

1376. No evidence of enslavement was led in relation to Peacock Farm.²⁵⁶⁶

23413

1377. In reaching the following findings of fact, the Trial Chamber has taken into account the evidence adduced, in particular the testimony of Prosecution witnesses TF1-024, TF1-227, TF1-084, TF1-023, TF1-085, George Johnson and TF1-334.

1378. The Trial Chamber has considered the evidence of Prosecution witnesses TF1-023 and TF1-085 in its findings under Count 9²⁵⁶⁷ and TF1-157 under Count 12.²⁵⁶⁸ The evidence therein establishes beyond reasonable doubt that these witnesses were enslaved in Freetown and the Western Area. Their testimony is considered below insofar as it demonstrates that an unknown number of other civilians were abducted and used as forced labour.

(i) Freetown

1379. Prosecution witness George Johnson testified that as the AFRC faction advanced on Freetown on 6 January 1999, they were accompanied by a large number of abductees who carried arms, ammunition and foodstuffs.²⁵⁶⁹

1380. Approximately three weeks later, at a meeting of senior commanders in the Upgun area during the retreat from Freetown, 'Gullit' ordered that troops should begin abducting civilians, saying that this would attract the attention of the international community.²⁵⁷⁰ Witness TF1-334 subsequently observed troops breaking into houses and capturing civilians, especially young girls, and taking them to headquarters at the PWD.²⁵⁷¹ The witness stated that at this time 'almost everybody had civilians,' including the commanders.²⁵⁷² It was the responsibility of the abducting commander to ensure that the civilians were 'well-secured', which the witness explained meant that they could not escape.²⁵⁷³

(ii) Kissy

1381. While the troop was based at Ferry Junction, during the retreat from Freetown, 'Gullit' issued a further order for abductions to start again.²⁵⁷⁴ As ECOMOG advanced towards Ferry

²⁵⁶⁶ Rule 98 Decision, para. 236.

²⁵⁶⁷ Facts and Findings, Outrages on Personal Dignity, paras 2285-1159, *supra*.

²⁵⁶⁸ Facts and Findings, Child Soldiers, paras 1252-1255, *supra*.

²⁵⁶⁹ George Johnson, Transcript 16 September 2005, pp. 8, 21.

²⁵⁷⁰ TF1-334, Transcript 14 June 2005, pp. 62-63.

²⁵⁷¹ TF1-334, Transcript 14 June 2005, pp. 63-64.

²⁵⁷² TF1-334, Transcript 14 June 2005, pp. 118-119.

²⁵⁷³ TF1-334, Transcript 14 June 2005, p. 119.

²⁵⁷⁴ TF1-334, Transcript 14 June 2005, pp. 77-78.

Junction, the AFRC withdrew towards Kissy. In accordance with the Accused Brima's orders, the troops captured civilians as they withdrew. These civilians were taken to Kissy Mental Home.²⁵⁷⁵

1382. This evidence is corroborated by Witness TF1-084, who was in Kissy, Freetown, during the January 1999 retreat. He observed 'rebels' in military dress capturing people, putting them in vehicles and driving them away. The witness testified that among those captured he recognised a 14 year old girl. He did not see any of the people captured again.²⁵⁷⁶

(iii) Calaba Town

1383. Witness TF1-024 testified that on 8 January 1999, he was captured in Freetown by three armed rebel boys who were dressed in ECOMOG uniforms and taken to State House.²⁵⁷⁷ The rebel boys who had captured the witness beat him and then locked him inside the kitchen at State House.²⁵⁷⁸ The witness stated that there were 50 other civilians in the kitchen and they remained locked there for four days without food or water.²⁵⁷⁹ After four days, as ECOMOG approached State House, the rebels forced witness TF1-024 and the other civilians to accompany them on their flight out of Freetown. The rebels made the witness carry a heavy bomb to Calaba Town.²⁵⁸⁰ At Calaba Town, the rebels took the bomb from witness TF1-024 and he escaped.²⁵⁸¹

1384. On the afternoon of 22 January 1999, witness TF1-023 and ten other civilians were captured by an armed young boy in Calaba Town. The boy was with a group of about 200 people, consisting of rebels and civilians whom the rebels had just captured.²⁵⁸² The rebels took the civilians to a location that the witness was unable to identify. The civilians were told that they had been captured to use as human shields, but that they would not be harmed and so they should not be scared. The rebels gave the civilians food and the boy that had captured Witness TF1-023 gave her a small bag to carry. The following day, the civilians were taken to Allen Town, where they met around 300-400 armed rebels and around 100 other civilians.²⁵⁸³ The civilians were guarded by armed boys that prevented them from moving around freely.²⁵⁸⁴

²⁵⁷⁵ TF1-334, Transcript 14 June 2005, pp. 79-80; Transcript 15 June 2005 pp. 8-9; George Johnson, Transcript 16 September 2005, pp. 52-53.

²⁵⁷⁶ TF1-084, Transcript 6 April 2005, pp. 38-40.

²⁵⁷⁷ TF1-024, Transcript 7 March 2005, pp. 43-45, 63-65.

²⁵⁷⁸ TF1-024, Transcript 7 March 2005, p. 44.

²⁵⁷⁹ TF1-024, Transcript 7 March 2005, pp. 48-49.

²⁵⁸⁰ TF1-024, Transcript 7 March 2005, pp. 48, 50-51, 53, 81.

²⁵⁸¹ TF1-024, Transcript 7 March 2005, p. 53.

²⁵⁸² TF1-023, Transcript 9 March 2005, pp. 30-31.

²⁵⁸³ TF1-023, Transcript 9 March 2005, pp. 32-34.

²⁵⁸⁴ TF1-023, Transcript 9 March 2005, p. 35.

(iv) Other locations in Freetown and Western Area

1385. In late January 1999, witness TF1-227 was captured in Kola Tree by soldiers who accused him of being a Kamajor.²⁵⁸⁵ Witness TF1-227 remained in captivity for 10 months. At Kola Tree, there were about 200 civilians who were forced by the AFRC to join them in the retreat to Benguema.²⁵⁸⁶

1386. While the above evidence relates primarily to abductions, the Trial Chamber is satisfied on the basis of the following evidence that AFRC soldiers used the civilians abducted during the retreat from Freetown as forced labour.

1387. Witness TF1-227 testified that during the retreat to Benguema, AFRC soldiers used civilians to carry loads, perform domestic tasks or act as guards.²⁵⁸⁷ Witnesses TF1-334 and TF1-227 testified that when the troops arrived at Benguema, they were accompanied by several hundred civilians who had been abducted in Freetown. During the month in which the troops were based there, the civilians went on food finding missions, pounded rice, carried looted items and participated in cooking.²⁵⁸⁸ Witness TF1-334 stated that the civilians were obliged to perform these tasks because there was no way that they could escape.²⁵⁸⁹

1388. From Benguema, the troops retreated to Newton, where they remained about a month, performing similar tasks.²⁵⁹⁰ At Newton, 'Five-Five' was responsible for all the young girls at the camp. Witness TF1-334 observed problems with the girls being reported to him.²⁵⁹¹

(v) Findings

1389. On the basis of the evidence above, the Trial Chamber is satisfied beyond reasonable doubt that between 6 January 1999 and 28 February 1999, members of the AFRC abducted large numbers of civilians from locations including Freetown, Kissy, Calaba Town and Kola Tree and used these civilians as forced labour in locations including Benguema and Newton in the Western Area. The Trial Chamber accordingly finds, without predetermining the individual responsibility of the three Accused, that the elements in relation to Count 13 have been established.

²⁵⁸⁵ TF1-227, Transcript 8 April 2005, p. 96.
²⁵⁸⁶ TF1-227, Transcript 8 April 2005, p. 98; Transcript 11 April 2005, p. 6.
²⁵⁸⁷ TF1-227, Transcript 8 April 2005, p. 98; Transcript 11 April 2005, p. 6.
²⁵⁸⁸ TF1-334, Transcript 14 June 2005, p. 113-116; TF1-227, Transcript 11 April 2005, pp. 12-13.
²⁵⁸⁹ TF1-334, Transcript 14 June 2005, pp. 119-120.
²⁵⁹⁰ TF1-334, Transcript 15 June 2005, p. 13-15.
²⁵⁹¹ TF1-334, Transcript 15 June 2005, p. 15.

