.

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However, the Trial Chamber has considered the witness's testimony regarding her abduction in its factual findings in relation to outrages on personal dignity.

(v) Findings

951. In light of the foregoing evidence and leaving aside for the present the individual responsibility of the Accused, the Trial Chamber is satisfied beyond reasonable doubt that between 6 January and 28 February 1999, AFRC forces killed at least 145 civilian men, women and children in the city of Freetown and in Kissy in the Western Area, as charged under Counts 4 and 5. The Trial Chamber is further satisfied that these large scale killings satisfy the element of massiveness for the crime of extermination charged under Count 3 of the Indictment. The indiscriminate manner in which the victims were targeted and the fact that the killings occurred over a relatively short period of time establishes that the principal perpetrators of the individual killings intended to contribute to the overall and massive result of these killings.

(h) Port Loko District

952. The Prosecution alleges that “[a]bout the month of February 1999, members of the AFRC/RUF fled from Freetown to various locations in the Port Loko District. Between about February 1999 and April 1999, members of AFRC/RUF unlawfully killed an unknown number of civilians in various locations in Port Loko District, including Manaarma, Tendakum and Nonkoba.”<sup>1787</sup>

953. The Trial Chamber recalls that the Prosecution did not lead evidence of unlawful killings with respect to Tendakum.<sup>1788</sup>

954. In arriving at the following findings, the Trial Chamber has examined the available evidence and relies on the testimony of Prosecution witnesses TF1-334, George Johnson, TF1-157, TF1-023, TF1-253, TF1-256 and TF1-320 and Defence witnesses, DBK-129, DBK-012.

(i) Manaarma

<sup>1787</sup> Indictment, para. 50.

<sup>1788</sup> Rule 98 Decision, para. 96. The Trial Chamber notes that the Defence evidence shows that on an unspecified day in April 1999, ‘rebels’ killed a lot of people during the attack on Tendakum. Witness DBK-111 stated that he saw over ten mass graves where people were buried in Tendakum.<sup>1788</sup> He does not know how they were killed. As the Prosecution had not led evidence of unlawful killings in this location, the Trial Chamber did not require the Defence to complete this evidence: *See* Transcript 18 September 2006, pp. 49-50.

955. Witness TF1-320 testified that on an unspecified date in April 1999, “soldiers” wearing military uniforms brought a number of civilians who had been captured in the surrounding villages to Manaarma. After separating the women from the men, the “soldiers” took an unspecified number of women to a house where they killed some of them with axes and shot dead the others.<sup>1789</sup>

956. In April 1999, witness TF1-253 was abducted on the way to Ro-Makambisa by “rebels” who took him to Manaarma.<sup>1790</sup> As they entered Manaarma, witness TF1-253 saw a pregnant woman whose head had been severed and her stomach opened by the “rebels”.<sup>1791</sup> The Brima Defence submits that the testimony of witness TF1-253 is inconsistent and unreliable.<sup>1792</sup> However, the Trial Chamber is satisfied that the witness’s testimony on this particular incident was not shaken in cross-examination and therefore relies on his evidence.

957. The Prosecution submits that the evidence of Prosecution witnesses TF1-253 and TF1-320, both residents of Manaarma who were abducted by rebels in April 1999 and taken to Port Loko,<sup>1793</sup> establishes that the “rebels” and “soldiers” who attacked Manaarma were in fact AFRC troops en route to Port Loko, where a major attack was staged at the end of April 1999.<sup>1794</sup> The Trial Chamber will thus consider the available evidence on the attacks on Port Loko and Manaarma in order to make a finding on this submission.

958. Witness George Johnson testified that en route to Port Loko, the troops attacked a village where a fat lady was killed by an AFRC captain using a machete.<sup>1795</sup> The witness, who was the commander of the troops at the time, then sent an advance troop to secure the village ahead. He testified that when he subsequently arrived at the next village, he observed a number of dead civilians and ‘Sheriff’ complained to him that ‘Cyborg’ had killed them.<sup>1796</sup> The witness did not give the names of either village. He stated that no other villages were attacked en route to Port Loko.<sup>1797</sup> The witness led the troops to Port Loko, where they fought Malian ECOMOG soldiers and captured a large cache of arms and ammunition and two Malian soldiers.<sup>1798</sup>

<sup>1789</sup> TF1-320, Transcript 8 April 2005, pp. 13-15, 38-40.

<sup>1790</sup> TF1-253, Transcript 15 April 2005, pp. 63-65, 79-80.

<sup>1791</sup> TF1-253, Transcript 15 April 2005, pp. 80-81.

<sup>1792</sup> Brima Final Brief, para. 253.

<sup>1793</sup> TF1-253, Transcript 15 April 2005, p. 94; TF1-320, Transcript 8 April 2005, pp. 16-18.

<sup>1794</sup> Prosecution Final Brief, paras 1785-1786.

<sup>1795</sup> George Johnson, Transcript 16 September 2005, p. 79.

<sup>1796</sup> George Johnson, Transcript 16 September 2005, pp. 75-76.

<sup>1797</sup> George Johnson, Transcript 16 September 2005, p. 76.

<sup>1798</sup> George Johnson, Transcript 16 September 2005, p. 74.

959. Witness TF1-334 also went on the operation commanded by George Johnson to Port Loko.<sup>1799</sup> The witness testified that at Port Loko, Junior Lion and the other troops fought the Malians at Shelenka secondary school.<sup>1800</sup>

960. Witness TF1-253 was told by one of the rebels who captured him that he was part of Superman's group.<sup>1801</sup> However, he stated that "Johnson" and "Sesay" were the "big men" in Manaarma. He described Johnson as fat and black with plaited hair.<sup>1802</sup> "Colonel Sesay" was described as fair in complexion, not overly tall, wearing combat and a 'cap' that from the witness's description sounded like a balaclava.<sup>1803</sup> The witness states that "Johnson" was speaking into a device which the witness's described as "the thing [...] which is called a solar, normally they put it in the sun".<sup>1804</sup> The Trial Chamber infers that the witness is referring to a radio. Witness TF1-253 accompanied the troops as their captive to Port Loko. He testified that at Port Loko, the rebels fought the Malians at a secondary school called Schenlenker, at which point he escaped.<sup>1805</sup>

961. Witness TF1-320 also stated that at Port Loko, the rebels fought Malian ECOMOG soldiers at "Sri Lanka", a place near Low Shell Road.<sup>1806</sup> The Trial Chamber infers that the witness was referring to 'Shelenker' or 'Shelenka', the school referred to by witnesses TF1-320 and TF1-334.<sup>1807</sup>

962. Although the Trial Chamber has not relied on the testimony of Defence witness DBK-012 in relation to the command structure in Port Loko District, the Trial Chamber notes that the witness went on the operation to Port Loko and testified that the troops attacked Manaarma en route.<sup>1808</sup>

963. On the basis of the evidence of witnesses TF1-253 and TF1-320, the Trial Chamber finds that a group of rebels attacked Manaarma en route to Port Loko, where they engaged the Malian ECOMOG soldiers in combat at Shelenker/Shelenka secondary school. The Trial Chamber is satisfied from the evidence of witnesses TF1-334 and DBK-012 that the group of rebels that attacked Manaarma were AFRC soldiers under the command of 'Junior Lion' aka George Johnson. In making this finding, the Trial Chamber has not relied on witness TF1-253's description of 'Colonel Sesay' and 'Colonel Johnson', which it found confused and contradictory.

<sup>1799</sup> TF1-334, Transcript 15 June 2005, p. 34.

<sup>1800</sup> TF1-334, Transcript 15 June 2005, p. 35.

<sup>1801</sup> TF1-253, Transcript 15 April 2005, p. 62.

<sup>1802</sup> TF1-253, Transcript 15 April 2005, p. 81.

<sup>1803</sup> TF1-253, Transcript 15 April 2005, p. 82.

<sup>1804</sup> TF1-253, Transcript 15 April 2005, p. 83.

<sup>1805</sup> TF1-253, Transcript 15 April 2005, pp. 97-98, 100.

<sup>1806</sup> TF1-320, Transcript 8 April 2005, pp. 16-17.

(ii) Nonkoba

964. On the morning of 28 April 1999, “rebels” attacked the village of Nonkoba. Witness DBK-111 and other inhabitants of Nonkoba fled to the bush. The witness later learned that 36 villagers were killed in this attack, including his mother-in-law. He observed several dead bodies with severed heads.<sup>1809</sup>

(iii) Findings

965. By virtue of the foregoing, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied beyond reasonable doubt that between February and April 1999, in Port Loko District, an unknown number of civilians were unlawfully killed by AFRC troops in Manaarma, as charged under Counts 4 and 5. The Trial Chamber further finds that at least 36 civilians were unlawfully killed in Nonkoba, as charged under Counts 4 and 5. However, on the evidence adduced, the Trial Chamber has been unable to establish beyond reasonable doubt whether the perpetrators of the killings in Nonkoba were members of the AFRC and/or RUF.

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<sup>1807</sup> TF1-320, Transcript 8 April 2005, pp. 17-18.

<sup>1808</sup> DBK-012, Transcript 6 October 2006, p. 45-46.

<sup>1809</sup> DBK-111, Transcript 18 September 2006, pp. 43-45

## B. Rape (Count 6)

### 1. Allegations and Submissions

966. The Indictment alleges that members of the AFRC/RUF committed widespread sexual violence against civilian women and girls including brutal rapes, often by multiple rapists. The sexual violence is alleged to have occurred between 14 February 1998 and 30 June 1998 in Kono District, between 14 February 1998 and 30 September 1998 in Koinadugu District, between about 1 May 1998 and 30 November 1998 in Bombali District, at all times relevant to the Indictment in Kailahun District, between 6 January 1999 and 28 February 1999 in Freetown and Western Area and between February 1999 and April 1999 in Port Loko District.<sup>1810</sup>

967. The Prosecution submits that the evidence presented establishes beyond reasonable doubt that the legal requirements for rape as a crime against humanity are met.<sup>1811</sup> With regards to the *mens rea* element, the Prosecution argues that the only reasonable inference from the evidence is that the perpetrators had the required *mens rea*. Specifically, the Prosecution alleges that, there is no doubt that the perpetrators knew of the absence of consent of the victims.<sup>1812</sup>

968. Insofar as the Defence challenge the testimony of witnesses with regard to specific incidents of rape, the Trial Chamber has discussed these submissions as they arise in the evidence below. Submissions by the Parties on the applicable law have been discussed above.

### 2. Evidence and Deliberations

#### (a) Kono District (14 February 1998 – 30 June 1998)

969. The Indictment alleges that between about 14 February 1998 and 30 June 1998 members of the AFRC/RUF raped hundreds of women and girls at various locations throughout Kono District including Koidu, Tombodu, Kissi-town (or Kissi Town), Foendor (or Foendu), Tomeneh, Fokoiya, Wonedu, and AFRC/RUF camps such as “Superman camp” and Kissi-town (or Kissi Town) camp.<sup>1813</sup>

<sup>1810</sup> Indictment, para. 51-57.

<sup>1811</sup> Prosecution Final Brief, para. 998.

<sup>1812</sup> Prosecution Final Brief, para. 998.

<sup>1813</sup> Indictment, para. 52.

970. The Prosecution has conceded that there was no evidence of rape in respect of Tomendeh, Fokoiya, “Superman Camp”/Kissi Town Camp, Kissi Town, or Tombodu.<sup>1814</sup>

971. The Trial Chamber has carefully considered the evidence on rape, a crime against humanity, relative to Kono District of Prosecution witnesses TF1-198, TF1-206, TF1-272, TF1-019, TF1-033, and TF1-217 and Defence witnesses DBK-129, DAB-025, DAB-115, DAB-114, DBA-113, DAB-123, DAB-128, DSK-103, DAB-127, DAB-134, DAB-129, DAB-101, DAB-125, and DAB-124. The Trial Chamber finds the evidence given by these witnesses with regards to the commission of crimes under Count 6 relates to locations not specified in the Indictment and therefore makes no findings on the basis of their evidence.

972. In arriving at its factual findings, the Trial Chamber has taken into consideration the evidence of Prosecution witnesses TF1-217, TF1-019, TF1-076 and Defence witnesses DBK-117.

(i) Koidu

973. Prosecution witness TF1-217 testified that “juntas” and “rebels” under the command of a certain ‘Akim Sesay’ attacked Koidu Town and raped young girls in February or March 1998.<sup>1815</sup> On cross-examination, witness DBK-117 gave similar evidence. The witness, who was based in Koidu from April 1998 until it was overtaken by ECOMOG<sup>1816</sup> and again when Koidu was recaptured by ‘Superman’ in December 1998, testified that the RUF raped women and girls when they went on patrols in Kono District.<sup>1817</sup> The Trial Chamber finds that the evidence of both Prosecution witness TF1-217 and Defence witness DBK-117 to be vague and insufficient to satisfy the *actus reus* and *mens rea* elements of the crime of rape.

974. The Trial Chamber also notes the evidence of Prosecution witness TF1-019 but finds that the relevant aspects fall outside of the indicted period for Kono District and therefore makes no findings in this regard.<sup>1818</sup>

(ii) Foendor / Foendu

975. Witness TF1-076 testified that on an unknown date in 1998, when she was approximately 15 years old, she fled her village of Tombodu and went towards Foendor with her sister, her brother-in-law and her uncle. They were captured by three “rebels” in the bush just outside of Foendor. The

<sup>1814</sup> Rule 98 Decision, para. 159.

<sup>1815</sup> TF1-217, Transcript 17 October 2005, pp. 4-5, 8.

<sup>1816</sup> Approximately May 1998, see Role of the Accused.

<sup>1817</sup> DBK-117, Transcript 16 October 2006, p. 35.

witness described the rebels as wearing combat trousers or shorts and t-shirts. They were carrying guns and a cutlass and were speaking Liberian English. One of the rebels raped the witness. He cut off her skirt and underwear with a knife and penetrated her with his penis. The witness bled and became light-headed.<sup>1819</sup> On cross-examination, the Defence put to the witness a prior statement in which she stated that the rebel removed her “lappa”.<sup>1820</sup> The Trial Chamber finds that there is no meaningful difference between a “lappa” and a skirt and therefore this inconsistency does not undermine the credibility of the witness.

976. The Trial Chamber is satisfied on the basis of the witness’s description of the perpetrators as “rebels”, wearing combat trousers or shorts and t-shirts, carrying guns and a cutlass and speaking Liberian English that they were members of either the AFRC or the RUF.

977. The Prosecution argues that it did not attempt to identify specifically the attacker of witness TF1-076, but submits that the attacker was a member of the Junta under the command of both AFRC and RUF commanders.<sup>1821</sup>

978. The Trial Chamber notes that the Prosecution in its Final Brief listed the preceding evidence of witness TF1-076 as having occurred in Tombodu.<sup>1822</sup> The Trial Chamber finds this is a mischaracterisation of the evidence. The witness clearly testified that she left Tombodu and was in the bush near Foendor when she was attacked. The Trial Chamber also notes that the Prosecution conceded that it did not lead evidence on Count 6 in Tombodu.<sup>1823</sup>

979. The Trial Chamber finds the testimony of witness TF1-076 to be credible; however, the Prosecution failed to establish that the evidence of the witness falls within the indicted period for Kono District (14 February through 30 June 1998). The witness testified that the events occurred in 1998 but did not provide any further direct or circumstantial evidence to guide the Chamber. Where two reasonable inferences are possible on the available evidence, the Trial Chamber is bound to interpret the evidence to the benefit of the Accused. The Trial Chamber therefore makes no further findings on the evidence of witness TF1-076.

(iii) Wonedu

<sup>1818</sup> TF1-019, Transcript 30 June 2005, pp. 81-82.

<sup>1819</sup> TF1-076, Transcript 27 June 2005, pp. 101-108.

<sup>1820</sup> “Lappa” is a Krio word which refers to a piece of cloth which women traditionally wrap around their waists as a skirt-like covering or sarong; TF1-076, Transcript 27 June 2005, p. 108.

<sup>1821</sup> Prosecution Response to Motion for Judgement of Acquittal, para. 154.

<sup>1822</sup> Prosecution Final Brief, para. 1320.

<sup>1823</sup> Prosecution Response to Rule 98 Motion, para. 146.

980. In making its factual findings in Wondedu, the Trial Chamber takes into consideration the evidence of Prosecution witness TF1-217 who testified that women, including his sister, were abducted from Wondedu.<sup>1824</sup> However, no further evidence was adduced which would suggest that the women he knew were raped.

(iv) Findings

981. By virtue of the foregoing the Trial Chamber is not satisfied that the elements of rape are established in relation to Kono District.

(b) Koinadugu District (14 February 1998 – 30 September 1998)

982. The Indictment alleges that between about 14 February and 30 September 1998 members of the AFRC/RUF raped an unknown number of women and girls in locations in Koinadugu District including Kabala, Koinadugu, Heremakono and Fadugu.<sup>1825</sup>

983. The Prosecution has conceded that it did not lead evidence of rape in respect of Heremakono.<sup>1826</sup>

984. The Trial Chamber has carefully considered the evidence on rape, a crime against humanity, relative to Koinadugu District of Prosecution witnesses TF1-153, TF1-033, TF1-199 and Defence witnesses DAB-090, DAB-086, DAB-088 and DAB-089. The Trial Chamber finds the evidence given by these witnesses relates to locations not specified in the Indictment and therefore makes no findings on the basis of their evidence.

985. In coming to its findings in relation to Koinadugu District, the Trial Chamber has examined the evidence of Prosecution witnesses TF1-199 and TF1-209 and Defence witnesses DBK-083 DAB-079, DAB-081, DAB-078, DAB-085 and DBK-156.

(i) Kabala

986. Defence witness DAB-156 testified that after the AFRC was overthrown in Freetown in February 1998 but before the rainy season, she was raped by 'Junior Lion'<sup>1827</sup> in Kabala. He held her, raped her, banged her on the forehead where she still has a scar, and knocked out some of her

<sup>1824</sup> TF1-217, Transcript 17 October 2005, p. 11.

<sup>1825</sup> Indictment, para. 53.

<sup>1826</sup> Rule 98 Decision, para. 159.

<sup>1827</sup> 'Junior Lion' is Prosecution witness George Johnson.

teeth.<sup>1828</sup> The Trial Chamber is satisfied that the *actus reus* and *mens rea* of rape are satisfied on the basis of this evidence.

987. Witness DBK-083 testified that sometime after the AFRC and RUF were forced to withdraw from Freetown,<sup>1829</sup> a column of troops passed by his farm outside of Kabala. The witness testified that the troops were led by SAJ Musa and Superman. At that time, the witness heard reports of rapes.<sup>1830</sup>

988. The Trial Chamber also notes, but does not rely on, the testimony of witness TF1-199 with regards to a possible incident of rape in Kabala. The Trial Chamber finds that the relevant evidence falls outside of the indicted period. The witness testified that he came to Kabala in 1998. While no specific date was given by the witness of his arrival, the Trial Chamber notes the witness stated that he was abducted by the AFRC/RUF in Bombali District at Christmas time 1998 and travelled with the AFRC/RUF to several places prior to arriving in Kabala.<sup>1831</sup> As such, he could not have been in Kabala prior to 30 September 1998, the end of the indicted period for Koinadugu.

(ii) Koinadugu Town

989. Witness TF1-209 testified that she was “in Kabala in Koinadugu Town” in August of 1998 when the witness heard and saw “rebels” carrying guns shooting outside her home. The “rebels” were dressed in combat and civilian clothes with pieces of red and white cloth tied around their heads.<sup>1832</sup> The witness fled. The next day, the witness was at her mother’s farm when she, her husband, her six year old child and some neighbours were attacked by “rebels”.

990. The Trial Chamber notes that the witness testified in chief that the timeframe of these events was August 1998 but that on cross-examination, when asked whether she remembered when she was captured, she stated that she was not sure of the dates because she had never been to school, and that she could not remember the year. When asked if she remembered August 1998, the witness stated that she remembered August was in the rainy season and that was the time in which she was captured.<sup>1833</sup> The Trial Chamber notes, in light of the repeated evidence and references before it, that the annual rainy season in Sierra Leone extends from May to September. The Trial Chamber accepts that witness TF1-209 has little formal education and that her indication of August is not

<sup>1828</sup> DAB-156, Transcript 29 September 2006, pp. 39-40, 43.

<sup>1829</sup> Approximately February 1998, *see* Context of Alleged Crimes, *supra*.

<sup>1830</sup> DBK-083, Transcript 21 July 2006, pp. 28-36.

<sup>1831</sup> TF1-199, Transcript 06 October 2005, pp. 69-70, 75, 89.

<sup>1832</sup> TF1-209, Transcript 7 July 2005, pp. 29-30.

<sup>1833</sup> TF1-209, Transcript 7 July 2005, pp. 43-44.

inconsistent with the Chamber's determination of the rainy season. The Trial Chamber is therefore satisfied that it can rely upon the timeframe adduced of August 1998.

991. The witness described the persons who attacked her as "rebels and soldiers" and as "juntas". They were armed.<sup>1834</sup> The witness saw four rebels arrive; two went towards a neighbouring farm and two remained at the witness's mother's farm.<sup>1835</sup> Two rebels raped the witness in the presence of her husband. The two rebels told her to "bow down" and they removed her "pants" and "lappa". The witness stated that the rebels and raped her "as their wife." The witness was pregnant at the time of the rapes. She stated that her "pregnancy was wasted"<sup>1836</sup> which the Trial Chamber understands to mean that she miscarried as a result of the rapes.

992. The witness testified that the rebels beat her husband to death with a mortar pestle and shot her child dead. A rebel cut the witness's hand with a knife when she tried to hold on to her child.<sup>1837</sup> The witness also testified that she saw the rebels rape other women and children during the attack. She was unable to estimate how many persons were raped. She estimated that the children who were raped were approximately nine to ten years old.<sup>1838</sup>

993. After the attack, the rebels looted some belongings, such as rice, and forced civilians to carry those belongings to town. In town, the witness learned that the men who raped her belonged to Superman and SAJ Musa's groups.<sup>1839</sup>

994. The Trial Chamber notes that the witness's testimony was unclear with regards to her location at the time of the attacks. She testified that she was "in Kabala in Koinadugu" at the time that she first saw rebels in August 1998, but then continued to respond to the Prosecutor's questions with regards to "Koinadugu."<sup>1840</sup> She also testified that the rebels she saw at this time told her they were going to Kabala.<sup>1841</sup> On cross-examination, the witness clarified that in August 1998 in the rainy season she was not in Kabala, but in Koinadugu.<sup>1842</sup>

995. On the second occasion the witness saw rebels, at the time that according to her testimony she was raped, the witness testified she had fled to her mother's farm but did not give the precise location of the farm. She subsequently testified that after the attack she was brought "to town" by

<sup>1834</sup> TF1-209, Transcript 7 July 2005, p. 31.

<sup>1835</sup> TF1-209, Transcript 7 July 2005, pp. 67-69.

<sup>1836</sup> TF1-209, Transcript 7 July 2005, p. 33.

<sup>1837</sup> TF1-209, Transcript 7 July 2005, pp. 31-33, 35-36.

<sup>1838</sup> TF1-209, Transcript 7 July 2005, pp. 31, 33-34.

<sup>1839</sup> TF1-209, Transcript 7 July 2005, p. 32.

<sup>1840</sup> TF1-209, Transcript 7 July 2005, p. 29.

<sup>1841</sup> TF1-209, Transcript 7 July 2005, p. 30

the rebels.<sup>1843</sup> Although she did not explicitly specify which town she was referring to, the Trial Chamber infers, as discussed below, that she was taken to Koinadugu Town. The Trial Chamber similarly infers that witness's mother's farm is located in the environs of Koinadugu Town.

996. The Trial Chamber finds the witness's evidence with regards to this attack credible and not significantly shaken on cross-examination. From the description of her attackers as armed "rebels and soldiers", as "juntas", and as members of 'Superman' and SAJ Musa's groups, known commanders of the RUF and the AFRC respectively, the Trial Chamber is satisfied that the perpetrators of the attack belonged to either the AFRC or the RUF. The Trial Chamber infers from the context of violence and coercion that the witness did not and could not have validly consented to the sexual intercourse. The Trial Chamber is thus satisfied that the *actus reus* and *mens rea* elements of rape are met with regards to this incident.

997. The Trial Chamber also considers the further evidence of witness TF1-209 suggesting acts of sexual violence occurred subsequent to this attack. The witness testified that captured civilians, including herself, were taken "to town" where the witness indicated that she was then held by two persons she named as 'Jabie' and 'Allusein'. The witness testified that the person who captured her took her to a house where the witness cooked and laundered for him. The witness testified that he turned her into his "wife" which she explained meant that he would have sex with her whenever he felt like it.<sup>1844</sup> The witness indicated that this person was 'Jabie'. The witness testified that following 'Jabie's death, she was held and abused by 'Allusein'.<sup>1845</sup>

998. The witness testified that she had seen 'Jabie' and 'Allusein' before, when she was captured and raped at her mother's farm outside of Koinadugu Town. The witness testified that she recognised them as the rebels who had beaten her husband to death and 'Jabie' as the rebel who had shot her child dead.<sup>1846</sup>

999. The witness was strenuously challenged on the periods of time and sequence of her interactions with 'Jabie' and 'Allusein'. She remained calm and unshaken in her answers but appeared to have some difficulty in conveying what exactly she meant. However, the Trial Chamber is satisfied that the witness did not resile from her evidence in chief that she entered into

<sup>1842</sup> TF1-209, Transcript 7 July 2005, p. 63.

<sup>1843</sup> TF1-209, Transcript 7 July 2005, pp. 31-32, 36.

<sup>1844</sup> TF1-209, Transcript 7 July 2006, p. 38.

<sup>1845</sup> TF1-209, Transcript 7 July 2006, pp. 39, 38-39, 44-45.

<sup>1846</sup> TF1-209, Transcript 7 July 2006, pp. 35-36.

relationships by force or duress with 'Jabie' for three months from the time of her capture to the time of 'Jabie's' death and subsequently with Allusein for one month.<sup>1847</sup>

1000. With regards to the affiliations of the two men, the witness first testified that 'Jabie' was a member of SAJ Musa's group and that 'Allusein' was a member of 'Superman's group'.<sup>1848</sup> The witness subsequently testified that the person who took her to his house and made her into his wife upon her arrival in Koinadugu Town was a member of 'Superman's group'.<sup>1849</sup> This is inconsistent with her statement that she was first with 'Jabie' and that he belonged to SAJ Musa's group. The witness later reiterated that 'Allusein' was part of Superman's group.<sup>1850</sup> She also testified that after she was captured and taken to Koinadugu Town, she frequently saw a man she referred to as 'Five-Five', who was one of several rebels who told her about atrocities they had committed together, but that this man had left Koinadugu Town by the time the witness was with 'Allusein'.<sup>1851</sup> On cross-examination Counsel put it to the witness that she changed her reference in a prior statement from "Fire-Fire" to 'Five-Five'. The Trial Chamber is satisfied by the witness's clear statements that 'Five-Five' and "Fire-Fire" were separate persons with different names and that "Fire-Fire" was a small, short boy who was known for killing and to whom she had never spoken.

1001. With regards to her location during these events, the Trial Chamber notes that witness TF1-209's testimony was at times unclear. The Trial Chamber has found that following the attack at her mother's farm the witness was brought to Koinadugu Town by the rebels. The witness testified that some time after she had been held for four months, she was present in Koinadugu when members of the CDF came from Kabala and there was a fight in which two members of the CDF were killed<sup>1852</sup> and that sometime following that Koinadugu was completely burnt.<sup>1853</sup> The witness testified that following this she went to a village near Koinadugu called Kalkoya.<sup>1854</sup>

1002. On cross-examination when asked by Counsel where she was when she was with the rebels 'Allusein' and 'Jabie' the witness replied, "Koinadugu. In the Koinadugu District or Kabala." Counsel for Kanu then asked if she was in Kabala, and the witness replied, "Yes, in my village."<sup>1855</sup>

<sup>1847</sup> TF1-209, Transcript 7 July 2006, pp. 38-39.

<sup>1848</sup> TF1-209, Transcript 7 July 2006, p. 39.

<sup>1849</sup> TF1-209, Transcript 7 July 2006, p. 38.

<sup>1850</sup> TF1-209, Transcript 7 July 2006, p. 52.

<sup>1851</sup> TF1-209, Transcript 7 July 2006, pp. 54-55.

<sup>1852</sup> TF1-209, Transcript 7 July 2005, pp. 39-40.

<sup>1853</sup> TF1-209, Transcript 7 July 2005, p. 42.

<sup>1854</sup> TF1-209, Transcript 7 July 2005, p. 43.

<sup>1855</sup> TF1-209, Transcript 7 July 2005, p. 45.

1003. Later on cross-examination the witness stated that she was in Koinadugu at the time after SAJ Musa and Superman fought and when SAJ Musa went to Morya.<sup>1856</sup> Counsel and the witness then had the following exchange:

Q: Madam Witness, when you say Koinadugu, do you mean the district or a town in Koinadugu District?

A: It was a town. The town is also called Koinadugu District. When you talk of Kabala, it is in the Koinadugu District. Kabala. That has the name Koinadugu District. They only say it is Kabala.

Q: You see what I am asking you, when you talk about Koinadugu, do you mean Kabala?

A: No. The Koinadugu District in Kabala.

Q: Is there a separate town, apart from Kabala, called Koinadugu?

A: Yes, that is my own village. That is where my father was born.

Q: Your village is called Koinadugu?

A: Yes.<sup>1857</sup>

1004. On further cross-examination by Counsel for Kanu the witness stated that she stayed with 'Jabie' and 'Allusein' in Koinadugu Town<sup>1858</sup> and that during the whole of the three months she was with 'Jabie' she stayed primarily in one house in Koinadugu Town, occasionally going during the day to farms in the bush.<sup>1859</sup>

1005. The Trial Chamber accepts that the witness may have been nervous to appear before it and that it may have been difficult for her to testify to events that would have been extremely traumatic. The Trial Chamber also notes that the witness's testimony was being translated and that the witness is uneducated, all of which may account for some apparent inconsistencies in her testimony. The Trial Chamber found her to be reliable and unshaken in her testimony and having carefully reviewed the evidence of the witness, is satisfied of the following:

1006. Witness TF1-209 was abducted and brought to Koinadugu Town in approximately August, 1998, by members of the AFRC/RUF. In Koinadugu Town she stayed first with a certain 'Jabie' for a period of three months and subsequently with a certain 'Allusein' for one month.

<sup>1856</sup> TF1-209, Transcript 7 July 2005, p. 46.

<sup>1857</sup> TF1-209, Transcript 7 July 2005, pp. 46-47.

<sup>1858</sup> TF1-209, Transcript 7 July 2005, p. 52.

<sup>1859</sup> TF1-209, Transcript 7 July 2005, p. 60.

1007. The Trial Chamber is satisfied that the witness's identification of 'Jabie' as one of the persons present when she was attacked at her mother's farm; her description of attackers at her mother's farm as armed "rebels and soldiers", "juntas"; and her description of 'Jabie' as being a member of SAJ Musa's group or Superman's group; are consistent with a finding that 'Jabie' was a member of the AFRC or RUF.

1008. The Trial Chamber is satisfied from the repeated references to Koinadugu Town and the witness's detailed descriptions of events that occurred there in her presence, that she was held by 'Jabie' in Koinadugu Town.

1009. Finally, the Trial Chamber is satisfied on the basis of the testimony of the witness that 'Jabie' repeatedly had sex with her and that given the context of violence, to wit, the previous attacks against the witness, the death of her husband and her child at the hands of 'Jabie', her abduction and her subsequent confinement, that the witness could not have validly consented to the repeated acts of sexual intercourse. The Trial Chamber is thus satisfied that the *actus reus* and *mens rea* elements of rape are met with regards to this incident.

1010. The Trial Chamber notes that further evidence was given by witness TF1-209 regarding possible acts of sexual violence perpetrated by 'Allusein' in Koinadugu Town following the death of 'Jabie'. However, the Trial Chamber finds that this evidence falls out of the indicted period. The Trial Chamber has accepted that the witness was attacked in or about August, 1998 and after this attack she was held by 'Jabie' until he was killed, a period of three months. The Trial Chamber therefore concludes that 'Jabie's death must have occurred some time in November, 1998 and that any events testified to by the witness occurring in the month after this point fall well outside of the indicted period for Koinadugu District which ends on 30 September 1998. The Trial Chamber therefore makes no findings with regards to Count 6 on the basis of this testimony.

1011. The Trial Chamber finds that the evidence of witness TF1-209 is generally supported by that of Defence witness DAB-079 who testified that he was based in Kabala and was operating with the CDF shortly after the AFRC Coup in May 1997.<sup>1860</sup> The witness's professional capacity, given to the Trial Chamber in closed session,<sup>1861</sup> put him in a position to receive information from CDF contacts about the activities of other parties in the region including SLA, AFRC and ECOMOG forces. The Trial Chamber is satisfied that the witness had indirect access to approximately 1000-1700 people and received weekly reports from Koinadugu Town as well as other locations such as

<sup>1860</sup> DAB-079, Transcript 28 July 2006, pp. 8, 43

<sup>1861</sup> DAB-079, Transcript 28 July 2006, p. 7.

Kabala, Yifin and Geberefed. The witness testified that on the basis of these reports and his own knowledge that members of the RUF committed rapes but that the SLAs were more disciplined.<sup>1862</sup>

1012. The witness testified that in Kabala, the “SLA”s, including the commanders KIS Kamara and SAJ Musa, arrived after the AFRC was driven out of Freetown by ECOMOG in February 1998.<sup>1863</sup> They arrived on approximately the 15<sup>th</sup> of February.<sup>1864</sup> A week after the SLAs arrived, starting on approximately February 22<sup>nd</sup>, the RUF also began to arrive, followed by Sam Bockarie on approximately 24 May.<sup>1865</sup>

1013. The witness testified that prior to the arrival of the RUF, the relationship between the civilians and the SLAs in Kabala was “cordial.” In particular, the witness recalled that SAJ Musa held a meeting in the late Chief’s compound in Sengbe in which he told his soldiers not to intimidate civilians.<sup>1866</sup> The witness was present at this meeting and testified that there were a large number of SLA officers at the meeting. The witness understood the meeting was called by SAJ Musa in response to reports to him from civilians in Kabala that an SLA officer had attempted to steal money from a civilian.

1014. The witness testified that by contrast, when the RUF arrived, Kabala became “extremely chaotic”. The RUF contingent included ‘Superman’, ‘Johnny Hemoe’ and Captain Rahman D. Kobah a.k.a. ‘Blackman’. The witness testified that during this time, the RUF were known to loot property, beat civilians, enter houses without permission and steal food and that there were a number of children with weapons among them. On cross-examination the witness testified that the RUF committed rapes. The witness testified that he knew of one rape in particular as he was informed of it by a woman who had been raped by ‘Superman’. The witness estimated that members of the RUF raped approximately four to five women. The witness stated that the rapes motivated some civilians in Kabala to form the CDF.<sup>1867</sup>

1015. Later in his evidence in chief, the witness suggested that rape was a trademark of the RUF. The witness testified that in the reports he received on the activities of groups in the area his sources often referred generally to “rebels” which could denote either the AFRC or the RUF. Nevertheless, the witness testified that although the groups were together, each group had its trademark. The

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<sup>1862</sup> DAB-079, Transcript 28 July 2006, pp. 30-36.

<sup>1863</sup> DAB-079, Transcript 28 July 2006, pp. 9-10.

<sup>1864</sup> DAB-079, Transcript 28 July 2006, p. 65.