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(g) Port Loko District (about February 1999)

1390. The Indictment alleges that “[a]bout the month of February 1999, the AFRC/RUF fled from Freetown to various locations in the Port Loko District. Members of the AFRC/RUF used civilians, including those that had been abducted from Freetown and the Western Area, as forced labour in various locations throughout the Port Loko District including Port Loko, Lunsar and Masiaka. AFRC/RUF forces also abducted and used as forced labour civilians from various locations in the Port Loko District, including Tendakum and Nonkoba”.²⁵⁹²

1391. In arriving at the following findings, the Trial Chamber has examined the entire evidence in relation to enslavement in Port Loko District, in particular the testimony of witnesses TF1-334 and George Johnson. No evidence was adduced of enslavement in February 1999 in Port Loko, Lunsar, Tendakum and Nonkoba.

(i) Other locations in Port Loko District

1392. In Mamamah Town, the troops were ordered by the Accused Kamara to use civilians to dig a large ditch in the road to create an obstacle for ECOMOG forces. Civilians did so, using pick axes, under the supervision of the Accused Kamara.²⁵⁹³ The Trial Chamber is of the view that this isolated incident of forced labour of short duration does not involve the exercise of powers attaching to the right of ownership over the victims. It is therefore of an insufficient gravity to prove the *actus reus* of enslavement.

1393. Witnesses testified that about 700 people, including abducted civilians, were at the AFRC base in Gberi Bana under the command of the Accused Kamara.²⁵⁹⁴ However, in the absence of further evidence as to whether the abductees were used as forced labour, and in light of the evidence of witness TF1-334 that civilians joined the AFRC troops retreating from Benguema did so since they feared for their lives,²⁵⁹⁵ the Trial Chamber finds that there is reasonable doubt as to whether these civilians were enslaved.

(ii) Findings

1394. The Trial Chamber accordingly finds that the Prosecution has failed to establish that civilians were enslaved in February 1999 in Port Loko District.

²⁵⁹² Indictment, para. 73.

²⁵⁹³ TF1-334, Transcript 15 June 2005, pp. 21-22.

G. Count 14 (Pillage)

23417

1. Allegations and Submissions

1395. The Indictment alleges that members of the AFRC/RUF subordinate to and/or acting in concert with the Accused carried out “[w]idespread unlawful taking and destruction by burning of civilian property”.²⁵⁹⁶ This looting and burning was allegedly carried out in various locations in the territory of Sierra Leone including Bo District between 1 June 1997 and 30 June 1997; Koinadugu District between about 14 February 1998 and 30 September 1998; Kono District between about 14 February and 30 June 1998; Bombali District between about 1 March 1998 and 30 November 1998; and Freetown and the Western Area between 6 January 1999 and 28 February 1999.²⁵⁹⁷

1396. Submissions by the Parties with regard to specific incidents and witnesses will be discussed as they arise in the evidence below.

2. Evidence and Deliberations

1397. The Trial Chamber recalls its finding that the burning of property does not satisfy the legal elements of pillage.²⁵⁹⁸ Therefore, the Trial Chamber will only examine the evidence relating to the underlying acts of looting.

1398. The Trial Chamber recalls that on several occasions, senior AFRC and RUF commanders declared operations that authorised their forces to plunder civilian property. Following the retreat from Freetown in February 1998, Johnny Paul Koroma declared “Operation Pay Yourself” over BBC Radio.²⁵⁹⁹ Witness TF1-334 testified that Koroma announced this operation, which encouraged the troops to loot property, since without access to state revenue he could no longer pay them.²⁶⁰⁰ Sam Bockarie declared a similar operation to his soldiers in Kenema District in February 1998.²⁶⁰¹ Looting with reference to ‘Operation Pay Yourself’ continued long after their announcement.²⁶⁰²

²⁵⁹⁴ TF1-334, Transcript 15 June 2005, p. 31; George Johnson, Transcript 16 September 2005, p. 72. *See* Role of Accused, paras 485-500, *supra*, for further detail on the Accused Kamara in Port Loko District in this period.

²⁵⁹⁵ TF1-334, Transcript 15 June 2005, p. 10.

²⁵⁹⁶ Indictment, para. 74.

²⁵⁹⁷ Indictment, paras 75-79.

²⁵⁹⁸ Applicable Law, para. 757, *supra*.

²⁵⁹⁹ TF1-334, Transcript 17 May 2005, pp. 72-73.

²⁶⁰⁰ TF1-334, Transcript 17 May 2005, pp. 72-73; TF1-216, Transcript 27 June 2005, pp. 78-80, 96.

²⁶⁰¹ TF1-045, Transcript 19 July 2005, p. 82.

²⁶⁰² Witness TF1-216 testified that soldiers referred to ‘Operation Pay Yourself’ following the capture of Koidu Town in March 1998: Transcript 27 June 2005, pp. 78-80, 96. Witness TF1-334 testified that the operation continued up to

1399. Given this context, the Trial Chamber is satisfied that the looting described below was directly linked to the war efforts of the AFRC and RUF and that the perpetrators were aware of the existence of an armed conflict and of the protected status of the owner of the property.

1400. The Trial Chamber is satisfied, in respect of each incident of looting described below, that the perpetrators intended to deprive the civilians of their property, without their consent, and appropriate it for their personal use.

(a) Bo District (1 June 1997 - 30 June 1997)

1401. The Prosecution alleges that “[b]etween 1 June 1997 and 30 June 1997, AFRC/RUF forces looted [...] in Telu, Sembehun, Mamboma and Tikonko”.²⁶⁰³

1402. The Trial Chamber has previously found that no evidence on pillage was adduced with respect to Telu, Sembehun and Mamboma.²⁶⁰⁴ The Trial Chamber finds that no evidence has been adduced of acts of looting with respect to Tikonko.

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

1403. The Prosecution alleges that “[b]etween about 14 February 1998 and 30 September 1998, AFRC/RUF forces engaged in widespread looting [...] in the District, including Heremakono, Kabala, Kamadugu and Fadugu”.²⁶⁰⁵

1404. The Trial Chamber has previously held that the Prosecution has not led evidence on pillage with respect to Heremakono and Kamadugu.²⁶⁰⁶ No evidence was adduced of looting within the Indictment period in Fadugu.

1405. In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on Prosecution witnesses TF1-147, TF1-153 and TF1-199, Defence witness DAB-078 and Exhibit P-57.

(i) Kabala

Kono District: Transcript 20 June 2005, pp. 104-10. Witness TF1-157 testified that looting AFRC soldiers referred to ‘Operation Pay Yourself’ in Bombali District in April/May 1998: Transcript 22 July 2005, p. 68.

²⁶⁰³ Indictment, para. 75.

²⁶⁰⁴ Rule 98 Decision, para. 261.

²⁶⁰⁵ Indictment, para. 76.

²⁶⁰⁶ Rule 98 Decision, para. 261.

1406. Witness TF1-147 testified that following a “rebel” attack on Kabala on 27 July 1998, property of civilians, including his personal belongings, were looted.²⁶⁰⁷ The witness did not see the perpetrators, but concluded that the “rebels” who attacked the town were responsible.²⁶⁰⁸ In a second attack on 17 September 1998, fighters again looted civilian property from houses.²⁶⁰⁹ The witness believed that the attack was conducted by the same “rebels” who had staged the July attack.²⁶¹⁰

1407. Witness TF1-147 was not able to identify the faction that attacked Kabala town on those two occasions. However, witness DAB-078 stated that around September 1998 he heard that troops under the command of ‘Savage’ had looted a house in Kabala.²⁶¹¹

1408. From the date given of the attacks and the overall evidence adduced, the Trial Chamber finds beyond reasonable doubt that the attacks on Kabala were conducted by troops associated with SAJ Musa and/or Dennis Mingo.

(ii) Finding

1409. On the basis on the foregoing evidence and without predetermining the individual responsibility of the three Accused, the Trial Chamber finds beyond a reasonable doubt that between about 14 February 1998 and 30 September 1998, AFRC/RUF forces engaged in looting in Kabala in Koinadugu District.

(c) Kono District (14 February 1998 - 30 June 1998)

1410. The Prosecution alleges that “[b]etween about 14 February 1998 and 30 June 1998, AFRC/RUF engaged in widespread looting and burning in various locations in the District, including Tombodu, Foindu and Yardu Sando, where virtually every home in the village was looted [...]”²⁶¹²

1411. The Trial Chamber has previously found that no evidence on pillage was led with respect to Foindu.²⁶¹³

²⁶⁰⁷ TF1-147, Transcript 13 July 2005, p. 10; TF1-199, Transcript 6 October 2005, p. 88.

²⁶⁰⁸ TF1-147, Transcript 13 July 2005, pp. 10-12.

²⁶⁰⁹ TF1-147, Transcript 13 July 2005, p. 14.

²⁶¹⁰ TF1-147, Transcript 13 July 2005, p. 13.

²⁶¹¹ DAB-078, Transcript 6 September 2006, pp. 41, 43-44.

²⁶¹² Indictment, para. 77.

²⁶¹³ Rule 98 Decision, para. 261.

1412. In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on Prosecution witnesses TF1-019 and TF1-072.

(i) Tombodu

1413. Witness TF1-072 testified that in March 1998, soldiers under the command of ‘Savage’²⁶¹⁴ on the way to Tombodu forcefully appropriated five gallons of palm wine from a civilian and consumed the palm wine.²⁶¹⁵

(ii) Yardu Sando

1414. Witness TF1-019 testified that on 16 April 1998, AFRC soldiers and RUF rebels attacked Yardu Sando²⁶¹⁶ and took boxes and other valuable property from civilian houses.²⁶¹⁷ The fighters were singing in joy about the property they looted.²⁶¹⁸

(iii) Findings

1415. On the basis on the foregoing evidence and without predetermining the individual responsibility of the three Accused, the Trial Chamber finds beyond a reasonable doubt that between about 14 February 1998 and 30 June 1998, AFRC/RUF forces engaged in looting in Tombodu and Yardu Sando in Kono District.

(d) Bombali District (1 March 1998-31 November 1998)

1416. The Prosecution alleges that “[b]etween about 1 March 1998 and 31 November 1998, AFRC/RUF forces burnt an unknown number of civilian buildings in locations in Bombali District, such as Karina and Mateboi”.²⁶¹⁹

1417. Although the Prosecution adduced evidence with respect to looting in Karina, Makeni and Camp Rosos, acts of looting are not alleged in the Indictment with regard to Bombali District. The Trial Chamber accordingly makes no findings on this evidence.

²⁶¹⁴ TF1-072, Transcript 1 July 2005, pp. 21-22.

²⁶¹⁵ TF1-072, Transcript 1 July 2005, pp. 11-12.

²⁶¹⁶ TF1-019, Transcript 30 June 2005, pp. 89, 94-95.

²⁶¹⁷ TF1-019, Transcript 30 June 2005, pp. 89-91.

²⁶¹⁸ TF1-019, Transcript 30 June 2005, p. 114.

²⁶¹⁹ Indictment, para. 78.

(e) Freetown and the Western area (6 January 1999-28 February 1999)

1418. The Prosecution alleges that “[b]etween 6 January 1999 and 28 February 1999, AFRC/RUF forces engaged in widespread looting [...] throughout Freetown and the Western Area”.²⁶²⁰

1419. Given that burning does not constitute an act of pillage, the Trial Chamber has not made findings on the destruction of civilian houses in Kissy, Wellington and Calaba Town, as pleaded in the Indictment.²⁶²¹ The Trial Chamber makes findings only on incidents of looting which occurred within Freetown and not the greater Western Area.

1420. In arriving at the following findings of fact, the Trial Chamber has considered the available evidence and relies on the testimony of Prosecution witnesses Gibril Massaquoi, TF1-334, and TF1-083.

(i) State House

1421. On 6 January 1999 at State House, witness TF1-334 was present when the Accused Brima ordered the Operation Commander to collect the vehicles parked at UN House and bring them to State House, since the commanders needed vehicles for transportation within the city. Following the order, the Operation Commander moved towards ‘UN House’ and subsequently returned to State House with jeeps and Toyota Land Cruisers.²⁶²²

1422. Moreover, Gibril Massaquoi testified that whilst present at State House during the January 1999 invasion of Freetown, he observed that “almost all” AFRC faction commanders had vehicles. He stated that he saw the Accused Brima entering State House with a jeep, the Accused Kanu with a white ‘Hilux’ with an ‘UNDP’ logo, and other vehicles being used with the ‘UNWFP’ logo.²⁶²³ Accordingly, the witness understood that these vehicles had been looted.²⁶²⁴

1423. Witness TF1-334 testified that on 6 January 1999 he observed extensive looting within State House. He stated that the Presidential Office and all other offices were completely vandalised.²⁶²⁵ The Trial Chamber is satisfied that this looting was carried out by AFRC troops, as State House was the headquarters of the AFRC troops during the Freetown invasion.

²⁶²⁰ Indictment, para. 79.
²⁶²¹ Indictment, para. 79.
²⁶²² TF1-334, Transcript 14 June 2005, p. 24.
²⁶²³ Gibril Massaquoi, Transcript 7 October 2005, p. 126.
²⁶²⁴ Gibril Massaquoi, Transcript 7 October 2005, p. 126.
²⁶²⁵ TF1-334, Transcript 14 June 2005, pp. 25-26.

(ii) Kissy

1424. On 6 January 1999, two men wearing plain clothes and military trousers and one other man wearing full military uniform and carrying a gun took away money and food from witness TF1-104 and his family.²⁶²⁶

1425. One Friday at about 12:30 p.m. during the January 1999 invasion of Freetown, a congregation of people were gathered inside Rogbalan mosque to attend Juma prayers when “armed men” carrying guns, cutlasses and axes attacked the people. Witness TF1-021 testified that these armed men took 15,000 Leones from his pocket.²⁶²⁷

1426. During the January 1999 invasion of Freetown, “rebels” wearing military uniforms raided Kissy area and stole civilian property.²⁶²⁸ Witness TF1-084 was present in Kissy area and saw the looting taking place. He stated that the “rebels” led by ‘Akim’ entered civilian houses, loaded televisions, radios and other goods onto their vehicles and drove off.²⁶²⁹ The rebels also attacked houses on Rowe Street where they captured eight civilians, including witness TF1-084, and took away all their money.²⁶³⁰ Shortly thereafter, Commander ‘Tafaiko’ removed the witness’ gold plated wrist watch and took it from him. ‘Tafaiko’ also took an amount of \$200 which he had removed from the witness’s pocket.²⁶³¹

1427. On 22 January 1999, “rebels” wearing combat and armed with guns and machetes broke into a house on Old Road. Witness TF1-083 stated that the “rebels” demanded money and other valuables, including clothes, which they took from him and other civilians in the house.²⁶³²

1428. On the same day, Witness TF1-083 also encountered several “rebels” armed with guns, machetes, knives and axes at Locust and Samuel’s area at Old Road. One of the “rebels” took the witness’s shirt and wore it. Another “rebel” took money from the witness’s pockets.²⁶³³

(iii) Findings

1429. On the basis on the foregoing evidence and without predetermining the individual responsibility of the three Accused, the Trial Chamber finds beyond reasonable doubt that between

²⁶²⁶ TF1-104, Transcript 30 June 2005, pp. 30, 31.

²⁶²⁷ TF1-021, Transcript 15 April 2005, pp. 26, 34-35.

²⁶²⁸ TF1-084, Transcript 6 April 2005, p. 39.

²⁶²⁹ TF1-084, Transcript 6 April 2005, pp. 38-39.

²⁶³⁰ TF1-084, Transcript 6 April 2005, pp. 40-41.

²⁶³¹ TF1-084, Transcript 6 April 2005, pp. 41-42.

²⁶³² TF1-083, Transcript 8 April 2005, pp. 59-60.

²⁶³³ TF1-083, Transcript 8 April 2005, pp. 62-63.

23423

6 January 1999 and 28 February 1999, AFRC forces engaged in looting in State House in Freetown and Kissy in the Western Area.