<sup>1865</sup> DAB-079, Transcript 28 July 2006, p. 65.

<sup>1866</sup> DAB-079, Transcript 28 July 2006, p. 13.

<sup>1867</sup> DAB-079, Transcript 28 July 2006, pp. 46-47.

SLAs were more restrained whereas the RUF would attack more indiscriminately and more rampantly. The SLA tended to loot food while the RUF tended to burn down houses and to rape.<sup>1868</sup>

1016. Witness DAB-079 also testified that some SLAs stayed in Kabala for eight to nine months and that during that time he did not see any SLAs perpetrating sexual violence.<sup>1869</sup>

1017. The Trial Chamber finds the evidence of witness DAB-079, although largely hearsay, to be credible and consistent. The witness was not significantly shaken on cross-examination. The Trial Chamber is of the opinion that the testimony given by the witness relating to rapes alleged to have been committed by members of the RUF is insufficient to support the *actus reus* and *mens rea* elements of the crime, and does not rely upon it in this regard.

1018. While the Trial Chamber does not make any findings which would support a finding of rape on the basis of witness DAB-079's evidence, the Trial Chamber notes that the implication that the RUF may have committed rapes in Koinadugu District, including Koinadugu Town, during this time period generally supports the evidence of rapes committed against witness TF1-209 and others, the perpetrators of which the Trial Chamber has found belonged to the RUF or the AFRC.

1019. The Trial Chamber accepts the evidence of witness DAB-079 that SAJ Musa instructed his troops not to intimidate civilians but notes that this general prohibition, in and of itself, does not create a reasonable doubt with regards to the veracity of the incidents of rape described by described by witness TF1-209. Similarly, the Trial Chamber finds that the fact that witness DAB-079 did not witness any acts of violence committed in Kabala by SLAs does not in and of itself create a reasonable doubt that in fact no rapes were committed by members of the AFRC during this time period either in Kabala or elsewhere in the District. The Trial Chamber accepts that the witness was in a particular position to receive wide-ranging information on the activities of parties to the conflict in and around Kabala, including Koinadugu Town, but the Defence has not demonstrated that this information network was in any way exhaustive. Nor has the Defence demonstrated that the information network systematically collected information on possible crimes committed by the parties to the conflict. The witness's testimony therefore does not create a reasonable doubt with regards to the specific incidents of rape to which witness TF1-209 testified in great detail.

1020. Finally, the Trial Chamber notes that the evidence of both witness TF1-209 and witness DAB-079 is generally supported by that of Defence witness DAB-081 who testified that while he

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<sup>1868</sup> DAB-079, Transcript 28 July 2006, pp. 36-41.

<sup>1869</sup> DAB-079, Transcript 28 July 2006, p. 42.

was in captivity in Koinadugu Town after August 1998, he did not hear of SAJ Musa ordering any harassment of civilians; however, he heard that the RUF were committing rapes.

(iii) Fadugu

1021. The Prosecution asserts that there were two attacks in Fadugu; one in May and one in September, 1998.<sup>1870</sup> Noting the evidence of witness DAB-078 who testified that he did not see or hear about any rapes when Fadugu was attacked on 22 May 1998,<sup>1871</sup> the Trial Chamber finds no evidence was led of rape in Fadugu during the May attack.

1022. With regards to the attack in September, the Trial Chamber has carefully reviewed the testimony of witness DAB-078 who also testified that he was in Fadugu Town when ECOMOG forces in the town were attacked on 11 September 1998. The witness testified that he hid during the attack and when the gunfire subsided he ran to a house. When he arrived he found four men who were attempting to rape a girl. The witness described two of the men as wearing soldier's uniforms and two in civilian clothes. Three of the men were armed with guns.<sup>1872</sup> The Trial Chamber is satisfied from this description and from the context of the attack that the men were members of the AFRC or RUF.

1023. The men detained the witness and forced him to watch as they raped the girl.<sup>1873</sup> The witness testified that the girl died from the rape due to excessive bleeding. After the attack, the witness did not see the men again. The witness later met a woman in the bush who told him that the rebels had called a meeting where 'Savage' introduced himself as the commander of the attack. His second in command was 'Ishmael'.<sup>1874</sup> The witness knew that 'Savage' and 'Ishmael' were SLAs "from the discussion with the men."<sup>1875</sup> The Trial Chamber finds the testimony of witness DAB-078 to be detailed, consistent and credible and that the *actus reus* and *mens rea* of rape are satisfied with regards to this incident.

1024. The Trial Chamber has carefully reviewed the testimony of Defence witness DAB-085 who testified that between February and September 1998, he did not see or hear about any rapes or sexual violence by members of the AFRC.<sup>1876</sup> The Trial Chamber finds that this evidence, though credible, does not raise reasonable doubt as to the testimony given by witness DAB-078 as the

<sup>1870</sup> Prosecution Final Brief, para. 1490.

<sup>1871</sup> DAB-078, Transcript 11 September 1998, pp. 8-22, 53.

<sup>1872</sup> DAB-078, Transcript 11 September 1998, pp. 34-40.

<sup>1873</sup> DAB-078, Transcript 11 September 1998, p. 40.

<sup>1874</sup> DAB-078, Transcript 11 September 1998, pp. 40-41.

<sup>1875</sup> DAB-078, Transcript 11 September 1998, p. 57.

witness did not provide any evidence that he would have been in a position to know whether or not the incident described by witness DAB-078 in fact occurred.

1025. The Trial Chamber notes that Prosecution witness TF1-199 also gave evidence of rape in Fadugu<sup>1877</sup> but the Chamber has not taken this evidence into consideration in its factual findings on Count 6 as the evidence relates to events which fall outside of the indicted period. The witness testified that he was abducted at Christmas time, 1998, in Bombali District and travelled to several places before arriving in Fadugu.<sup>1878</sup> As such, it is impossible that he could have been in Fadugu prior to the end of the indicted period, 30 September, 1998.

(iv) Findings

1026. By virtue of the foregoing the Trial Chamber is satisfied that the elements of rape are established in relation to Koinadugu District.

(c) Bombali District (1 May 1998 – 30 November 1998)

1027. The Indictment alleges that between about 1 May 1998 and 30 November 1998 members of the AFRC/RUF raped an unknown number of women and girls in locations in Bombali District including Mandaha and Rosos (or Rosors or Rossos).<sup>1879</sup>

1028. At the Motion for Acquittal stage the Prosecution conceded that there was no evidence of rape in respect of Mandaha.<sup>1880</sup>

1029. The Trial Chamber has carefully considered evidence relevant to the crime of rape in Bombali District of Prosecution witnesses TF1-334 and TF1-033 and Defence witnesses DBK-090, DBK-094, DBK-086, DBK-102, DBK-089 and DBK-101. The Trial Chamber finds the evidence given by these witnesses relates to locations not specified in the Indictment and therefore makes no findings on the basis of their evidence.

1030. In arriving at its factual findings, the Trial Chamber has taken into consideration the evidence given by Prosecution witnesses TF1-269, TF1-267, TF1-033 and George Johnson and Defence witness DBK-113.

<sup>1876</sup> DAB-085, Transcript 20 July 2006, pp. 50-51.

<sup>1877</sup> TF1-199, Transcript 6 October 2005, pp. 79-80.

<sup>1878</sup> TF1-199, Transcript 6 October 2005, pp. 69-70.

<sup>1879</sup> Indictment, para. 54.

<sup>1880</sup> Rule 98 Decision, para. 159.

(i) Rosos

1031. Prosecution witness TF1-269 testified that she was living in Rosos during the war when, during the rainy season, “rebels” entered the town and captured her. The Trial Chamber is satisfied that the time period described by the witness is May through July 1998. The witness testified that some of the rebels were wearing vests and some were wearing combat. Three of the rebels raped her. One of the rebels had a gun and the other had a knife. After they had raped her, a rebel pushed her to the ground and cut her in the back of the neck.<sup>1881</sup> The existence of a scar on the witness’s body was noted by the Chamber.<sup>1882</sup> The witness testified that two of the rebels convinced the others not to kill her.

1032. The three rebels spoke to the witness in Temne and asked her to show them where the other civilians were hiding. The witness took them to a nearby area; however the civilians were not there. Rather, there were only more rebels. One of these rebels, whom the witness described as wearing a T-shirt, told the witness to take his penis in her mouth. She refused and the rebel said he would have her killed. The rebel put his penis in her mouth and tried to rape her vaginally. When the witness resisted the rebel brought her over to another group of rebels. The witness testified that some of these rebels were armed with guns, some with sticks and some with knives and they were wearing a mix of combat and civilian clothes. One of these rebels hit the witness’s head and left shin with a stick. The witness was unable to walk and her leg remains scarred. The scar on the witness’s left shin was noted by the Trial Chamber.<sup>1883</sup> After she was beaten the witness was raped twice more. The witness described the last rebel who raped her as wearing civilian dress.<sup>1884</sup> Altogether, the witness was raped by five rebels.<sup>1885</sup>

1033. The Trial Chamber finds the evidence of witness TF1-269 to be detailed and consistent. The Defence was unable to adduce any major inconsistencies in her testimony during cross-examination. As such, the Trial Chamber finds the evidence described to be credible and that the *actus reus* and *mens rea* of rape are satisfied on the basis of her evidence.

1034. Prosecution witness TF1-267 testified that she was at her home in Rosos in 1998, during the time when farms were being burnt in the countryside, when people from the neighbouring village came and told her and the other villagers that “rebels” were attacking the area and urged them to

<sup>1881</sup> TF1-269, Transcript 14 July 2005, pp. 41-43.

<sup>1882</sup> TF1-269, Transcript 14 July 2005, pp. 43.

<sup>1883</sup> TF1-269, Transcript 14 July 2005, p. 46.

<sup>1884</sup> TF1-269, Transcript 14 July 2005, pp. 43-47.

<sup>1885</sup> TF1-269, Transcript 14 July 2005, p. 46.

leave. The witness left Rosos with her family and hid in the bush.<sup>1886</sup> Several days later, when the witness and her family were drying their belongings after a “big rain”<sup>1887</sup> in a nearby area called Rotu, rebels and soldiers attacked. The witness testified that one of the attackers wore a soldier’s fatigue cap, another wore trousers and combat fatigue, and another had “big shoes that they wore”.<sup>1888</sup> On cross-examination, the witness stated that she was able to identify SLA soldiers even though she had not seen them before and she clarified that one of the soldiers was wearing a cap and trousers which were both “military fatigue” and that others were wearing big black boots.<sup>1889</sup> The witness explained that others wore civilian clothes.<sup>1890</sup>

1035. The witness tried to run away, but a soldier kicked her and she fell down. The soldier tore off all her clothes, including her “knicker”<sup>1891</sup> - which the Trial Chamber understands to mean underwear - and brutally raped her. The witness stated, “he took his penis and thrust it into my vagina and started pounding me like he was pounding mud...he did not sex me as people do normally. He did it abnormally”.<sup>1892</sup> The witness was then raped by another rebel. She tried to fight him but he pinned her back on the ground. A third rebel - who was armed, came and told the witness, “If you open your mouth, I will shoot you dead” and then raped her. The witness testified that she experienced great pain. A fourth rebel came and the witness tried to get up, but as she bent to rise “somebody” pushed her back down onto her back. The fourth rebel also raped the witness. She was afraid he would kill her and she could not resist. The witness testified that the last rape was particularly painful. She stated, “it seem[ed] as though all my guts were coming out”.<sup>1893</sup> When the rebels left, the witness tried to get up but she fell back down again as she was so weak.<sup>1894</sup> The Trial Chamber is satisfied on the basis of this evidence that the *actus reus* and *mens rea* of rape are proven.

1036. The witness testified further that when the rebels left the village, her daughter ran to her and told her that she too had been raped by two rebels from the same group – the only group of rebels to come to Rosos that day.<sup>1895</sup> The witness’s daughter told her that “they” stuffed her mouth with cloth

<sup>1886</sup> TF1-267, Transcript 26 July 2005, pp. 102-105; Transcript 27 July 2005, pp. 5, 10-11.

<sup>1887</sup> TF1-267, Transcript 26 July 2005, pp. 103-104; Transcript 27 July 2005, pp. 4-5.

<sup>1888</sup> TF1-267, Transcript 27 July 2005, p. 5.

<sup>1889</sup> TF1-267, Transcript 27 July 2005, pp. 12-13.

<sup>1890</sup> TF1-267, Transcript 27 July 2005, pp. 16-17.

<sup>1891</sup> TF1-267, Transcript 27 July 2005, p. 5.

<sup>1892</sup> TF1-267, Transcript 27 July 2005, p. 6.

<sup>1893</sup> TF1-267, Transcript 27 July 2005, p. 7.

<sup>1894</sup> TF1-267, Transcript 27 July 2005, pp. 4-7, 10, 12-13, 16-17.

<sup>1895</sup> TF1-267, Transcript 27 July 2005, pp. 20-22.

and raped her one after the other. The witness saw that her daughter was bleeding from her vagina. Prior to this incident, her daughter was a virgin.<sup>1896</sup>

1037. The Trial Chamber notes that in her evidence-in-chief, the witness refers to her daughter alternately as her “sibling”, “daughter” and “lady”.<sup>1897</sup> On cross-examination the witness adopted prior statements which use the term “daughter”.<sup>1898</sup> The Trial Chamber notes that the witness testified in Krio which was translated into English. The Chamber is satisfied that the various terms used do not undermine the credibility of the witness and that a girl that the witness knew very well was raped that day. The Trial Chamber finds the evidence given by witness TF1-267 in chief to be highly detailed and coherent and the witness was not shaken on cross-examination. The Trial Chamber therefore finds the evidence to be credible and is satisfied on the basis of this evidence that the *actus reus* and *mens rea* of rape are satisfied.

1038. The evidence of Prosecution witnesses TF1-269 and TF1-267 is supported generally by that of Prosecution witness TF1-033 who testified to being with AFRC troops at Rosos during the rainy season in 1998.<sup>1899</sup> He testified that rape was widespread throughout the time he was in captivity with the AFRC troops.<sup>1900</sup>

1039. Prosecution witness, George Johnson aka ‘Junior Lion’, testified that towards the end of April or early May 1998, when the AFRC advanced to Rosos, he was appointed as a Provost Marshal in charge of discipline to ensure that “jungle justice” was adhered to. The witness testified that “jungle justice” included a prohibition against rape during operations. Punishment for breaching “jungle justice” included public flogging or death.<sup>1901</sup> The Trial Chamber finds that the mere prohibition of rape does not create any doubt as to whether the incidents of rape testified to in great detail by Prosecution witnesses TF1-269 and TF1-267 in fact occurred.

1040. The Trial Chamber has carefully examined the evidence of witness DBK-113, who testified that he went to Rosos with the AFRC and stayed there for about three or four months.<sup>1902</sup> On cross-examination, the witness testified that he did not see or hear about any rapes of female civilians at Rosos.<sup>1903</sup> In the absence of evidence establishing that the witness was in a position to broadly determine whether rapes were or were not occurring and given the highly detailed and credible

<sup>1896</sup> TF1-267, Transcript 27 July 2005, pp. 9-10, 20-22.  
<sup>1897</sup> TF1-267, Transcript 27 July 2005, p. 9.  
<sup>1898</sup> TF1-267, Transcript 27 July 2005, p. 29.  
<sup>1899</sup> TF1-033, Transcript 11 July 2005, p. 22.  
<sup>1900</sup> TF1-033, Transcript 12 July 2005, p. 9.  
<sup>1901</sup> George Johnson, Transcript 15 September 2005, pp. 48-49, 78.  
<sup>1902</sup> DBK-113, Transcript 13 October 2006, p. 46.

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evidence of Prosecution witnesses to the contrary, the Trial Chamber finds that this evidence does not raise reasonable doubt that rapes did in fact occur in Rosos at this time.

(ii) Findings

1041. By virtue of the foregoing the Trial Chamber is satisfied that the elements of rape are established in relation to Bombali District.

(d) Freetown and Western Area (6 January 1999 – 28 February 1999)

1042. The Indictment alleges that between 6 January 1999 and 28 February 1999 members of the AFRC/RUF raped hundreds of women and girls throughout the city of Freetown and the Western Area.<sup>1904</sup>

1043. In arriving at its factual findings in Freetown and the Western Area, the Trial Chamber has taken into consideration the evidence given by Prosecution witnesses TF1-334, TF1-024, Gibril Massaquoi, TF1-033, TF1-153, TF1-083 and Defence witnesses DBK-012 and DBK-126.

(i) State House

1044. The Prosecution submits that there is evidence that all three Accused committed rape or instigated or aided and abetted the sexual violence at the State House and elsewhere during the invasion and retreat.<sup>1905</sup> The Prosecution further submits that in January 1999, the three Accused were at State House where soldiers brought and engaged women in forceful sexual intercourse.<sup>1906</sup>

1045. Witness TF1-334 testified that on 6 January 1999, he saw “soldiers” bring an unknown number of abducted women to rooms within the State House and rape them there.<sup>1907</sup> He testified that the most beautiful ones were brought to the senior commanders, including ‘Gullit’, ‘Bazzy’ and ‘55’.<sup>1908</sup> Witness TF1-334 saw ‘Gullit’ with a girl who told the witness that she was in Form Two;<sup>1909</sup> that is, approximately 12 years old.<sup>1910</sup> The witness did not see ‘Gullit’ abduct the girl.<sup>1911</sup> The girls with ‘55’ and ‘Bazzy’ were also very young school girls.<sup>1912</sup> The girl with Bazzy was

<sup>1903</sup> DBK-113, Transcript 13 October 2006, p. 78.

<sup>1904</sup> Indictment, para. 56.

<sup>1905</sup> Prosecution Final Brief, paras 1622, 1628, 1635.

<sup>1906</sup> Prosecution Final Brief, para 1672.

<sup>1907</sup> TF1-334, Transcript 14 June 2005, p. 25.

<sup>1908</sup> TF1-334, Transcript 14 June 2005, p. 26; Transcript 15 June 2005, p.3.

<sup>1909</sup> TF1-334, Transcript 15 June 2005, p. 3.

<sup>1910</sup> TF1-334, Transcript 20 June 2005, p. 3.

<sup>1911</sup> TF1-334, Transcript 20 June 2005, p. 4-5.

<sup>1912</sup> TF1-334, Transcript 15 June 2005, pp. 4-5.

approximately 12-15 years old.<sup>1913</sup> Gullit was with his girl up to Makeni; ‘55’ stayed with his girl until the retreat from Freetown; and ‘Bazzy’ was with his girl until Westside.<sup>1914</sup> The Trial Chamber has previously considered general issues of credibility with regards to witness TF1-334 and finds the evidence given by him with regards to rapes at the State House to be reliable. However, the Trial Chamber finds this evidence insufficient to prove the *actus reus* and *mens rea* of rape.

1046. The evidence of witness TF1-334 is generally supported by that of witness TF1-024 who testified that on 8 January 1999,<sup>1915</sup> he was captured by a group of rebels and soldiers.<sup>1916</sup> The Trial Chamber notes that the witness describes his abductors variously as “rebels and soldiers [... ] combin[ed] together”, as “rebel boys”, as “rebels and soldiers [...] all mixed together”. The witness also describes them as wearing “ECOMOG” uniforms and speaking Liberian English.<sup>1917</sup> The rebels and soldiers took the witness to State House where he was detained for four nights in a kitchen on the ground level.<sup>1918</sup> Through the kitchen window, the witness testified that he could see women and girls being raped<sup>1919</sup> by “Gullit’s boys” every night in the compound.<sup>1920</sup> He heard the women cry and heard the girls saying “We do not agree. We are school-going girls.” (“A no de gri. Mi na small pikin.”)<sup>1921</sup>

1047. The witness testified that he saw ‘Gullit’ twice at the State House.<sup>1922</sup> The rebels called him “Honorable Gullit” and he was “commanding his boys.”<sup>1923</sup> When ECOMOG forces approached the State House, ‘Gullit’ ordered the rebels to leave and left together with them.<sup>1924</sup>

1048. The Trial Chamber notes that on cross-examination, the witness testified that the girls who were raped were given 5000 leones, but that this was not pay.<sup>1925</sup> The Trial Chamber finds that given the overwhelmingly coercive environment and the suggestion of the young age of the victims, no attribution of consent to the sexual acts can be derived from this payment. The Trial Chamber is of the opinion that the testimony of witness TF1-024 is detailed and coherent. The witness was not shaken on this evidence on cross-examination. The Trial Chamber accepts this evidence as credible.

<sup>1913</sup> TF1-334, Transcript 22 June 2005, p. 10.

<sup>1914</sup> TF1-334, Transcript 15 June 2005, pp. 3-5; Transcript 22 June 2005, p. 6.

<sup>1915</sup> TF1-024, Transcript 7 March 2005, pp. 43, 53, 62-63.

<sup>1916</sup> TF1-024, Transcript 7 March 2005, p. 44.

<sup>1917</sup> TF1-024, Transcript 7 March 2005, pp. 44, 49.

<sup>1918</sup> TF1-024, Transcript 7 March 2005, pp. 70-72.

<sup>1919</sup> TF1-024, Transcript 7 March 2005, pp. 72-75.

<sup>1920</sup> TF1-024, Transcript 7 March 2005, pp. 44, 46, 49, 76.

<sup>1921</sup> TF1-024, Transcript 7 March 2005, p. 49.

<sup>1922</sup> TF1-024, Transcript 7 March 2005, pp. 45, 51-52.

<sup>1923</sup> TF1-024, Transcript 7 March 2005, p. 45.

<sup>1924</sup> TF1-024, Transcript 7 March 2005, pp. 51-52.

<sup>1925</sup> TF1-024, Transcript 7 March 2005, p. 75.

The Trial Chamber is satisfied that the *actus reus* and *mens rea* elements of rape are satisfied on the basis of this evidence.

1049. The evidence of witnesses TF1-334 and TF1-024 is also generally supported by Prosecution witness Gibril Massaquoi who testified that while the three Accused were in command at State House in January 1999, he heard complaints from civilians that “Military Police” came into people’s homes “to look for girls”.<sup>1926</sup> The witness heard a civilian complain to the Accused Kamara about looting and entering homes at night. The witness did not see or hear of anyone being punished for looting or entering houses looking for women in Freetown.

1050. By contrast, the Trial Chamber notes that a number of witnesses testified that they were not aware of any rapes occurring at State House in early January, 1999.

1051. Prosecution witness TF1-033 testified that he was at State House with the AFRC troops on 6 January 1999<sup>1927</sup> and that he did not witness any rapes while he was there.<sup>1928</sup>

1052. Defence witness DBK-012, an ex-SLA who was a member of the AFRC during the war, similarly testified that he did not see or hear of any raping going on at State House during the invasion of Freetown in January 1999.<sup>1929</sup> He was neither able to confirm or deny that young girls were brought to State House by the AFRC to be raped.<sup>1930</sup>

1053. Witness DBK-126 testified that she was captured in Koidu Town by a “boy” whom the witness referred to as ‘Bravo’ shortly after the AFRC was overthrown in Freetown in February 1998. The witness testified that ‘Bravo’s’ boss was Junior Johnson also known as Junior Lion.<sup>1931</sup> The witness testified that she was with the troops when the AFRC invaded Freetown. In Freetown Junior Lion made the witness cook for him and bring him food at the Adelaide Police Station. Three days later, the government troops moved Junior Lion to State House. The witness continued to take food to him there. The witness testified that ‘FAT Sesay’ was in charge of the State House. She testified that the Accused Kamara was not at State House during this period and that she did not see

<sup>1926</sup> Gibril Massaquoi, Transcript 10 October 2005, pp. 10-11.

<sup>1927</sup> TF1-033, Transcript 11 July 2005, p. 61.

<sup>1928</sup> TF1-033, Transcript 11 July 2005, p. 65; 12 January 2005, p. 20.

<sup>1929</sup> DBK-012, Transcript 9 October 2006, p. 46.

<sup>1930</sup> DBK-012, Transcript 9 October 2006, p. 49.

<sup>1931</sup> DBK-126, Transcript 11 October 2006, pp. 45-47.

the soldiers rape anyone.<sup>1932</sup> On cross-examination, however, the witness admitted that she had brought food to the Accused Kamara at the State House.<sup>1933</sup>

1054. The Prosecution notes that this witness has already pleaded guilty to contempt of Court for attempting to intimidate Prosecution witnesses.<sup>1934</sup>

1055. The Trial Chamber recalls its discussion of the evidence of witnesses who did not see atrocities committed in Freetown, wherein it found that in light of the overwhelming evidence to the contrary, no weight was to be afforded to this aspect of their testimony.

(ii) PWD

1056. Prosecution witness TF1-153 testified that ‘Gullit’ called him to the AFRC Headquarters at PWD during the time of the AFRC invasion. The witness testified that he saw young civilian women at the PWD several times. The witness testified that “soldiers” had abducted the girls from the Annie Walsh School near the East End Police Station. Tina Musa told the witness later that the girls had told her that they were all raped at the place they were caught.<sup>1935</sup>

1057. Witness TF1-153 also testified that around this same time, ‘Gullit’ called him and told him he “had strangers” for him at PWD.<sup>1936</sup> The witness went upstairs and saw a group of priests and nuns locked in a room. The witness spoke to a priest who told him that they had been captured and brought to the PWD. The priest said that all the nuns had been raped. The witness approached ‘Gullit’ to ask him to release the priests and nuns, but ‘Gullit’ said “They are all involved. They are making us suffer.”<sup>1937</sup>

1058. The Brima Defence asserts that witness TF1-153 abandoned portions of his statement and was desirous of impressing the bench by giving evidence damaging to the Accused as he had received a witness allowance.<sup>1938</sup> The Trial Chamber has previously addressed general issues of credibility with regards to witness TF1-153. The Trial Chamber notes that the evidence given by the witness with regards to rapes of young girls and nuns at PWD is hearsay evidence.

<sup>1932</sup> DBK-126, Transcript 12 October 2006, p. 62.

<sup>1933</sup> DBK-126, Transcript 25 October 2006, p. 56.

<sup>1934</sup> Prosecution Final Brief, para. 1575(o).

<sup>1935</sup> TF1-153, 23 September 2005, pp. 6-11.

<sup>1936</sup> TF1-153, 23 September 2005, p. 12.

<sup>1937</sup> TF1-153, 23 September 2005, pp. 12-14.

<sup>1938</sup> Brima Final Brief, para. 191.

1059. The evidence of witness TF1-153 is generally supported by Prosecution witness TF1-334 who testified that roughly three weeks after the 6 January 1999 invasion of Freetown, Brima, Kamara and Kanu went to PWD Junction<sup>1939</sup> to call for reinforcements from the RUF.<sup>1940</sup> Around that time, Brima ordered the “troops” to abduct civilians in order to attract the attention of the international community.<sup>1941</sup> Kamara and Kanu were present also.<sup>1942</sup> Civilians, including a number of young girls were then abducted by the rebels and the commanders<sup>1943</sup> from Freetown and brought to the headquarters at PWD.<sup>1944</sup>

1060. The Trial Chamber finds that the hearsay evidence of witness TF1-153 that women and girls were raped at PWD and the general evidence of witness TF1-334 that young girls were abducted and brought to PWD is insufficient to satisfy the *actus reus* and *mens rea* elements of rape.

(iii) Greater Freetown

1061. The Trial Chamber has carefully considered the evidence of Prosecution witnesses TF1-104 who testified that “RUF junta guys” tried to rape his colleague, a certain ‘Saata’ at the Good Shepherd Clinic in Freetown sometime between 6 January 1999 and 14 January 1999.<sup>1945</sup> The Trial Chamber makes no findings on this evidence, as it goes to proof of a crime, namely attempted rape, over which this Court has no jurisdiction.

1062. Prosecution witness TF1-083 testified that in “Freetown” on about 16 January 1999, “rebels” whom the witness described as wearing “combat” but who were not ECOMOG came at night and took his sister-in-law out of their house. The witness and his brother ran and hid in nearby plantations. When the witness’s sister-in-law returned later that evening, she told the witness and his brother that she had been raped.<sup>1946</sup>

1063. The evidence of witness TF1-083 is generally supported by that of Prosecution witness TF1-033 who testified that after the AFRC lost the battle in Freetown he remained with the AFRC troops during their retreat for three weeks. During this time the eastern part of Freetown was occupied by

<sup>1939</sup> The Witness marked “PWD” as location #6 on a map of Freetown, Exhibit P18.

<sup>1940</sup> TF1-334, Transcript 14 June 2005, p. 55.

<sup>1941</sup> TF1-334, 14 June 2005, pp. 62, 118-119.

<sup>1942</sup> TF1-334, 14 June 2005, p. 63.

<sup>1943</sup> TF1-334, 14 June 2005, p. 118.

<sup>1944</sup> TF1-334, 14 June 2005, pp. 64, 120.

<sup>1945</sup> TF1-104, Transcript 30 June 2005, pp. 14-16, 22, 39-40.

<sup>1946</sup> TF1-083, Transcript 8 April 2005, pp. 47-50, 52.

AFRC “fighters” under the command of ‘Gullit’. The witness testified that ‘Gullit’ ordered his men to commit atrocities as they were retreating and that women and girls were raped by the fighters.<sup>1947</sup>

1064. The Trial Chamber has carefully considered the objections of the Defence with regards to the credibility of witness TF1-033.<sup>1948</sup> The Trial Chamber has previously considered the credibility of witness TF1-033 in general terms<sup>1949</sup>

1065. Defence witness DAB-100 testified that he heard that there were rapes by the AFRC/RUF during the invasion of Freetown in 1999. The Trial Chamber gives this statement little weight as no specific incidents were elaborated by the witness.

1066. By contrast, Defence witness DBK-012 testified that there were no rapes during the attack on Freetown in January 1999 because this was against the ideology of SAJ Musa, to whom he referred as the “Five Star General”. Anyone who would rape a civilian would have been executed.<sup>1950</sup> The Trial Chamber finds that this evidence does not raise a reasonable doubt as to the veracity of the overwhelming and detailed evidence to the contrary.

1067. The Trial Chamber also notes, but does not rely on, the evidence of Defence witness DSK-113 who testified that he was taken with the AFRC to Freetown during the January 1999 invasion. He testified that during the journey from Benguema to Freetown he did not see any SLA soldiers carrying out any rapes.<sup>1951</sup> This evidence relates to time periods not indicted.

(iv) Findings

1068. By virtue of the foregoing, and without predetermining the individual criminal responsibility of the three Accused, the Trial Chamber is satisfied that the elements of rape are established in relation to Freetown and the Western Area.

<sup>1947</sup> TF1-033, Transcript 11 July 2005, pp 65-66.

<sup>1948</sup> Kanu Final Brief, para. 140; Brima Defence Final Brief, para. 34, 189.

<sup>1949</sup> Role of Accused, paras 364-367.

<sup>1950</sup> DBK-012, Transcript 6 October 2006, p. 29.

<sup>1951</sup> DSK-113, Transcript 12 October 2006, pp. 108-111.

## C. Outrages on Personal Dignity (Count 9)

### 1. Preliminary Remarks

1069. Count 9 has been charged in addition to or in the alternative to Count 6 (Rape), Count 7 (Sexual Slavery and Any Other Form of Sexual Violence) and Count 8 (Other Inhumane Act, Forced Marriage). As discussed, *supra*, in *Chapter II, Defects in the Indictment*, the Trial Chamber has dismissed Count 7 for duplicity<sup>1952</sup> and as discussed, *supra*, in *Chapter IX, Applicable Law*, the Trial Chamber has dismissed Count 8 for redundancy.<sup>1953</sup> As additionally discussed, *supra*, in *Chapter IX, Applicable Law*, the Trial Chamber is satisfied that the acts of rape and sexual slavery are encompassed by the definition of outrages on personal dignity and will consider evidence to this effect presently.

1070. In coming to its findings in relation to Count 9, the Trial Chamber relies on the findings made in relation to Count 6, *supra*, as well as its findings on the chapeau elements of war crimes.<sup>1954</sup>

### 2. Allegations and Submissions

1071. The Prosecution submits that the evidence in relation to Counts 6 to 8 establishes the legal requirements for the charge of outrages upon personal dignity.

1072. The Prosecution submits that the evidence establishes beyond a reasonable doubt the legal requirements of sexual slavery. The Prosecution asserts that the acts described in the evidence shows a pattern according to which the perpetrators abducted and detained women and subjected them to sexual acts. The Prosecution asserts that, very often, these women were the victims of multiple perpetrators. The only possible inference from the evidence is that the perpetrators acted in the reasonable knowledge that sexual slavery were likely to follow from their acts.<sup>1955</sup>

1073. The Prosecution in its Final Brief stated that it is the condition of being enslaved that gives rise to sexual slavery.<sup>1956</sup> It recalls the opinion of Trial Chamber I that the Accused must have intended to exercise the act of sexual slavery or have had reasonable knowledge that this was likely

<sup>1952</sup> Defects in the Indictment, para. 92 et seq.

<sup>1953</sup> Applicable Law, para. 697.

<sup>1954</sup> General Requirements of Articles 2, 3 and 4 of the Statute, paras 249-254.

<sup>1955</sup> Prosecution Final Brief, para. 1005.

<sup>1956</sup> Prosecution Final Brief, para. 1000.

to occur. The Prosecution submits that same standard prevails in and should be applied in the present instance.<sup>1957</sup>

1074. The Kanu Defence submits that the Prosecution evidence did not prove that the phenomenon of ‘bush wives’ can be categorized as the crime of sexual slavery, as the “powers attaching to the right of ownership” (an element of the crime) are absent.<sup>1958</sup>

1075. Insofar as the Defence challenge the testimony of witnesses with regard to specific incidents of sexual slavery, the Trial Chamber has discussed these submissions as they arise in the evidence below.

### 3. Evidence of Witnesses TF1-094, DAB-156 and TF1-085

1076. Evidence which may go to the proof of the elements of sexual slavery can not always be limited to a particular place or a particular instant in time. Rather, given the prolonged nature of the crime alleged, some of the evidence given by a number of witnesses relates to events which take place over time, sometimes running through the indicted period for one District into the indicted period of other Districts. Similarly, some of the evidence given by these witnesses cover more than one location within a District and often more than one District.

1077. To maintain the coherence of such testimony, the Trial Chamber will first examine this evidence on a witness by witness basis. The Trial Chamber will then make findings on the whole of the evidence by District as set out in the Indictment.

#### (a) Prosecution Witness TF1-094

1078. Prosecution witness TF1-094 testified that she was with her parents in the village of Bamukura, Koinadugu District in August of 1998 when the village was attacked by “rebels and SLAs”.<sup>1959</sup> The witness, her parents and other family members fled to the bush but they were captured. The “rebels and SLAs” killed her parents<sup>1960</sup> and “one of them” threatened to kill the witness as well.<sup>1961</sup> An “SLA”, whom the witness described as wearing combat, and to whom she referred as ‘Andrew’ intervened and said that he would save her.<sup>1962</sup> On cross-examination the

<sup>1957</sup> Prosecution Final Brief, para. 1001.

<sup>1958</sup> Kanu Final Brief, para. 58.

<sup>1959</sup> TF1-094, Transcript 13 July 2005, pp. 25, 47.

<sup>1960</sup> TF1-094, Transcript 13 July 2005, pp. 26-27.

<sup>1961</sup> TF1-094, Transcript 14 July 2005, pp. 37-38.