H. Acts of Terrorism (Count 1) and Collective Punishment (Count 2)

1430. The Indictment alleges that at all times relevant to the Indictment, members of the RUF, AFRC, Junta and/or AFRC/RUF forces (AFRC/RUF), subordinate to and/or acting in concert with the three Accused conducted armed attacks throughout the territory of the Republic of Sierra Leone, including Bo, Kono, Kenema, Koinadugu, Bombali, Kailahun and Port Loko Districts and the City of Freetown and the Western Area. Targets of the armed attacks included civilians.²⁶³⁴

1431. The Indictment alleges that these attacks were carried out primarily to terrorize the civilian population but were also used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The Indictment further alleges that the attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. It is alleged that many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes – dead bodies, mutilated victims and looted and burnt property.²⁶³⁵

1432. The Indictment alleges that as part of the campaign of terror and punishment the AFRC/RUF routinely captured and abducted members of the civilian population. It alleges that captured women and girls were raped; many of them were abducted and used as sex slaves and as forced labour; and that some of these women and girls were held captive for years. It alleges that men and boys who were abducted were also used as forced labour; some of them were also held captive for years; and that many abducted boys and girls were given combat training and used in active fighting. It is alleged that AFRC/RUF also physically mutilated men, women and children, including amputating their hands or feet and carving “AFRC” and “RUF” on their bodies.²⁶³⁶

1433. The Indictment alleges that members of the AFRC/RUF subordinate to and/or acting in concert with Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu committed the crimes set forth in paragraphs 42 through 79 and charged in Counts 3 through 14 (Counts 3-5: Unlawful Killings; Counts 6-9: Sexual Violence; Counts 10-11: Physical Violence; Count 12: Use of Child Soldiers; Count 13: Abductions and Forced Labour; Count 14: Looting and Burning) as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The Indictment alleges that the AFRC/RUF also committed the crimes to

²⁶³⁴ Indictment para. 38; *See also* Prosecution Opening Statement, Transcript 7 March 2005, p. 26.

²⁶³⁵ Indictment para. 39; *See also* Prosecution Opening Statement, Transcript 7 March 2005, p. 26.

²⁶³⁶ Indictment para. 40; *See also* Prosecution Opening Statement, Transcript 7 March 2005, p. 27.

punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF.²⁶³⁷

1434. The Indictment charges that, by their acts or omissions in relation to these events, the three Accused, pursuant to Article 6.1 and/or alternatively, Article 6.3 of the Statute, are individually criminally responsible for the crimes alleged in Count 1, Acts of Terrorism, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.d. of the Statute,²⁶³⁸ and in Count 2, Collective Punishments, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II punishable under Article 3.b. of the Statute.²⁶³⁹

1. Allegations and Submissions

(a) Evidentiary basis

1435. In its Supplemental Pre-Trial and Final Briefs, the Prosecution asserted that the evidentiary basis for the crimes charged in Counts 3 to 14 of the Indictment, taken as a whole, provides the evidentiary basis for the acts of terrorism charged as Count 1 and the collective punishments charged as Count 2.²⁶⁴⁰

1436. The Trial Chamber notes that the *actus reus* of the crime of terror involves “acts or threats of violence directed against protected persons or their property”. A plain reading suggests that the factual basis of this element could, in theory, encompass a broader range of facts than those necessary to prove the *actus reus* elements of the crimes charged in Counts 3 to 14 of the Indictment. As set out by this Chamber in the Applicable Law, *supra*, the *Galić* Appeals Chamber has confirmed that “the nature of the acts or threats of violence directed at the civilian population can vary; the primary concern [...] is that those acts or threats of violence can be committed with the specific intent to spread terror among the civilian population.”²⁶⁴¹ This Chamber has held that acts of terrorism are not restricted to violence, or threats of violence, targeted at protected persons but may include threats of attacks on, or destruction of, people’s property or means of survival.

²⁶³⁷ Indictment para. 41.

²⁶³⁸ Indictment para. 41; *See also* Prosecution Opening Statement, Transcript 7 March 2005, p. 27.

²⁶³⁹ Indictment para. 41; *See also* Prosecution Opening Statement, Transcript 7 March 2005, p. 27.

²⁶⁴⁰ Prosecution Supplemental Pre-Trial Brief Pursuant to Order to the Prosecution to File a Supplemental Pre-Trial Brief of 1 April 2004, 21 April 2004, para. 14. [“Prosecution Supplemental Pre-Trial Brief”]; Prosecution Final Brief, paras 543, 560, 1373, 1288, 1488, 1517, 1561.

²⁶⁴¹ *Galić* Appeal Judgement, para. 102.

1437. The Trial Chamber notes also that some evidence has been adduced by the Prosecution in this case which does not go to the proof of the crimes indicted in Counts 3 - 14. While such evidence might theoretically go to proof of the *actus reus* of the crime of Terror in an abstract consideration, the Trial Chamber does not rely upon it in this case as to do so would place an unfair burden upon the Defence who cannot be said to have been put on notice of such in the Prosecution's case against the Accused. This is similarly the case with any evidence of threats of violence which may have been adduced by the Prosecution, but which have not been expressly pleaded by the Prosecution. The Trial Chamber, therefore, has limited its examination of the evidence adduced in relation to the crime of terror in this case to acts of violence which have been pleaded by the Prosecution as going to crimes laid out in the Indictment.

1438. The Trial Chamber, does however, make an exception to this limitation with regards to evidence which relates to acts of burning civilian property. The Trial Chamber has found that burning, as alleged by the Prosecution, is not inclusive of the crime of pillage.²⁶⁴² However, the Trial Chamber is of the opinion that burning, unlike other evidence adduced by the Prosecution which does not go to proof of the crimes alleged, has been sufficiently particularized by the Prosecution in the Indictment under Count 14, and that therefore, the Defence has been put on adequate notice. The Trial Chamber will therefore take into consideration evidence of burning in relation to the *actus reus* of the crime of the crime of terror as an act of violence directed against protected persons or their property.

1439. With regards to the element of the crime of terror that the acts or threats of violence directed against protected persons or their property were committed with the primary purpose of spreading terror among the civilian population, the Trial Chamber may rely on evidence which demonstrates a pattern of similar attacks, the context of the act, or is otherwise indicative of the purpose relative to any acts of violence committed, regardless of the nature of that evidence. The Trial Chamber will therefore examine the whole of the evidentiary record in this regard.

1440. The Trial Chamber therefore adopts a two-step approach to the examination of the crime of terror as follows:

Were acts of violence particularised in the Indictment wilfully directed against protected persons or their property by members of the AFRC?

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²⁶⁴² Rule 98 Decision.

If so, is there evidence which proves beyond a reasonable doubt that these acts were committed with the primary intent of spreading terror among the civilian population?

(b) Primary purpose

1441. In its Final Brief, the Kanu Defence argues that the intent required for a finding of terror is a special intent, namely, that the Accused must not only be aware of the possibility that terror would result, but that terror was the result that was specifically intended.²⁶⁴³ The Kanu Defence argues that from the time the AFRC was ousted from Freetown by ECOMOG in February 1998, SAJ Musa was the overall commander of the AFRC and that the overall goal of the AFRC was to reinstate the army in Freetown. As such, the Kanu Defence argues that all crimes allegedly committed during this time were in furtherance of this goal and that the Prosecution did not lead any evidence that Kanu’s primary goal was to spread terror.²⁶⁴⁴

1442. The Appeals Chamber in the *Galić* case held:

[...] the purpose of the unlawful acts or threats to commit such unlawful acts need not be the only purpose of the acts or threats of violence. The fact that other purposes may have coexisted simultaneously with the purpose of spreading terror among the civilian population would not disprove this charge, provided that the intent to spread terror among the civilian population was principal among the aims. Such intent can be inferred from the circumstances of the acts or threats, that is from their nature, manner, timing and duration.²⁶⁴⁵

1443. The Trial Chamber therefore finds as a preliminary observation, that the possibility that another purpose to acts of violence may have existed does not in and of itself disprove that the primary purpose was to spread terror among the civilian population. Whether such a purpose was the *primary* purpose is a question to be determined in relation to the events outlined below.

1444. The Trial Chamber refers to paragraphs 38 and 39 of the Indictment in which the Prosecution sets out the particulars of Count 1, Terror. It is stated in paragraph 38 that “members of the RUF, AFRC, Junta and/or AFRC/RUF forces (AFRC/RUF) [...] conducted armed attacks throughout the territory of the Republic of Sierra Leone [...]”²⁶⁴⁶ Paragraph 39 continues, “These attacks were carried out primarily to terrorize the civilian population, but were also used to punish the population for failing to provide sufficient support to the Kabbah government or pro-government forces.”²⁶⁴⁷ The alleged attacks to which the Indictment refers occurred in the context of an internal armed conflict in which various parties, each maintaining their own overall goals,

²⁶⁴³ Kanu Final Brief, p. 135.
²⁶⁴⁴ Kanu Final Brief, para. 400.
²⁶⁴⁵ *Galić* Appeal Judgement, para 104.
²⁶⁴⁶ Indictment, para. 38.

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engaged with each other and with the civilian population in a number of encounters. Any given encounter or attack within the context of the overall conflict may have been undertaken for any number of strategic, necessary or other reasons. It is a question of whether any particular attack or series of attacks was waged with the primary purpose to spread terror among the civilian population that the Indictment bids the Trial Chamber to determine. The Trial Chamber finds therefore, that the Kanu Defence submission that all the crimes allegedly committed during this time were in furtherance of the overall goal of SAJ Musa to reinstate the army in Freetown does not address the question before it with regards to Count 1.

2. Evidence and Deliberations

(a) Primary purpose of certain acts of violence

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

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

(i) Child soldiers

1447. The Trial Chamber has found that children abducted by the AFRC/RUF were forced to undergo military training²⁶⁴⁸ and were organised into “Small Boy Units” (SBUs)²⁶⁴⁹ and battalions.²⁶⁵⁰ Child soldiers were forced to fight along side the AFRC/RUF²⁶⁵¹ and to guard strategic points of interest such as Cyborg Pit, a diamond mine in Kenema District, diamonds being the main source of conflict in the region. Child soldiers were forced into labour which supported and maintained the troops. Such labour included carrying loads of food and other “luggage”,

²⁶⁴⁷ Indictment, para. 39.

²⁶⁴⁸ Factual Findings, Child Soldiers, para. 1254, *supra*.

²⁶⁴⁹ Factual Findings, Child Soldiers, para. 1271, *supra*.

²⁶⁵⁰ Factual Findings, Child Soldiers, para. 1271, *supra*.

²⁶⁵¹ Factual Findings, Child Soldiers, para. 1255, *supra*.

fetching water and pounding rice. Child soldiers were forced to flog captured civilians²⁶⁵², act as bodyguards²⁶⁵³, amputate civilians²⁶⁵⁴ and were used as human shields.²⁶⁵⁵

1448. Generally speaking, the Trial Chamber has concluded that Junta forces abducted children for military purposes in Kenema District during the Junta period, that AFRC forces abducted children for military purposes in Kono, Koinadugu and Bombali Districts in 1998 and in Freetown and the Western Area in 1999. The Trial Chamber has also concluded that children were used for military purposes in Kenema District in 1997-1998, Kono District in 1998, and Freetown and Western Area in 1999.²⁶⁵⁶ On the basis of the evidence of expert witnesses, the Trial Chamber has also concluded that persons under the age of 15 were used for military purposes by all factions, including the AFRC, during the conflict including the period 25 May 1997-mid 1999.

1449. The Trial Chamber notes the evidence of Witness TF1-334 who stated that during the 1999 invasion of Freetown, the Accused Brima ordered the capture of civilians saying it would attract the attention of the international community²⁶⁵⁷ and the finding of the Chamber that children were among those captured. While this evidence suggests that a non-military purpose also drove the AFRC to abduct children in this context, the Trial Chamber finds this purpose was subordinate given the overwhelming evidence of the conscription and use of child soldiers for military purposes. This is supported by the further evidence of Witness TF1-334 who testified that the children abducted from Freetown were later trained to be SBUs.²⁶⁵⁸

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

(ii) Abductions and Forced Labour

²⁶⁵² Factual Findings, Child Soldiers, para. 1262, *supra*.

²⁶⁵³ Factual Findings, Child Soldiers, para. 1268, *supra*.

²⁶⁵⁴ Factual Findings, Child Soldiers, para. 1270, *supra*.

²⁶⁵⁵ Factual Findings, Child Soldiers, para. 1275, *supra*.

²⁶⁵⁶ Factual Findings, Child Soldiers paras 1278, *supra*.

²⁶⁵⁷ TF1-334, Transcript 14 June 2005, pp. 118-119, *supra*.

²⁶⁵⁸ TF1-334, Transcript 14 June 2005, pp. 182, *supra*.

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1451. The Trial Chamber has found that civilians abducted by the AFRC/RUF were forced to mine for diamonds at Cyborg Pit in Tongo Field, Kenema District.²⁶⁵⁹ Witness TF1-334 testified that the Accused Brima ordered his troops to capture any civilian who looked strong in order to make them part of the troops prior to attacks in Koinadugu and Bombali Districts.²⁶⁶⁰ The Trial Chamber has found that abducted civilians were trained to use arms²⁶⁶¹ and were given military training in Rosos, Bombali District.²⁶⁶² They were also pressed into forced labour²⁶⁶³ including being forced to carry equipment and other goods for the troops.²⁶⁶⁴

1452. The Trial Chamber notes the evidence of Witness TF1-334 who testified that Brima ordered the abduction of civilians from Freetown during the attack in order to attract the attention of the international community.²⁶⁶⁵ Similar to child soldiers, while this evidence suggests that a non-military purpose may have also driven the AFRC to abduct civilians in this context, the Trial Chamber is satisfied that this purpose was subordinate given the overwhelming evidence of the abduction of civilians for use as slave labour and/or to strengthen the number of the troops. The Trial Chamber notes its further findings that the Accused Brima told his fighters to force captured civilians to join their forces in order to compensate for those fighters killed by ECOMOG.²⁶⁶⁶ The Trial Chamber has also found that civilians captured in Freetown were forced to join the rebel forces, that they accompanied the troops out of Freetown and were forced to carry loads. The Trial Chamber has also found that rebels told the civilians captured in Freetown that they had captured them to use them as human shields.²⁶⁶⁷

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

1454. The Trial Chamber finds, therefore, that the primary purpose behind commission of abductions and forced labour was not to spread terror among the civilian population, but rather was primarily utilitarian or military in nature. As with evidence of the abduction and use of child soldiers, therefore, even where abductions and forced labour occurred simultaneously with other

²⁶⁵⁹ Factual Findings, Enslavement, paras 1289-1309, *supra*.

²⁶⁶⁰ TF1-334, Transcript 23 May 2005, pp. 15-17.

²⁶⁶¹ Factual Findings Enslavement, para. 1363, *supra*.

²⁶⁶² Factual Findings Enslavement, paras 1355-1359, *supra*.

²⁶⁶³ Factual Findings Enslavement, paras 1355-1359, *supra*.

²⁶⁶⁴ Factual Findings Enslavement, paras 1355-1359, *supra*.

²⁶⁶⁵ TF1-334, Transcript 14 June 2005, pp. 62-64.

²⁶⁶⁶ Factual Findings, Unlawful Killings, para. 914, *supra*.

acts of violence otherwise examined by this Chamber with regards to the crime of terror, the Trial Chamber is of the opinion that such acts cannot be considered to have been committed with the primary purpose to terrorise protected persons.

(iii) Sexual Slavery

1455. The Trial Chamber has found that many women abducted by the AFRC troops were detained for many months, repeatedly raped and forced to do domestic work such as cooking, washing clothes and to carry loads. Many women were told by the perpetrators that they were now their “wives”.²⁶⁶⁸

1456. Witness TF1-334 testified that at Rosos, civilians were captured by “rebels” from the surrounding villages. Those who tried to escape were executed.²⁶⁶⁹ 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.”²⁶⁷⁰ This was an open practice. The Witness testified that he and other soldiers all “had sexual intercourse” with captured women.²⁶⁷¹

1457. Witness TF1-133 testified that all the women who were captured at the same time as her were given to men as their wives which meant that the women had to have sex with the men.²⁶⁷² She testified further that in Krubola, the captured women cooked, “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.

²⁶⁶⁷ Factual Findings, Enslavement, para. 1384, *supra*.

²⁶⁶⁸ Factual Findings, Outrages upon Personal Dignity, *supra*.

²⁶⁶⁹ TF1-334, Transcript 20 May 2005, pp. 4-5.

²⁶⁷⁰ TF1-334, Transcript 20 May 2005, pp. 4-6.

²⁶⁷¹ TF1-334, Transcript 20 May 2005, p. 7.

²⁶⁷² TF1-133, Transcript 7 July 2005, pp. 90-92.

1458. The practice of sexual slavery was regulated by the AFRC troops through a system of ownership and punishment for transgressing the rules.²⁶⁷³ Witness TF1-094 testified that she believed that if she refused to have sex with her captor, she would have been killed.²⁶⁷⁴ Some women were transferred as “wives” between two or more different soldiers.²⁶⁷⁵

1459. The Trial Chamber therefore finds that in the particular factual circumstances before it, the primary purpose behind commission of sexual slavery was not to spread terror among the civilian population, but rather was committed by the AFRC troops to take advantage of the spoils of war, by treating women as property and using them to satisfy their sexual desires and to fulfil other conjugal needs. As with evidence of the other enslavement crimes, namely the abduction and use of child soldiers and forced labour therefore, even where sexual slavery occurred simultaneously with other acts of violence examined by this Chamber with regards to the crime of terror, the Trial Chamber is of the opinion that such acts cannot be considered to have been committed with the primary purpose to terrorise the civilian population.