<sup>1962</sup> TF1-094, Transcript 13 July 2004, p. 28, Transcript 14 July 2005, p. 37.

witness clarified that at the time 'Andrew' said that he would save her, he did not actually save her as "if you were saving somebody ... you would not rape that person."<sup>1963</sup>

1079. 'Andrew' captured the witness, brought her to Yamadugu and raped her there. The witness was in "Class Two" at the time and had not yet started menstruating. The Trial Chamber observes that a child in Class Two is approximately 12 years old. The witness testified that she believed that if she had refused to have sex with 'Andrew', "they" would have killed her.<sup>1964</sup> The Trial Chamber finds that the environment of violence and the murder of both the witness's parents substantiates this belief.

1080. The witness testified that after this, 'Andrew' continued to rape her and she became pregnant within a month of her capture. 'Andrew' told the witness not to abort the pregnancy and he would take care of her. The witness had to do his laundry and other chores. 'Andrew' considered the witness to be his "wife".<sup>1965</sup> The witness testified that the "boss" in Yamadugu was a certain 'Ojagu' who was an SLA. The witness also stated that 'Syllabug', 'Colonel Junior' and 'Rambo', whom she describes as all SLA, as well as other commanders whom the witness did not know, were also in Yamadugu.<sup>1966</sup>

1081. The Prosecution states that it was suggested to the witness in cross-examination that at the time she was pregnant, Andrew said he would marry her. In response, the witness did not specifically rebut this statement, but clarified that she was pregnant at the time and 'Andrew' had asked her not to abort the pregnancy.<sup>1967</sup> The Prosecution asserts, and the Trial Chamber accepts, that this shows that at the time, she was not legally married to him. The witness testified in cross-examination that Andrew used to care for her.<sup>1968</sup> It is the case of the Prosecution, however, that the fact that the men cared for their abducted 'wives' did not change the fact that these women were under sexual slavery or forced marriage as the men exercised ownership over them, denied them liberty and engaged them in acts of a sexual nature under a coercive environment whereby they were unable to give genuine consent.<sup>1969</sup> The Trial Chamber notes the environment of violence and coercion in which the events testified to by the witness took place and it is satisfied that any benefit received by the witness is relative only and in no way diminishes the seriousness of the acts committed against her.

<sup>1963</sup> TF1-094, Transcript 14 July 2005, pp. 37-38.  
<sup>1964</sup> TF1-094, Transcript 13 July 2005, pp. 28-29, 49.  
<sup>1965</sup> TF1-094, Transcript 13 July 2005, pp. 29, 50; Transcript 14 July 2005, p. 38.  
<sup>1966</sup> TF1-094, Transcript 13 July 2005, pp. 29, 50; Transcript 14 July 2005, p. 38.  
<sup>1967</sup> TF1-094, Transcript 14 July 2005, p. 38.

1082. Witness TF1-094 testified that she was taken with the troops as they travelled to Bamukoro, Koinadugu District; Badela; Tumanya or “Pumpkin Ground”, Koinadugu District where the witness stated SAJ Musa was the commander; Bofodia, Koinadugu District and Rosos, Bombali District. When they reached Rosos, the witness was four months pregnant. The witness testified that “55” was at Rosos and that there were many civilians at Rosos including hundreds of women.<sup>1970</sup>

1083. After Rosos, the witness was taken with the troops to Kamaranka; Kamalo, Bombali District; and then to Waterloo, Western Area. The witness testified that “55” was with the troops on the way to Waterloo. She was six months pregnant at the time and “55” beat her with a stick.<sup>1971</sup> The witness was then taken with the troops to Benguema, Western Area; Hastings, Western Area; and to Freetown during the AFRC invasion of 6 January 1999.<sup>1972</sup> During the AFRC retreat from Freetown, the witness was taken to Calaba Town, Western Area; Waterloo, Western Area - where she met ‘Andrew’; and then to Makeni, Bombali District. Andrew was shot dead in Makeni when the witness was seven months pregnant. The witness gave birth in Makeni on 19 April 1999, however, the child had died in the womb.<sup>1973</sup>

(b) Defence Witness DAB-156

1084. As found by the Trial Chamber with regards to Count 6, *supra*, Defence witness DAB-156 was raped by Junior Lion in Kabala, Koinadugu District sometime after the AFRC was overthrown in Freetown in February 1998 but before the rainy season. The witness testified that Junior Lion held her, raped her, banged her on the forehead where she still has a scar, and knocked out some of her teeth.<sup>1974</sup> The witness testified that he took her as his “wife” by force. He abducted her in Yuromia Town, near Foday Street.<sup>1975</sup>

1085. The witness testified that she was taken by Junior Lion to Kono, Koidu, Kono District and Kurubonla, Port Loko District. In Kurubonla, the witness saw a large number of soldiers, their wives, and other civilians. The leader was SAJ Musa and his deputies were called FAT and King. Junior Lion was also a deputy. At Krubonla, Junior Lion released the witness and a person the witness referred to as ‘Simon’ took the witness as his second wife. The witness testified that he was

<sup>1968</sup> TF1-094, Transcript 14 July 2005, p. 38.

<sup>1969</sup> Prosecution Final Brief, paras 1894-1895.

<sup>1970</sup> TF1-094, Transcript 13 July 2005, pp. 34, 36-39, 53, 55.

<sup>1971</sup> TF1-094, Transcript 13 July 2005, pp. 41, 55-57.

<sup>1972</sup> TF1-094, Transcript 13 July 2005, pp. 39-43.

<sup>1973</sup> TF1-094, Transcript 13 July 2005, pp. 45-46.

<sup>1974</sup> DAB-156, Transcript 29 September 2006, pp. 39-40, 43.

<sup>1975</sup> DAB-156, Transcript 29 September 2006, pp. 77-78.

good to her. After that Simon and Junior Lion moved to another town and Simon arranged that the witness would stay with his brother, a man known to the witness as 'Foyo'.<sup>1976</sup>

1086. Regarding witness DAB-156's evidence that she was captured and raped by George Johnson aka Junior Lion and taken to the Westside as a captive, the Prosecution submits that the witness's testimony ought to be completely disregarded because according to her own testimony she gave birth to her child in the Westside on 20 November 1999, and arrived in that area very shortly prior to the completion of her pregnancy.<sup>1977</sup> Thus, even if the events she has recounted in relation to Port Loko District are true (which the Prosecution disputes), her testimony falls well outside the relevant indictment period.<sup>1978</sup> The Trial Chamber agrees with this submission and makes no further findings on the basis of this evidence.

(c) Prosecution Witness TF1-085

1087. Prosecution witness TF1-085 testified that she lived with her family in Wellington, Western Area when AFRC rebels invaded in early January 1999. The Trial Chamber notes that the witness testified in chief that the year was 1999 but stated on cross-examination that she does not know the year she was captured. She accepted from counsel that the year was "1999" but then remained inconsistent on the exact date, stating alternatively that it was the 5<sup>th</sup>, the 6<sup>th</sup> and "Thursday".<sup>1979</sup> The Trial Chamber finds that as the events happened many years ago and as the evidence of the witness is corroborated by the known date of the AFRC invasion of Freetown, 6 January 1999, the credibility of the witness is not undermined.

1088. The witness testified that she was approximately thirteen at the time.<sup>1980</sup> One day, shortly thereafter, the witness was warned by her neighbours that the rebels had arrived in Wellington. She hid in her house with her family but "rebels" whom the witness describes as "STF from Liberia" including a rebel whose name the witness gave to the Court in closed session,<sup>1981</sup> hereinafter 'Colonel Z', broke down the door. The rebels told the witness to come with them and when she refused they beat her, put a pistol to her neck and threatened to cut off her mother's hands.<sup>1982</sup> The rebels gave her a load to carry and took her to Allen Town.<sup>1983</sup>

<sup>1976</sup> DAB-156, Transcript 29 September 2006, pp. 39-40, 42-49.

<sup>1977</sup> DAB-156, Transcript 29 September 2006, p. 5.

<sup>1978</sup> Prosecution Final Brief, para. 1805.

<sup>1979</sup> TF1-085, Transcript 6 April 2005, pp. 61, 74, 116.

<sup>1980</sup> TF1-085, Transcript 6 April 2005, pp. 61; Transcript 7 April 2005, pp. 124-125.

<sup>1981</sup> Name given in closed session, TF1-085, Transcript 6 April 2005p. 11-12.

<sup>1982</sup> TF1-085, Transcript 7 April 2005, pp. 7-14.

<sup>1983</sup> TF1-085, Transcript 7 April 2005, pp. 15-17.

1089. The witness testified that ‘Five-Five’ led the group in Wellington. She was told by “others” that he was ‘55’. She described him as huge, fat, tall, fair, black, carrying a stick that shot bombs, and wearing ronko.<sup>1984</sup> On cross-examination, the witness testified that he was “huge”, “tall”, and had body guards.<sup>1985</sup> The Kanu Defence asserts that witness TF1-085’s description of a “big boss” named ‘Five-Five’ does not correspond with the Accused Kanu and is not corroborated by any other Prosecution witnesses.<sup>1986</sup> The Trial Chamber notes that the description of ‘Five-Five’ given by the witness does not correspond with the physical features of the Accused Kanu who is a thin man of medium height and therefore does not rely on her evidence in this regard.

1090. ‘Colonel Z’ took the witness into the Mammy Dumbuya Church in Allen Town and told her he wanted to have sex with her. The witness refused. ‘Colonel Z’ beat her, tied her hands and raped her. The witness bled and lost consciousness. It took a month for her to heal.<sup>1987</sup> After ‘Colonel Z’ raped the witness, he told her she was his “wife”.<sup>1988</sup>

1091. Witness TF1-085 was taken by the rebels from Allen Town to Waterloo which had been captured.<sup>1989</sup> The witness testified that a person she referred to as ‘Five-Five’ was in command in Allen Town<sup>1990</sup> and that in a village on the way to Waterloo, he ordered that the witness be beaten for cooking and making smoke.<sup>1991</sup> As discussed, *supra*, the Trial Chamber makes no findings with regards to the Accused Kanu on the basis of this evidence. The witness was then taken by the rebels to Masiaka, Port Loko District. The person the witness referred to as ‘Five-Five’ led the group to Masiaka.<sup>1992</sup> In Masiaka, ‘Colonel Z’ repeatedly forced the witness to have sex with him. As a result, the witness bled and ‘Colonel Z’ took her to the doctor. When she healed, ‘Colonel Z’ continued to have sex with her without her consent.<sup>1993</sup> The witness became pregnant and miscarried twice as a result of the rapes.<sup>1994</sup>

1092. In Masiaka, ‘Colonel Z’ “married” the witness in a ceremony and gave money to the person referred to by the witness as ‘Five-Five’ as a “father-in-law”.<sup>1995</sup> The Prosecution submits that this did not create any valid marriage or change the witness’s status of being under sexual slavery or in

<sup>1984</sup> TF1-085, Transcript 7 April 2005, pp. 16-17, 90-91.

<sup>1985</sup> TF1-085, Transcript 7 April 2005, pp. 60, 67, 69.

<sup>1986</sup> Kanu Final Brief, paras 172-174.

<sup>1987</sup> TF1-085, Transcript 7 April 2005, pp. 17-20.

<sup>1988</sup> TF1-085, Transcript 7 April 2005, p. 21.

<sup>1989</sup> TF1-085, Transcript 7 April 2005, p. 21.

<sup>1990</sup> TF1-085, Transcript 7 April 2005, p. 18.

<sup>1991</sup> TF1-085, Transcript 7 April 2005, pp. 27-28, 71.

<sup>1992</sup> TF1-085, Transcript 7 April 2005, p. 30.

<sup>1993</sup> TF1-085, Transcript 7 April 2005, pp. 35-36.

<sup>1994</sup> TF1-085, Transcript 7 April 2005, pp. 36-37.

<sup>1995</sup> TF1-085, Transcript 7 April 2005, p. 37.

a forced marriage as she was not at liberty to leave and remained there under a coercive war environment.<sup>1996</sup> The Trial Chamber notes the environment of violence and coercion, namely, the witness's forcible abduction and her repeated rape by the rebel 'Colonel Z', and finds that given these circumstances the witness could not have validly consented to the "marriage". The Trial Chamber is therefore of the opinion that this was not a 'legal' marriage.

1093. 'Colonel Z' had more than six other captured wives in Masiaka.<sup>1997</sup> He did not force the witness to do any work around the house; however, his other wives were required to do so. The other wives beat the witness because they said that she took their husband away.<sup>1998</sup>

1094. 'Colonel Z' held the witness in Masiaka against her will.<sup>1999</sup> The witness begged 'Colonel Z' to let her return to Freetown. The witness testified that 'Colonel Z' gave her cocaine. She also stated that he gave her marijuana, a pistol and an AK-47 and taught her how to use the weapons for her security.<sup>2000</sup> On cross-examination, the witness stated that she carried the pistol with her.<sup>2001</sup>

1095. The witness tried to escape from Masiaka with two other women. They were approximately two miles away from town when they were caught by some "rebel boys". The rebels cut the two other women with a blade, marking their bodies with the acronym "AFRC/RUF". They took the witness to the police station in Masiaka where 'Colonel Z' picked her up. He brought her back to the house, beat her, and threatened to kill her.<sup>2002</sup>

1096. The witness was held Masiaka for several months after which time she, 'Colonel Z' and the rebels travelled to Lunsar, Port Loko District to avoid ECOMOG.<sup>2003</sup> The witness testified that 'Issa' went from Masiaka to Lunsar and that he was in charge together with the other rebels.<sup>2004</sup> 'Daramy' and 'Gold Teeth' were in Lunsar.<sup>2005</sup> They then travelled to Krubola Hill, Port Loko District where the witness and other civilians were trained to fight. They were trained on how to cock and fire a gun, how to evade enemies and how to attack.<sup>2006</sup> After the training, the witness and the other trained civilians were sent to fight in Kono. Some of the trained civilians were killed by

<sup>1996</sup> Prosecution Final Brief, para. 1908.

<sup>1997</sup> TF1-085, Transcript 7 April 2005, pp. 33, 89, 96.

<sup>1998</sup> TF1-085, Transcript 7 April 2005, p. 37.

<sup>1999</sup> TF1-085, Transcript 7 April 2005, p. 36.

<sup>2000</sup> TF1-085, Transcript 7 April 2005, pp. 34-35.

<sup>2001</sup> TF1-085, Transcript 7 April 2005, p. 112.

<sup>2002</sup> TF1-085, Transcript 7 April 2005, pp. 43-44, 121.

<sup>2003</sup> TF1-085, Transcript 7 April 2005, p. 46.

<sup>2004</sup> TF1-085, Transcript 7 April 2005, p. 46.

<sup>2005</sup> TF1-085, Transcript 7 April 2005, p. 86.

<sup>2006</sup> TF1-085, Transcript 7 April 2005, p. 49.

ECOMOG during the attack.<sup>2007</sup> The Trial Chamber notes this evidence of witness TF1-085 will be addressed in the Factual Findings in relation to Count 12 (Child Soldiers). The Trial Chamber also notes that the Indicted period for Count 13 (Abductions and Forced Labour) for Kono District ends in January 2000 and thus makes no findings on the basis of this evidence in that regard.

1097. After the attack, the witness, the rebels and ‘Colonel Z’ returned to Port Loko District and then travelled to Makeni, Bombali District. Makeni was bombed and the witness was separated from ‘Colonel Z’ and she attempted to flee to Masiaka. She was detained by ECOMOG forces and then allowed to return to Freetown where she reunited with her mother. She was pregnant when she returned and underwent an abortion.<sup>2008</sup> The Trial Chamber makes no findings on the basis of this evidence in regards to Bombali District as the indicted period for sexual crimes in Bombali District ends on 30 November 1998, well before this evidence of the witness took place.

1098. The Trial Chamber notes that the witness testified that she was abducted by an “STF from Liberia” and that the Trial Chamber has no evidence before it to suggest with which faction, if any, these persons were affiliated. However, the witness’s description of her abductors as “rebels”; and the route taken by the persons who captured the witness, namely from Wellington to Allen Town to Waterloo to Masiaka, Port Loko District where she was held for several months, which is consistent with the known route taken by AFRC/RUF forces on the retreat from Freetown; are consistent with a finding that her abductors were members of the AFRC/RUF.

1099. The Trial Chamber notes the Kanu Defence assertion that the evidence given by Prosecution witness TF1-085 can not be deemed reliable and should not be give any weight.<sup>2009</sup> The Trial Chamber found witness TF1-085 consistent and firm in her evidence and accepts her as a witness of truth.

#### 4. Evidence and Deliberations by District

##### (a) Kono District (14 February 1998 – 30 June 1998)

1100. The Indictment alleges that between 14 February 1998 and 30 June 1998 an unknown number of women and girls were abducted by members of the AFRC/RUF from various locations within the District and used as sex slaves.<sup>2010</sup>

<sup>2007</sup> TF1-085, Transcript 7 April 2005, p. 50.

<sup>2008</sup> TF1-085, Transcript 7 April 2005, pp. 51-52, 119-120.

<sup>2009</sup> Kanu Final Brief, paras 172-174.

<sup>2010</sup> Indictment, para. 52.

1101. The Prosecution has conceded that it has not led evidence in respect of Tomendeh, Fokoiya, Superman Camp/Kissi Town Camp, Kissi Town or Tombodu.<sup>2011</sup>

1102. In making its findings in relation to Kono District, the Trial Chamber relies upon the evidence of Prosecution witness TF1-334 and Defence witnesses DAB-125 and DAB-101.

1103. Prosecution witness TF1-334 testified that from the time Johnny Paul Koroma declared Koidu a “no go” area for civilians in early March, 1998, civilians were captured by “rebels” from the surrounding villages such as Tombodu and Yamadu. Civilians who tried to escape were executed.<sup>2012</sup> Women – particularly the young and beautiful ones – were placed under the full control of “commanders”; they became their “wives”. As their “wives” the women cooked for the rebels and the other soldiers in Kono. They were also “used sexually.”<sup>2013</sup> This was an open practice. Witness TF1-334, “Commander A” and other soldiers all “had sexual intercourse” with captured women.<sup>2014</sup>

1104. The Prosecution submits that this evidence has not been challenged by any Defence evidence and as such the Prosecution version of events must be accepted.<sup>2015</sup>

1105. The Trial Chamber is of the opinion that witness TF1-334’s testimony that women were captured; that captured civilians who tried to escape were executed; that captured women were place under the “full control” of commanders and became their “wives”; and that these women cooked for the commanders and other soldiers is indicative of the deprivation of the captured women’s liberty and the exercise of ownership over them by members of the AFRC. The Trial Chamber is also satisfied on the evidence of the witness, namely that the women were “used sexually” and that soldiers, including himself, had sexual intercourse with captured women, that acts of sexual violence were committed against the captured women. The Trial Chamber infers from the environment of violence and coercion that the women did not consent to these sexual acts. The Trial Chamber is thus of the opinion that the *actus reus* and *mens rea* elements of the crime of sexual slavery are satisfied on the basis of this evidence.

1106. The evidence of witness TF1-334 is generally supported by that of witness DAB-101 who testified that after hearing on the radio about “Operation No Living Thing” he was captured and released three times by the RUF in Kono District. The “rebels” were based at Mortema at this time.

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<sup>2011</sup> Rule 98 Decision, para. 161.

<sup>2012</sup> TF1-334, Transcript 20 May 2005, pp. 4-5.

<sup>2013</sup> TF1-334, Transcript 20 May 2005, pp. 4-6.

<sup>2014</sup> TF1-334, Transcript 20 May 2005, p. 7.

The witness was captured, together with two other civilians, by the RUF a fourth time. The rebels were armed and were wearing civilian clothing. The rebels told the witness that they would release him if he agreed to turn over two of his nieces to them to be their “wives”. The witness testified that the nieces advised him to accept the offer so he did. The girls were 15 and 17 years old at the time. The witness then went back to the “bush”. The witness saw the girls again after the war. The girls told the witness their “ordeal”; they said they were beaten but did not tell the witness anything else.<sup>2016</sup> The Trial Chamber is of the opinion that girls aged 15 and 17 years of age, in the context of coercion and violence, could not have validly consented to “marriage”.

1107. Witness DAB-101 also testified that, generally, women that were captured by the rebels were transformed into their ‘wives’. They were usually sent to spy for the rebels or to find food. In Mortema, the witness did not hear about any rapes. He also never heard the name of the Accused Brima.<sup>2017</sup>

1108. The evidence of witness TF1-334 is also generally supported by that of witness DAB-125 who testified that around Wordu Town, if “they” saw a young girl they would hold and turn her into their wife.<sup>2018</sup>

(i) Findings

1109. By virtue of the foregoing the Trial Chamber is satisfied that the elements of sexual slavery are established in relation to Kono District.

(b) Koinadugu District (14 February 1998 – 30 September 1998)

1110. The Indictment alleges that between 14 February 1998 and 30 September 1998 an unknown number of women and girls were abducted and used as sex slaves by members of the AFRC/RUF.<sup>2019</sup>

1111. The Prosecution has conceded that it has not led evidence in respect of Heremakono.<sup>2020</sup>

<sup>2015</sup> Prosecution Final Brief, para. 1314.

<sup>2016</sup> DAB-101, Transcript 12 September 2006 pp. 81-88.

<sup>2017</sup> DAB-101, Transcript 12 September 2006, pp. 98-99.

<sup>2018</sup> DAB-125, Transcript 13 September 2006, p. 54.

<sup>2019</sup> Indictment, para. 53.

<sup>2020</sup> Rule 98 Decision, para. 161.

1112. In making its findings in relation to Koinadugu District, the Trial Chamber relies on the evidence of Prosecution witnesses TF1-094, TF1-133, and TF1-209 and Defence witness DAB-079 and DAB-156.

1113. As examined, *supra*, in the evidence by witness section, witness TF1-094 testified that in August of 1998 she was abducted by a certain 'Andrew' from her village, Bambukura, Koinadugu District. The Trial Chamber is satisfied from the witness's description of 'Andrew' as an "SLA" dressed in combat that Andrew was a member of the AFRC or the RUF. The witness testified that after Andrew abducted her, he repeatedly raped her. The witness became pregnant within the first month of being with Andrew. She testified that she had to do his laundry and other chores and that Andrew considered the witness to be his "wife". The witness was taken with the troops as they travelled to Bombali District. They reached Rosos when the witness was four months pregnant.

1114. The Trial Chamber is of the opinion that the witness's testimony of her forcible abduction; the murder of her parents in her presence which established an context of fear and violence; her fear that she too would be killed if she did not have sex with 'Andrew'; the extraction of her forced labour by 'Andrew', namely laundering and other chores; the use of the term 'wife'; and her detention with the troops for approximately four to five months as they travelled through Koinadugu District to Bombali District are all indicative of the deprivation of her liberty and the exercise of ownership over her person by 'Andrew' which together with acts of sexual violence, namely, 'Andrew's repeated rape of the witness and her subsequent pregnancy, satisfies the *actus reus* and *mens rea* elements of the crime of sexual slavery.

1115. Prosecution witness TF1-133 testified that captured women in Koinadugu District were forced to be "wives" to members of the AFRC or RUF and that she was present in Krubola for a period of seven months and Serekolia for a period of three months during which time "forced marriages" were supervised and organised by herself for members of the AFRC and RUF.

1116. The witness testified that in Kumala, in April 1998, at the time that the villagers were "getting ready to make [their] farms" at the end of the dry season, she, her siblings and one of her husband's other wives, were captured by four "rebels" whom the witness named as 'Mohammed the Killer', 'Trouble', 'Arpick' and 'Cyborg'. Some of the rebels were in uniform and some were in civilian dress.<sup>2021</sup> The witness and her family members, together with some other captured civilians known to the witness – Bamba Jalloh and Sialo Kamara - were taken by the rebels on a path towards Woronbiai. Before they reached town, 'Mohammed the Killer', who was armed, raped the

witness. The witness testified that she was unable to refuse. At the same time, another rebel – whom the witness named as ‘RPG’ - raped the witness’s husband’s other wife.<sup>2022</sup>

1117. The witness was kept with the rebels at Woronbiai for eight days. There the witness learned that Mohammed the Killer’s commander was named ‘Cobra’.<sup>2023</sup> Other commanders at Woronbiai were ‘Colonel Tee’ who was SLA; ‘Pa Mani’ who was SLA; and ‘Rambo’. ‘Rambo’ and ‘Pa Mani’ were the overall commanders at Woronbiai.<sup>2024</sup> At Woronbiai, ‘Mohammed the Killer’ wanted to marry the witness to ‘Cobra’. The witness refused. ‘Mohammed the Killer’ said the witness should be killed and he wounded her with a bayonet. The witness was injured on her hip and buttocks.<sup>2025</sup> The witness was led away by a rebel to be killed, however, ‘Rambo’ intervened.<sup>2026</sup> ‘Rambo’ and ‘Pa Mani’ punished ‘Mohammed the Killer’ by having him beaten.<sup>2027</sup> ‘Cobra’ said “You have brought this woman for me. If she says she doesn’t love me, leave her alone”.<sup>2028</sup> The witness was treated for her injuries. For the eight days she was in Woronbiai, the witness lived with ‘Cobra’.<sup>2029</sup>

1118. All of the women who were captured at the same time as the witness were given to “men” as their “wives” which meant that the women had to have sex with the men. The witness’s husband’s other wife was given to a “rebel” named Komba; Bamba Jalloh was given to a Mende “rebel” named Yubao. Sialo Kamara was made to work for the wives of the rebels. She laundered clothes and washed dishes.<sup>2030</sup>

1119. The Trial Chamber notes that in its Final Brief, the Prosecution cites the proceeding testimony of witness TF1-133 as evidence of crimes committed in Woronbiai, *Kono* District.<sup>2031</sup> The Trial Chamber finds that this is a mistaken assertion. Witness TF1-133 clearly testified that she was in the bush outside of Kumala, near Alikalia, when she was captured, and that she was raped in the bush on the way to Woronbiai. She also testified that immediately prior to the attack on Kumala, Yifin had been attacked.<sup>2032</sup> The Trial Chamber has no doubt that the proceeding events the witness describes took place in Koinadugu District.

<sup>2021</sup> TF1-133, Transcript 7 July 2005, pp. 80-85.

<sup>2022</sup> TF1-133, Transcript 7 July 2005, pp. 85-86, 113, 118.

<sup>2023</sup> TF1-133, Transcript 7 July 2005, pp. 86-87.

<sup>2024</sup> TF1-133, Transcript 7 July 2005, p. 88.

<sup>2025</sup> TF1-133, Transcript 7 July 2005, pp. 89-90.

<sup>2026</sup> TF1-133, Transcript 7 July 2005, pp. 88, 90.

<sup>2027</sup> TF1-133, Transcript 7 July 2005, p. 90.

<sup>2028</sup> TF1-133, Transcript 7 July 2005, p. 90.

<sup>2029</sup> TF1-133, Transcript 7 July 2005, p. 92.

<sup>2030</sup> TF1-133, Transcript 7 July 2005, pp. 90-92.

<sup>2031</sup> Prosecution Final Brief, paras 1317-1318, 1889.

<sup>2032</sup> TF1-133, Transcript 7 July 2005, pp. 81-82.

1120. Witness TF1-133 testified that then she and an unknown number of other women who had been captured by “rebels” were taken with the rebels - including ‘Cobra’ and “Brigadier” Mani - to Krubola where they stayed for seven months. At Krubola, they “met” another group of rebels which included a “fighter” named ‘Savage’, a “rebel” named ‘Komba Gbundema’, and a “rebel” named ‘Superman’. There were other men there, but the witness did not know their names. The men at Krubola were all “under” Komba Gbundema.<sup>2033</sup> The Trial Chamber is satisfied on the basis of this evidence that the rebels present at Krubola at this time were both members of the AFRC and RUF.

1121. In Krubola, the captured women cooked and “had sex” with the rebels and were forced to be their “wives”. The witness stated that when a woman was “betrothed” to a man, she became his “wife” which according to the witness, meant that “whoever you were with would have sex with you.” The witness testified that when the rebels captured women, they would have sex with them before bringing them to where the rebels were based. When the captured women were taken to the base, they would be handed over to a person who would have sex with that woman all the time. The “bosses and stronger guys” all had wives who were captured but the subordinates were not allowed to have wives. The subordinates would be sent to the front and they would always bring back captured civilians, including women.

1122. The witness testified that in her presence the “elders” and “bosses” including ‘Rambo’, ‘Colonel Tee’ and ‘Pa Mani’ made a law that whoever was given a woman would be the sole owner over her and that a man should not covet his colleague’s wife. “If you were caught, you will be killed”. Captured children were made to work for the captured “wives” of the rebels.<sup>2034</sup> On cross-examination, the witness testified that the children were captured *because* older civilians wanted them to work for them.

1123. At the time that groundnuts were about to be harvested the rebels moved to Serekolia, Koinadugu District. On the way, the rebels travelled through Mongo which “was captured”. The rebels that moved included Kombo Gbundema’s group, ‘Superman’, ‘Savage’, ‘Colonel Tee’ and ‘Pa Mani’. They remained in Serekolia for three months. While they were there the civilians voted for the witness to represent them. She was appointed the “Mammy Queen” by ‘Pa Mani’, ‘Colonel Tee’ and their clerk Alhaji. As the Mammy Queen, the witness would investigate captured civilians who had been mistreated and cases where husbands or wives had sex with someone else’s spouse. If

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<sup>2033</sup> TF1-133, Transcript 7 July 2005, pp. 93-95, 118

<sup>2034</sup> TF1-133, Transcript 7 July 2005, pp. 98-102.

a woman was found guilty of having sex with someone else's husband she could be given 200 lashes. If a man raped another man's wife, he could be killed.<sup>2035</sup>

1124. The Prosecution asserts that the witness's position as a "Mammy Queen" did not in any way help her or the other "wives'" plight, as it did not affect the powers of the men over their abducted 'wives', or afford them any liberty to leave or refuse to engage in acts of a sexual nature with their so called husbands.<sup>2036</sup>

1125. The Prosecution also asserts that witness TF1-133 was not discredited on cross-examination and that her evidence has not been challenged by any Defence evidence and as such, the Prosecution version of events should be accepted.<sup>2037</sup>

1126. The Trial Chamber is satisfied on the evidence of witness TF1-133 that women captured in Koinadugu District were subject to repeated rape by members of the AFRC/RUF; were made to labour for members of the AFRC/RUF, namely to cook, launder clothes and wash dishes; were labelled as "wives", in this context a label of possession, and placed in exclusive relationships of ownership by certain rebels; were punished with physical violence if the exclusive sexual relationship was violated; and were detained at rebel bases in Krubola and Serekolia and made to travel together with the troops; are all indicative of the deprivation of liberty and the exercise of ownership over captured women together with acts of sexual violence satisfying the *actus reus* and *mens rea* of the crime of sexual slavery.

1127. As found by the Trial Chamber, *supra*, Prosecution witness TF1-209 was raped at her mother's farm outside of Koinadugu Town by two members of the AFRC/RUF in or about August, 1998. Following this attack the rebels brought her to Koinadugu Town where over a period of three months she was repeatedly raped by 'Jabie', a member of the AFRC.<sup>2038</sup>

1128. In addition to these findings, the Trial Chamber also relies upon the evidence of witness TF1-209 that when she and other captured civilians were brought to Koinadugu Town, they were taken to the "MP's" office where their names were recorded by a person to whom the witness referred as 'Mongo.' The witness testified that this was done so that the captured civilians would

<sup>2035</sup> TF1-133, Transcript 7 July 2005, pp. 102-106.

<sup>2036</sup> Prosecution Final Brief, para. 1891.

<sup>2037</sup> Prosecution Final Brief, paras 1319, 1890, 1897.

<sup>2038</sup> Factual Findings, Outrages on Personal Dignity, paras 989-1011, *supra*.

not go missing. The witness described ‘Mongo’ as dressed in combat and stated that he was the boss of the Military Police.<sup>2039</sup>

1129. The witness testified that following this registration process she was taken by the “person” who captured her to ‘Jabie’s house where she cooked and laundered for him. The witness testified that he turned her into his “wife” which she explained meant that he would have sex with the witness whenever he felt like it.<sup>2040</sup> The witness also testified that with the exception of excursions during the day to farms in the bush, she stayed in the same house with ‘Jabie’ in Koinadugu Town for three months until he was killed.<sup>2041</sup>

1130. The Trial Chamber is satisfied that the witness’s testimony of her forcible capture; the registration of her name by ‘Mongo’ when she arrived in Koinadugu Town and her perception that this was done to prevent her and other captured civilians from “going missing”; the extraction of her forced labour by ‘Jabie’, namely cooking and laundering; the use of the term ‘wife’, in this context a label of possession; and her detention in the same house as ‘Jabie’ is indicative of the deprivation of her liberty and the exercise of ownership over her person which together with acts of sexual violence, namely, ‘Jabie’s repeated rape of the witness found previously by the Trial Chamber satisfies the *actus reus* and *mens rea* elements of the crime of sexual slavery.

1131. The evidence of Prosecution witnesses TF1-094, TF1-133, and TF1-209 is generally supported by that of Defence witnesses DAB-156 and DAB-079. As found by the Trial Chamber with regards to Count 6, *supra*, Defence witness DAB-156 was raped by ‘Junior Lion’ in Kabala sometime after the AFRC was overthrown in Freetown in February 1998 but before the rainy season.<sup>2042</sup> The witness also testified that he took her as his “wife” by force and that he abducted her in Yuromia Town, near Foday Street.<sup>2043</sup>

1132. Witness DAB-079 testified that he did not receive any information about sexual violence in Kabala Town by the SLAs, although there were rumours of ‘bush wives’ in the interior. The witness was part of a CDF information network of 1000-1700 people and was receiving weekly reports from Kabala, Koinadugu, Yifin, Geberefe and other locations.<sup>2044</sup>

(i) Findings

<sup>2039</sup> TF1-209, Transcript 7 July 2006, pp. 37-38.

<sup>2040</sup> TF1-209, Transcript 7 July 2006, p. 38.

<sup>2041</sup> TF1-209, Transcript 7 July 2006, p. 74.

<sup>2042</sup> Factual Findings, Rape, para. 986.

<sup>2043</sup> DAB-156, Transcript 29 September 2006, pp. 77-78.

<sup>2044</sup> DAB-079, Transcript 28 July 2006, pp. 9-10, 13-14, 16-17, 27, 34-36, 39-42.

1133. By virtue of the foregoing the Trial Chamber is satisfied that the elements in relation to sexual slavery are established in relation to Koinadugu District.

(c) Bombali District (1 May 1998 – 30 November 1998)

1134. The Indictment alleges that between 1 May 1998 and 30 November 1998 an unknown number of women and girls were abducted and used as sex slaves by members of the AFRC/RUF.<sup>2045</sup>

1135. The Prosecution has conceded that it has not led evidence in respect of Mandaha.<sup>2046</sup>

1136. In coming to its findings in Bombali District, the Trial Chamber relies on the evidence of Prosecution witnesses TF1-334, TF1-094 and TF1-033 and Defence witness DAB-095.

1137. Witness TF1-334 testified that he and other “soldiers” under the command of “Woyoh”<sup>2047</sup> captured approximately 35 civilian women during the attack on Karina in June of 1998.<sup>2048</sup> The women were initially stripped naked but were later permitted to dress.<sup>2049</sup> When the soldiers left Karina they stopped at a temporary base in the jungle. There, Woyoh handed the women over to ‘Five-Five’ who was the Chief of Staff.<sup>2050</sup> ‘Five-Five’ distributed the women among the soldiers under his command by requiring them to “sign for” a woman. ‘Five-Five’ stated that if there were any problems the soldiers should immediately report directly to him. He also stated that if the soldiers “disturbed” the women, they would be removed from the soldier’s control.<sup>2051</sup> The women were “wives to the soldiers”<sup>2052</sup> and they remained with their “husbands” until the soldiers invaded Freetown.<sup>2053</sup>

1138. Witness TF1-334 testified that the AFRC troops arrived in Rosos at the beginning of the rainy season in 1998 and stayed there for three months, leaving in September.<sup>2054</sup> ‘Five-Five’ was in charge of overseeing that the captured women were trained for combat.<sup>2055</sup> ‘Five-Five’ continued to regulate the “marriages” of the women abducted in Karina at Camp Rosos. ‘Gullit’ appointed a “Mammy Queen” – a woman at the camp who looked after women’s affairs, including pregnancy,

<sup>2045</sup> Indictment, para. 54.