(iv) Physical Violence: Amputations

1460. The Trial Chamber has found that amputations of civilians were carried out by members of the AFRC in Kono and Koinadugu Districts as well as in the City of Freetown. In Tombodu, Kono District, the Trial Chamber has found amputations were carried out by members of the AFRC in retaliation for alleged civilian killings of AFRC soldiers, as a warning to other civilians, and because civilians did not support the AFRC but supported the government. Civilians whose hands were amputated by members of the AFRC were told to ask President Kabbah for new hands.²⁶⁷⁶

1461. The Trial Chamber has found that civilians throughout Freetown, during the January 1999 invasion also had their hands amputated by members of the AFRC and were told to go to President Kabbah and ask him for new hands. During a raid of the PWD areas an AFRC operation was carried out called ‘Operation Cut Hand’ in which civilians were given the cruel choice of having either “short sleeves” or “long sleeves” meaning amputations of the arm at the bicep or of the hand at the wrist. In the Uppun, Ross Road and Fourah Bay area, civilians were “taught a lesson” and had their hands amputated and were hacked to death. Civilians there were told that as they had voted for “Pa Kabbah” they should go to him as he had hands to give them. They were also told to go to “Pa

²⁶⁷³ TF1-133, Transcript 7 July 2005, pp. 98-102, pp. 102-106; TF1-334, Transcript 23 May 2005, pp. 76-77; TF1-033, Transcript 12 July 2005, p. 9.

²⁶⁷⁴ TF1-094, Transcript 13 July 2005, pp. 28-29, 49.

²⁶⁷⁵ DAB-156, Transcript 29 September 2006, pp. 39-40, 42-49; TF1-023, Transcript 9 March 2005, p. 46.

²⁶⁷⁶ See generally Factual Findings, Physical Violence, *supra*.

Kabbah” or ECOMOG to complain. Civilians near Shell Company at Old Road had their hands amputated and were told to go to “Pa Kabbah” because they had voted for him and he would give back their hands. At Kissy mental home, civilians had their hands amputated because they were thought to have divulged the location of AFRC troops to ECOMOG. Civilians were amputated at Kissy Mental Home, Fataraman Street, Parsonage Street and told to go to Kabbah. At Parsonage Street, the amputated civilians were told expressly, to tell Kabbah “this is what we have done. Go tell him no more politics, no more voting.” This pattern continued until late January or early February when the AFRC were forced to flee Freetown.²⁶⁷⁷

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

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

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

(b) Kenema District (25 May 1997 – 19 February 1998)

1465. In its Pre-Trial Brief, the Prosecution submitted that following the AFRC coup in May 1997, AFRC/RUF forces engaged in sustained attacks throughout Kenema District on positions held by local militias, namely the CDF or Kamajors. The Prosecution submitted that as part of the campaign of terror and collective punishment, AFRC/RUF forces routinely targeted civilians for killings,

²⁶⁷⁷ Factual Findings, Physical Violence, para.1235, *supra*.

detention, physical violence and ill-treatment for allegedly being sympathetic to, or collaborating with the CDF/Kamajors.²⁶⁷⁸

1466. In its Supplemental Pre-Trial Brief, the Prosecution submitted that the crimes committed during attacks on various villages in Kenema District where it was perceived that the civilians were supporting and/or harbouring the CDF/Kamajors as well as the burning of civilian property performed as part of many of the attacks is evidence of collective punishment.²⁶⁷⁹

1467. In its Opening Statement, the Prosecution submitted that in Kenema Town, the AFRC/RUF rounded up prominent elders of the community including Mr. B.S. Massaquoi, and accused them of supporting the Kamajors and then ruthlessly beat them, tortured them for days and finally killed them.²⁶⁸⁰

1468. The Trial Chamber has found that acts of violence were carried out against protected persons in Kenema Town (Unlawful Killings; Physical Violence); and in Tongo Field (Enslavement). The Trial Chamber has also found that child soldiers were abducted and used for military purposes in Kono District. As discussed above, the Trial Chamber does not consider that acts of enslavement and the abduction and use of child soldiers were acts the primary purpose of which was to spread terror among the civilian population. Evidence on these counts will not be considered further in this regard.

1469. The Indictment does not allege burning in Kenema District.

(i) Kenema Town

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

1471. In particular, the Trial Chamber relies on its findings that after the Coup in 1997, both “RUF” rebels” and “AFRC Juntas” took over control of Kenema Town and remained in Kenema until February, 1998.²⁶⁸¹

1472. The Trial Chamber also accepts the evidence of Prosecution Witness TF1-122, not previously examined by the Chamber, that later, in December 1997, the AFRC/RUF launched

²⁶⁷⁸ Prosecution Pre-Trial Brief, para. 78.

²⁶⁷⁹ Prosecution Supplemental Pre-Trial Brief, paras 17, 300, 583.

²⁶⁸⁰ Prosecution Opening Statement, 7 March 2005, p. 34.

'Operation No Living Thing' in Kenema and that as part of this operation members of the AFRC/RUF would parade the streets of Kenema Town during the day accusing people of being Kamajors, entering people's homes, harassing them, and looting their property alleging that they had Kamajors in their houses. The Witness testified that members of the AFRC/RUF would "search you in the street, take whatever you have in your pocket and they will allege that you have Kamajor in your pocket" and that the RUF/AFRC "were shooting all over the air."²⁶⁸²

1473. The Trial Chamber has found that during this time, "RUF rebels" and "AFRC juntas" were seen dancing around the body of a civilian singing that they would kill all Kamajors. The rebels and juntas then split his abdomen and stretched his intestines across Hangh Road where the body stayed for three days.²⁶⁸³

1474. The Trial Chamber has previously found that in early February 1998 Sam Bockarie arrested a number of persons on the grounds that they were 'Kamajor supporters'. They were brought to the AFRC Secretariat, physically abused and detained for about three days. They were brought to the police and later rearrested by members of the AFRC/RUF, beaten and killed.²⁶⁸⁴

(ii) Findings

1475. On the basis of the circumstances of the attacks, namely that civilians were deliberately targeted on the premise that they supported Kamajors; the sustained duration of attacks of a similar nature, spanning May 1997 through December 1998; and the particularly brutal nature of some of the attacks including the burning of civilians in a house and the grotesque public display of a mutilated body, the Trial Chamber is satisfied that it has been proven beyond reasonable doubt that the primary purpose of the acts of violence described in Kenema Town was to spread terror among the civilian population.

1476. The Trial Chamber is further satisfied that the unlawful killings and subjection to physical violence also served as a punishment against protected persons. No evidence has been adduced to indicate whether the protected persons targeted in these attacks did or did not in fact support the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, in this instance Kamajors, nor whether the protected persons in fact failed to provide sufficient support to the AFRC/RUF. The Trial Chamber has held that the material element in the *actus reus*

²⁶⁸¹ Factual Findings, Unlawful Killings, para. 829, *supra*.

²⁶⁸² TF1-122, Transcript 24 June 2005, pp. 32-33, 35.

²⁶⁸³ Factual Findings, Unlawful Killings, para. 836, *supra*.

²⁶⁸⁴ See Factual Findings, Unlawful Killings para. 832, *supra*.

of the crime of collective punishment is not whether the acts were actually committed or not by the victims, but whether the perpetrator indiscriminately and collectively punished these individuals for acts that they might or might not have committed.²⁶⁸⁵ The Trial Chamber is satisfied, on the basis of the evidence specified above, that protected persons were collectively punished for allegedly being or supporting Kamajors by members of the AFRC/RUF.