<sup>2046</sup> Rule 98 Decision, para. 161.

<sup>2047</sup> TF1-334, Transcript 23 May 2005, p. 72.

<sup>2048</sup> TF1-334, Transcript 23 May 2005, pp. 63, 72.

<sup>2049</sup> TF1-334, Transcript 23 May 2005, pp. 72-73.

<sup>2050</sup> TF1-334, Transcript 23 May 2005, p. 73.

<sup>2051</sup> TF1-334, Transcript 23 May 2005, pp. 76-77.

<sup>2052</sup> TF1-334, Transcript 23 May 2005, p. 77.

<sup>2053</sup> TF1-334, Transcript 24 May 2005, p. 61.

<sup>2054</sup> TF1-334, Transcript 23 May 2005, p. 103.

<sup>2055</sup> TF1-334, Transcript 24 May 2005, pp. 23-24, 60.

birth and sickness.<sup>2056</sup> ‘Five-Five’ issued a “disciplinary order” regulating the conduct of women which was explained to supervisors in the camp and to the Mammy Queen. According to this order, women who were unfaithful to their husbands should be punished.<sup>2057</sup> Soldiers and their “wives” reported problems directly to ‘Five-Five’ and if ‘Five-Five’ determined that the woman deserved punishment this could be delegated to the Mammy Queen. Women found by ‘Five-Five’ to have misbehaved could be beaten or given lashes. Women were also locked for long periods of time in a box meant for transporting rice.<sup>2058</sup> In one instance, witness TF1-334 observed a Staff Sergeant named “Junior” aka “General Bagehgeh” report to ‘Five-Five’ that he suspected his “wife” of misbehaving. ‘Five-Five’ called the woman before him and found her guilty. He ordered that she be sent to the Mammy Queen, be given a dozen lashes and be locked in the box. The witness escorted her to the box.<sup>2059</sup>

1139. The Trial Chamber considers the evidence of Prosecution witness TF1-334 together with that of Prosecution witness TF1-033 who testified to having been taken along with AFRC troops to Rosos during the rainy season in 1998.<sup>2060</sup> He testified that rape was widespread throughout the time he was in captivity with the AFRC troops and that the only thing done about sexual violence committed by ARFC troops by “the commanders” occurred at Rosos. The witness testified that according to the “jungle justice” rules at that time, any fighter who raped another fighter’s abducted and forcefully married wife would be put to death. The witness specifically recalled an incident in which Alhaji Kamanda alias ‘Gunboot’ killed an AFRC fighter for raping another fighter’s forcefully abducted and married wife.<sup>2061</sup>

1140. The evidence of Prosecution witnesses TF1-334 and TF1-033 is supported by that of Prosecution witness TF1-094, found by the Trial Chamber to have been subject to sexual slavery in Koinadugu District, who also testified that during the period of her sexual slavery, she was brought by the troops to Rosos.<sup>2062</sup>

1141. The Trial Chamber is satisfied that the testimony of Prosecution witnesses TF1-334, TF1-033 and TF1-094 that women captured by the AFRC/RUF were distributed to soldiers to be their “wives”; that captured women were brought to Rosos where they were subject to physical and

<sup>2056</sup> TF1-334, Transcript 24 May 2005, p. 62.

<sup>2057</sup> TF1-334, Transcript 24 May 2005, pp. 65-67.

<sup>2058</sup> TF1-334, Transcript 24 May 2005, pp. 63-64.

<sup>2059</sup> TF1-334, Transcript 24 May 2005, pp. 67-69. *See* discussion on credibility of this witness: Role of Accused, paras 364-367.

<sup>2060</sup> TF1-033, Transcript 11 July 2005, p. 22.

<sup>2061</sup> TF1-033, Transcript 12 July 2005, p. 9. *See* discussion on credibility of this witness: Role of Accused, paras 364-367.

psychological violence as a form of punishment; and that the women were detained with their “husbands” until the soldiers invaded Freetown is indicative of the deprivation of the captured women’s liberty and the exercise of ownership over her person which taken together with acts of sexual violence committed against them, namely, rape at the hands of their rebel “husbands” or at the hands of other fighters satisfies the *actus reus* and *mens rea* elements of the crime of sexual slavery. The Trial Chamber finds further that this was a practice tolerated and regulated by the AFRC/RUF commanders.

1142. Prosecution witness TF1-334 also testified that in or about September 1998, after the troops left Rosos, SAJ Musa arrived in Major Eddie Town. During a meeting with the commanders there, he said that the troops would not be able to secure the women so the women should leave. The women did not leave.<sup>2063</sup>

1143. This evidence is generally supported by that of Defence witness DAB-095 who testified that he was in Colonel Eddie Town when it was used as a military camp for the SLAs under SAJ Musa. The witness was present during a muster parade held by SAJ Musa in Eddie Town when SAJ Musa gave an order that the SLAs should not attack civilians. Witness did not know about a Mammy Queen at Eddie Town. Soldiers were not allowed to rape civilians.<sup>2064</sup>

1144. The Prosecution argues that defence witnesses who gave insider type evidence such as DAB-095 lied in key parts of their evidence and colluded with each other and the Accused in order to ensure that their stories were the same.<sup>2065</sup> The Prosecution considers evidence given by such witnesses that they did not hear of any crimes, such as rape, being committed by the SLAs during the retreat from Freetown to be manifestly unreliable and untrue.<sup>2066</sup>

(i) Findings

1145. By virtue of the foregoing, and without predetermining the individual responsibility of the three Accused, the Trial Chamber is satisfied that the elements in relation to sexual slavery are established in relation to Bombali District.

<sup>2062</sup> Factual Findings, Outrages on Personal Dignity, paras 1078-1083.

<sup>2063</sup> TF1-334, Transcript 13 June 2005, p. 27.

<sup>2064</sup> DAB-095, Transcript 28 September 2006, pp. 49-54.

<sup>2065</sup> Prosecution Final Brief, para. 1569.

<sup>2066</sup> Prosecution Final Brief, para. 1573.

(d) Kailahun (At all times relevant to the Indictment)

1146. The Indictment alleges that at all times relevant to the Indictment, an unknown number of women and girls in various locations in the District were subjected to sexual violence. Many of these victims were captured in other areas of the Republic of Sierra Leone and brought to AFRC/RUF camps in the District and used as sex slaves.<sup>2067</sup>

1147. No specific concessions with regards to locations in Kailahun were found to have been made by the Prosecution at the Motion for Acquittal stage.<sup>2068</sup>

1148. In making its findings in relation to Kailahun, the Trial Chamber has examined the evidence of Prosecution witnesses TF1-045 who testified that during the ECOMOG intervention in Freetown in February 1998, he was in Kenema.<sup>2069</sup> “Operation Pay Yourself” was declared by Sam Bockarie during which time civilians were abducted by the troops and taken to Daru.<sup>2070</sup> The witness moved with the troops to Daru, where the next morning, he met his niece Aminata who was one of the captured civilians. Aminata told the witness that an “RUF” named Ibrahim captured her, raped her and told her she should be his “wife”. Aminata was a young teenager at the time.<sup>2071</sup> The Trial Chamber finds on the basis of this evidence that the crime of sexual slavery is not proven as the evidence insufficiently establishes the exercise of ownership by the perpetrator over the victim.

(i) Findings

1149. By virtue of the foregoing the Trial Chamber is not satisfied that the elements in relation to sexual slavery are established in relation to Kailahun District.

(e) Freetown and Western Area (6 January 1999 – 28 February 1999)

1150. The Indictment alleges that between 6 January 1999 and 28 February 1999 throughout Freetown and the Western Area members of the AFRC/RUF abducted hundreds of women and girls and used them as sex slaves.<sup>2072</sup>

1151. No specific concessions with regards to locations in Freetown and the Western Area were found to have been made by the Prosecution at the Motion for Acquittal stage.<sup>2073</sup>

<sup>2067</sup> Indictment para. 55.

<sup>2068</sup> Rule 98 Decision, para. 161.

<sup>2069</sup> TF1-045, Transcript 19 July 2004, p. 78.

<sup>2070</sup> TF1-045, Transcript 19 July 2004, pp. 79-83.

<sup>2071</sup> TF1-045, Transcript 19 July 2004, pp. 84-86.

<sup>2072</sup> Indictment, para. 56.

1152. In coming to its findings in relation to Freetown and the Western Area, the Trial Chamber relies on the evidence of Prosecution witnesses TF1-023, TF1-334, TF1-094 and Defence witnesses DBK-113 and DBK-126.

1153. Prosecution witness TF1-023 testified that she was 16<sup>2074</sup> when the AFRC invaded Freetown in January 1999. She and her family tried to hide; however, she was captured by “rebels”<sup>2075</sup> in Calaba Town on 22 January 1999.<sup>2076</sup> She was taken by the rebels first to Allen Town and then back to Calaba Town.<sup>2077</sup> At Calaba town, she was given to an AFRC rebel,<sup>2078</sup> hereinafter “the Captain” to be his “wife”.<sup>2079</sup> The Captain told the witness he would not take her as his “wife” as he had already been given another woman – the witness’s cousin – and could not take care of two women at the same time.<sup>2080</sup> Instead, the Captain handed the witness over to a known AFRC Colonel,<sup>2081</sup> hereinafter “Colonel X”, who took her as his “wife”.<sup>2082</sup> There was no ceremony and he did not ask her consent.<sup>2083</sup> The witness was afraid. That night, Colonel X came into the room where the witness was instructed to sleep. He told her to undress, threatened her and had sex with her without her consent. Prior to this incident, the witness was a virgin.<sup>2084</sup>

1154. After that night, the witness was taken along with the rebels as they attempted to evade ECOMOG attacks, travelling to Allen Town, Waterloo, Benguema, Lumpa and Four Mile.<sup>2085</sup> At Benguema, the witness saw a man whom the soldiers<sup>2086</sup> said was the senior commander, Brigadier ‘Gullit’.<sup>2087</sup> At Four Mile the witness spent three weeks with Colonel X.<sup>2088</sup> During this time Colonel X and the witness lived together and he continued to have sex with her frequently. He did not ask her consent when he had sex with her; he said she was his “wife”. Colonel X asked the witness to cook for him, but she did not because she did not know how.<sup>2089</sup> The witness felt there was no way for her to escape from Colonel X.<sup>2090</sup> She was unfamiliar with the area in which she

<sup>2073</sup> Rule 98 Decision, para. 161.

<sup>2074</sup> TF1-023, Transcript 9 March 2005, p. 32.

<sup>2075</sup> TF1-023, Transcript 9 March 2005, p. 30.

<sup>2076</sup> TF1-023, Transcript 9 March 2005, pp. 29-30; Transcript 07 November 2005, p. 12.

<sup>2077</sup> TF1-023, Transcript 9 March 2005, pp. 33, 37; Exhibit P-1. Name under seal.

<sup>2078</sup> TF1-023, Transcript 10 March 2005, p. 25.

<sup>2079</sup> TF1-023, Transcript 9 March 2005, p. 45.

<sup>2080</sup> TF1-023, Transcript 9 March 2005, pp. 44-45.

<sup>2081</sup> TF1-023, Transcript 10 March 2005, p. 25; name on exhibit P-2 [under seal].

<sup>2082</sup> TF1-023, Transcript 9 March 2005, p. 46.

<sup>2083</sup> TF1-023, Transcript 9 March 2005, p. 46.

<sup>2084</sup> TF1-023, Transcript 9 March 2005, pp. 46-47.

<sup>2085</sup> All locations in Freetown/Western Area; TF1-023, Transcript 9 March 2005, pp. 48-49.

<sup>2086</sup> TF1-023, Transcript 10 March 2005, p. 30.

<sup>2087</sup> TF1-023, Transcript 10 March 2005, pp. 26-30.

<sup>2088</sup> TF1-023, Transcript 9 March 2005, p. 49.

<sup>2089</sup> TF1-023, Transcript 9 March 2005, pp. 49-51.

<sup>2090</sup> TF1-023, Transcript 9 March 2005, p. 51.

was being held<sup>2091</sup> and Colonel X sent an armed escort with her wherever she went.<sup>2092</sup> She was afraid.<sup>2093</sup> There were approximately 400 armed rebels at Four Mile and the witness knew that those who tried to escape were caught and beaten by the rebels.<sup>2094</sup> The witness testified that Colonel X told her that the senior commander at Four Mile was Brigadier ‘Bazzy’.<sup>2095</sup> She would see Brigadier ‘Bazzy’ regularly when he would visit Colonel X.<sup>2096</sup>

1155. There were other women given to soldiers as wives in Four Mile. In Lumpa, for example, the witness knew ten other women who had been captured and given as “wives” to AFRC rebels.<sup>2097</sup> Some were given to lieutenants and some were given to ordinary soldiers.<sup>2098</sup> The Prosecution asserts that this evidence was not challenged in cross-examination.<sup>2099</sup>

1156. As the “wife” of a commander, the witness was accorded certain privileges. The Trial Chamber notes that in chief the witness stated that she was not forced to do “anything”. She clarified on cross-examination that she was not forced to do any work; she was not forced to cook or clean, for example.<sup>2100</sup> The witness testified that “people of lower ranks” respected her and deferentially called her “De Mammy” because of the Colonel.<sup>2101</sup> The Prosecution submits that this did not change the status of the witness who remained under sexual slavery because she had no way of leaving as an armed person watched over her and those who attempted to escape were caught and beaten.<sup>2102</sup> The Trial Chamber agrees with this submission. The fact that some individual abductees were treated less harshly than others does not, in our opinion, detract from the fact that they were forcibly taken and subjected to sexual slavery.

1157. Colonel X left the witness in Four Mile and went to Makeni. In his absence, Colonel X left her in the care of another AFRC captain,<sup>2103</sup> hereinafter “Captain Y”, whom the witness accepted on cross-examination tried to look after her and to ensure that she did not come to any harm.<sup>2104</sup> The witness travelled with Captain Y and the rebels to Mile 38, Port Loko District and then to

<sup>2091</sup> TF1-023, Transcript 9 March 2005, p. 51.

<sup>2092</sup> TF1-023, Transcript 9 March 2005, pp. 51-53; Transcript 10 March 2005, p. 41.

<sup>2093</sup> TF1-023, Transcript 9 March 2005, p. 53.

<sup>2094</sup> TF1-023, Transcript 9 March 2005, pp. 51-53.

<sup>2095</sup> TF1-023, Transcript 07 November 2005, pp. 27, 34.

<sup>2096</sup> TF1-023, Transcript 10 March 2005, pp. 32-33; TF1-023, Transcript 07 November 2005, p. 27.

<sup>2097</sup> TF1-023, Transcript 9 March 2005, p. 54; Transcript 10 March 2005, p. 24.

<sup>2098</sup> TF1-023, Transcript 9 March 2005, p. 55.

<sup>2099</sup> Prosecution Final Brief, para. 1902.

<sup>2100</sup> TF1-023, Transcript 9 March 2005, p. 57; Transcript 11 November 2005, p. 13.

<sup>2101</sup> TF1-023, Transcript 9 March 2005, pp. 57-58.

<sup>2102</sup> Prosecution Final Brief, para. 1900.

<sup>2103</sup> TF1-023, Transcript 9 March 2005, p. 59; TF1-023, Transcript 10 March 2005, p. 26 name on exhibit P-3.

<sup>2104</sup> TF1-023, Transcript 07 November 2005, p. 13.

Magbeni<sup>2105</sup> where later, in August of 1999, the witness was able to escape. The witness was in the custody of Captain Y for approximately five months. During this time, Colonel X did not return.<sup>2106</sup> The witness saw ‘Bazzy’ several times in Mile 38.<sup>2107</sup> ‘Bazzy’ was the overall commander in Magbeni.<sup>2108</sup> In June or July, the witness also saw ‘Gullit’ in Magbeni.<sup>2109</sup>

1158. The Prosecution submits that the evidence of the witness remained consistent and was unsuccessfully challenged in cross-examination.<sup>2110</sup>

1159. The Trial Chamber is satisfied that the witness’s testimony of her forcible capture; the use of the term ‘wife’, in this context a label of possession; her detention with the troops as they travelled through the Western Area; her detention with Colonel X for three weeks in Four Mile at which time she felt that she could not escape for fear of being beaten or killed by him; and her subsequent detention by Colonel X and the other rebels for a period of several months, are all indicative of the deprivation of her liberty and the exercise of ownership over her person which, together with acts of sexual violence committed against her, namely ‘Colonel X’s repeated rape of the witness, satisfies the *actus reus* and *mens rea* of the crime of sexual slavery.

1160. The Trial Chamber notes that the witness testified that as the “wife” of Colonel X she was accorded certain benefits, for example, she was not forced to cook or clean and was deferentially called “De Mammy”. The Trial Chamber is of the opinion that this is a relative benefit only and does not in any way undermine the absolute seriousness of the crime committed against the witness.

1161. The evidence of Prosecution witness TF1-023 is generally supported by that of Prosecution witness TF1-334 who testified that after the invasion of Freetown on 6 January 1999, a number of soldiers who did not “have women” before had new “wives”.<sup>2111</sup> The soldiers gave the women food and clothing and the women cooked for the soldiers.<sup>2112</sup>

1162. Prosecution witness TF1-334 testified that civilians abducted during the retreat from Freetown<sup>2113</sup> were brought with the rebels to Benguema where the rebels were based for approximately one month.<sup>2114</sup> There were approximately 300 civilians at Benguema – men, women

<sup>2105</sup> TF1-023, Transcript 10 March 2005, pp. 34-35.

<sup>2106</sup> TF1-023, Transcript 10 March 2005, p. 24.

<sup>2107</sup> TF1-023, Transcript 07 November 2005, pp. 33, 34.

<sup>2108</sup> TF1-023, Transcript 07 November 2005, p. 34.

<sup>2109</sup> TF1-023, Transcript 07 November 2005, pp. 14-16.

<sup>2110</sup> Prosecution Final Brief, para. 1901, 1899.

<sup>2111</sup> TF1-334, Transcript 15 June 2005, pp. 5, 8.

<sup>2112</sup> TF1-334, Transcript 15 June 2005, pp. 5-8.

<sup>2113</sup> TF1-334, 14 June 2005, pp. 78, 80, 114-117.

<sup>2114</sup> TF1-334, 14 June 2005, pp. 105, 114-117.

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and children.<sup>2115</sup> During this time, the civilians that were abducted were “well-secured” meaning that they could not escape.<sup>2116</sup> Most of the young girls who were abducted from Freetown became the “wives” of “various commanders” meaning that they had sex with the commanders.<sup>2117</sup>

1163. In the Kissy area, where the witness knew some of the captured girls, they told the witness “what they would do with the men who captured them”; sometimes the witness would “see with my own eyes”.<sup>2118</sup> The “wives” were also required to help with the cooking.<sup>2119</sup>

1164. Witness TF1-334 testified that “families”, which the witness explained refers to the captured civilians travelling with the troops, travelled with the troops from Waterloo to Newton where they all stayed for about a month. The only civilians with the “troops” at Waterloo and Newton were those who arrived with them.<sup>2120</sup> The “women” were helping with the cooking and the “girls” were sleeping with the “commanders”. The “commanders” would call them their “wives”.<sup>2121</sup> ‘Five-Five’ was responsible for the women and girls in the camp at Newton. The soldiers would report problems with the women to ‘Five-Five’.<sup>2122</sup>

1165. The Trial Chamber is of the opinion that witness TF1-334’s testimony that civilian women were captured from Freetown and brought with the retreating troops to the Western Area, were held in Benguema for approximately one month and were taken to Kissy, Waterloo and Newton; that during their detention in Benguema the civilians were well secured so they could not escape; that young girls became the “wives” of various commanders; and that the “wives” were required to cook for the soldiers is credible and is indicative of the deprivation of the captured women’s liberty and the exercise of ownership over them by members of the AFRC/RUF. The Trial Chamber is also satisfied that acts of sexual violence described by the witness, namely that the “wives” had sex with the various commanders, were committed against the captured women. The Trial Chamber infers from the environment of violence and coercion that the women did not consent to these sexual acts. The Trial Chamber is thus of the opinion that the *actus reus* and *mens rea* elements of the crime of sexual slavery are satisfied on the basis of this evidence.

1166. The Trial Chamber also relies on the evidence of Prosecution witness TF1-094, found by the Trial Chamber to have been subject to sexual slavery in Koinadugu District, that during the period

<sup>2115</sup> Witness TF1-334, 14 June 2005, p. 116

<sup>2116</sup> Witness TF1-334, 14 June 2005, p. 119.

<sup>2117</sup> Witness TF1-334, 14 June 2005, pp. 120-121.

<sup>2118</sup> Witness TF1-334, 14 June 2005, p. 121.

<sup>2119</sup> Witness TF1-334, 14 June 2005, p. 121.

<sup>2120</sup> Witness TF1-334, Transcript 15 June 2005, pp. 13-14.

<sup>2121</sup> Witness TF1-334, Transcript 15 June 2005, p. 14.

of her sexual slavery, she was brought by the troops to Freetown during the AFRC invasion of 6 January 1999 and was present during the retreat through the Western Area.<sup>2123</sup>

1167. Defence witness DBK-113 testified that he was with the troops during the invasion of Freetown in January, 1999.<sup>2124</sup> He testified that after SAJ Musa died, he remained with the troops in Hastings for three to four days. From Hastings, the witness passed through Allen Town, Wellington and Kissi and, on January 6<sup>th</sup>, he came as far as Hill Cot Road. The witness cannot recall that a “Mammy Queen” was appointed during the move to Freetown.<sup>2125</sup> The Trial Chamber finds the evidence of witness DBK-113 to be credible and consistent. However, the fact that the witness could not recall a “Mammy Queen” does not raise a reasonable doubt with regards to the evidence of Prosecution witnesses TF1-023, TF1-094 and TF1-334 whose evidence indicates numerous incidents of sexual slavery following the 6 January 1999 invasion.

1168. The Trial Chamber has also carefully examined the evidence of witness DBK-126 who testified that when the AFRC entered Freetown, all the soldiers were with their wives. Only the detainees did not have wives.<sup>2126</sup> The Trial Chamber finds that in the face of overwhelming evidence to the contrary this statement is not credible.

1169. Witness DBK-126 also testified that she had a “boyfriend” who was a commander of a mortar platoon. The witness testified that from the time she and her “boyfriend” were in Kono at Masingbi Road, he had repeatedly proposed to her. He went to ‘Junior Lion’ whom the witness referred to as “the Chief”<sup>2127</sup> and told him he wanted the witness. ‘Junior Lion’ told the witness “this is your husband.” She agreed because she had no option. They have a son together. After they left the bush, the witness told her “boyfriend” that she did not want him anymore.<sup>2128</sup> In Freetown, the witness was called a “rebel wife”, but she testified that she does not consider herself a “rebel wife”, as she was with the SLA and not the RUF. Although the witness also stated she had not heard the term “forced marriage” the Trial Chamber is satisfied that her evidence shows the *actus reus* and *mens rea* of sexual slavery.<sup>2129</sup>

(i) Findings

<sup>2122</sup> Witness TF1-334, Transcript 15 June 2005, p. 15-16.

<sup>2123</sup> Factual Findings, Outrages on Personal Dignity, paras 1078-1083.

<sup>2124</sup> Witness DBK-113, Transcript 13 October 2006, p. 46.

<sup>2125</sup> Witness DBK-113, Transcript 13 October 2006, pp. 38-40.

<sup>2126</sup> Witness DBK-126, Transcript 12 October 2006, pp. 62-64.

<sup>2127</sup> Witness DBK-126, Transcript 11 October 2006, pp. 45-47.

<sup>2128</sup> Witness DBK-126, Transcript 12 October 2006, pp. 62-64.

<sup>2129</sup> Witness DBK-126, Transcript 12 October 2006, pp. 80-81.

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1170. By virtue of the foregoing, and without predetermining the individual responsibility of the three Accused, the Trial Chamber is satisfied that the elements in relation to sexual slavery are established in relation to Freetown and the Western Area.

(f) Port Loko District (February, 1999 – April, 1999)

1171. The Indictment alleges that about the month of February 1999, AFRC/RUF fled from Freetown to various locations in the Port Loko District. Between February 1999 and April 1999 an unknown number of women and girls in various locations in the District were used as sex slaves by members of the AFRC/RUF.<sup>2130</sup>

1172. No specific concessions with regards to locations in Port Loko District were found to have been made by the Prosecution at the Motion for Acquittal stage.<sup>2131</sup>

1173. In coming to its findings in Port Loko District, the Trial Chamber relies upon the evidence of Prosecution witnesses TF1-282 and TF1-285 and Defence witness DAB-156.

1174. Witness TF1-282 testified that during the dry season in early 1999, “rebels”<sup>2132</sup> entered her village in Port Loko District.<sup>2133</sup> The Trial Chamber notes that the witness testified in chief that the time period was “early in 1999” and in the “dry season”.<sup>2134</sup> On cross-examination the witness accepted that the correct month was January but she could not say if it was towards the beginning or end of January.<sup>2135</sup>

1175. The witness hid in an uncultivated area outside of the village. As she was hiding, the “rebels”, whom the witness described as some wearing civilian attire, some in combat, and some with guns, came a second time and captured the witness along with other civilians hiding in the uncultivated area. Witness TF1-282 was 14 at the time. The Trial Chamber notes that the witness stated that she was born in 1985 but on cross-examination testified that she does not know how old she was when she was captured.<sup>2136</sup> The Trial Chamber accepts that the witness is innumerate and finds that this does not undermine her credibility.

<sup>2130</sup> Indictment, para. 57.

<sup>2131</sup> Rule 98 Decision, para. 161.

<sup>2132</sup> Witness TF1-282, Transcript 13 April 2005, p. 7.

<sup>2133</sup> Witness TF1-282, Transcript 13 April 2005, pp. 5-7, 28-30.

<sup>2134</sup> Witness TF1-282, Transcript 13 April 2005, pp. 5, 7.

<sup>2135</sup> Witness TF1-282, Transcript 13 April 2005, pp. 29, 30.

<sup>2136</sup> Witness TF1-282, Transcript 13 April 2005, pp. 4, 27.

1176. The witness testified that the civilians were made to sit on the ground and were surrounded by the rebels. The witness watched as an armed rebel selected a woman from the group and led her away to another area. The rebel brought the woman back a short while later and then selected the witness and led her along the same route where a man the witness referred to as '55' and another armed rebel were waiting. The witness testified that she knew the man was called '55' because the rebel who brought her to the area called the name '55' and nodded at him. '55' told the witness to undress and to lie down and then he raped her. After the rape the witness was light-headed and was unable to get up for some time. '55' told her to stand up and brought her back to the group of civilians.<sup>2137</sup>

1177. Witness TF1-282 testified that she later heard '55' giving orders to fire and to move to Sumbuya, although on cross-examination she admitted that she did not hear '55' give these orders directly.<sup>2138</sup> The witness also stated that she was later told by her rebel husband, whose name was given in closed session and hereinafter referred to as 'Rebel A',<sup>2139</sup> that '55' was the "big man" in Sumbuya and gave orders to loot.<sup>2140</sup> On cross-examination the witness stated that she only saw '55' once, when he raped her, and could not describe him.<sup>2141</sup>

1178. The Kanu Defence submits that witness TF1-282 is highly unreliable. In cross-examination, the witness was presented with a prior statement in which she described the person 'Five-Five' who raped her as "tall, slim, and fair in complexion, which means not too black."<sup>2142</sup> When presented with this account of her description of 'Five-Five' the witness recanted stating that she was not able to describe the man who raped her, as she only saw him once, and that she did not describe him as tall, slim and fair in complexion.<sup>2143</sup> The Trial Chamber finds that the witness's identification evidence is therefore inconsistent and cannot be relied upon. The Trial Chamber makes no findings on the basis of this evidence with regards to the Accused Kanu.

1179. After she was raped, the rebels, some of whom the witness described as wearing civilian attire and some of whom were in combat and who had guns took the witness to Sumbuya, a two day march. On the way, 'Rebel A' told the witness that he "wanted" her. When they arrived at Sumbuya, the named rebel took the witness to a house where he raped her. After that, the named

<sup>2137</sup> Witness TF1-282, Transcript 13 April 2005, pp. 5-15; 20-21; Transcript 14 April 2005, pp. 4-5; 32-35.

<sup>2138</sup> Witness TF1-282, Transcript 13 April 2005, p. 15; Transcript 14 April 2005, pp. 4-5

<sup>2139</sup> Name given in closed session: Transcript 13 April 2005, p. 25.

<sup>2140</sup> Witness TF1-282, Transcript 13 April 2005, pp. 20-21.

<sup>2141</sup> Witness TF1-282, Transcript 13 April 2005, pp. 32-35.

<sup>2142</sup> Witness TF1-282, Transcript 14 April 2005, pp. 3-5.

<sup>2143</sup> Witness TF1-282, Transcript 14 April 2005, pp. 3-5.

rebel asked the witness to be his “wife”. The witness testified that she said “yes” because saying no in the circumstances would make no difference and she was afraid she might have been killed.

1180. In cross-examination, a prior statement of witness TF1-282 was put to her in which she stated that the man who took her had asked the witness’ brother to go and inform her parents that he had taken her as a wife and that after the war, he would go and see them. The witness testified that she could not remember saying this. It is the case of the Prosecution that, even if she had said so, it did not change the situation of the witness being in sexual slavery or forced ‘marriage’.<sup>2144</sup> The Trial Chamber agrees that such retroactive action does not diminish the seriousness of the acts.

1181. The witness testified that the named rebel continued to rape her everyday.<sup>2145</sup> The witness and the named rebel lived in the house with two other rebels; all three rebels were armed. There were also many other rebels in Sumbuya. The witness was afraid of the named rebel and did not try to escape for fear of what he might do to her. The witness was kept in Sumbuya by the named rebel for less than a month.<sup>2146</sup> On cross examination, the witness stated that she did not know if she was with the rebels in Sumbuya during February.<sup>2147</sup>

1182. The Brima Defence asserts that the testimony of witness TF1-282 is not reliable as she testified on cross that by giving evidence at the Special Court her lifestyle had changed for the better.<sup>2148</sup> The Trial Chamber does not share this opinion. Any benefit received by the witness related to her short-term accommodation during the Trial and in no way changes the witness’s overall lifestyle.

1183. The Trial Chamber is satisfied that the witness’s testimony of her forcible capture; her detention in a house with her rebel husband and two other rebels for under a month; her feeling that she could not escape for fear of what her rebel husband might do to her; and the use of the term ‘wife’, in this context a label of possession; is indicative of the deprivation of her liberty and the exercise of ownership over her person which, together with acts of sexual violence committed against her, namely repeated rapes committed by her rebel husband, satisfies the *actus reus* and *mens rea* of the crime of sexual slavery.

<sup>2144</sup> Prosecution Final Brief, para. 1910.

<sup>2145</sup> TF1-282, Transcript 13 April 2005, pp. 15-18; Transcript 14 April 2005, p. 39.

<sup>2146</sup> TF1-282, Transcript 13 April 2005, pp. 18-19.

<sup>2147</sup> TF1-282, Transcript 13 April 2005, p. 30.

<sup>2148</sup> Brima Defence Final Brief, para. 188.

1184. The Trial Chamber also relies on the evidence of Prosecution witness TF1-085, examined by the Trial Chamber, *supra*,<sup>2149</sup> that she was abducted from Wellington, Western Area by persons found by the Chamber to belong to the AFRC/RUF sometime shortly after the 6<sup>th</sup> of January 1999. She was forced by the rebels to carry a load and taken to Allen Town where a rebel, present at the time of the witness's abduction and whose name was given to the Court in closed session [hereinafter "named rebel"], raped her and told her she was his 'wife.' The witness was taken with the troops during the retreat from Freetown to Waterloo and then Masiaka, Port Loko District, where the named rebel continued to repeatedly rape her. The witness became pregnant and miscarried twice as a result of the rapes. In Masiaka, the named rebel "married" the witness in a ceremony, although the Trial Chamber has held that given the environment of coercion, there could be no valid consent on the part of the witness and therefore, this "marriage" could not have been legal. The witness was not forced to do any work for the named rebel, but she was detained against her will for several months and punished and threatened with death by the named rebel when she tried to escape.

1185. The Trial Chamber is satisfied on the basis of the evidence above that the named rebel exercised ownership over the witness and committed acts of sexual violence against her. As such, the Trial Chamber is satisfied that the *actus reus* and *mens rea* of the crime of sexual slavery are satisfied with regards to the evidence of witness TF1-085.

1186. The Trial Chamber also notes the evidence of Defence witness DAB-156 who testified that 'Junior Lion' took her as his "wife" by force in Kabala District after the AFRC was overthrown in Freetown in February 1998, but before the rainy season and that he brought her to Kurubonla, Port Loko District some time after that. The witness testified that at Kurubonla, 'Junior Lion' released the witness and a person the witness referred to as 'Simon' took her as his second wife. The witness testified that he was good to her and that after Simon and 'Junior Lion' moved to another town Simon arranged that she would stay with his brother, a man known to the witness as 'Foyo'.<sup>2150</sup> The Trial Chamber is not satisfied on the basis of this evidence that sexual slavery is satisfied as there is no indication of the elements of ownership or sexual violence. The Trial Chamber is also of the opinion that this evidence indicates that the witness may have received some benefit from this particular arrangement. However, the Trial Chamber is not willing to infer that this was also the case for other witnesses who have testified to sexual slavery nor, in any event, that this relative

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<sup>2149</sup> Factual Findings, Outrages on Personal Dignity, paras 1087-1099.

<sup>2150</sup> Witness DAB-156, Transcript 29 September 2006, pp. 39-40, 42-49.

benefit would create doubt as to the seriousness of the crime of sexual slavery where it has been found in relation to the evidence of other witnesses.

(i) Findings

1187. By virtue of the foregoing, and without predetermining the individual responsibility of the three Accused, the Trial Chamber is satisfied that the elements in relation to sexual slavery are established in relation to Port Loko District.

5. Findings

1188. By virtue of the foregoing and of the Trial Chamber's findings with regards to Count 6 and the chapeau elements of war crimes, the Trial Chamber is satisfied that the elements in relation to Count 9 (Outrages on Personal Dignity) are established in Kono, Koinadugu, Bombali, Freetown and Western Area and Port Loko Districts.

## **D. Physical Violence**

### 1. Allegations and Submissions

1189. The Indictment alleges that “[w]idespread physical violence, including mutilations, was committed against civilians. Victims were often brought to a central location where mutilations were carried out”<sup>2151</sup> by members of the AFRC/RUF in various locations in the territory of Sierra Leone including Kono District between about 14 February 1998 to 30 June 1998; Koinadugu District between about 14 February 1998 and 30 September 1998; Bombali District between about 1 May 1998 and 31 [sic] November 1998; Freetown and the Western Area between 6 January 1999 and 28 February 1999; and Port Loko District between February and April 1999.<sup>2152</sup>

1190. Specifically in relation to Kenema District the Indictment alleges that between about 25 May 1997 and about 19 February 1998 members of the AFRC/RUF carried out beatings and ill treatment of a number of civilians that were in custody.<sup>2153</sup>

1191. The Parties have not made general submissions applicable to all districts in which mutilations are alleged to have occurred. Insofar as the Parties challenge the testimony of witnesses with regard to specific incidents of physical violence the Trial Chamber has discussed these submissions as they arise in the evidence below.

### 2. Evidence and Deliberations

#### (a) Kenema District (25 May 1997 - 19 February 1998)

1192. The Indictment alleges that “[b]etween 25 May 1997 and about 19 February 1998, in locations in Kenema District, including Kenema town, members of the AFRC/RUF carried out beatings and ill-treatment of a number of civilians who were in custody”.<sup>2154</sup>

1193. In reaching the following findings of fact, the Trial Chamber relied on the testimony of Prosecution witness TF1-122, and exhibit P-24.

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<sup>2151</sup> Indictment, para. 58.

<sup>2152</sup> Indictment, paras 59, 61-64.

<sup>2153</sup> Indictment, para. 60.

<sup>2154</sup> Indictment, para. 60.

1194. At the time of the AFRC coup on 25 May 1997, CDF controlled Kenema District.<sup>2155</sup> Following the coup, AFRC/RUF troops under the command of Sam Bockarie took over control of Kenema District.<sup>2156</sup>

(i) Kenema Town

1195. AFRC/RUF troops were stationed in Kenema Town between May 1997 and February 1998.<sup>2157</sup> Witness TF1-122 testified that AFRC/RUF soldiers used to “set a trap” on civilians with the national flag. The witness explained that the flag of Sierra Leone used to be raised every morning at 6am outside the AFRC/RUF Secretariat building at 14 Hangh Road. The law stated that civilians had to stand still while the flag was being raised. However, sometimes the AFRC/RUF would raise the flag at different times of the morning. The AFRC/RUF soldiers would then arrest civilians who were unaware of the changed time and were walking in the street. They took these individuals to their Secretariat and took away any possessions that they had on them.<sup>2158</sup> If a person resisted, she or he would be beaten and confined. The witness testified that this happened “continuously”.<sup>2159</sup> On one such occasion the witness tried to prevent the soldiers from arresting a woman but the soldiers then began beating him with their belts.<sup>2160</sup>

1196. In early February 1998, Sam Bockarie arrested the chairman of Kenema Town Council, B.S. Massaquoi; Brima Kpaka, a prominent business man; Andrew Quee, a civil servant and about four others on the grounds that they were “Kamajor supporters”.<sup>2161</sup> These individuals were initially detained at the AFRC Secretariat in Kenema Town.<sup>2162</sup> In the presence of both Sam Bockarie and the man in charge of the local AFRC Secretariat, the detainees were made to lie on the floor with tied hands to the back. They were assaulted, as a result of which B.S. Massaquoi had a swollen face, Brima Kpaka had an injury above his eye and the others had bruises.<sup>2163</sup> They were kept at the AFRC Secretariat building for three days.<sup>2164</sup> After handing them over to the police,<sup>2165</sup> AFRC/RUF

<sup>2155</sup> TF1-062, Transcript 27 June 2005, p. 6.

<sup>2156</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; According to TF1-122 the Commander of the AFRC/RUF troops in Kenema Town was Secretary of State East, Eddy Kanneh. Sam Bockarie was in charge of the RUF. His sub-commanders were Gibril Massaquoi and Morris Kallon. Other sub-commanders were ‘Akim’ and Issa Sesay.

<sup>2157</sup> TF1-122, Transcript 24 June 2005, p. 7.

<sup>2158</sup> TF1-122, Transcript 24 June 2005, pp. 10-12.

<sup>2159</sup> TF1-122, Transcript 24 June 2005, pp. 12.

<sup>2160</sup> TF1-122, Transcript 24 June 2005, p. 13.

<sup>2161</sup> TF1-122, Transcript 24 June 2005, pp. 35-37.

<sup>2162</sup> TF1-122, Transcript 24 June 2005, p. 36.

<sup>2163</sup> TF1-122, Transcript 24 June 2005, pp. 36-37.

<sup>2164</sup> TF1-122, Transcript 24 June 2005, p. 38.

<sup>2165</sup> TF1-122, Transcript 24 June 2005, pp. 41-42; Exhibit P-24, “Kenema Police Diary”, p. 112, serial no. 46 (dated 28 January 1998), p. 00008552.

troops rearrested them saying that they were to be taken to SOS East Brigade Headquarters.<sup>2166</sup> The AFRC/RUF troops beat and kicked B.S. Massaquoi.<sup>2167</sup> Subsequently, B.S. Massaquoi, Andrew Quee and the four other individuals were all killed.<sup>2168</sup>

(ii) Finding

1197. In light of the foregoing evidence, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied that AFRC/RUF troops carried out beatings and ill-treatment of at least seven civilians who were in their custody in Kenema Town in Kenema District. The Trial Chamber accordingly finds that the elements in relation to Counts 10 and 11 are established in respect of these incidents.

(b) Kono District (14 February 1998 - 30 June 1998)

1198. The Indictment alleges that “[b]etween about 14 February 1998 and 30 June 1998, AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including Tombodu, Kaima (or Kayima) and Wonedu. The mutilations included cutting off limbs and carving ‘AFRC’ and ‘RUF’ on the bodies of the civilians”.<sup>2169</sup>

1199. No evidence of physical violence was led in respect of Wonedu.

1200. In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on Prosecution Witnesses TF1-033, TF1-072, TF1-074, TF1-076, George Johnson, TF1-198, TF1-216, TF1-272 and TF1-334, Defence Witness DAB-098 and Exhibits P-24, P-26, P-27, P-51 and P-56.

(i) Tombodu

1201. Following an order of Johnny Paul Koroma in March 1998 children were abducted and trained to perform amputations on civilians in areas within the Kono District, including Tombodu.<sup>2170</sup> Documentary evidence corroborates the occurrence of physical violence, including mutilations, in Tombodu.<sup>2171</sup>

<sup>2166</sup> TF1-122, Transcript 24 June 2005, p. 44; Exhibit P-24, “Kenema Police Diary”, p. 155, serial no. 50 and p. 181, serial no. 78, and P. 182, serial no. 10, pp. 00008595, 00008620, 00008621.

<sup>2167</sup> TF1-122, Transcript 24 June 2005, pp. 44-45.

<sup>2168</sup> See Factual Findings, Unlawful Killings, paras 832-833.

<sup>2169</sup> Indictment, para. 59.

<sup>2170</sup> TF1-334, Transcript 20 May 2005, pp. 6-7,

<sup>2171</sup> Exhibit P-54, “Amnesty International ‘Sierra Leone 1998 – a year of atrocities against civilians’”, p. 15718, 15810.

1202. In about March 1998, Witness TF1-072 and thirteen other civilians were captured by “soldiers” and brought before their commander ‘Savage’ in Tombodu. ‘Savage’ used a cutlass to slap Witness TF1-072 on the back, accusing him of killing soldiers.<sup>2172</sup> He then cut the Witness severely with the cutlass on his upper right calf and on his left calf. Witness TF1-072 was also stabbed by one of Savage’s subordinates, ‘Small Mosquito’, in the left rib area following an order by ‘Savage’. The Trial Chamber was able to observe the scars from these incidents.<sup>2173</sup>

1203. ‘Savage’ then announced that he would cut off the hands of the fourteen captives, including witness TF1-072.<sup>2174</sup> The men were forced to lie on ground and were tied together. ‘Small Mosquito’ urinated on them. He then covered them with a mattress that he set on fire with the men still lying underneath. Witness TF1-072 was burnt on his shoulder before he managed to free himself. On account of his attempted escape ‘Savage’ flogged the Witness on his face so severely that his vision is permanently impaired.<sup>2175</sup> ‘Savage’ then ordered the witness to place his hand on a nearby tree stump and attempted to amputate his right hand. The Witness was so terrified that he defecated. His right hand was not entirely amputated, but permanently disfigured. The Trial Chamber was able to observe that the Witness’ fingers are mangled. He stated that he is unable to read or write as result of the assault.<sup>2176</sup> The witness was not shaken on cross-examination with regard to the identity of the commander ‘Savage’.<sup>2177</sup>

1204. In about May 1998, Witness TF1-334 watched ‘Savage’ personally amputate the hands of about fifteen civilians. The civilians were celebrating what they believed was an ECOMOG takeover of Tombodu when in fact it was ‘Savage’ and his men who were wearing Nigerian ECOMOG uniforms. ‘Savage’ retaliated against the civilians for celebrating what they believed was his defeat.<sup>2178</sup> The witness testified that ‘Savage’ told the civilians that “they should go and tell ECOMOG that he, Savage, was in Tombodu and this was to be a warning to the other civilians”.<sup>2179</sup>

1205. Witnesses TF1-033 and DAB-098 also testified that civilians were amputated by troops under the command of ‘Savage’ in Tombodu.<sup>2180</sup>

<sup>2172</sup> TF1-072, Transcript 1 July 2005, pp. 14-16. The Trial Chamber notes that the retaliation on the civilians for the killing of a soldier is corroborated by TF1-033: TF1-033, Transcript 11 July 2005, p. 12.

<sup>2173</sup> TF1-072, Transcript 1 July 2005, pp. 15-16.

<sup>2174</sup> TF1-072, 1 July 2005, p. 16.

<sup>2175</sup> TF1-072, 1 July 2005, p. 18.

<sup>2176</sup> TF1-072, 1 July 2005, pp. 19, 26.

<sup>2177</sup> TF1-072, 1 July 2005, pp. 22-38.

<sup>2178</sup> TF1-344, Transcript 20 May 2005, pp. 8, 12-13.

<sup>2179</sup> TF1-334, Transcript 20 May 2005, p. 13.

<sup>2180</sup> TF1-033, Transcript 11 July 2005, pp. 11-12; DAB-098, Transcript 4 September 2006, pp. 22, 45.

1206. In April 1998, witness TF1-216 was abducted and taken to Tombodu, along with a number of other civilians. At Tombodu, a commander called 'Staff Alhaji' ordered that the witness' hands and the hands of five other civilians be amputated. Following the amputation they were told to go and see President Kabbah as "he [...] got one container [of] hands for us".<sup>2181</sup>

(ii) Kaima/Kayima

1207. At an unspecified time in 1998, Witness TF1-074 was abducted by "rebels", along with eighteen other civilians, and taken to Kayima where the rebel boss Komba Gbundema was headquartered.<sup>2182</sup> In Kayima, AFRC/RUF soldiers carved the letters "AFRC" or "RUF" with a surgical blade on the chests of each of the civilians. Witness TF1-074 was marked by a soldier named Bangalie and was carved with both "AFRC" and "RUF" letters.<sup>2183</sup> The witness described the people who captured him as belonging to the AFRC/RUF.<sup>2184</sup> As the witness testified that these events happened approximately two months after he had seen Johnny Paul Koroma passing through Kono District from Koidu Town, the Trial Chamber is able to conclude that the mutilation described took place around May 1998.<sup>2185</sup>

1208. The Brima Defence submits that the credibility of witness TF1-074 is undermined by inconsistencies between his testimony and his pre-trial statement as to whether particular individuals mentioned in his testimony were AFRC or RUF troops. The Brima Defence thus submits that RUF troops were solely responsible for the events described.<sup>2186</sup> While the witness may have been mistaken regarding the affiliation of particular troops, the Trial Chamber notes that witness TF1-074 testified consistently that both the AFRC and the RUF were present in Kayima. The witness testified that he was able to distinguish between the two groups since the AFRC soldiers wore combat while the RUF were armed but wearing civilian clothing.<sup>2187</sup> The Trial Chamber also accepts the detailed and credible evidence of witness TF1-074 that it was an AFRC soldier Bangalie who was responsible for marking his body.

<sup>2181</sup> TF1-216, Transcript 27 June 2005, pp. 93-94.

<sup>2182</sup> TF1-074, Transcript 5 July 2005, p. 14.

<sup>2183</sup> TF1-074, Transcript 5 July 2005, pp. 14-15; Exhibit P-27, "Picture of Chest of Witness TF1-074 with markings 'AFRC RUF.'" "

<sup>2184</sup> TF1-074, Transcript 5 July 2005, p. 11.

<sup>2185</sup> TF1-074, Transcript 5 July 2005, p. 10.

<sup>2186</sup> Brima Defence Final Brief, paras 187, 282. *See also* cross-examination of witness: TF1-074, Transcript 5 July 2005, pp. 34-38.

<sup>2187</sup> TF1-074, Transcript 5 July 2005, p. 11.

1209. In March 1998, when witness DSK-103 arrived in Koidu Town, a number of amputees were being treated by ECOMOG. The amputees said their hands had been amputated by 'Savage's group'.<sup>2188</sup>

1210. In addition, documentary evidence corroborates the evidence given by the witnesses of physical violence by members of the AFRC/RUF in Kono District, including Kayima.<sup>2189</sup>

1211. From 6 April 1998 onward, the surgical teams of MSF at Connaught Hospital in Freetown started recording an increase in the number of patients suffering from severe mutilations. Between 6 April and 4 May 1998 Connaught Hospital received 115 patients,<sup>2190</sup> most of whom were severely mutilated. Most of them came from Kono.<sup>2191</sup> Some had received some basic medical treatment from ECOMOG just outside Koidu.<sup>2192</sup> They were brought to the hospital in ECOMOG trucks.<sup>2193</sup>

1212. The majority of patients suffered deep lacerations, broken limbs, field amputations and amputations. A few suffered gunshot wounds and the lips, ears and fingers of some had been cut.<sup>2194</sup> Of the 115 patients admitted to Connaught Hospital between 6 April and 4 May 1998 four men had had both arms amputated; 14 men had had one arm amputated; five men, in addition to having their arms amputated had a part of, one or both ears cut off; 23 patients had deep lacerations on lower arms, severed tendons, broken ulna and radius, as a result of cutlass attacks; seven patients had either a complete hand or several fingers missing as a result of cutlass attacks.<sup>2195</sup> Between 6 April 1998 and 27 July 1998, an MSF surgical team treated almost 300 patients with amputations, severe mutilations or gunshot wounds at the hospital. The majority of the cases treated were lacerations to the head or neck or amputations of arms, hands, fingers, ears or lips. This number represented, however, only a fraction of the number of such victims, many of whom never reached

<sup>2188</sup> DSK-103, 13 September 2006, pp. 27-31.

<sup>2189</sup> Exhibit P-54, "Amnesty International 'Sierra Leone 1998 – a year of atrocities against civilians'", p. 15718, 15810.

<sup>2190</sup> The patients were brought to Connaught Hospital because at that time there were no other functioning surgical/operating theatres in Sierra Leone. By May 1998 other hospitals started receiving patients in Makeni, Magburaka, and Kamakwie: see TF1-272, Transcript 4 July 2005, p. 42 [closed session]. Connaught Hospital is Sierra Leone's only hospital with an orthopaedic surgeon. Exhibit P-26, "MSF 1998 Report: Atrocities against civilians in Sierra Leone", p. 3787.

<sup>2191</sup> Exhibit P-26, "MSF 1998 Report: Atrocities against civilians in Sierra Leone", p. 3787.

<sup>2192</sup> TF1-272, Transcript 4 July 2005, p. 35 [closed session].

<sup>2193</sup> TF1-272, Transcript 4 July 2005, p. 42 [closed session].

<sup>2194</sup> TF1-272, Transcript 4 July 2005, pp. 39-40 [closed session].

<sup>2195</sup> Exhibit P-26, "MSF 1998 Report: Atrocities against civilians in Sierra Leone", p. 3789; see also Exhibit P-54, "Amnesty International 'Sierra Leone 1998 – a year of atrocities against civilians'", pp. 15807-15808.

medical help.<sup>2196</sup> According to humanitarian agencies in Freetown, only about one in four victims of mutilations by rebel forces survived their injuries.<sup>2197</sup>

(iii) Finding

1213. By virtue of the foregoing, and leaving aside for the present the question of the criminal responsibility of the Accused, the Trial Chamber is satisfied beyond reasonable doubt that between 14 February 1998 and 30 June 1998, troops under the command of 'Savage' intentionally mutilated at least sixteen civilians by cutting off their limbs in Tombodu in Kono District, as charged under Counts 10 and 11. The Trial Chamber further finds beyond reasonable doubt that in this same period AFRC/RUF soldiers carved the letters 'AFRC' and 'RUF' on the bodies of eighteen civilians in Kayima in Kono District, as charged under Counts 10 and 11.

(c) Koinadugu District (14 February 1998 - 30 September 1998)

1214. The Indictment alleges that "[b]etween about 14 February 1998 and 30 September 1998, members of the AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including Kabala and Konkoba (or Kontoba). The mutilations included cutting off limbs and carving 'AFRC' on the chests and foreheads of the civilians".<sup>2198</sup>

1215. No evidence of physical violence was adduced in respect of Konkoba.<sup>2199</sup>

1216. In reaching the following findings of fact, the Trial Chamber has considered the entire evidence and relies on the testimony of Prosecution witness TF1-199 and Defence witness DAB-156, as well as exhibit P-51.

(i) Kabala

1217. Witness TF1-199, a member of an SBU (Small Boys Unit), testified that in approximately mid-May 1998, Lieutenant-Colonel 'Savage' led an attack by AFRC/RUF forces on Kabala Town. The witness participated in the attack and he testified that after the AFRC/RUF forces had successfully captured the town, they amputated the hands of an unknown number of civilians.<sup>2200</sup>

<sup>2196</sup> Exhibit P-54, "Amnesty International 'Sierra Leone 1998 – a year of atrocities against civilians'", p. 15808; Exhibit P-26, "MSF 1998 Report: Atrocities against civilians in Sierra Leone", p. 3791.

<sup>2197</sup> Exhibit P-54, "Amnesty International 'Sierra Leone 1998 – a year of atrocities against civilians'", p. 15808.

<sup>2198</sup> Indictment, para. 61.

<sup>2199</sup> Rule 98 Decision, para. 186.

<sup>2200</sup> TF1-199, Transcript 6 October 2005, pp. 81-83, 86-88, 91.

(ii) Findings

1218. By virtue of the foregoing, and leaving aside for the present the question of the criminal responsibility of the Accused, the Trial Chamber is satisfied beyond reasonable doubt that between about 14 February 1998 and 30 September 1998, members of the AFRC/RUF mutilated an unknown number of civilians by cutting off their limbs in Kabala in Koinadugu District. The Trial Chamber accordingly finds that the elements in relation to Counts 10 and 11 are established.

(d) Bombali District (1 May 1998 - 30 November 1998)

1219. The Indictment alleges that “[b]etween about 1 May 1998 and 31 [sic] November 1998, members of the AFRC/RUF mutilated an unknown number of civilians in various locations in Bombali district, including Lohondi, Malama, Mamaka, Rosos (or Rossos or Rosors). The mutilations included cutting off limbs.”<sup>2201</sup>

1220. No evidence of mutilations was led in respect of Lohondi, Malama, Mamaka.<sup>2202</sup>

1221. In arriving at the following findings of fact, the Trial Chamber has considered the entirety of the evidence and relies on the testimony of Prosecution witness TF1-269.

(i) Rosos

1222. During the rainy season of 1998, in Rosos, Witness TF1-269 was attacked by three persons she referred to as ‘rebels’. One of the rebels cut Witness TF1-269 in the back of her neck in an attempt to kill her.<sup>2203</sup> The Trial Chamber was able to observe a scar of about two inches on the neck of the Witness.<sup>2204</sup>

1223. The Trial Chamber however makes no finding on this incident as the only act of mutilation particularised in the Indictment is “cutting off limbs”.<sup>2205</sup>

1224. The Trial Chamber notes that a significant amount of evidence was led on mutilations in other locations in Bombali District, in particular in Karina.<sup>2206</sup> No findings have been made on this evidence as the locations were not pleaded in the Indictment.

<sup>2201</sup> Indictment, para. 62.

<sup>2202</sup> Rule 98 Decision, para. 186.

<sup>2203</sup> TF1-269, Transcript 14 July 2005, pp. 41-42, 51.

<sup>2204</sup> TF1-269, Transcript 14 July 2005, pp. 43.

<sup>2205</sup> Indictment, para.62.

(e) Freetown and the Western Area (6 January 1999 - 28 February 1999)

1225. The Indictment alleges that “[b]etween 6 January 1999 and 28 February 1999, members of the AFRC/RUF mutilated an unknown number of civilian men, women and children in various areas of Freetown, and the Western Area, including Kissy, Wellington and Calaba Town. The mutilations included cutting off limbs”.<sup>2207</sup>

1226. No evidence was adduced in relation to Calaba Town.

1227. The Prosecution led evidence of witnesses seeing amputated people or stating that ‘rebels’ committed amputations in various parts of Freetown and the Western Area.<sup>2208</sup> Documentary evidence confirms that in Freetown during January 1999, hundreds of civilians had their limbs amputated or were subjected to other forms of mutilation. The mutilations were usually inflicted with machetes or axes and the victims included men, women and children.<sup>2209</sup> While the Trial Chamber accepts this evidence as credible, given its general nature, the Trial Chamber relies on it to corroborate its findings on the more specific incidents described below.

1228. In arriving at the following findings of fact, the Trial Chamber has considered on the credible testimony of Prosecution witnesses TF1-083, TF1-084, TF1-085, TF1-098, TF1-153, George Johnson, TF1-184, TF1-278, and TF1-334.

(i) Freetowna. Upgun

1229. The Trial Chamber has found that in January 1999, an attack on Fourah Bay was ordered by the Accused Brima in retaliation for the alleged killing of an AFRC soldier by civilians.<sup>2210</sup> Witness TF1-184 testified that prior to the troops commencing the attack, in the Kissy Old Road area, ‘Five-Five’ demonstrated an amputation on a civilian, explaining to them that a ‘long hand’ is the amputation of the hand, while a ‘short hand’ is the amputation of an arm around the bicep area

<sup>2206</sup> TF1- 058, Transcript 14 July 2005, pp. 83- 86; TF1-199, Transcript 06 October 2005, p. 76; TF1-334, Transcript 23 May 2005, pp. 70-71; TF1- 157, Transcript 22 July 2005, p. 75; TF1- 184, Transcript 07 September 2005, p. 35; Exhibit P-54.

<sup>2207</sup> Indictment, para. 63.

<sup>2208</sup> TF1-157, Transcript 25 July 2005, pp. 18-20; TF1-084, Transcript 6 April 2005, pp. 43-44; TF1-033, Transcript 10 July 2005, p.20, Transcript 12 July 2005, p.60; TF1-104, Transcript 30 June 2005, pp. 5-9.

<sup>2209</sup> Exhibit P-46, “Fifth Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone”, p. 15658 (para. 23).

<sup>2210</sup> Factual Findings, Unlawful Killings, para. 919.

(above the elbow and below the shoulder).<sup>2211</sup> Witness TF1-184 identified ‘Five-Five’ as the Accused Kanu.<sup>2212</sup>

b. Kissy Old Road

1230. Witness TF1-334 testified about a demonstration of an amputation carried out by ‘Five-Five’ subsequent to the attack on Fourah Bay, at Kissy Old Road. According to the witness, ‘Five-Five’ arrived at Uppgun with Major Mines and Captain Kabila and announced that it was time for the amputations to begin. He stated that he would carry out the first amputations in order to set an example for the others. Kanu called for two civilians nearby to be brought to him and he amputated both hands of both civilians with a machete at their wrists, explaining the difference between what he referred to as ‘short sleeve’ and ‘long sleeve’ amputations. ‘Five-Five’ then told the civilians that since they voted for ‘Pa Kabbah’ they should go to him and ask him for hands. In the presence of the Accused Kanu, ten more civilians were then rounded up and Captain Kabila and Major Mines amputated them at the elbow. Major Mines told them to go to ‘Pa Kabbah’ or ECOMOG to complain.<sup>2213</sup>

c. ‘Operation Cut Hand’ at PWD

1231. Witness TF1-153 testified that while the headquarters was at PWD, a soldier came from Fourah Bay “with his head bust” reporting that the civilians there had been fighting the soldiers.<sup>2214</sup> The witness subsequently heard that ‘Bazzy’ had raided a WFP warehouse in the nearby area and collected a number of machetes he found there. Later that evening, the witness saw ‘Bazzy’ and overheard a conversation between him and SAJ Musa’s wife. Tina Musa asked ‘Bazzy’ why his men were holding machetes. According to the witness, ‘Bazzy’ replied “We are just [returning] from Operation Cut Hand”. The witness testified that from this conversation he understood that the machetes from the warehouse had been used to amputate people.<sup>2215</sup>

(ii) Kissy

a. Rowe Street

<sup>2211</sup> TF1-184, Transcript 27 September 2005, pp. 72-74.

<sup>2212</sup> TF1-184, Transcript 26 September 2005, p. 80.

<sup>2213</sup> TF1-334, Transcript 14 June 2005, pp. 68-71.

<sup>2214</sup> TF1-153, Transcript 23 September 2005, p. 17.

<sup>2215</sup> TF1-153, Transcript 23 September 2005, p. 18.

1232. The Trial Chamber has relied on the evidence of witness TF1-084 of his arrest in Rowe Street, Kissy, by rebels in January 1999 in its findings on unlawful killings.<sup>2216</sup> In addition to the evidence recounted therein, the witness stated the rebel commander, a certain Tafaiko, ordered that witness TF1-084's hand was to be amputated. The rebels put witness TF1-084 on the ground, stood on his chest, stretched out his arms, and intentionally chopped off his hand with an axe.<sup>2217</sup>

b. Fatamaram Street

1233. On approximately 18 January 1999, witness TF1-098, his brother and his cousin were forced by rebels at gunpoint to follow them to a school on Fataraman Street.<sup>2218</sup> The witness described the rebels as being dressed in black T-shirts, some had soldier combats and tied mufflers with the American flag.<sup>2219</sup> Upon arrival at the school, four other civilians captured by the rebels were joined with the witness' group. 'Tommy', one of the rebels, dressed in combat, amputated the hands of the seven captured persons, including the left hand of the witness. Having done so, the rebels told them to go to 'Pa Kabbah' and he would give them new hands.<sup>2220</sup> Witness TF1-098's cousin died as a result of the amputation.<sup>2221</sup>

c. Old Road (Locust and Samuels area)

1234. On 22 January 1999, on Old Road in the Locust and Samuels area, witness TF1-083 and his family were captured by a group of rebels. The rebel commander told witness TF1-083 and others to lie flat on their backs to be killed or amputated. The rebels took two people to a corner and then returned with bloody knives. The commander ordered the rebels to cut off the hands of the remaining people. He said anyone whose hand is cut should go to Kabbah and ask him for a hand. One rebel stabbed witness TF1-083 with a knife in the left upper arm. The rebels chopped witness TF1-083's hand off with two blows of an axe.<sup>2222</sup> The hand of a man named Pa Sorie was also cut.<sup>2223</sup> The rebels cut off the fingers of a man named Mussa. The commander ordered the rebels to cut off the entire hand and when Mussa begged for mercy, the rebels killed him.<sup>2224</sup>

<sup>2216</sup> TF1-084, Transcript 6 April 2005, p. 38.  
<sup>2217</sup> TF1-084, Transcript 6 April 2005, pp. 40-42.  
<sup>2218</sup> TF1-098, Transcript 5 April 2005, p. 39.  
<sup>2219</sup> TF1-098, Transcript 5 April 2005, p. 39.  
<sup>2220</sup> TF1-098, Transcript 5 April 2005, pp. 40-42.  
<sup>2221</sup> TF1-098, Transcript 5 April 2005, pp. 42-43.  
<sup>2222</sup> TF1-083, Transcript 8 April 2005, pp. 62-67.  
<sup>2223</sup> TF1-083, Transcript 8 April 2005, p. 67.  
<sup>2224</sup> TF1-083, Transcript 8 April 2005, p. 68.

d. Parsonage Street

1235. On 22 January 1999, witness TF1-278 was fleeing from the rebels with his family and some of his tenants with their families when they were stopped by four persons wearing SLA uniforms and one person wearing civilian clothes near Parsonage Street in Freetown.<sup>2225</sup> A soldier named ‘Captain Two Hand’ ordered the soldiers to cut off the tenant’s hands. A rebel in civilian clothes used an axe to cut off both of his hands. The soldiers told the tenant to “go and tell Tejan Kabbah this is what we have done. Go and tell no more politics, no more voting.”<sup>2226</sup> Soldiers then amputated witness TF1-278’s left hand. The witness testified that his child shouted “Hey, soldier, don’t cut my father’s hand, please. He is working for us.”<sup>2227</sup> One of the soldiers ordered that the child’s hand be amputated. The witness asked the soldier to amputate his right hand in exchange for sparing his child. The rebels amputated his right hand, before releasing the witness and the other civilians, telling them “You are the messenger of Tejan Kabbah. Go and tell Tejan Kabbah that we cut off your hand. Since you did not allow for peace we are saying good-bye to you.”<sup>2228</sup>

e. Old Shell Road

1236. At Old Shell road, immediately prior to the troops’ arrival at Kissy Mental Home, witness TF1-334 observed Osman Sesay a.k.a. ‘Changamulanga’ amputating six young civilian men at the elbow. ‘Changamulanga’ told the men to go to ‘Pa Kabbah’ and he would give them back their hands because they had voted for him. None of the three Accused were present during the amputations, but the troops subsequently moved to Kissy Mental Home to meet them.<sup>2229</sup>

f. Kissy Mental Home

1237. The Trial Chamber has found that the evening the troops arrived at Kissy Mental Home during the retreat from Freetown in January 1999, in the presence of the Accused Kamara and the Accused Kanu, the Accused Brima issued an order to the troops to burn houses and kill civilians in retaliation for their support of ECOMOG.<sup>2230</sup> In addition to ordering the witness to kill people in the PWD area, the witness overheard the Accused Brima ordering ‘Changamulanga’, ‘Mines’ and

<sup>2225</sup> TF1-278, Transcript 5 April 2005, p. 54.

<sup>2226</sup> TF1-278, Transcript 6 April 2005, pp. 5-7.

<sup>2227</sup> TF1-278, Transcript 6 April 2005, p. 8.

<sup>2228</sup> TF1-278, Transcript 6 April 2005, pp. 8-9.

<sup>2229</sup> TF1-334, Transcript 14 June 2005, p. 82.

<sup>2230</sup> Factual Findings, Unlawful Killings, para 931.

Colonel Kido to go towards the “low cost area” and amputate people.<sup>2231</sup> However, the witness did not testify as to whether this order to commit amputations was carried out. The Trial Chamber therefore does not make a finding of physical violence on this evidence. However, the Trial Chamber considers this evidence to generally corroborate the findings of physical violence made below in relation to Kissy Mental Home.

1238. Witness George Johnson testified that on the day that the troops arrived at Kissy Mental Home, the Accused Kanu ordered the soldiers, in the presence of the Accused Brima, the Accused Kamara and other commanders, to go to the eastern part of Freetown and amputate up to 200 civilians and send them to Ferry Junction. After the order was given, the witness observed fighters, including Kabila, ‘Born Naked’, ‘Cyborg’, and ‘SBU Killer’, moving towards the eastern part of Freetown. On their return, their machetes were covered with blood and they brought with them many amputated arms.<sup>2232</sup>

1239. Witness TF1-184 testified that while the troops were at Kissy Mental Home, AFRC soldier Kabila told ‘Gullit’ that “the civilians are pointing their hands at our own crowd here,” implying that the civilians were divulging the troops’ position to ECOMOG. In the presence of the witness, ‘Gullit’ said “that the hand that they are pointing at us, the fingers that are pointing at us, we shall ensure that all their hands are amputated.”<sup>2233</sup> When asked if anything occurred as a result of the Accused Brima’s words, the witness testified that about one and a half hours later, AFRC soldier ‘Mines’ returned to Kissy Mental Home with a bag full of hands which he showed to ‘Gullit’ and others, including the witness.<sup>2234</sup> The Trial Chamber is satisfied beyond reasonable doubt from this testimony that ‘Mines’ amputated an unknown number of civilians pursuant to the order issued by the Accused Brima.

1240. Witness TF1-184 testified that during the period that the troops were at Kissy Mental Home, he observed ‘Gullit’ amputating a civilian’s hand at Shell Company by Old Road.<sup>2235</sup>

1241. George Johnson testified that at Kissy Mental Home, a soldier named Kabila amputated the arms of a captured Nigerian ECOMOG soldier.<sup>2236</sup> The witness observed FAT Sesay writing a letter, which Kanu placed the around the ECOMOG soldier’s neck. The ECOMOG soldier was sent

<sup>2231</sup> TF1-334, Transcript 14 June 2005, p. 84.

<sup>2232</sup> George Johnson, Transcript 16 September 2005, p. 53-54.

<sup>2233</sup> TF1-184, Transcript 27 September 2005, p. 81.

<sup>2234</sup> TF1-184, Transcript 27 September 2005, p. 81.

<sup>2235</sup> TF1-184, Transcript 27 September 2005, p. 80.

<sup>2236</sup> George Johnson, Transcript 16 September 2005, p. 54.

to meet other ECOMOG soldiers at Ferry Junction.<sup>2237</sup> The Trial Chamber notes that this incident was not directed against the civilian population, but against a combatant. Therefore the Trial Chamber will consider this incident only in relation to Count 10.

(iii) Wellington

1242. Witness TF1-085 testified that in January 1999, 'rebels' broke the door to her mother's house in Wellington where she was hiding along with some other civilians. The 'rebels' cut off the hand of one of the children, aged four or five years, who had been hiding in the house. The witness was then abducted by the rebels.<sup>2238</sup> The witness' testimony regarding subsequent events has been considered in the Trial Chamber's findings on outrages on personal dignity.<sup>2239</sup>

(iv) Findings

1243. In light of the foregoing evidence, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied beyond reasonable doubt that between 6 January 1999 and 28 February 1999, members of the AFRC fighting forces mutilated at least 237 civilians and one soldier by cutting off their limbs in various areas of Freetown and in Kissy and Wellington in the Western Area. The Trial Chamber accordingly finds that the elements in relation to Count 10 (violence to life, health and physical or mental well-being of persons, in particular mutilation) and Count 11 (other inhumane acts) have been established in Freetown and the Western Area.

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<sup>2237</sup> George Johnson, Transcript 16 September 2005. pp. 54-55.

<sup>2238</sup> TF1-085, Transcript 7 April 2005, pp. 6-7.

<sup>2239</sup> Factual Findings, Outrages on Personal Dignity, paras 1087- 1099, *infra*.

## E. Child Soldiers

### 1. Allegations and Submissions

1244. In Count 12, the Accused are charged with “conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities”, punishable under Article 4(c) of the Statute. Paragraph 65 of the Indictment alleges that “[a]t all times relevant to this Indictment, throughout the Republic of Sierra Leone, AFRC/RUF routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities. Many of these children were first abducted, then trained in AFRC/RUF camps in various locations throughout the country, and thereafter used as fighters.”

1245. In its Pre-Trial Brief, the Prosecution added that the evidence would demonstrate that: “Thousands of children were abducted from all over Sierra Leone; Thousands of children underwent military training at AFRC/RUF camps; Children were formed into Small Boys Units and Small Girls Units; and Armed Small Boys Units and Small Girls Units were used in combat.”<sup>2240</sup>

1246. In addition to the legal submissions of the Defence which have been considered elsewhere in the Judgement,<sup>2241</sup> the Defence argues that the evidence was inconclusive regarding the age of many of the alleged child soldiers.<sup>2242</sup> Bearing this concern in mind, the Trial Chamber emphasizes that it has excluded all evidence related to child soldiers where it was not clear that the evidence referred to soldiers under the age of 15.