(c) Bo District (1 June 1997 – 30 June 1997)

1477. In its Pre-Trial Brief, the Prosecution alleged that after the coup in May 1997, there was significant fighting between CDF/Kamajors and the AFRC/RUF forces in Bo District and civilians were often targeted as being sympathetic or collaborating with either the CDF or the AFRC/RUF. The Prosecution alleged that there were several instances of the AFRC/RUF forces executing civilians perceived to be working or sympathizing with the CDF during the Junta period.²⁶⁸⁶

1478. Also in its Pre-Trial Brief, the Prosecution alleged that in the weeks following the coup, there was an offensive launched by the AFRC/RUF from Bo Town against the surrounding villages for their perceived sympathy or assistance to Kamajors in the region. It is alleged by the Prosecution that in approximately June 1997, AFRC/RUF forces attacked five villages in the region, including Tikonko and Gerihun in the region; namely, Sembahun, Tikonko, Mamboma, Gerihun, and Telu. In these attacks, the Prosecution alleged that the AFRC/RUF intentionally killed many civilians that were remaining in the villages and in most of the attacks, looted and burned houses.²⁶⁸⁷

1479. In its Supplemental Pre-Trial Brief, the Prosecution submitted that the crimes committed during attacks on various villages in Bo District where it was perceived that the civilians were supporting and/or harbouring the CDF/Kamajors as well as the burning of civilian property performed as part of many of the attacks is evidence of collective punishment.²⁶⁸⁸

1480. In its Final Brief, the Prosecution submitted that it was a policy of the AFRC Government to eliminate all opposition to it and that the AFRC Government ordered, as a matter of policy, attacks on villages like Tikonko which supported the former SLPP Government. The Prosecution submitted that AFRC attacks including the burning of the SLPP building in Bo Town, the attack in Gerihun in which an AFRC delegation said they wanted to join forces with the Kamajors but instead shot

²⁶⁸⁵ Applicable Law, para. 680-681, *supra*.

²⁶⁸⁶ Prosecution's Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (Under Rules 54 and 73bis) of 13 February 2004), 05 March 2004, para. 46. ["Prosecution Pre-Trial Brief"]

²⁶⁸⁷ Prosecution Pre-Trial Brief, paras 47-48.

civilians, attacked the Vice President's house with an RPG and killed Chief Demby, sent a clear message that was "you are either for us or against us," with elimination being the consequence of resistance.²⁶⁸⁹

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

1482. In relation to the crime of terror, the Trial Chamber will consider evidence of burning of civilian property as an act of violence. The Indictment alleges that AFRC/RUF forces burned an unknown number of civilian homes in Telu, Sembahun, Mamboma and Tikonko. The Trial Chamber has found that the Prosecution conceded that it had not led evidence in respect of Telu, Sembahun and Mamboma.²⁶⁹⁰ The Trial Chamber finds there is evidence of burning in Tikonko. This evidence will be evaluated, below.

(i) Tikonko

1483. The Trial Chamber has previously found on the evidence of Prosecution Witness TF1-004, that on or around 25 June 1997, AFRC and/or RUF rebels attacked the villages of Tikonko and killed civilians.²⁶⁹¹ In particular the Trial Chamber relies on its previous findings that two groups of attackers came to the village that day. The Trial Chamber has found that the first group came with the intent to kill Kamajors but the second group shot indiscriminately at civilians and Kamajors alike killing five civilians and three Kamajors at Tikonko Junction. During the attack on the village, the Trial Chamber has found a minimum of 18 more civilians were killed but that no evidence was adduced that any other Kamajors were killed. The Trial Chamber also relies in particular on its findings that the soldiers entering the village were heard to say "the people of Tikonko will know them today"; that three civilian women had their bellies split open, two of whom died from their injuries; that civilians, including a child, were killed in their houses; and that a corpse of a man was mutilated, the skin removed from the forehead.²⁶⁹²

1484. The Trial Chamber also accepts the evidence of Prosecution Witness TF1-004, not previously evaluated by the Chamber, that there was burning in Tikonko. The Witness testified that as he was walking towards his home he noticed that there was a lot of smoke in the town and that houses were burnt. When he reached his own house, he saw that it had been burnt, that items,

²⁶⁸⁸ Prosecution Supplemental Pre-Trial Brief, paras 17, 300, 583.

²⁶⁸⁹ Prosecution Final Brief, paras 541-542.

²⁶⁹⁰ Rule 98 Decision, para. 261.

²⁶⁹¹ Factual Findings, Unlawful Killings, paras 810-818, *supra*.

including rice, had been looted from the house or pulled out in front of the house and burned.²⁶⁹³ The Witness testified that he did not know of anyone in the village who had petrol available to burn the houses.²⁶⁹⁴

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

(ii) Gerihun

1486. The Trial Chamber has found previously in its Factual Findings that civilians were unlawfully killed in Gerihun.²⁶⁹⁵ The Trial Chamber relies in particular on its previous findings that during an AFRC/RUF attack on Gerihun on 26 June 1997, Paramount Chief Demby and his caretaker were murdered by soldiers while the Paramount Chief was lying sick in his home.²⁶⁹⁶

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

1488. Witness TF1-053 testified that he was in Bo Town on 25 May 1997 where he observed soldiers in uniform shooting in the street, causing people to run away, and hurling insults against persons affiliated with the SLPP. The Witness testified that at this time the SLPP Party Office on Kpondahun Road was burnt down. The Trial Chamber finds it reasonable to infer that the SLPP Party was burnt down by AFRC/RUF soldiers.²⁶⁹⁷

1489. Roughly a month later, shortly before the killing of Paramount Chief Demby, Witness TF1-054 testified that he too was present in Bo Town, at the Demby Hotel when armed "soldiers" wearing combat arrived at roughly 1:00 a.m. The soldiers stated that they were looking for Kamajors but the Witness testified that they did not find any at the hotel. The soldiers asked the Witness the whereabouts of Paramount Chief Demby and he told them that he was in his Chiefdom

²⁶⁹² Factual Findings, Unlawful Killings, para. 814, *supra*.

²⁶⁹³ TF1-004, Transcript 23 June 2005, p. 24.

²⁶⁹⁴ TF1-004, Transcript 23 June 2005, p. 27.

²⁶⁹⁵ Factual Findings, Unlawful Killings, *supra*.

²⁶⁹⁶ Factual Findings, Unlawful Killings, paras 13-15, *supra*.

in Gerihun Town. Witness TF1-054 testified that the soldiers harassed and beat civilians staying at the hotel, including wife of Paramount Chief Demby. The soldiers also stole property belonging to the patrons of the hotel.²⁶⁹⁸

1490. Witness TF1-053 also testified that he observed “soldiers” launch an RPG into the house of the former vice-president, Mr. Albert Joe Demby (Paramount Chief Demby’s brother) during the attack on Gerihun in which Paramount Chief Demby was killed.²⁶⁹⁹

1491. However, the Trial Chamber finds that the Prosecution assertion that the attack on Gerihun was preceded by an AFRC delegation which said they wanted to join forces with the Kamajors but instead shot civilians, an incident not previously evaluated by the Trial Chamber in its Factual Findings, mischaracterises the evidence brought before the Court. The Trial Chamber has carefully reviewed the evidence of Witness TF1-054 on this point. The Witness testified that the afternoon prior to the attack on Gerihun at about 3:00 pm, he, together with a group of students and Kamajors, attended a meeting at a school in Gerihun with four persons whom the witness stated had come from Freetown.²⁷⁰⁰ The Witness described the persons as a certain Mike Lamin, a certain Mr. Gbao and two others. According to the Witness, the four came to Gerihun to speak with the people there and to request that the Kamajors in Gerihun unite together with the AFRC soldiers. The Witness testified that during the meeting he heard gun fire near the entrance to the town of Gerihun at which point the persons in attendance at the meeting disbursed.²⁷⁰¹ In the absence of any further facts establishing the identities of the persons at the meeting and linking them to the subsequent attack on Gerihun, the Trial Chamber finds the evidence is insufficient to support the conclusions drawn by the Prosecution.

(iii) Findings

1492. The Trial Chamber notes the targeted nature of the attacks against civilians in Tikonko by the second group of soldiers described by Witness TF1-004. Specifically the Trial Chamber notes that the soldiers were not making any selection in their killings which, taken together with the evidence of civilian deaths, the Trial Chamber is satisfied is indicative of the intent of the soldiers to target civilians and Kamajors alike. This inference is supported by the express statement, relayed

²⁶⁹⁷ TF1-053, 18 April 2005 pp. 96-99.

²⁶⁹⁸ TF1-054, Transcript 19 April 2005, pp. 80-85.

²⁶⁹⁹ TF1-054, Transcript 19 April 2005, pp. 89-90, 95.

²⁷⁰⁰ TF1-054, Transcript 19 April 2005, pp. 86-87.