1247. Finally, the Defence refers to several arguments made by the Defence Expert which will be addressed below.<sup>2243</sup>

### 2. The Expert Witnesses

1248. Both the Prosecution and the Defence introduced expert witness reports on Child Soldiers,<sup>2244</sup> and the Prosecution expert testified at trial.<sup>2245</sup> The Prosecution expert report provides an overview on the widespread use of children under the age of 15 as combatants by the parties to the conflict in Sierra Leone during the period covered by the Special Court Statute.<sup>2246</sup> The Trial

<sup>2240</sup> Prosecution Supplemental Pre-Trial Brief, paras 182, 465, 748.

<sup>2241</sup> Applicable Law, paras. 732.

<sup>2242</sup> Kamara Defence Final Brief, para. 310. Kanu Defence Final Brief, para. 80.

<sup>2243</sup> Kamara Final Trial Brief, paras 312-319. Kanu Final Defence Brief, paras 75-80.

<sup>2244</sup> Exhibit P-33, “Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces.” Exhibit D-37, Osman Gbla, “Research Report: The use of child soldiers in the Sierra Leone Conflict.”

<sup>2245</sup> Witness TF1-296, Transcripts 4 and 5 October 2005.

<sup>2246</sup> Exhibit P-33, “Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces.”

Chamber cannot confirm the Prosecution Expert's figures regarding the number of child soldiers because some of her sources referred to child soldiers as individuals under the age of 18, rather than 15, and there is no other corroborating evidence on the issue.<sup>2247</sup> Nevertheless, the Prosecution expert report emphasizes that the illegal recruitment and/or use of children as combatants was not an isolated, localised, or accidental phenomenon.<sup>2248</sup> While "widespread or systematic use" of children is not a chapeau element for a finding of liability under Article 4 ( C) of the Statute, that Trial Chamber finds that the information may be useful in assessing whether a perpetrator "knew or should have known" that persons recruited were under the age of 15.

1249. With regards to the forces alleged to have been associated with the Accused in this case, the Prosecution Expert Report refers to the illegal conscription and use of children by AFRC Government forces during the AFRC government period,<sup>2249</sup> and by armed forces during the January 1999 invasion and retreat from Freetown.<sup>2250</sup> She also notes that the overthrow of the AFRC government brought negotiations for the release of child combatants between child protection organisations and the rebel government to a halt. While the expert does not specifically refer to the further illegal recruitment or use of children during 1998, she does say that during that year ECOMOG turned over child Prisoners of War (POWs) to UNICEF,<sup>2251</sup> suggesting that these children had been associated with forces fighting the Kabbah government during this period.

1250. The Defence Expert Witness report affirms the widespread recruitment and use of children as combatants by all the forces involved in the conflict, including by AFRC soldiers.<sup>2252</sup> He attributes the problem to several phenomena: that in a "traditional African setting the concept of childhood is related to the ability to perform tasks not to age"<sup>2253</sup>; that the phenomenon was due, in part, to the partial disintegration of the state prior to the conflict<sup>2254</sup>; that the use of children as combatants was a practice established in Sierra Leone in the decades preceding the conflict of the latter half of the 1990s<sup>2255</sup>; that the Kabbah government's encouragement of child soldier

<sup>2247</sup> Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces," para. 9.

<sup>2248</sup> Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces," paras 24, 28, 32-33.

<sup>2249</sup> Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces," paras 21, 43.

<sup>2250</sup> Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces," paras 32-34, 47.

<sup>2251</sup> Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces," para. 27.

<sup>2252</sup> Exhibit D-37, Osman Gbla, "Research Report: The use of child soldiers in the Sierra Leone Conflict," paras 1, 38, 40.

<sup>2253</sup> Exhibit D-37, Osman Gbla, "Research Report: The use of child soldiers in the Sierra Leone Conflict," para. 9.

<sup>2254</sup> Exhibit D-37, Osman Gbla, "Research Report: The use of child soldiers in the Sierra Leone Conflict," paras 35-37, 43-44.

<sup>2255</sup> Exhibit D-37, Osman Gbla, "Research Report: The use of child soldiers in the Sierra Leone Conflict," paras 35-37.

recruitment into the military influenced the practice of rebel groups<sup>2256</sup>; and that all fighting factions resorted to the use of child soldiers.<sup>2257</sup> Finally, the Defence Expert report states that many of the children that followed AFRC members after they were ousted from power in February 1998 did so voluntarily, and that they joined family members or other close associates out of fear of reprisals.<sup>2258</sup> However, the Expert provided no research or evidence to substantiate this claim.

1251. The Trial Chamber stresses that both experts agree that persons under the age of 15 were used for military purposes by all factions, including the AFRC, during the conflict including the period 25 May 1997-mid 1999. As discussed in the Applicable law, the Trial Chamber rejects any defence based on cultural distinctions regarding the definition of “childhood.”<sup>2259</sup> The Trial Chamber infers from the Defence Expert’s argument that all factions to the conflict recruited and used child soldiers that he is suggesting a *tu quoque* defence. The Trial Chamber rejects such a defence and recalls that it has addressed the related Mistake of Law issue in the Applicable Law section of the Judgement. The Trial Chamber will not review evidence regarding the conditions of the Sierra Leonean State and army prior to 1997 as the issue has no bearing on the perpetration of international crimes by individuals within the state. Finally, it is not impossible that some persons under the age of 15 associated with the troops were family members and were present voluntarily. The Trial Chamber will address this particular defence claim in more detail below.

### 3. The Evidence of Former Child Soldiers

1252. The Trial Chamber finds the testimonies of both witnesses TF1-157 and TF1-158 regarding their experiences as former child soldiers to be reliable and credible.

1253. TF1-157 was 20 years old when he testified before the SCSL in 2005. As will be discussed in more detail below, the Trial Chamber is able to infer beyond a reasonable doubt that he was abducted between May and August of 1998, meaning that he was approximately thirteen years old at the time of the events he described.<sup>2260</sup> The witness testified that rebels and soldiers attacked Bonoya/Bornoya village in Bombali District, his home village, on the Islamic New year, although he did not know the year.<sup>2261</sup> He clarified that among the attackers were former soldiers who had “turned into rebels.”<sup>2262</sup> Among the attackers were individuals wearing combat fatigues, and others

<sup>2256</sup> Exhibit D-37, Osman Gbla, “Research Report: The use of child soldiers in the Sierra Leone Conflict,” para. 38

<sup>2257</sup> Exhibit D-37, Osman Gbla, “Research Report: The use of child soldiers in the Sierra Leone Conflict,” paras 40, 53.

<sup>2258</sup> Exhibit D-37, Osman Gbla, “Research Report: The use of child soldiers in the Sierra Leone Conflict,” paras 51, 57.

<sup>2259</sup> Applicable Law, para. 731.

<sup>2260</sup> TF1-157, Transcript 22 July 2005, pp. 56-57.

<sup>2261</sup> TF1-157, Transcript 22 July 2005, pp. 57-58.

<sup>2262</sup> TF1-157, Transcript 25 July 2005, p. 8.

wearing civilian clothing.<sup>2263</sup> During the attack, the witness watched the assailants commit a number of atrocities against his family members.<sup>2264</sup> Among the assailants was a man named 'Mohamed', who abducted the witness.<sup>2265</sup> The attackers abducted at least five other people from Bonoya/Bornoya the same day, at least three of whom were younger than the witness at the time.<sup>2266</sup> The witness described having gone together with his captors through the villages of Kamagbo, Daraya, Mayogbo, Karina, Mabaka, Mandaha, Mateboi, Gbomsamba, Robat Mess (Camp Rosos).<sup>2267</sup> While the Trial Chamber is unable to find some of these locations on the maps at its disposal, it notes that these locations are discussed by other prosecution witnesses.

1254. Given the precision with which the witness described his journey from Bonoya/Bornoya to Robat Mess/Camp Rosos, events at Robat Mess/Camp Rosos<sup>2268</sup>, the journey towards Freetown, including the death of SAJ Musa in Benguema,<sup>2269</sup> and the fact that the troops arrived in Freetown on "January 6,"<sup>2270</sup> the Trial Chamber is able to infer beyond a reasonable doubt that the witness was abducted between May and August of 1998.<sup>2271</sup> Along the route the child witnessed the commission of numerous crimes by his abductors,<sup>2272</sup> and was systematically exploited and abused. 'Mohamed' forced him to carry rice and luggage along the route from Bonoya to Camp Rosos,<sup>2273</sup> while other captors also used him to fetch water, and pound rice, in addition to carrying goods for the troops.<sup>2274</sup> Upon arrival at Camp Rosos, the witness' abductors forced the witness to undergo military training.<sup>2275</sup> During that training, the witness was repeatedly flogged by his captors because he "was Mandingo and belonged to Tejan Kabbah's people."<sup>2276</sup> As part of the military instruction the witness was given injections and tablets of drugs which he believed to be cocaine.<sup>2277</sup> The daily doses of narcotics were so strong that the witness did not know what he was doing, and could not tell the court whether he had killed anyone while under the influence.<sup>2278</sup> At one point 'Adama Cuthand', a known fighter associated with the AFRC soldiers, threatened to amputate one of his

<sup>2263</sup> TF1-157, Transcript 22 July 2005, p. 58.

<sup>2264</sup> TF1-157, Transcript 22 July 2005, pp. 58-60.

<sup>2265</sup> TF1-157, Transcript 22 July 2005, pp. 62-63, 88.

<sup>2266</sup> TF1-157, Transcript 22 July 2005, pp. 62-65.

<sup>2267</sup> TF1-157, Transcript 22 July 2005, pp. 67-87.

<sup>2268</sup> TF1-157, Transcript 22 July 2005, pp. 68-90, 90-91, 96.

<sup>2269</sup> TF1-157, Transcript 25 July 2005, pp. 15-18.

<sup>2270</sup> TF1-157, Transcript 25 July 2005, p. 18.

<sup>2271</sup> TF1-157, Transcript 22 July 2005, p. 66.

<sup>2272</sup> TF1-157, Transcript 22 July 2005, pp. 67-82.

<sup>2273</sup> TF1-157, Transcript 22 July 2005, pp. 62-63, 86.

<sup>2274</sup> TF1-157, Transcript 22 July 2005, p. 86.

<sup>2275</sup> TF1-157, Transcript 25 July 2005, pp. 3, 6.

<sup>2276</sup> TF1-157, Transcript 25 July 2005, p. 5.

<sup>2277</sup> TF1-157, Transcript 25 July 2005, p. 6.

<sup>2278</sup> TF1-157, Transcript 25 July 2005, p. 6.

limbs-- although it is not clear why-- and he only narrowly escaped that fate.<sup>2279</sup> The witness testified that he learned at Camp Rosos that the commanders in charge of the “rebels” who had captured him were ‘Gullit’, ‘Five-Five’ and ‘Adama Cut Hand’.<sup>2280</sup>

1255. On 6 January, 1999 the witness entered Freetown with the SLA rebels.<sup>2281</sup> He was forced by his commander Abdul to accompany him wherever he went in Freetown. The witness gives as an example an occasion on which he was forced to accompany Abdul to Calaba Town to burn vehicles and houses and kill people.<sup>2282</sup> On two occasions Abdul also took the witness to fight at Eastern Police.<sup>2283</sup> It emerged in cross-examination that witness TF1-157 did not fight on these occasions, but that his role was to carry equipment for Abdul.<sup>2284</sup> Following the retreat from Freetown, the witness managed to escape from the rebels and found his way to the protection of UNICEF.<sup>2285</sup> The Trial Chamber notes that the witness was not shaken on cross-examination, and therefore in spite of his youth at the time of events finds that the witness was credible and reliable with regards to the details of captivity and his treatment in captivity. However, the Trial Chamber will consider the youth of the witness at the time of events when evaluating the weight to be accorded his testimony regarding the command structure of the troops he was forced to accompany.

1256. Witness TF1-158, who is the younger brother of Witness TF1-157,<sup>2286</sup> was 18 years old when he testified before the Court. He too did not recall the precise year but remembered that he was 10 years old when armed soldiers and men wearing mixed combat and civilian witness attacked the Mosque in Bonoya/Bornoya where the witness was attending a service.<sup>2287</sup> The attackers wore mixed combat and civilian clothing.<sup>2288</sup> The witness later learned that the leaders of the group that attacked Bonoya/Bornoya were “SAJ Musa. Gullit, Five-Five and O-Five.”<sup>2289</sup> He also referred to his abductors as “SAJ Musa’s group.”<sup>2290</sup> The witness watched ‘Adama’ hack his father to death on

<sup>2279</sup> TF1-157, Transcript 25 July 2005, pp. 20-21.

<sup>2280</sup> TF1-157, Transcript 25 July 2005, pp. 90-92.

<sup>2281</sup> TF1-157, Transcript 25 July 2005, p. 18.

<sup>2282</sup> TF1-157, Transcript 25 July 2005, pp. 23-24.

<sup>2283</sup> TF1-157, Transcript 25 July 2005, p. 25, 26 September 2005 p. 22.

<sup>2284</sup> TF1-157, Transcript 26 September 2005 p. 22.

<sup>2285</sup> TF1-157, Transcript 25 July 2005, pp. 27-28.

<sup>2286</sup> TF1-158, Transcript 26 July 2006, pp. 50 (sealed).

<sup>2287</sup> TF1-158, Transcript 26 July 2005, p. 30.

<sup>2288</sup> TF1-158, Transcript 26 July 2005, p. 30.

<sup>2289</sup> TF1-158, Transcript 26 July 2005, p. 32. See also Transcript 26 July 2005, pp. 37 where the witness says that he saw “Gullit, Five-Five and O-Five” at Mateboi and again at Rosos. See Transcript 26 July 2005, p. 35 where the witness further describes the clothing worn by the assailants who attacked Bonoya. See also Transcript 26 July 2005, p. 40 where witness states that “Gullit, O-Five and Five-Five” watched Staff Alhaji provide military training to the witness.

<sup>2290</sup> TF1-158, Transcript 26 July 2005, p. 37. See also Transcript 26 July 2005, p. 39 where witness gives his age at the time of events.

the day he was abducted,<sup>2291</sup> was compelled by his captors to carry food for the troops,<sup>2292</sup> and witnessed the commission of numerous crimes by the troops who had abducted him.<sup>2293</sup> The witness testified that he spent a week at Rosos,<sup>2294</sup> where like witness TF1-157, he was forced by his captors to participate in military training. Some of those trained with him were as young as seven or eight years old.<sup>2295</sup> Soon after the military training the witness managed to escape to the village of Kamasufu, where he was arrested a second time by a different faction of AFRC soldiers associated with the fighters named “Savage” and “Staff Alhaji. When asked at which time he was abducted the second time the witness answered that “it was when they said there was a ceasefire.”<sup>2296</sup> The Trial Chamber therefore infers that the second abduction took place in 1999. The witness was again forced to carry loads for his captors,<sup>2297</sup> and forced to undergo further military training<sup>2298</sup> before being sent to participate in an attack on Kabala.<sup>2299</sup> The attack failed and the troops were forced to retreat to Kamabai. Five days later the witness was told there was infighting between the RUF and AFRC at Makeni. Savage then ordered that the troops disarm and the witness was turned over to the United Nations.<sup>2300</sup>

1257. The Trial Chamber concludes that Witness TF1-158 was abducted and exploited the first time by a group associated with the Accused during a period covered by the Indictment. However, the witness was abducted the second time in Bombali District in 1999. The Trial Chamber recalls that it is the Prosecution’s case that during this time the Accused were in the Western Area or Port Loko Districts. Although this point in itself is not dispositive, the Prosecution has failed to make a case linking the Accused with crimes committed in Bombali district in late 1998 or early 1999. Accordingly, while the Trial Chamber finds that Witness TF1-158 was again abducted and used to participate in hostilities, the Trial Chamber will disregard the evidence on this second abduction.

1258. The Brima Defence points out that the witness described the Accused Brima as having a stammer when he speaks.<sup>2301</sup> The Accused testified before the Chamber for 21 days and displayed no sign of a stammer in his speech. The Trial Chamber also observes that the witness repeatedly stated that the commanders of the first group that abducted him were “SAJ Musa, Gullit, 55 and

<sup>2291</sup> TF1-158, Transcript 26 July 2005, pp. 33-34.

<sup>2292</sup> TF1-158, Transcript 26 July 2005, p. 37.

<sup>2293</sup> TF1-158, Transcript 26 July 2005, pp. 36

<sup>2294</sup> TF1-158, Transcript 26 July 2005, p. 39.

<sup>2295</sup> TF1-158, Transcript 26 July 2005, pp. 39-41.

<sup>2296</sup> TF1-158, Transcript 26 July 2005, p. 42.

<sup>2297</sup> TF1-158, Transcript 26 July 2005, p. 42.

<sup>2298</sup> TF1-158, Transcript 26 July 2005, p. 44.

<sup>2299</sup> TF1-158, Transcript 26 July 2005, pp. 43-46.

<sup>2300</sup> TF1-158, Transcript 26 July 2005, pp. 45-46.

<sup>2301</sup> Brima Final Trial Brief, para. 291;[sic, the Final Brief refers to TF1-157].

05.”<sup>2302</sup> However, other evidence before this Chamber indicates that SAJ Musa and ‘O-Five’ were not together with the Accused Brima and Kanu in Bombali District during this period. The witness also testified that ‘Staff Alhaji’ trained child soldiers both at Camp Rosos in Bombali District,<sup>2303</sup> during the witness’ first abduction, and at Kamabai in Koinadugu District, during his second abduction, which the Trial Chamber believes is improbable.<sup>2304</sup> On cross-examination, however, the Witness was not shaken with regards to the description of his treatment in captivity. The Trial Chamber further notes that the events as described by TF1-158 are notably distinct from those related by witness TF1-157. Therefore the Trial Chamber finds that in spite of his youth, the witness was credible and reliable with regards to the details of captivity and his treatment in captivity. However, it will not rely on his testimony with regards to the command structure.

1259. Three other former child soldiers testified before the Chamber, TF1-199, TF1-180, TF1-085 but the Trial Chamber concludes that their testimonies were problematic. TF1-180 testified that he was abducted in Bombali District. He was then shuttled back and forth between Bombali District and Port Loko District and was eventually sent to fight ECOMOG in Koinadugu District. The only indication that the witness provides regarding the time frame is that the Commanders in charge of his captivity were “General Issa, Brigadier Five-Five and General Gullit” suggesting that his captivity took place after the retreat from Freetown to Port Loko or Bombali District in 1999.<sup>2305</sup> The Indictment refers to no other crimes taking place in Port Loko after April 1999, and to no crimes at all in Koinadugu and Bombali Districts during this period.

1260. TF1-085 testified she was abducted in Freetown in January 1999. She was then forced into a “marriage” with her captor. She spent “months” in Port Loko District where she endured a series of sexual crimes. After an attempt to escape, this witness too was shuttled back and forth between Port Loko and Makeni Districts where she was forced to undergo military training. Following a long, but imprecise, period of sexual enslavement, she was sent to participate in an attack on Kono. The Trial Chamber has no other information regarding any attacks on Kono after the spring of 1998.<sup>2306</sup> Thus, the Trial Chamber is unable to link the military element of the witness’ experiences, directly or indirectly, to the Accused

1261. TF1-199 testified that he was abducted in Bombali district during the Christmas holidays of 1998. ‘Lieutenant Marah’ and his superior ‘Savage’ were the commanders of the faction that

<sup>2302</sup> TF1-158, Transcript 26 July 2005, p. 32.

<sup>2303</sup> TF1-158, Transcript 26 July 2005, pp. 38-40.

<sup>2304</sup> TF1-158, Transcript 26 July 2005, p. 44.

<sup>2305</sup> TF1-180, Transcript 8 July 2005, pp. 5-18.

<sup>2306</sup> TF1-085, Transcript 7 April 2005, pp. 12-50. The witness was abducted in Freetown in January 1999.

abducted the witness.<sup>2307</sup> The Brima Defence argues that these two men were part of Brigadier Mani's group, and that the Prosecution has not linked Brigadier Mani to the Accused during this period.<sup>2308</sup> The Trial Chamber recalls that it is the Prosecution's case that during this period, the Accused were in the Western Area preparing the attack on Freetown. Although this point in itself is not dispositive, the Prosecution has failed to make a case linking the accused with crimes committed in Bombali district in late 1998 or early 1999.

#### 4. The Evidence of Other Witnesses

1262. In addition to the testimony provided by former child soldiers, the Trial Chamber heard the evidence of witnesses who said that crimes against them were committed by child soldiers, and the evidence of other witnesses who described the abduction and use of child soldiers by SLA soldiers. Witnesses TF1-023, who was 16 years old at the time of events, testified that she was captured by a "young boy" holding a gun on 22 January 1999.<sup>2309</sup> She was then taken to Allen Town with other abducted civilians. Once there, she and other civilians were guarded by boys her abductors referred to as 'SBUs' which she said stood for 'Small Boy Units.' The witness believed these boys to have been between 13 and 15 years old.<sup>2310</sup> TF1-024 testified that he was abducted by three "rebel boys" on 8 January 1999.<sup>2311</sup> However, as he did not provide an approximate age for these "boys", the Trial Chamber will not consider his testimony on this particular subject.

1263. On the 25<sup>th</sup> of January 1999, Witness TF1-227 was abducted by AFRC troops led by a 'Corporal Bastard' at Kola Tree in the Western Area and taken to Benguema in the Western Area.<sup>2312</sup> At Benguema, he saw approximately 25 combatants between the ages of 10 and 14 years old.<sup>2313</sup> They were dressed in military uniforms, carried guns and "acted like they were trained soldiers".<sup>2314</sup> He said that "Brigadier Five-Five" personally had five to ten child combatants with him.<sup>2315</sup> He described Five-Five as a "mature gentleman" wearing civilian clothes.<sup>2316</sup> The Witness explained that child soldiers were responsible for flogging civilians who disobeyed disciplinary

<sup>2307</sup> TF1-199, Transcript 6 October 2005, pp. 69-75, 86-87: The Trial Chamber notes that two Foday Marah's are referred to in the evidence. Foday *Bah* Marah was a renegade soldier and participated in the 6 January 1999 invasion. The affiliation of the other Foday Marah is unclear.

<sup>2308</sup> Brima Final Trial Brief, para. 290.

<sup>2309</sup> TF1-023, Transcript 9 March 2005, p. 30.

<sup>2310</sup> TF1-023, Transcript 9 March 2005, p. 35.

<sup>2311</sup> TF1-024, Transcript 7 March 2005, pp. 43-44.

<sup>2312</sup> TF1-227, Transcripts 8 April 2005, pp. 95-96; Transcript 11 April 2005, pp. 2-3.

<sup>2313</sup> TF1-227, Transcript 11 April 2005.

<sup>2314</sup> TF1-227, Transcript 11 April 2005, pp. 16, 21.

<sup>2315</sup> TF1-227, Transcript 11 April 2005, p. 22.

<sup>2316</sup> TF1-227, Transcript 11 April 2005, p. 18.

rules.<sup>2317</sup> As the Witness' identification of 'Brigadier Five-Five' is vague, the Trial Chamber will not rely on it in making its findings on the liability of the Accused Kanu for this crime.

1264. Witness TF1-206 testified that he was abducted by rebels wearing combat clothing in Bombafoidu, Kono during the night of 12-13 April 1998.<sup>2318</sup> Once captured by these men, the witness and other abducted civilians were forced to undress by an armed boy between the ages of 12 and 14 wearing combat clothing.<sup>2319</sup>

1265. Witnesses TF1-122 and TF1-062 described the use of children in Kenema District. The former testified that during the Junta period he saw child soldiers, some no older than 12 years old, at the AFRC Secretariat in Kenema,<sup>2320</sup> while the latter said he saw armed children as young as 12 guarding Cyborg Pit, a diamond mining area in Kenema, during the same period.<sup>2321</sup>

1266. Referring to the Applicable Law above, it is the Trial Chamber's view that the use of children to participate actively in hostilities is not limited to participation in combat. An armed force requires logistical support to maintain its operations. Any labour or support that gives effect to, or helps maintain, operations in a conflict constitutes active participation.

1267. Thus, with regards to the specific question of using a child to guard a diamond mine, the Trial Chamber observes that in the instant conflict, diamonds were mined and sold to raise revenue to finance war efforts. Therefore, use of a child to guard a diamond mine in this context put the child at sufficient risk to constitute illegal use of the child pursuant to Article 4 (C) of the Statute. Therefore, the Trial Chamber will consider the evidence of Witness TF1-062. TF1-122 testified that he saw child soldiers at the AFRC Secretariat in Kenema. He also testified that crimes were committed in that Secretariat.<sup>2322</sup> Thus the Trial Chamber further finds that regardless of the specific duties of the children at the Secretariat, the presence of children in locations where crimes were widely committed was illegal.

1268. Witness TF1-133 testified that 'Pa Mani' used children as bodyguards at his home in Kurunbonla, Koinadugu in 1998.<sup>2323</sup> The Trial Chamber is satisfied that 'Pa Mani' is Brigadier Mani, the Director of Defence in the AFRC government. However, the Prosecution has adduced no evidence linking the crimes of Brigadier Mani with the Accused.

<sup>2317</sup> TF1-227, Transcript 11 April 2005, pp. 6-7, 21-23.

<sup>2318</sup> TF1-206, Transcript 28 June 2005, pp. 86-88.

<sup>2319</sup> TF1-206, Transcript 28 June, p. 92.

<sup>2320</sup> TF1-122, Transcript 24 June 2005, pp. 17-18.

<sup>2321</sup> TF1-062, Transcript 27 June 2005, pp. 35-36.

1269. In addition to the prosecution witnesses, Defence witnesses DAB-081 and DBK-037 also indicated that the use of child soldiers was prevalent during the Indictment period. DBK-081 testified that in July 1998 rebels associated with SAJ Musa and ‘Superman’ attacked the witness’ village in Koinadugu District.<sup>2324</sup> While the factions occupied the town, they “recruited” young boys and girls and used them to “safeguard the village from enemy attack”. The abductees ranged in age from 14 to 18 years old.<sup>2325</sup> DBK-037, testified that numerous children were abducted during the retreat from Freetown, and that commanders on the “West Side” in Port Loko District had approximately 300 child combatants in their charge. However, the witness did not specify the time period.<sup>2326</sup> The Trial Chamber, however, finds no evidence linking the Accused to these children.

1270. The testimony of other witnesses has enabled the Trial Chamber to put the evidence provided by former child soldiers and their victims into a broader context. TF1-334 testified that following Johnny Paul Koroma’s declaration of Koidu (Kono District) as a “no-go area” area for civilians in late February 1998, rebel soldiers began capturing civilians for a variety of uses, including children between the ages of 8 and 12. Young boys were assigned to Small Boy Units (SBUs) which were used in Tombodu to amputate the limbs of civilians.<sup>2327</sup>

1271. George Johnson testified that hundreds of civilians were abducted by AFRC troops during the trek from Mansofinia to Camp Rosos, including men, women and children.<sup>2328</sup> Among those who received military training at Rosos were small boys between the ages of ten and fifteen who were called “Small Boy Units”. Following the training these boys were then divided into battalions. The witness himself had approximately 15 SBUs under his command.<sup>2329</sup> TF1-334 corroborated this evidence saying small children as young as ten years old were abducted at Karina and distributed among the military commanders,<sup>2330</sup> and that at Camp Rosos he personally provided military training to children abducted between Mansofinia and Rosos.<sup>2331</sup> Witness TF1-153 testified that he had seen many child soldiers at the base established by the AFRC soldiers at ‘Colonel Eddie Town.’<sup>2332</sup>

<sup>2322</sup> TF1-122, Transcript 24 June 2005, pp. 12-13.

<sup>2323</sup> TF1-133, Transcript 7 July 2005, pp. 95-96.

<sup>2324</sup> DAB-081, Transcript 20 July 2006, p. 82.

<sup>2325</sup> DAB-081, Transcript 21 July 2006, p. 3.

<sup>2326</sup> DBK-037, Transcript 4 October 2006, p. 55.

<sup>2327</sup> TF1-334, Transcript 20 May 2005, pp. 4-6.

<sup>2328</sup> George Johnson, Transcript 15 September 2005, pp. 58-59.

<sup>2329</sup> George Johnson, Transcript 15 September 2005, pp. 65-67.

<sup>2330</sup> TF1-334, Transcript 23 May 2005, p. 73.

<sup>2331</sup> TF1-334, Transcript 23 May 2005, p. 73, and Transcript 24 May 2005 pp. 23-25.

<sup>2332</sup> TF1-153, Transcript 22 September 2005, p. 83.

1272. Witness TF1-334 further stated that during the 1999 invasion of Freetown, 'Gullit' ordered the capture of civilians saying that it would attract the attention of the international community.<sup>2333</sup> Approximately 300 abducted civilians were taken by the fighters from Freetown to Benguema.<sup>2334</sup> Among those captured were "many" small boys, including some as young as nine or ten years old. They were later trained as SBUs, and the witness himself had two SBUs.<sup>2335</sup> He added that once the retreating troops arrived at Newton in the Western Area, 'Gullit' ordered that everyone who had a young boy between the ages of ten and twelve should provide the child with basic military training.<sup>2336</sup>

1273. Witness TF1-334 further testified that while he, 'Gullit', 'Bazzy', 'Five-Five' and 'Commander A', a close associate of the accused, were at Newton following the 1999 retreat from Freetown, they met with officials from UNAMSIL and Archbishop Ganda who asked the fighters to release children in order to help secure a ceasefire. 'Gullit' responded that he would consider the proposal but no children were released.<sup>2337</sup> With regards to this particular evidence, however, the Trial Chamber notes that the Witness did not say that the children had been abducted nor did he explain what they were being used for.

1274. Finally, a UN Report released in the wake of the January 1999 invasion of Freetown stated that "a significant number of rebel combatants were children. Reports were received of death and injuries being inflicted by boys as young as eight to 11 years old."<sup>2338</sup>

1275. The Trial Chamber therefore finds that the AFRC fighting forces conscripted children under the age of 15 years old and/or used them to participate actively in hostilities during the period covered by the Indictment. The Trial Chamber is of the view that the AFRC fighting faction used children as combatants because they were easy to manipulate and program, and resilient in battle.<sup>2339</sup> In the instant case, the evidence is conclusive that most, if not all, of the children in question were forcibly abducted from their families or legal guardians.<sup>2340</sup> In addition to having been kidnapped,

<sup>2333</sup> TF1-334, Transcript 14 June 2005, pp. 118-119.

<sup>2334</sup> TF1-334, Transcript 14 June 2005, p. 116.

<sup>2335</sup> TF1-334, Transcript 14 June 2005, pp. 121-122.

<sup>2336</sup> TF1-334, Transcript 15 June 2005, pp. 14-15.

<sup>2337</sup> TF1-334, Transcript 15 June 2005, pp. 16-17.

<sup>2338</sup> Exhibit P-46, "Fifth Report of the Secretary General on the United Nations Observer Mission in Sierra Leone", 4 March 1999, para. 25.

<sup>2339</sup> Defence Expert Witness Osman Gbla, "Research Report: The use of child soldiers in the Sierra Leone Conflict", 11 October 2006, para. 40.

<sup>2340</sup> Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces", para. 47. Exhibit P-55, Amnesty International "Sierra Leone; Childhood – A casualty of conflict," 31 August 2000, para. 55; Exhibit P-46, "Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone," 4 March 1999, para. 26; Prosecution Military Expert, Col. Richard Iron, exhibit P-36, para. C3.1; exhibit P-52, Human Rights Watch,

child soldiers described having been forced into hard labour<sup>2341</sup> and military training, and sent into battle, often on the frontlines.<sup>2342</sup> They were also beaten;<sup>2343</sup> forced to watch the commission of crimes against family members;<sup>2344</sup> injected with narcotics to make them fearless;<sup>2345</sup> compelled to commit crimes including rape, murder, amputation and abduction;<sup>2346</sup> used as human shields;<sup>2347</sup> and threatened with death if they tried to escape or refused to obey orders.<sup>2348</sup>

## 5. Findings

1276. The Trial Chamber is therefore satisfied that children were routinely recruited and used for military purposes by the AFRC fighting forces. The only method of recruitment described in the evidence is abduction, a particularly egregious form of ‘conscription.’

1277. The Trial Chamber is further satisfied that AFRC and RUF forces abducted children for military purposes in Kenema District<sup>2349</sup> during the AFRC government period, and that the AFRC fighting forces abducted children for military purposes in Kono<sup>2350</sup>, Koinadugu and Bombali<sup>2351</sup>

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“Sowing Terror: Atrocities against civilians in Sierra Leone,” July 1998; TF1-334, Transcript 24 May 2005, pp. 23-24, 14 June 2005, pp. 121-122.

<sup>2341</sup> Exhibit P-33, “Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces”, para. 47; exhibit P-46, “Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone,” 4 March 1999, para. 26.

<sup>2342</sup> Exhibit P-33, “Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces”, para. 49; Exhibit P-55, Amnesty International “Sierra Leone; Childhood- A casualty of conflict,” 31 August 2000; Exhibit P-46, “Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone,” 4 March 1999, paras 25, 26; Prosecution Military Expert, Col. Richard Iron, exhibit P-36, para. C3.1; George Johnson, Transcript 15 September 2005, pp. 65-66; TF1-334, Transcript 24 May 2005, pp. 23-25.

<sup>2343</sup> TF1-157, Transcript 25 July 2005, p. 5.

<sup>2344</sup> TF1-158, Transcript 26 July 2005, p. 33.

<sup>2345</sup> Exhibit P-33, “Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces”, para. 48; Prosecution Exhibit 46, para. 22; exhibit P-55, Amnesty International “Sierra Leone; Childhood – A casualty of conflict,” 31 August 2000; TF1-180, Transcript 8 July 2005, pp. 10-12.

<sup>2346</sup> Exhibit P-33, “Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces”, para. 46; TF1-334, Transcript 20 May 2005, p. 6; TF1-180, Transcript 8 July 2005, pp. 13-15; TF1-024, Transcript 7 March 2005, pp. 43-44, 50; TF1-023, transcript 9 March 2005, pp. 30-36; TF1-227, Transcript 11 April 2005, pp. 21-23; TF1-206, Transcript 28 June 2005, p. 92; TF1-334, Transcript 20 May 2005, pp. 4-6. Exhibit P-57, “No Peace Without Justice-Conflict Mapping Program,” 9 March 2004.

<sup>2347</sup> Exhibit P-33, “Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces”, para. 47.

<sup>2348</sup> Exhibit P-33, “Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces”, paras 48-49; Exhibit P-55, Amnesty International “Sierra Leone; Childhood- A casualty of conflict,” 31 August 2000; TF1-334, Transcript 20 May 2005, pp. 4-5.

<sup>2349</sup> TF1-122, Transcript 24 June 2005, pp. 17-18. TF1-062, Transcript 27 June 2005, pp. 35-36.

<sup>2350</sup> TF1-206, Transcript 28 June, p. 92. TF1-334, Transcript 20 May 2005, pp. 4-6.

<sup>2351</sup> TF1-157, Transcript 22 July 2005, pp. 68-90, 90-91, 96. TF1-158, Transcript 26 July 2005, pp. 39-41. TF1-334, Transcript 23 May 2005, p.73, and TF1-334 Transcript 24 May 2005 pp. 23-26. TF1-153, Transcript 22 September 2005, p. 83. P-Exhibit 51, “Report on Atrocities Committed” UNHCR, 28 January 1999. Exhibit P-55, Amnesty International “Sierra Leone childhood- a casualty of conflict,” 31 August 2000.

Districts in 1998, and in Freetown and the Western area in 1999.<sup>2352</sup> It finds the evidence insufficient to make a finding with regards to the conscription and/or use of Child Soldiers in Port Loko District between February and April 1999.

1278. Although the Trial Chamber has found that the recruitment of these children for military purposes suffices for a finding of liability under Count 12, the Trial Chamber is further satisfied that children under the age of 15 were used for military purposes in Kenema District in 1997-1998,<sup>2353</sup> Kono District in 1998,<sup>2354</sup> and Freetown and the Western Area in 1999.<sup>2355</sup> The Trial Chamber finds that forcing children to undergo military training in a hostile environment constitutes illegal use of children pursuant to Article 4 ( C ), and therefore also finds that AFRC forces illegally used children in Bombali District in 1998.<sup>2356</sup> The Trial Chamber is further satisfied that incidents of conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities were linked to the Accused in this case in the districts of Bombali and Freetown and the Western Area.

<sup>2352</sup> TF1-023, Transcript 9 March 2005, pp. 30-36; TF1-024, Transcript 7 March 2005, pp. 43-44, 50. TF1-227, Transcript 11 April 2005, pp. 6-7, 21-23. George Johnson, Transcript 15 September 2005, pp. 65-67. TF1-334, Transcript 15 June 2005, pp. 13-15.

<sup>2353</sup> TF1-062, Transcript 27 June 2005, pp. 35-36.

<sup>2354</sup> TF1-206, Transcript 28 June, p. 92. TF1-334, Transcript 20 May 2005, pp. 4-6.

<sup>2355</sup> TF1-023, Transcript 9 March 2005, pp. 30-36; TF1-024, Transcript 7 March 2005, pp. 43-44, 50. TF1-227, Transcript 11 April 2005, pp. 6-7, 21-23. Exhibit P-46, "Report of the UN Observer Mission in Sierra Leone (UNOMSIL)", 4 March 1999.

<sup>2356</sup> TF1-157, Transcript 25 July 2005, pp. 3, 6. TF1-158, Transcript 26 July 2005, pp. 39-41. George Johnson, Transcript 15 September 2005, pp. 65-67. TF1-334, Transcript 23 May 2005, p. 73, and TF1-334 Transcript 24 May 2005 pp. 23-25.

## F. Abductions and Forced Labour (Count 13)

### 1. Allegations and Submissions

1279. The Indictment alleges that “[a]t all times relevant to this Indictment, AFRC/RUF engaged in widespread and large scale abductions of civilians and use of civilians as forced labour. Forced labour included domestic labour and use of diamond miners.”<sup>2357</sup> The Indictment specifies that such acts allegedly occurred in various locations in the territory of Sierra Leone, including Kenema District between about 1 August 1997 and about 31 January 1998; Kono District between about 14 February 1998 to January 2000; Koinadugu District between about 14 February 1998 and 30 September 1998; Bombali District between about 1 May 1998 and 31 November 1998; Kailahun District at all times relevant to the Indictment; Freetown and the Western Area between 6 January 1999 and 28 February 1999; and Port Loko District about February 1999.<sup>2358</sup> The Accused are thus charged with enslavement, a crime against humanity, punishable under Article 2(c) of the Statute.

1280. The Trial Chamber recalls that the Prosecution has pleaded specific locations at which abductions and forced labour are alleged to have occurred in Kenema, Kono, Koinadugu, Freetown and Western Area and Port Loko, but has not provided such particulars in respect of Bombali and Kailahun Districts. Given the continuous nature of the offence, and in the interests of justice, the Trial Chamber has considered all the evidence of enslavement adduced in relation to each District, provided that it falls within the timeframe specified in the Indictment.<sup>2359</sup>

1281. Submissions by the Parties in respect of particular incidents or witnesses have been discussed as they arise on the evidence below. In addition, however, the Parties made several general submissions on the evidence with respect to enslavement.

1282. The Prosecution submits that the evidence adduced establishes the legal requirements for a finding of enslavement as a crime against humanity.<sup>2360</sup> The Prosecution argues that it is not necessary for a finding of enslavement to prove that the perpetrators intended to detain the victims under constant control for a prolonged period of time, citing the ICTY Appeals Chamber decision in *Kunarac* in support of this proposition.<sup>2361</sup> The Trial Chamber accepts that a person may be

<sup>2357</sup> Indictment, para 66.

<sup>2358</sup> Indictment, paras 67-73.

<sup>2359</sup> See discussion on the pleading of offences of a continuous nature: Alleged Defects in the Form of the Indictment, paras 39-41.

<sup>2360</sup> Prosecution Final Brief, para. 1034.

<sup>2361</sup> Prosecution Final Brief, para. 1032; *Prosecutor v. Kunarac et al.*, IT-96-23&23/1-A, “Judgement”, Appeals Chamber, 12 June 2002 paras 116-122.

enslaved for a short period of time provided that in that time the perpetrator intentionally exercises a degree of control over the person sufficient to constitute the *actus reus* of the crime.

2. The Brima Defence submits that there is no evidence before the Trial Chamber capable of supporting a charge of enslavement.<sup>2362</sup>

1283. The Kanu Defence also submits that the evidence presented during the trial does not support a conviction on enslavement.<sup>2363</sup> The Kanu Defence submits in relation to forced labour that the evidence must prove objectively that the witness was forced to work. The Kanu Defence argues that some of the evidence adduced by the Prosecution fails to fulfil this requirement as it was subjective, meaning that the evidence proved only the witness's personal conviction that she or he was compelled to work.<sup>2364</sup> The Trial Chamber emphasises that the legal definition of enslavement is framed objectively.<sup>2365</sup> When considering the evidence below, the Trial Chamber has looked for objective indications that civilians were forced to work, such as threats or use of violence by the perpetrators and lack of compensation. Findings are made only where the Trial Chamber is satisfied beyond reasonable doubt that the civilians were forced to work by AFRC/RUF soldiers.

1284. The Kanu Defence further submits that evidence of abduction does not suffice for a finding of enslavement and rather, the Prosecution must prove that victims were abducted and then subjected to enslavement. The Kanu Defence argues that much of the Prosecution evidence deals only with abducted civilians and it cannot be inferred that these abducted civilians were used as forced labour on the basis of evidence of different incidents in which abducted civilians were so used.<sup>2366</sup>

1285. The Trial Chamber accepts the submission that evidence that civilians were abducted, in the absence of proof of what subsequently occurred to them, is not sufficient *per se* to prove that these civilians were enslaved. However, the Trial Chamber relies on evidence of abductions insofar as it corroborates the evidence of witnesses who were abducted and then enslaved by AFRC/RUF troops.

1286. The Trial Chamber has considered the evidence adduced below to determine whether the *actus reus* of enslavement is proved beyond reasonable doubt in respect of the locations and time

<sup>2362</sup> Brima Defence Final Brief, para. 315.

<sup>2363</sup> Kanu Defence Final Brief, para. 92.

<sup>2364</sup> Kanu Defence Final Brief, para. 84, citing *Prosecutor v. Krnojelac*, Appeals Chamber Judgement, 17 September 2003, IT-97-25-A, para. 159.

<sup>2365</sup> Applicable Law, paras 744-749.

<sup>2366</sup> Kanu Defence Final Brief, paras 87-90.

frames pleaded in the Indictment. The Trial Chamber finds that where the *actus reus* of the crime has been established, the only reasonable inference on the evidence is that the perpetrators intentionally exercised powers attaching to the right of ownership over the abductees. The Trial Chamber is also satisfied that each of the perpetrators was aware that their acts formed part of the widespread and systematic attack on the civilian population which was taking place at the time the crime was committed. In such circumstances the requisite *mens rea* element of the offence is established.

## 2. Findings

### (a) Kenema District (about 1 August 1997 - about 31 January 1998)

1287. The Prosecution alleges that “[b]etween about 1 August 1997 and 31 January 1998, AFRC/RUF forced an unknown number of civilians living in the District to mine for diamonds at Cyborg Pit in Tongo Field”.<sup>2367</sup>

1288. In arriving at the following findings of fact, the Trial Chamber has considered the available evidence, in particular the testimony of Prosecution witnesses TF1-062, TF1-122, TF1-334 and TF1-045 and Defence witnesses DAB-147, DAB-033 and DBK-063.

#### (i) Tongo Field

1289. Witness TF1-062 is a miner who was living and working in Tongo Field in 1997, with six men employed to mine for him.<sup>2368</sup> On an unspecified date in August 1997, witness TF1-062 heard gunfire and soon after observed soldiers entering Tongo Field. Some of these soldiers wore combat and others were in civilian clothing. The witness recognised the soldiers in combat as members of the SLA.<sup>2369</sup> The witness identified Sam Bockarie (‘Mosquito’) as the commander of the men, since he entered in a jeep and spoke to the civilians.<sup>2370</sup>

1290. Approximately three days later, ‘Mosquito’ gathered the civilians of Tongo Field in a public meeting at Tongo Park attended by witness TF1-062.<sup>2371</sup> He informed the civilians that the AFRC/RUF government, formed in Freetown, was now in control of Tongo. The civilians were told that ‘Mosquito’ had set up a secretariat, under Lieutenant Dennis, to handle any of their complaints.

<sup>2367</sup> Indictment, para 67.

<sup>2368</sup> TF1-062, Transcript 27 June 2005, p. 4.

<sup>2369</sup> TF1-062, Transcript 27 June 2005, pp. 8, 43-45.

<sup>2370</sup> TF1-062, Transcript 27 June 2005, pp. 8-9.

<sup>2371</sup> TF1-062, Transcript 27 June 2005, p. 13.

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In addition, 'Mosquito' told the civilians that they were going to mine for diamonds.<sup>2372</sup> Witness TF1-062 testified that soon after this meeting, 'Mosquito' left Tongo Field, leaving SLA commander Jamayo Kati in charge of the mining. Kati was subsequently killed and replaced by SLA soldier Set Marrah.<sup>2373</sup> However, 'Mosquito' would visit Tongo Field more or less at weekly intervals.<sup>2374</sup>

1291. Witness TF1-062 stated that the civilians of Tongo Field were subsequently required to elect from their number a chairman, named Mompleh, who would be responsible for organising the civilian mining. Commander Pa Set Marrah informed the civilians, through Mompleh, that 'Mosquito' had ordered that they should mine for "the Government" two days a week.<sup>2375</sup> Witness TF1-062 testified that thereafter the AFRC/RUF would designate certain days as 'government days'.<sup>2376</sup> On 'government days', the civilians of Tongo Field were forced to go and work in the mines in an area known as Cyborg Pit.<sup>2377</sup>

1292. Witness TF1-062 estimated that over a thousand civilians worked in the mines on 'government days'.<sup>2378</sup> The AFRC/RUF government did not provide the civilians with food or mining equipment.<sup>2379</sup> Witness TF1-062 testified that civilians would not refuse to work on 'government days' since they knew that if they did so, the AFRC/RUF would mete out "discipline".<sup>2380</sup> The witness stated, as an example, that one of his workers hid in an attempt to avoid work, but was found and beaten.<sup>2381</sup>

1293. On 'government days', civilians were compelled to hand over any diamonds found to the AFRC/RUF soldiers supervising the mine work.<sup>2382</sup> The supervising soldiers at Cyborg Pit were armed with guns, such as RPGs, LMGs, G-3s, and AK-47s, and would watch the civilian miners to ensure that all diamonds found were surrendered.<sup>2383</sup> Civilians who attempted to keep diamonds

<sup>2372</sup> TF1-062, Transcript 27 June 2005, pp. 14-16.

<sup>2373</sup> TF1-062, Transcript 27 June 2005, pp. 20-21. This commander is referred to in the transcript as 'Katy'. The Trial Chamber has adopted the spelling 'Kati' for consistency, as it is satisfied that this is the same person referred to in the evidence of TF1-045 below.

<sup>2374</sup> TF1-062, Transcript 27 June 2005, pp. 25, 54.

<sup>2375</sup> TF1-062, Transcript 27 June 2005, p. 24.

<sup>2376</sup> TF1-062, Transcript 27 June 2005, p. 27.

<sup>2377</sup> TF1-062, Transcript 27 June 2005, pp. 22-23, 27. *See also* TF1-045 Transcript 19 July 2005, p 48 and DAB-147, Transcript 3 October 2006, p. 62.

<sup>2378</sup> TF1-062, Transcript 27 June 2005, pp. 26-27.

<sup>2379</sup> TF1-062, Transcript 27 June 2005, p. 31.

<sup>2380</sup> TF1-062, Transcript 27 June 2005, p. 27.

<sup>2381</sup> TF1-062, Transcript 27 June 2005, pp. 26-27.

<sup>2382</sup> TF1-062, Transcript 27 June 2005, p. 26-27; TF1-045, Transcript 19 July 2005, p 53.

<sup>2383</sup> TF1-062, Transcript 27 June 2005, pp. 31-32 and 34-35.

found during a government mining day would be flogged almost to death.<sup>2384</sup> Witness TF1-062 watched AFRC/RUF soldiers shoot and kill civilian miners that disobeyed orders on two occasions.<sup>2385</sup> In addition, the witness regularly saw corpses being brought out of the Cyborg pit, and he was informed by his workers that these civilians had been shot by AFRC/RUF soldiers.<sup>2386</sup> Even on non-government days, AFRC/RUF soldiers would be present at Cyborg Pit and would take diamonds found by civilians.<sup>2387</sup>

1294. Witness TF1-062 worked for the AFRC/RUF government at Cyborg Pit for about four months, until they were ousted from Tongo Field by the CDF Kamajors in approximately December 1997.<sup>2388</sup> His evidence regarding events at Cyborg Pit was corroborated by that of witnesses TF1-045 and TF1-122, each of whom testified that the AFRC/RUF forced civilians to labour in the diamond mines at Tongo Field in the period May 1997 through February 1998.

1295. Witness TF1-122, a civil police officer based in Kenema Town in the relevant period, testified that on an unspecified date the AFRC/RUF in Kenema Town formed a strong force and left for Tongo Field.<sup>2389</sup> Several days later, he spoke with displaced civilians arriving from Tongo, who told him that the AFRC/RUF had captured many able-bodied men and forced them to mine diamonds for them.<sup>2390</sup>

1296. Witness TF1-045 was an RUF Major who spent two to three months in Tongo Field, from approximately July to September 1997.<sup>2391</sup> He was sent there by his RUF commanding officer to mine diamonds and he did so using captured civilians given to him by the AFRC/RUF. The witness stated that the civilians he used did not mine for him voluntarily, although he gave them some food and money.<sup>2392</sup>

1297. Witness TF1-045 was unable to give an estimate of the number of civilians labouring in the mines, but stated that it could have been than 300 or 500.<sup>2393</sup> He described the process by which civilians were collected for work. The AFRC oversaw the formation of civilian committees that were in charge of organising their civilian colleagues for government work, in return for which they

<sup>2384</sup> TF1-062, Transcript 27 June 2005, p. 33.

<sup>2385</sup> TF1-062, Transcript 27 June 2005, pp. 35-36.

<sup>2386</sup> TF1-062, Transcript 27 June 2005, pp. 36-37.

<sup>2387</sup> TF1-062, Transcript 27 June 2005, p. 30.

<sup>2388</sup> TF1-062, Transcript 27 June 2005, p. 38.

<sup>2389</sup> TF1-122, Transcript 24 June 2005, p. 71.

<sup>2390</sup> TF1-122, Transcript 24 June 2005, p. 72.

<sup>2391</sup> TF1-045, Transcript 19 July 2005, pp. 34-35, 55, Transcript 20 July 2005 pp. 79-81.

<sup>2392</sup> TF1-045, Transcript 20 July 2005 pp. 85-86. The name of the witness's commanding officer was given to the Trial Chamber in closed session.

<sup>2393</sup> TF1-045, Transcript 19 July 2005, p. 47.

reputedly earned a commission from the diamonds found.<sup>2394</sup> The witness observed civilians being rounded up. He stated that armed men accompanied the committees to search for civilians and collected them at gunpoint.<sup>2395</sup> Once captured, the armed men tied the civilians together with their shirts and brought them to the mine where they were forced to work at gunpoint.<sup>2396</sup> When asked what happened to civilians who resisted, the witness replied that, from his observations, "If [you] refused to mine and you are captured, you will be beaten. You will undergo serious torture, if -- and if you are not lucky you will die. They will shoot you with a gun."<sup>2397</sup> The witness clarified in cross-examination that he saw civilians shot and killed on two occasions.<sup>2398</sup>

1298. Witness TF1-045 testified that upon his arrival in Tongo Field, Captain Kati was the AFRC commander in charge of a company consisting of both RUF and AFRC troops.<sup>2399</sup> Kati reported to 'Mosquito', who was the overall commander of Tongo Field at this time.<sup>2400</sup> The witness testified that there were several other AFRC/RUF commanders involved in the mining operation in Tongo Field in this period, including Kati's deputy, RUF Major 'Eagle'; the OC Secretariat, AFRC Sergeant 'Junior'; and the AFRC PLO 2, whose name the witness did not recall.<sup>2401</sup>

1299. Witness TF1-045 testified that any diamonds found at the mines were handed over to the armed guards, who would then pass them on to the PLO 2. The witness was present at the AFRC Secretariat on occasions when the PLO 2 would weigh the diamonds. The PLO 2 told him that the diamonds were to be sent to Eddie Kanneh, the resident Minister at the time. However, on one occasion the witness observed the PLO 2 giving diamonds to 'Mosquito'.<sup>2402</sup>

1300. The Trial Chamber recalls its finding that the Accused Brima was the PLO 2 during the AFRC period, but that in this position he was involved in mining in Kono District and not Kenema.<sup>2403</sup> Although the witness was clearly mistaken in his recollection that the 'PLO 2' was in Tongo Field, the Trial Chamber accepts the remainder of his evidence in relation to the use of forced labour as it was detailed and consistent in all material respects and the witness remained unshaken on cross-examination.

<sup>2394</sup> TF1-045, Transcript 20 July 2005 pp. 88-89.

<sup>2395</sup> TF1-045, Transcript 19 July 2005, pp. 48-51.

<sup>2396</sup> TF1-045, Transcript 19 July 2005, pp. 51-52.

<sup>2397</sup> TF1-045, Transcript 19 July 2005, p. 55.

<sup>2398</sup> TF1-045, Transcript 20 July 2005, pp. 16-18.

<sup>2399</sup> TF1-045, Transcript 19 July 2005, pp. 35-36.

<sup>2400</sup> TF1-045, Transcript 19 July 2005, p. 37, Transcript 20 July 2005 p. 85.

<sup>2401</sup> TF1-045, Transcript 19 July 2005, pp. 39-40.

<sup>2402</sup> TF1-045, Transcript 19 July 2005, pp. 53-55.

<sup>2403</sup> See discussion of this aspect of witness TF1-045's evidence in Role of Accused, paras 329.

1301. The Brima Defence submits that witness TF1-045 did not describe any actual events which led him to conclude that the labour at the mines was forced.<sup>2404</sup> The Trial Chamber considers that a reasonable inference may be drawn from the evidence of witness TF1-045 that civilians were collected and taken to the mines at gunpoint, with resistance being met by violence, that their labour was extracted by force and without consent. While the witness does not give particulars of specific incidents in which he saw violence being inflicted on civilians, the Trial Chamber is satisfied that his evidence on this point is reliable, given that he personally used forced civilian labour in Tongo Field for a substantial period of time.

1302. Witness TF1-334 also gave evidence that during the AFRC government period both the SLA and the RUF were mining in Tongo. Each faction supervised its own mining sites, but the mining of both factions was under the overall control of the AFRC Secretariat led by Staff Sergeant 'Junior Sheriff'. The AFRC Secretariat was under the command of Secretary of State East, Captain Eddie Kanneh.<sup>2405</sup> While the witness does not state that civilians were forced to mine diamonds, the evidence corroborates the testimony of witnesses TF1-062 and TF1-045 that the AFRC were involved in diamond mining in Tongo Field.

1303. The Trial Chamber notes that Defence witnesses DAB-147, DAB-033 and DAB-063 gave evidence to the effect that the RUF were solely responsible for forced mining at Cyborg Pit in Tongo Field.

1304. Witness DAB-147 visited Kenema on two occasions in the period May 1997 through February 1998. He testified that both AFRC and RUF troops were stationed there. The witness stated that the RUF were mining at Cyborg Pit and they would kill civilians that went there to mine. The RUF commanders in Tongo, according to witness DAB-147, were named Manawa and Mopleh and they reported to Bockarie.<sup>2406</sup> However, he also stated at one point that the OC Secretariat Sergeant-Major 'Junior' was in charge of Tongo in this period. Witness DAB-047 testified that while he was in Tongo, he did not see AFRC soldiers forcing civilians to work in the mines.<sup>2407</sup> However, in cross-examination he agreed with the proposition that the AFRC government in Kenema forced civilians to mine for diamonds, before stating repeatedly that he had no knowledge of any AFRC mining operations and he could only testify to RUF mining in Tongo Field.<sup>2408</sup>

<sup>2404</sup> Brima Defence Final Brief, p. 123.

<sup>2405</sup> TF1-334, Transcript 17 May 2005, pp.54-55.

<sup>2406</sup> DAB-147, Transcript 3 October 2006, pp. 35-37.

<sup>2407</sup> DAB-147, Transcript 3 October 2006, p. 38.

<sup>2408</sup> DAB-147, Transcript 3 October 2006, pp. 62-65.

1305. Witness DAB-033, a member of the SLA, was posted to Tongo in July 1997 and remained there until January 1998. He gave evidence that Tongo was under RUF command.<sup>2409</sup> Witness DAB-033 agreed that civilians were forced to mine at Cyborg Pit, but testified that the RUF was in control of all mining operations there.<sup>2410</sup> Although there were SLAs in Tongo, led by Captain Kati and Seth Marrah, they were under RUF control and did not force civilians to mine.<sup>2411</sup> Under cross-examination, witness DAB-033 agreed that there was an AFRC secretariat in Tongo that monitored the mining operations. He also agreed that SLAs and RUF worked together at the secretariat, and SLA ‘Junior Sheriff’ was one of the commanders.<sup>2412</sup> Further, the witness’s evidence discloses that the SLAs conducted mining in Tongo, since he states that good mining sites were taken from them by the RUF.<sup>2413</sup>

1306. Witness DBK-063, a member of the SLA, was posted in Tongo for six months commencing soon after June 1997.<sup>2414</sup> He testified that both RUF and SLA members were stationed in Tongo in this period. The RUF were commanded by ‘Mosquito’ and Eddie Kanneh, who was the SLA Secretary of State for Kenema.<sup>2415</sup> However, he gave evidence that the RUF and the SLA did not work together in Kenema District because they did not take commands from each other.<sup>2416</sup> According to Witness DBK-063, he was sent to Tongo along with other SLAs because the RUF were “not under control” and ‘Mosquito’ was stealing diamonds.<sup>2417</sup> He testified that Captain Kati, an SLA officer was killed when he went to Cyborg Pit to try and stop the mining, although this occurred prior to the witness’s arrival in Tongo Field.<sup>2418</sup>

1307. Having considered the cross-examination of Defence witnesses DAB-033 and DAB-147, the Trial Chamber finds their testimony unreliable insofar as they both assert that the SLA had no involvement in the forced mining that occurred at Cyborg Pit. Witness DBK-063 did not state whether or not the AFRC were involved in mining operations. The Trial Chamber considers that the fact that these witnesses could testify only to RUF involvement in forced mining does not necessarily mean that the AFRC were not also engaging in the practice. Witness DAB-147 visited

<sup>2409</sup> DAB-033, Transcript 25 September 2006, p. 42.

<sup>2410</sup> DAB-033, Transcript 25 September 2006, p. 43, Transcript 2 October 2006, pp. 109-110.

<sup>2411</sup> DAB-033, Transcript 25 September 2006, p. 43-44, Transcript 2 October 2006, p. 109.

<sup>2412</sup> DAB-033, Transcript 2 October 2006, p. 54.

<sup>2413</sup> DAB-033, Transcript 25 September 2006, p. 44.

<sup>2414</sup> DBK-063, Transcript 2 August 2006, pp. 21-22, 25.

<sup>2415</sup> DBK-063, Transcript 2 August 2006, pp. 68-69.

<sup>2416</sup> DBK-063, Transcript 2 August 2006, pp. 63-64.

<sup>2417</sup> DBK-063, Transcript 2 August 2006, pp. 23-24.

<sup>2418</sup> DBK-063, Transcript 2 August 2006, pp. 23-25, 52. The transcript records the name of this captain as ‘Yamao Kateh’. The Trial Chamber instead adopts the spelling ‘Kati’, as it is satisfied that this is the same person referred to in the evidence of witness TF1-045.

Tongo Field only twice and never went to Cyborg Pit.<sup>2419</sup> There is no evidence that witness DAB-033 or DBK-063 ever visited Cyborg Pit. The Trial Chamber prefers the more detailed evidence of Prosecution witnesses TF1-062 and TF1-045 in relation to the involvement of the AFRC in forced labour at Cyborg Pit, as both these witnesses were involved in mining operations there for a significant period of time.

1308. The Trial Chamber notes the evidence of Witness DBK-063 that the two factions worked separately in Tongo Field and also that of DAB-033 that the SLAs were under RUF control. Having accepted that the evidence above establishes beyond reasonable doubt that the AFRC were involved in mining operations using forced civilian labour at Cyborg Pit, the Trial Chamber finds it unnecessary to determine conclusively the working dynamic between the two factions, which was often frictional.

(ii) Findings

1309. On the basis of the preceding evidence, and without predetermining the individual responsibility of the three Accused, the Trial Chamber is satisfied beyond reasonable doubt that between about 1 August 1997 and about 31 January 1998, the AFRC/RUF forced an unknown number of civilians to mine for diamonds at Cyborg Pit in Tongo Field in Kenema District. The Trial Chamber accordingly finds that the elements of enslavement, as charged in Count 13, are established.

(b) Kono District (about 14 February 1998 – January 2000)

1310. The Prosecution alleges that “[b]etween about 14 February 1998 to January 2000, AFRC/RUF forces abducted hundreds of civilian men, women and children, and took them to various locations outside the District, or to locations within the District such as AFRC/RUF camps, Tombodu, Koidu, Wonedu, Tomendeh. At these locations the civilians were used as forced labour, including domestic labour and as diamond miners in the Tombodu area”.<sup>2420</sup>

1311. No evidence of enslavement has been adduced with respect to Tomendeh.<sup>2421</sup>

1312. In arriving at the following findings of fact, the Trial Chamber has considered the available evidence, in particular the testimony of Prosecution witnesses TF1-072, TF1-216, TF1-334, TF1-198 and TF1-033 and Defence witnesses DAB-098, DAB-042 and DAB-131.

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<sup>2419</sup> DAB-147, Transcript 3 October 2006, p. 37.

(i) Tombodu

1313. Witness TF1-334 arrived in Koidu Town in Kono District in early March 1998.<sup>2422</sup> He testified that several days after his arrival, the AFRC/RUF began capturing civilians on the order of Johnny Paul Koroma, especially the strong men and the young women, from Tombodu, Yamadu and other surrounding villages in Kono District. Civilians who tried to escape were executed.<sup>2423</sup> The AFRC/RUF used the civilians to carry their food, and trained some of them as soldiers for the movement.<sup>2424</sup>

1314. In March 1998, witness TF1-072 and his friend encountered seven soldiers in uniform near Gbaima while looking for food. Accompanying the soldiers was a civilian, tied with rope.<sup>2425</sup> The soldiers tied up witness TF1-072 and his friend and forced them to walk to Gbaima. The witness states that he and his friend could not refuse the soldiers as they were 'big men'. On arrival at Gbaima, the two men were made to lie down. They overheard the armed soldier left to guard them being instructed to shoot them if they tried to escape.<sup>2426</sup>

1315. Witness TF1-072, his friend, and the other civilian who had been with the soldiers were then taken, still tied, into Gbaima. Witness TF1-072 observed many "bags and bundles" lying around the town. The men were untied and forced by the soldiers to carry these loads on their heads towards Tombodu.<sup>2427</sup> Along the way, the soldiers encountered other civilians, whom they forced to join them, also making them carry loads on their heads.<sup>2428</sup> In Tombodu the civilians, of whom by now there were fourteen, were taken to a compound where they were beaten.<sup>2429</sup> The leader of the soldiers in the compound was called 'Savage'.<sup>2430</sup> 'Savage' mutilated Witness TF1-072's right hand before he managed to escape.<sup>2431</sup>

1316. On 14 April 1998, witness TF1-216 and his three children were captured by a group of soldiers near Paema.<sup>2432</sup> The soldiers tied up the witness and forced him and six other civilians to

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<sup>2420</sup> Indictment, para 68.

<sup>2421</sup> Rule 98 Decision, para. 236.

<sup>2422</sup> TF1-334, Transcript 20 May 2005, p. 3.

<sup>2423</sup> TF1-334, Transcript 20 May 2005, pp. 4-5.

<sup>2424</sup> TF1-334, Transcript 20 May 2005, pp. 5, 34.

<sup>2425</sup> TF1-072, Transcript 1 July 2005, p. 7.

<sup>2426</sup> TF1-072, Transcript 1 July 2005, p. 8.

<sup>2427</sup> TF1-072, Transcript 1 July 2005, pp. 9-10.

<sup>2428</sup> TF1-072, Transcript 1 July 2005, pp. 10-12.

<sup>2429</sup> TF1-072, Transcript 1 July 2005, pp. 12-18.

<sup>2430</sup> TF1-072, Transcript 1 July 2005, pp. 14.

<sup>2431</sup> TF1-072, Transcript 1 July 2005, pp. 19-20.

<sup>2432</sup> TF1-216, Transcript 27 June 2005, pp. 87-88.

carry loads to Tombodu at gunpoint.<sup>2433</sup> Upon arrival, the seven were tied together outside a house.<sup>2434</sup> At that point, a group of soldiers arrived with some other civilians. ‘Staff Alhaji’ whom the soldiers had identified as their leader, ordered the soldiers to put the civilians in the house. Witness TF1-216 overheard one of the soldiers reporting to ‘Staff Alhaji’ that there were 53 people in the house.<sup>2435</sup> ‘Staff Alhaji’ told Witness TF1-216 and four of the other civilians that they were to be used to take a message to President Kabbah. All five then had their hands amputated before being released.<sup>2436</sup>

1317. At an unspecified time after March 1998, witness DAB-098 and five others were captured by “rebels” near Gbongbor Junction while looking for food. Witness DAB-098 states that the “rebels” shot around them and there was no way for them to escape.<sup>2437</sup> The “rebels” took the group of civilians to Tombodu, where they were kept in a house for six months and subjected to regular beatings.<sup>2438</sup> Whilst in captivity, witness DAB-098 and the other civilians were required to go fishing, clean, carry goods, and collect food for the “rebels”.<sup>2439</sup> He stated that while under their command, he felt that he had to accept anything they did to him or otherwise they would kill him.<sup>2440</sup> During his captivity, witness DAB-098 learnt that the leader of the “rebels” was named ‘Savage’.<sup>2441</sup>

1318. The Trial Chamber recalls its finding that ‘Savage’ was an AFRC commander in charge of a battalion of mixed AFRC/RUF soldiers in Tombodu in the period from approximately mid March until at least the end of April 1998, with ‘Staff Alhaji’ as his deputy.

1319. Witness TF1-033 testified that in March 1998, he was abducted in Tombodu, along with many other civilians, by AFRC fighters under the command of ‘Gullit’, whose subordinate was ‘Savage’. He stated that he both saw and heard ‘Gullit’ issue the command to abduct the civilians, and that the AFRC fighters told him that if he tried to escape they would kill him.<sup>2442</sup> In April 1998, when ‘Gullit’ ordered the AFRC fighters to retreat to Yaya due to the advance of ECOMOG

<sup>2433</sup> TF1-216, Transcript 27 June 2005, pp. 89-90.

<sup>2434</sup> TF1-216, Transcript 27 June 2005, p. 91.

<sup>2435</sup> TF1-216, Transcript 27 June 2005, p. 92.

<sup>2436</sup> TF1-216, Transcript 27 June 2005, pp. 93-94.

<sup>2437</sup> DAB-098, Transcript 4 September 2006, p. 14.

<sup>2438</sup> DAB-098, Transcript 4 September 2006, pp. 17-19, 28.

<sup>2439</sup> DAB-098, Transcript 4 September 2006, pp. 20-21, 30-31. The Transcript gives the location as ‘Jagbema Fiamma’, however the Trial Chamber is satisfied that this is a misspelling of the location in Kono ‘Jagbwema Fiamma’.

<sup>2440</sup> DAB-098, Transcript 4 September 2006, p. 51.

<sup>2441</sup> DAB-098, Transcript 4 September 2006, pp. 22-23, 37-38, 52.

<sup>2442</sup> TF1-033, Transcript 11 July 2005, pp. 9-10.

witness TF1-033 was forced to accompany them.<sup>2443</sup> The witness remained with the AFRC until the retreat from Freetown in 1999.<sup>2444</sup>

1320. Under cross-examination, witness TF1-033 gave only very general information in relation to his abduction. He repeated his assertion that upon arrival in Tombodu, he encountered 'Gullit' and AFRC fighters and simultaneously overheard 'Gullit' ordering the fighters to abduct him.<sup>2445</sup> He stated that there were many other abducted civilians in Tombodu, and they stayed in houses under the strict supervision of AFRC fighters.<sup>2446</sup> Witness TF1-033 lived in the house of Staff Alhaji.<sup>2447</sup> He did not specify what, if anything, the civilians did in this period or describe any incidents that occurred involving himself or other abductees.

1321. The Kanu and Brima Defence submit that witness TF1-033's testimony in relation to his abduction is unreliable as the witness was not an abducted civilian, but rather an active AFRC supporter.<sup>2448</sup> The Brima Defence further submits that the evidence of witness TF1-033 is unreliable as he was a former AFRC member who stood to gain from embellishing his testimony to the detriment of the three Accused.<sup>2449</sup>

1322. Witness TF1-033's evidence that abductions of civilians were taking place in Tombodu in the period after February 1998 is corroborated by witnesses TF1-072, TF1-216 and TF1-334. However, the Trial Chamber is of the view that the evidence that the witness himself was forcibly captured in Tombodu is not probative, for several reasons. First, in a prior statement to the Prosecution, the witness stated that he decided to flee from Freetown with the AFRC troops in February 1998.<sup>2450</sup> Secondly, the Trial Chamber has found on the basis of reliable evidence from other witnesses that the Accused Brima was not in Kono in this period.<sup>2451</sup> Thirdly, the witness's account of his own abduction and captivity lacked the detail contained in the testimony of witnesses TF1-072, TF1-216 and DAB-098. The Trial Chamber therefore does not rely on the evidence of witness TF1-033 in making findings on enslavement in Kono District.

1323. The Trial Chamber notes that witnesses TF1-334 and DAB-098 gave evidence of diamond mining in the Tombodu area, however their evidence concerned the AFRC government period and

<sup>2443</sup> TF1-033, Transcript 11 July 2005, p. 13.

<sup>2444</sup> TF1-033, Transcript 11 July 2005, p. 66.

<sup>2445</sup> TF1-033, Transcript 11 July 2005, p. 135-136.

<sup>2446</sup> TF1-033, Transcript 11 July 2005, pp. 76-77.

<sup>2447</sup> TF1-033, Transcript 11 July 2005, p. 78.

<sup>2448</sup> Kanu Defence Final Brief paras 140, 389; Brima Defence Closing Arguments, Transcript 7 December 2006, pp. 96-97.

<sup>2449</sup> Brima Defence Final Brief, paras 34, 47.

<sup>2450</sup> TF1-033, Transcript 11 July 2005, pp. 139-142.

therefore falls outside the Indictment period for Kono District for Count 13.<sup>2452</sup> No other evidence was adduced of diamond mining in the Tombodu area.

(ii) Koidu

1324. In July 1998, witness DAB-131 and his family were captured, along with an unspecified number of other civilians, in the bush around Tuyor, near Koidu.<sup>2453</sup> Their captors identified themselves as RUF soldiers.<sup>2454</sup> After they were captured, they pounded husk rice for the RUF and were forced to carry it into Koidu Town on their heads.<sup>2455</sup>

1325. Upon arrival in Koidu, witness DAB-131 and his group of civilians were sent by an RUF commander to a mining unit in an unspecified location in Kono District and told that they would work for the RUF.<sup>2456</sup> Witness DAB-131 testified that there were 240 civilians mining diamonds for the rebels, guarded by RUF soldiers. He knew the number of civilians since they were counted every morning. The commander of the soldiers introduced himself to the civilians as RUF Major Kumba. Any diamonds found were handed over to him.<sup>2457</sup>

1326. The civilians mined for the RUF for three months, until ECOMOG displaced the RUF from Kono. At this point, witness DAB-131 and an unspecified number of other civilians were forced to carry loads on their heads for the RUF from Koidu Town to Burkina (also known as Buedu) in Kailahun District.<sup>2458</sup> The civilians walked for two days and two nights, accompanied by the RUF, before arriving in Burkina.<sup>2459</sup> He observed the RUF soldiers killing civilians who were unable to carry their loads. Their loads were then transferred on to the heads of others. In addition, the soldiers would confiscate clothing and footwear that was in good condition from the civilians.<sup>2460</sup> The witness testified that by the time the group arrived in Kailahun, it included over 500 civilians.<sup>2461</sup>

1327. After an unspecified time in Burkina, witness DAB-131 and some 230 other civilians were forced to carry loads for the rebels back to Kono, to a location that the witness refers to as 'Joe

<sup>2451</sup> Role of the Accused, paras 333-338, 343-343.

<sup>2452</sup> See TF1-334, Transcript 17 May 2005, p.52-54, Transcript 20 May 2005, p. 40-43; DAB-098, Transcript 4 September 2006, p. 50.

<sup>2453</sup> DAB-131, Transcript 14 September 2006, pp. 36-37, 69.

<sup>2454</sup> DAB-131, Transcript 14 September 2006, p. 36.

<sup>2455</sup> DAB-131, Transcript 14 September 2006, pp. 37, 70.

<sup>2456</sup> DAB-131, Transcript 14 September 2006, pp. 39-40.

<sup>2457</sup> DAB-131, Transcript 14 September 2006, pp. 40-41.

<sup>2458</sup> DAB-131, Transcript 14 September 2006, pp. 42-43.

<sup>2459</sup> DAB-131, Transcript 14 September 2006, pp. 42-43.

<sup>2460</sup> DAB-131, Transcript 14 September 2006, pp. 43-44, 72.

<sup>2461</sup> DAB-131, Transcript 14 September 2006, pp. 46-47, 49.

Bush'.<sup>2462</sup> At 'Joe Bush' the civilians were forced to mine diamonds, supervised by armed RUF guards.<sup>2463</sup> The witness stated that diamonds found at the mine were taken by escort to Sam Bockarie, since the civilians were told that everything they recovered was for the RUF movement.<sup>2464</sup> Witness DAB-131 and the other civilians mined at Joe Bush for three to four months, until December 1998 when the rebels moved them to Koidu Town.<sup>2465</sup> The witness remained a captive of the RUF until "the ceasefire".<sup>2466</sup>

(iii) Wonedu

1328. At an unspecified time after February 1998, witness TF1-217 observed that RUF rebels brought around ten girls to Wonedu in open vehicles.<sup>2467</sup> He saw one of the girls crying. At that same time, the witness's sister was forcefully captured by RUF Captain Bai Bureh, who said that she was his wife. Witness TF1-217 testified that his sister did not want to go with Bureh, but the witness did not dare to intervene because Bureh threatened that he would take either his life or his sister.<sup>2468</sup> The witness did not know the fate of his sister or the ten girls.

1329. The Trial Chamber recalls that evidence of abductions alone is insufficient to prove enslavement.<sup>2469</sup> In the absence of other evidence of enslavement in Wonedu, the Trial Chamber makes no finding of enslavement in respect of this location.

(iv) Other locations in Kono District

1330. In late 1999, witness DAB-042 was captured by RUF rebels in Yengema.<sup>2470</sup> The witness, along with many other civilians, was taken to Kailahun and forced to carry loads, consisting of objects such as beds, baling machines, rice and beans, to the Mende land area.<sup>2471</sup> The witness remained with the rebels for three months.<sup>2472</sup>

<sup>2462</sup> DAB-131, Transcript 14 September 2006, pp. 50-51.

<sup>2463</sup> DAB-131, Transcript 14 September 2006, pp. 51-53.

<sup>2464</sup> DAB-131, Transcript 14 September 2006, p. 53.

<sup>2465</sup> DAB-131, Transcript 14 September 2006, pp. 53-57.

<sup>2466</sup> DAB-131, Transcript 14 September 2006, p. 72. The reference to "the ceasefire" is likely to refer to the May 1999 ceasefire which preceded the 1999 Lome Peace Accord. However, the witness's testimony did not make this clear.

<sup>2467</sup> The transcript gives the location as 'Wenedu', however the Trial Chamber is satisfied that this is the same location as 'Wonedu', which is the spelling used in the Indictment.

<sup>2468</sup> TF1-217, Transcript 17 October 2005, pp. 10-11.

<sup>2469</sup> Factual Findings, Enslavement, para. 1285.

<sup>2470</sup> DAB-042, Transcript 15 September 2006, pp. 83-85, 95.

<sup>2471</sup> DAB-042, Transcript 15 September 2006, pp. 85-86.

<sup>2472</sup> DAB-042, Transcript 15 September 2006, p. 84.

1331. Around mid-1998, witness TF1-198 and her family met a group of around seven armed “soldiers” in Koiduwar, who tied up her husband and forced him, along with five other men, to carry loads on their heads to Yardu Gbensa.<sup>2473</sup>

1332. Witness DAB-025 was captured by RUF rebels in Mortema in an unspecified year and forced to undergo military training and work at an RUF checkpoint near Yengema.<sup>2474</sup> As the Trial Chamber was unable to ascertain the time period in which these events occurred, the Trial Chamber does not rely on this evidence.

(v) Findings

1333. In light of the foregoing evidence, the Trial Chamber is satisfied beyond reasonable doubt that between about 14 February 1998 to January 2000, an unknown number of civilians were abducted and used as forced labour in various locations in Kono District, including Tombodu, by AFRC/RUF forces under the command of ‘Savage’. The Trial Chamber is further satisfied that in this same period, RUF forces abducted an unknown number of civilians and used them as forced labour at various locations in Kono District, including the RUF camp known as ‘Joe Bush’, Koidu Town and Yengema. The Trial Chamber accordingly finds, without predetermining the individual responsibility of the three Accused, that the elements in relation to Count 13 have been established.

(c) Koinadugu District (about February 1998 – 30 September 1998)

1334. The Prosecution alleges that “[b]etween about 14 February 1998 and 30 September 1998, at various locations including Heremakono, Kabala, Kumala (or Kamalu), Koinadugu, Kamadugu and Fadugu, members of the AFRC/RUF abducted an unknown number of men, women and children and used them as forced labour”.<sup>2475</sup>

1335. No evidence of enslavement was led in respect of Kamadugu and Heremakono.<sup>2476</sup>

1336. In arriving at the following findings of fact, the Trial Chamber has taken into consideration the available evidence, in particular the testimony of Prosecution witnesses TF1-153, TF1-094, TF1-209 and TF1-133 and Defence witnesses DAB-089, DAB-081, DAB-082, DAB-078, DAB-088, DAB-090 and DAB-085.

<sup>2473</sup> TF1-198, Transcript 28 June 2005, pp. 12-13.

<sup>2474</sup> DAB-025, Transcript 28 July 2006, pp. 95-107

<sup>2475</sup> Indictment, para 69.

<sup>2476</sup> Rule 98 Decision, para. 236.

1337. The Trial Chamber has considered the evidence of witnesses TF1-209 and TF1-094 in its findings under Count 9.<sup>2477</sup> The evidence contained therein establishes beyond reasonable doubt that these witnesses were also enslaved by AFRC troops in Koinadugu District. Their evidence is discussed below insofar as it relates to the abduction and forced labour of other civilians in Koinadugu District.

(i) Kabala

1338. Witness TF1-209 testified that during the rainy season in 1998, a number of other civilians were captured by “juntas” along with herself, near Kabala.<sup>2478</sup> The ‘juntas’ took rice and ground nuts from the civilians and forced them to carry these items into Kabala town.<sup>2479</sup> En route, other civilians were captured and made to carry loads.<sup>2480</sup> Upon arriving in Kabala town, the civilians were taken to a man named ‘Mongo’ who was dressed in combat uniform. ‘Mongo’ wrote down their names so that none of them could go missing.<sup>2481</sup> Witness TF1-209 was taken to Koinadugu Town and ‘married’ to a man named Jabie. She gave no further evidence regarding the other civilians.

(ii) Kumala

1339. The available evidence of abductions and forced labour in Kumala consisted of the testimony of Prosecution witness TF1-133. The Trial Chamber has considered the evidence of this witness in its findings under Count 9.<sup>2482</sup> The evidence contained therein establishes beyond reasonable doubt that she was also enslaved by AFRC troops in Koinadugu District.

(iii) Koinadugu

1340. At an unspecified time in 1998, DAB-089 was abducted at gun point near Koinadugu by persons he identified only as ‘gunmen’ and forced to join a group of other civilians carrying loads to Koinadugu Town.<sup>2483</sup> Upon arrival in Koinadugu, the witness was handed over to a man named Albert, who threatened that he would kill him if he escaped and marked his forehead and chest with ‘RUF’.<sup>2484</sup> Witness DAB-089 remained with Albert for eight days, in which time he followed

<sup>2477</sup> Factual Findings, Outrages on Personal Dignity, paras 1127-1133.

<sup>2478</sup> TF1-209, Transcript 7 July 2005, pp. 31-32.

<sup>2479</sup> TF1-209, Transcript 7 July 2005, pp. 36-37.

<sup>2480</sup> TF1-209, Transcript 7 July 2005, p. 37.

<sup>2481</sup> TF1-209, Transcript 7 July 2005, pp. 37-38.

<sup>2482</sup> Factual Findings, Outrages on Personal Dignity, paras 1115-1126.

<sup>2483</sup> DAB-089, Transcript 24 July 2006, pp. 50-51.

<sup>2484</sup> DAB-089, Transcript 24 July 2006, pp. 52-53.

orders to carry loads of food and communications equipment and logged wood.<sup>2485</sup> He overheard conversations in which Albert referred to his leaders as 'Superman' and SAJ Musa.<sup>2486</sup> Witness DAB-089 then managed to escape.<sup>2487</sup>

1341. In about August 1998, witness DAB-081 was captured by RUF rebels near Koinadugu.<sup>2488</sup> The rebels made the witness take them at gunpoint to Dankawalli village and then the following day to Koinadugu.<sup>2489</sup> In Koinadugu, the witness was housed with 50 other abductees and kept captive for several months.<sup>2490</sup> He testified that while he worked for the RUF, both RUF and SLA fighters used civilians for labour.<sup>2491</sup> The captives were forced to search for food for the RUF and SLA troops in Koinadugu. Abductees also had to build over 20 huts and guard posts along the road to Koinadugu for the RUF fighters.<sup>2492</sup> The RUF flogged their civilian workers, including witness DAB-081, with sticks.<sup>2493</sup>

1342. At an unspecified time after February 1998, witness TF1-153 and other civilians of Yirayie Town were captured by RUF commander Komba Gbundema and his men in the bush near Yirayie.<sup>2494</sup> The men ordered the civilians to hand over all their food and property.<sup>2495</sup> The men carried guns and the civilians were told that anyone who ran away would be killed. Gbundema ordered witness TF1-153 and the other civilians to carry the property which had been taken from them to Yirayie Town.<sup>2496</sup>

1343. Upon arrival in Yirayie, witness TF1-153 observed women pounding rice, children carrying loads on their heads and other commanders arriving from the bush with civilians.<sup>2497</sup> Witness TF1-153 states that the commanders and soldiers in Yirayie were from both the AFRC and the RUF. The Trial Chamber accepts that the witness was able to distinguish between the two factions as he came from a family background of affiliation with the military.<sup>2498</sup> That night, Witness TF1-153 was

<sup>2485</sup> DAB-089, Transcript 24 July 2006, pp. 54-55.

<sup>2486</sup> DAB-089, Transcript 24 July 2006, p. 55.

<sup>2487</sup> DAB-089, Transcript 24 July 2006, p. 56.

<sup>2488</sup> DAB-081, Transcript 20 July 2006, p. 84.

<sup>2489</sup> DAB-081, Transcript 20 July 2006, p. 85.

<sup>2490</sup> DAB-081, Transcript 20 July 2006, pp. 85-86.

<sup>2491</sup> DAB-081, Transcript 20 July 2006, pp. 89-90, Transcript 21 July 2006 p.10.

<sup>2492</sup> DAB-081, Transcript 20 July 2006, pp. 89-90.

<sup>2493</sup> DAB-081, Transcript 20 July 2006, p. 91.

<sup>2494</sup> TF1-153, Transcript 22 September 2005, pp. 41-42, 44-45.

<sup>2495</sup> TF1-153, Transcript 22 September 2005, p. 45.

<sup>2496</sup> TF1-153, Transcript 22 September 2005, pp. 47-48.

<sup>2497</sup> TF1-153, Transcript 22 September 2005, p. 49.

<sup>2498</sup> TF1-153, Transcript 22 September 2005, pp. 6-7.

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forced by Gbundema's men to carry one bag of rice on his head to Koinadugu<sup>2499</sup> He was released upon his arrival because by chance one of the soldiers there was his cousin.<sup>2500</sup>

(iv) Other locations in Koinadugu District

1344. On 22 May 1998, witness DAB-078 was captured during an attack on his town in Koinadugu District by three armed men, one wearing a soldier's uniform and the other two wearing civilian clothing.<sup>2501</sup> He was forced to carry loads, along with about 15 other captured civilians, on the road to Makeni.<sup>2502</sup> He overheard his captors saying that their leaders were 'Captain Ishmael' and 'Colonel Born Trouble'.<sup>2503</sup> 'Captain Ishmael' was a deputy to 'Savage'.<sup>2504</sup> Witness DAB-078 overheard in discussion that both 'Ishmael' and 'Savage' were SLA soldiers.<sup>2505</sup> When the group reached Kanikay that same night, the witness managed to escape.<sup>2506</sup>

1345. Witness DAB-085 testified that between early September 1998 until about March 1999, 'Savage' and his men, including 'Ishmael', regularly looted his town in Koinadugu District.<sup>2507</sup> 'Savage's men would force young people from the witness's community to carry loads from the town to their base at Kamabai.<sup>2508</sup> As the Indictment period for Koinadugu District for Count 13 ends at 30 September 1998, the Trial Chamber relies on the witness's evidence primarily to corroborate the evidence of enslavement of other witnesses in relation to Koinadugu District.

1346. At an unspecified time after February 1998, rebels wearing civilian clothing captured witness DAB-082 and 14 other civilians in their village in Koinadugu District.<sup>2509</sup> The following day, the rebels sent witness DAB-082 and other civilians on food-finding missions.<sup>2510</sup> According to the witness, the civilians were told by the rebels to build a farm hut for themselves to use, and the rebels decided to call this place "Joe Bush". Every morning, the rebels would "bring out" the

<sup>2499</sup> TF1-153, Transcript 22 September 2005, p. 51.

<sup>2500</sup> TF1-153, Transcript 22 September 2005, pp. 52-53.

<sup>2501</sup> DAB-078, Transcript 6 September 2006, pp. 12-13. Name of his town admitted under seal: Exhibit D.23.

<sup>2502</sup> DAB-078, Transcript 6 September 2006, pp.13-14, 18, 54.

<sup>2503</sup> DAB-078, Transcript 6 September 2006, p. 22.

<sup>2504</sup> DAB-078, Transcript 6 September 2006, pp.51-52.

<sup>2505</sup> DAB-078, Transcript 6 September 2006, p. 57.

<sup>2506</sup> DAB-078, Transcript 6 September 2006, pp.21-22.

<sup>2507</sup> The witness gave the name of his town in closed session: DAB-085, Transcript 20 July 2006. pp. 43-44.

<sup>2508</sup> DAB-085, Transcript 20 July 2006. pp. 43-44.

<sup>2509</sup> The name of the witness's village was given in closed session: DAB-082, Transcript 21 July 2006, pp. 62-64, 70-71.

<sup>2510</sup> DAB-082, Transcript 21 July 2006, pp. 72-73.

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civilians and tell them to go to “Joe Bush”. The civilians would spend the day there and return in the evening.<sup>2511</sup>

1347. While the Trial Chamber found the witness credible, his evidence lacked detail. It is unclear whether the civilians were forced to obey the instructions given to them by the rebels or whether their autonomy was restricted in any other aspect. The witness did not explain what he and other civilians did at “Joe Bush”, and therefore there is no evidence that the rebels accrued any gain from the civilians’ activities. In the absence of such indicia, the Trial Chamber finds that it is not established beyond reasonable doubt that witness DAB-082 or other civilians in his company were used as forced labour.

1348. Witness DAB-090 testified that at an unspecified time after April 1998, rebels attacked Yifin. They remained in Yifin until the end of the year when they were disarmed.<sup>2512</sup> Throughout this period, the rebels used the children of Yifin to carry rice and other looted goods in loads on their heads to Kayima. The children told the witness that if they did not walk very fast on these trips they were seriously beaten.<sup>2513</sup> The rebels also forced the civilians of Yifin to cultivate a rice farm for them. The civilians were made to harvest the rice and then hand it over to the rebels.<sup>2514</sup>

1349. Witnesses TF1-094 and DAB-088 testified that in Yomadugu in around August 1998, there were many civilian men, women and children captured from surrounding villages. The civilians were forced to work for the rebels and SLAs, performing tasks such as harvesting rice in the bush, pounding rice, laundering and cooking. If civilians refused to work, they would be beaten or killed, and many such punishments were meted out.<sup>2515</sup>

(v) Findings

1350. In light of the preceding evidence, the Trial Chamber is satisfied beyond reasonable doubt that between about 14 February 1998 and 30 September 1998, an unknown number of civilians were abducted and used as forced labour by AFRC/RUF forces in various locations in Koinadugu District, including Kabala, Kumala, Koinadugu, Yifin and Yomadugu. The Trial Chamber accordingly finds, without predetermining the individual responsibility of the three Accused, that the elements in relation to Count 13 have been established.

<sup>2511</sup> DAB-082, Transcript 21 July 2006, pp. 74-78.

<sup>2512</sup> DAB-090, Transcript 24 July 2006, pp. 97, 102-103.

<sup>2513</sup> DAB-090, Transcript 24 July 2006, pp. 101-102.

<sup>2514</sup> DAB-090, Transcript 24 July 2006, p. 104.

<sup>2515</sup> TF1-094, Transcript 13 July 2005, pp. 31-32; DAB-088, Transcript 24 July 2006, pp. 40-41.

(d) Bombali District (about May 1998 – 31 November [sic] 1998)

1351. The Indictment alleges that “[b]etween about 1 May 1998 and 31 November [sic] 1998, in Bombali District, members of the AFRC/RUF abducted an unknown number of civilians and used them as forced labour”.<sup>2516</sup>

1352. The evidence adduced on Bombali District concerns the alleged enslavement of civilians by AFRC troops between approximately April and July 1998 during their movement from Mansofinia (Koinadugu District) to Rosos (Bombali District) under the command of the Accused Brima, accompanied by the Accused Kamara and Kanu.<sup>2517</sup> The Trial Chamber will consider first the evidence pertaining to incidents which took place during the journey to Rosos and then the evidence regarding events that occurred while the troops were at Rosos.

1353. In arriving at the following findings, the Trial Chamber has considered the evidence adduced, in particular the testimony of Prosecution witnesses George Johnson, TF1-334, TF1-184, TF1-157, TF1-158, TF1-055 and TF1-058 and Defence witnesses DBK-101, DBK-100, DBK-089 and DBK-094.

1354. The Trial Chamber recalls that Prosecution witnesses TF1-157 and TF1-158 were abducted from Bornoya in 1998 by AFRC troops en route to Rosos and used as child soldiers. Their evidence, considered in the Trial Chamber’s findings on Count 12, establishes beyond reasonable doubt that these witnesses were enslaved in Bombali District.<sup>2518</sup> Their testimony is considered below insofar as it demonstrates that an unknown number of other civilians were abducted and used as forced labour in Bombali District.

(i) Journey to Rosos

1355. Witness TF1-334 testified that ‘Gullit’ ordered at Mansofinia that any strong civilian encountered on the journey north should be captured and made part of the troop.<sup>2519</sup>

1356. Witnesses DBK-101 and DBK-100 testified that fighters abducted a number of civilians in the attack on Kamagbengbeh in May 1998. When some of the abductees subsequently escaped and

<sup>2516</sup> Indictment, para. 62.

<sup>2517</sup> See Role of Accused, para 465 for further detail on the journey from Mansofinia to Rosos.

<sup>2518</sup> Facts and Findings Child Soldiers, paras 1252-1258.

<sup>2519</sup> TF1-334, Transcript 23 May 2005, p. 17.

returned to the village, they told the other civilians that the attackers had forced them, under threat of violence, to carry loads to Kamabai.<sup>2520</sup>

1357. Witnesses living in Karina at the time of the AFRC forces' attack testified that the troops abducted a number of civilians, some of whom were personally known to the civilians.<sup>2521</sup> Witness TF1-058 was captured during the attack on Karina and ordered to sit with a group of other civilians being guarded by armed "juntas".<sup>2522</sup> The "juntas" instructed some of the civilians to stand up and form two lines. The men were forced to carry goods and the women to follow behind. All of the women were naked, except for one who was wearing a loincloth. Armed men accompanied the civilians.<sup>2523</sup>

1358. Witness TF1-334 was present during the attack on Karina, which he stated took place in the early morning, from around 2am until 7am.<sup>2524</sup> He testified that around 35 women were abducted in Karina and placed under the command of one Woyoh, who stripped the women naked.<sup>2525</sup> Small children were also abducted. Woyoh then handed control of the women to the Chief of Staff 'Five-Five'.<sup>2526</sup> 'Gullit' subsequently ordered, in the presence of the witness, that the children be distributed among the various commanders.<sup>2527</sup> After the attack on Karina, the soldiers arrived in Gbendembu, where they captured several young men and women.<sup>2528</sup>

1359. While the evidence above relates primarily to abductions, witnesses George Johnson and TF1-157, who were travelling with the troops, testified that the abducted civilians were used as forced labour. Johnson stated that hundreds of civilians were forcefully captured in the villages on the journey and the women were used as cooks, while the men were either used to carry arms, ammunition and food, or trained as fighters.<sup>2529</sup> Witness TF1-157 stated that civilians were forcefully abducted in Bornoya, Daraya, Mayogbo, Kagbemneh, Kamanameh, Kamatelun, Kamabai and Karina in Bombali District and compelled to carry looted goods for the rebels to Rosos.<sup>2530</sup>

(ii) Rosos

<sup>2520</sup> DBK-100, Transcript 17 July 2006, pp. 13-16; DBK-101, Transcript 14 July 2006, pp. 72-77.

<sup>2521</sup> The names of twelve women in total were given to the Trial Chamber in evidence by the various witnesses: TF1-055, Transcript 12 July 2005, pp. 134-137; DBK-089, Transcript 14 July 2006, pp. 22, 31-35, 46; Exhibit D16 (under seal); DBK-094, Transcript 11 July 2006, pp. 34, 40, 52-55, 73; TF1-058, Transcript 14 July 2005, p. 67.

<sup>2522</sup> TF1-058, Transcript 14 July 2005, p. 61-64.

<sup>2523</sup> TF1-058, Transcript 14 July 2005, p. 63-65.

<sup>2524</sup> TF1-334, 23 May 2005, p. 75.

<sup>2525</sup> TF1-334, 23 May 2005, pp. 72-73.

<sup>2526</sup> TF1-334, 23 May 2005, p. 73.

<sup>2527</sup> TF1-334, 23 May 2005, pp. 74-75.

<sup>2528</sup> TF1-334, Transcript 23 May 2005, p. 84.

<sup>2529</sup> George Johnson Transcript 15 September 2005, pp. 58-59, 64.

<sup>2530</sup> TF1-157, Transcript 22 July 2005, p. 66-87.

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1360. While at Rosos, the troops staged an operation to nearby village of Gbendembu, where additional civilians were abducted.<sup>2531</sup> The troops remained at Rosos for three months.<sup>2532</sup> Civilian abductees were used in this period to perform domestic labour, including food finding, fetching water and cleaning dishes.<sup>2533</sup>

1361. Abductees were also forced to undergo military training.<sup>2534</sup> Trainees that attempted to escape were killed.<sup>2535</sup> The duration of the training program at Rosos was three weeks.<sup>2536</sup> The exercises encompassed weapon handling, tactics, firing and maneuvering.<sup>2537</sup> Witness George Johnson estimated that approximately 520 civilians, including both adults and children, were trained in this manner at Rosos.<sup>2538</sup> At the completion of the training program, the civilians were integrated into the battalions by FAT Sesay.<sup>2539</sup>

1362. The Trial Chamber notes that witness TF1-184, who travelled with SAJ Musa's group of troops to meet the Accused Brima's group at 'Colonel Eddie Town', testified that SAJ Musa's group was accompanied by civilians who were free to leave at any time without fear of reprisal.<sup>2540</sup> The Kanu Defence submits that these civilians were not subjected to enslavement.<sup>2541</sup> Given that the AFRC faction led by the Accused Brima was not with SAJ Musa's group or subject to SAJ Musa's command until after they departed from Rosos, this evidence is not material to the Trial Chamber's consideration of the above evidence on Bombali District.

### (iii) Findings

1363. In light of the foregoing evidence, the Trial Chamber is satisfied beyond reasonable doubt that between about 1 May 1998 and 30 November 1998, an unknown number of civilians were abducted and used as forced labour, as well as being forced to undergo military training, by AFRC troops in various locations in Bombali District including Bornoya, Kamagbengbeh, Karina, Daraya, Mayogbo, Kagbemneh, Kamanameh, Kamatelun, Kamabai, Rosos and Gbendembu. The Trial

<sup>2531</sup> George Johnson, Transcript 15 September 2005, p. 63; TF1-158, Transcript 26 July 2005, p. 44.

<sup>2532</sup> TF1-334, Transcript 23 May 2005, p. 103.

<sup>2533</sup> TF1-158, Transcript 26 July 2005, pp. 38-39; TF1-157, Transcript 22 July 2005, pp. 96, 104; Transcript 25 July 2005, pp. 9-10.

<sup>2534</sup> TF1-334, Transcript 24 May 2005, p. 24; TF1-158, Transcript 26 July 2005, pp. 39-40; TF1-157, Transcript 25 July 2005, pp. 3-4.

<sup>2535</sup> George Johnson, Transcript 15 September 2005, pp. 64-65.

<sup>2536</sup> TF1-334, Transcript 24 May 2005, p. 28; George Johnson, Transcript 15 September 2005, p. 65.

<sup>2537</sup> George Johnson, Transcript 15 September 2005, pp. 65-66.

<sup>2538</sup> George Johnson, Transcript 15 September 2005, p. 66.

<sup>2539</sup> George Johnson, Transcript 15 September 2005, pp. 65-66.

<sup>2540</sup> TF1-184, Transcript 29 September 2005, pp. 32, 35-37.

<sup>2541</sup> Kanu Defence Final Brief, paras 85-86.

Chamber accordingly finds, without predetermining the individual responsibility of the three Accused, that the elements in relation to Count 13 have been established in Bombali District.

(e) Kailahun District (all times relevant to Indictment)

1364. The Indictment alleges that “[a]t all times relevant to the Indictment, captured men, women and children were brought to various locations within the District and used as forced labour”.<sup>2542</sup>

1365. In reaching the following factual findings, the Trial Chamber has considered the evidence adduced, in particular the testimony of Prosecution witnesses TF1-113 and TF1-114 and Defence witnesses DAB-135, DAB-140 and DAB-027.

1366. The Trial Chamber has divided the evidence on Kailahun District into two periods, the first being the AFRC government period from May 1997 to February 1998, and the second the period from February 1998 until January 2000.

(i) May 1997 – February 1998

1367. The Trial Chamber notes the evidence of witness TF1-113 that 67 persons accused by AFRC/RUF soldiers of being Kamajors were detained and used as forced labour in Kailahun Town for approximately two or three months during this period. As it has not been established beyond reasonable doubt that these persons were in fact civilians, the Trial Chamber makes no finding of enslavement on this evidence.<sup>2543</sup>

1368. Around May 1997, witness DAB-135 was captured with 19 other civilians in the fields near Jagbwema Town by armed RUF rebels wearing mixed combat and civilian clothing.<sup>2544</sup> The rebels took thirteen of the civilians to Jagbwema Town where they met other civilians that had been captured. Witness DAB-135 was taken before the rebel leader Major Kangoma, who questioned him, kicked him and hit him with a gun butt.<sup>2545</sup> A rebel named ‘Captain Death Squad’ then took witness DAB-135 and two of his sisters and ordered them to pound a drum of husk rice and launder clothes for him.<sup>2546</sup>

<sup>2542</sup> Indictment, para. 71.

<sup>2543</sup> TF1-113, Transcript 18 July 2005, pp. 84-89. See consideration of this evidence in Factual Findings, Unlawful Killings, paras 860-861, *supra*.

<sup>2544</sup> DAB-135, Transcript 11 September 2006, pp. 34, 37-38, 46-47, 55-56.

<sup>2545</sup> DAB-135, Transcript 11 September 2006, p. 42.

<sup>2546</sup> DAB-135, Transcript 11 September 2006, p. 44.

1369. The following day the civilians were taken to Tueyor, where they were again forced to pound rice and launder clothes, without being fed.<sup>2547</sup> Three days later, witness DAB-135 was ordered to go to Buedu in Kailahun Chiefdom with the rebels, carrying loads for them.<sup>2548</sup> The witness spent about two days in Kailahun Chiefdom, working for the rebels while being given very little food.<sup>2549</sup> The rebels then took witness DAB-135 back to Kono District, stopping along the way in a village called Manjama where the rebels forced the witness to pound rice and they captured other civilians.<sup>2550</sup> Upon returning to Kono, the witness spent two years and six months with the rebels before being reunited with his family.<sup>2551</sup>

1370. In approximately May 1997, Witness DAB-140 was captured by rebels in the bush near Buedu and brought into Buedu Town. The rebels, whose commander was Sam Bockarie, required the witness, along with other civilians in Buedu, to “report for duty” every morning to a rebel leader.<sup>2552</sup> One of the tasks that the witness was regularly forced to undertake was carrying heavy loads.<sup>2553</sup> Specifically, the witness stated that the rebels used to take corrugated iron and doors from people’s houses in Buedu and force civilians, under threat of violence, to carry the iron to Liberia and the doors to Guinea.<sup>2554</sup> Civilians who refused to take loads were beaten or killed.<sup>2555</sup>

(ii) February 1998 – January 2000

1371. Witness TF1-114, a military police adjutant in Buedu, testified that the RUF engaged in forced labour after February 1998.<sup>2556</sup> One of his duties was to take the names of civilians reporting for ‘government work’. ‘Government work’ typically included working on commanders’ farms, constructing roads and carrying loads for commanders and was carried out involuntarily by civilians who received no remuneration.<sup>2557</sup>

1372. The Kanu Defence submits that the evidence of witness TF1-114 in relation to forced labour in Kailahun establishes that the responsibility for this crime falls to members of the RUF.<sup>2558</sup> Under cross-examination, Witness TF1-114 gave confusing and contradictory evidence regarding his

<sup>2547</sup> DAB-135, Transcript 11 September 2006, pp. 45-46.

<sup>2548</sup> DAB-135, Transcript 11 September 2006, p. 47.

<sup>2549</sup> DAB-135, Transcript 11 September 2006, pp. 48-49.

<sup>2550</sup> DAB-135, Transcript 11 September 2006, pp. 50-51.

<sup>2551</sup> DAB-135, Transcript 11 September 2006, p. 51.

<sup>2552</sup> DAB-140, Transcript 19 September 2006, pp. 68-69.

<sup>2553</sup> DAB-140, Transcript 19 September 2006, pp. 69-70.

<sup>2554</sup> DAB-140, Transcript 19 September 2006, pp. 85-86.

<sup>2555</sup> DAB-140, Transcript 19 September 2006, pp. 69-70.

<sup>2556</sup> TF1-114, Transcript 14 July 2005, p. 128.

<sup>2557</sup> TF1-114, Transcript 14 July 2005, pp. 129-130.

<sup>2558</sup> Kanu Defence Final Brief, para. 383.

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affiliation with the SLA and RUF factions. He consistently asserted that throughout the period he worked in Buedu, he was a member of the RUF.<sup>2559</sup> Accordingly, the Trial Chamber finds that it has not been established beyond reasonable doubt that the AFRC was involved in the forced labour described.

1373. At an unspecified time in 1998, witness DAB-027 and a group of other civilians were captured in the bush near Bendu by RUF rebels and taken to Jagbema village.<sup>2560</sup> After several days, the civilians were taken to Tueyor, from where they were divided into two groups.<sup>2561</sup> The younger ones, including the witness, were taken to Bunumbu Camp Lion Training Base, in Kailahun District.<sup>2562</sup> Witness DAB-027 and many other captive civilians were given military training at Bunumbu.<sup>2563</sup> Over a month later, the witness was then sent to Gandorhun, in Kono District, and some time later to Sengema. Throughout this time he was required to work for RUF rebels.<sup>2564</sup>

(iii) Findings

1374. In light of the foregoing evidence, the Trial Chamber is satisfied beyond reasonable doubt that during the Indictment period, RUF troops abducted an unknown number of civilians and used them as forced labour, including military training, in various locations in Kailahun District, including Jagbwema Town, Buedu and Bunumbu. The Trial Chamber accordingly finds that the elements of enslavement, as charged in Count 13, are established. However, the Trial Chamber finds that the Prosecution has not established beyond reasonable doubt that AFRC troops were involved in the enslavement of civilians in Kailahun District.

(f) Freetown and the Western Area (6 January 1999 – 28 February 1999)

1375. The Indictment alleges that “[b]etween 6 January 1999 and 28 February 1999, in particular as the AFRC/RUF were being driven out of Freetown and the Western Area, members of the AFRC/RUF abducted hundreds of civilians, including a large number of children, from various areas in Freetown and the Western Area, including Peacock Farm, Kissy, and Calaba Town. These abducted civilians were used as forced labour.”<sup>2565</sup>

<sup>2559</sup> TF1-114, Transcript 18 July 2005, p. 12.

<sup>2560</sup> DAB-027, Transcript 4 September 2006, p. 105.

<sup>2561</sup> DAB-027, Transcript 4 September 2006, p. 106.

<sup>2562</sup> DAB-027, Transcript 4 September 2006, pp. 107-108, 113.

<sup>2563</sup> DAB-027, Transcript 4 September 2006, pp. 109-112.

<sup>2564</sup> DAB-027, Transcript 4 September 2006, pp. 112-115, Transcript 5 September 2006, pp. 2-4, 7.

<sup>2565</sup> Indictment, para. 72.