²⁷⁰¹ TF1-054, Transcript 19 April 2005, pp. 87-88.

by Witness TF1-004 that the soldiers were singing that the people of Tikonko will know them today.

1493. The Trial Chamber notes the circumstances of the attack against Tikonko; namely that armed soldiers entered and killed unarmed civilians, including a child, in their houses with no apparent military purpose. The civilians were killed or their bodies mutilated, in some instances in a particularly brutal manner, as for instance the splitting open of the belly of a pregnant women.

1494. The Trial Chamber also notes the close timing between the attacks on Tikonko and the attack in Gerihun, both of which targeted civilians for their supposed support for opposition groups to the AFRC.

1495. The Trial Chamber is satisfied on the basis of this evidence that the acts of violence described in Tikonko and Gerihun were carried out with the primary purpose of spreading terror.

1496. The Trial Chamber is further satisfied that the unlawful killings and burning also served as a punishment against protected persons. No evidence has been adduced to indicate whether the protected persons targeted in these attacks did or did not in fact support the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, in this instance Kamajors or the SLPP party, nor whether in fact the protected persons failed to provide sufficient support to the AFRC/RUF. The Trial Chamber has held that the material element in the *actus reus* of the crime of collective punishment is not whether the acts were actually committed or not by the victims, but whether the perpetrator indiscriminately and collectively punished these individuals for acts that they might or might not have committed.²⁷⁰²

1497. The Trial Chamber is satisfied, on the basis of the evidence specified above, that protected persons were collectively punished for allegedly being or supporting Kamajors or members of the SLPP Government by members of the AFRC/RUF.

(d) Kailahun District (14 February 1998 – 30 June 1998)

1498. In its Pre-Trial Brief, the Prosecution submitted that civilians in Kailahun District were killed by AFRC/RUF forces as part of their campaign of terror and punishment.²⁷⁰³ The Prosecution submitted that many civilians were deliberately killed on orders from senior AFRC/RUF commanders for their alleged membership or support for civil militia forces, the CDF/Kamajors,

²⁷⁰² General Requirements of Articles 2, 3 and 4 of the Statute, paras 218-219, *supra*.

²⁷⁰³ Prosecution Pre-Trial Brief, para. 71.

including a mass execution that was undertaken in Kailahun Town.²⁷⁰⁴ The Prosecution submitted that attacks against civilians also included the abduction of women from other parts of Sierra Leone and their subjection to sexual violence in Kailahun; the capture of men, women and children and their use as forced labour in various locations in Kailahun; and the training of forcibly conscripted men, women and children.²⁷⁰⁵

1499. In its Final Brief, the Prosecution argued that “[t]he crimes of physical violence and looting and burning although not specifically charged in the Indictment for Kailahun are relied upon as evidence for the crimes of Terrorism (Count 1) and Collective Punishment (Count 2).²⁷⁰⁶

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

1501. The Indictment does not allege burning in Kailahun District.

(i) Kailahun Town

1502. The Trial Chamber has previously found that persons in Kailahun Town were abducted, accused of being Kamajors and unlawfully killed. In particular, the Trial Chamber relies on its previous findings that on the orders of Sam Bockarie, 67 persons accused of being Kamajors, were arrested in several villages in Kailahun District and detained at the G5 office in Kailahun Town. Ten of these persons were killed by Sam Bockarie personally, and the rest were shot on his orders. The Trial Chamber has found the persons killed were *hors de combat*.²⁷⁰⁷

(ii) Findings

1503. The Trial Chamber is not satisfied that the evidence establishes beyond reasonable doubt that the persons in Kailahun Town were abducted and killed with the primary purpose of spreading terror among the civilian population.

1504. The Trial Chamber is not satisfied that the evidence establishes beyond reasonable doubt that persons in Kailahun Town were collectively punished for supporting Kamajors.

²⁷⁰⁴ Prosecution Pre-Trial Brief, para. 71.

²⁷⁰⁵ Prosecution Pre-Trial Brief, paras 72-74.

(e) Kono District (14 February 1998 – 30 June 1998)

1505. In its Pre-Trial Brief, the Prosecution submitted that widespread and systematic attacks were carried out by AFRC/RUF forces as part of a campaign of terror against the civilian population in order to gain control over Kono District, in particular the diamond mining areas. It was submitted that after the ECOMOG intervention in February 1998, AFRC/RUF forces retreating from Freetown and Makeni regrouped and travelled through Bombali and Koinadugu Districts to Kono District, specifically Koidu Town.²⁷⁰⁸

1506. In its Pre-Trial Brief and Supplemental Pre-Trial Brief, the Prosecution submitted that throughout Kono District, AFRC/RUF forces carried out organised amputations of limbs, including the chopping of hands of those accused of voting for President Kabbah. It is submitted that civilians who were present at the scene were forced to laugh or clap during amputations, while victims were told to return to President Kabbah and request their limbs back.²⁷⁰⁹

1507. It is submitted by the Prosecution in its Pre-Trial Brief that upon arrival in Koidu Town, AFRC/RUF forces commenced widespread attacks throughout the District demonstrating a pattern of widespread killings, physical and sexual violence, abductions, forced labour and conscription of civilians and widespread looting and destruction of civilian and public properties undertaken by AFRC/RUF forces in Kono throughout 1998. It is submitted that the AFRC/RUF terrorization of the civilian population enabled geographic control of the Kono area, particularly the diamond mining areas, where forced mining by civilians was being undertaken under the supervision of senior AFRC/RUF command.²⁷¹⁰

1508. In its Supplemental Pre-Trial Brief, the Prosecution submits that the burning of civilian property performed as part of the attacks on many villages throughout the District is evidence of collective punishment.²⁷¹¹

1509. The Trial Chamber has found that acts of violence were carried out against protected persons or their property in Koidu (Unlawful Killings; Enslavement); in Tombodu (Unlawful Killings; Physical Violence; Enslavement; Pillage); in Mortema (Unlawful Killings); in Wonedu (Rape; Enslavement); in Kaima/Kayima (Physical Violence) and in Yardu Sando (Pillage). The

²⁷⁰⁶ Prosecution Final Brief, para. 341.

²⁷⁰⁷ Factual Findings, Unlawful Killings, paras 860-863, *supra*.

²⁷⁰⁸ Prosecution Pre-Trial Brief, para. 92.

²⁷⁰⁹ Prosecution Pre-Trial Brief, para. 96; Prosecution Supplemental Pre-Trial Brief, paras 17, 300, 583.

²⁷¹⁰ Prosecution Pre-Trial Brief, para. 94.

²⁷¹¹ Prosecution Supplemental Pre-Trial Brief, paras 17, 300, 583.

Trial Chamber has also found that civilians were pressed into sexual slavery and that child soldiers were abducted and used for military purposes in Kono District. As discussed above, the Trial Chamber does not consider that acts of enslavement, the conscription and use of child soldiers, nor sexual slavery were acts the primary purpose of which was to spread terror among the civilian population. Evidence on these counts will not be considered further in this regard.

1510. In relation to the crime of terror, the Trial Chamber will consider evidence of burning of civilian property as an act of violence. The Indictment alleges that the AFRC/RUF engaged in widespread burning in Tombodu, Foindu and Yardu Sando, where virtually every home in the village was burned.²⁷¹² The Trial Chamber has found that the Prosecution conceded that it had not led evidence on burning in relation to Foindu. Where evidence has been led on burning in the remaining locations which may go the proof of Count 1, the Trial Chamber will examine it below.

(i) Koidu Town

1511. The Trial Chamber has previously found that civilians in Koidu Town were targeted by AFRC/RUF soldiers and were killed.²⁷¹³

1512. The Trial Chamber accepts the further evidence of witness TF1-334 that Johnny Paul Koroma addressed the commanders in Kono and told them that Kono must be retained as it was a defensive ground for the AFRC/RUF forces. Witness TF1-334 testified that Koroma stated that the civilians in Kono had betrayed them by calling in the Kamajors and therefore, they must not be tolerated any longer in Koidu Town. He stated that in order to secure the area, civilian houses should be completely burnt down so that no civilians would be able to settle there.²⁷¹⁴

1513. Koroma declared Kono a “civilian no-go area” and ordered that civilians who refused to join “the movement” should be executed so that they would not provide information regarding the location of the troops. Issa Sesay, in the presence of a number of other commanders, then reiterated what Johnny Paul Koroma had said, and added that the civilians had proven to be traitors and that this must not be tolerated at all. The witness testified that the orders of Johnny Paul Koroma and Issa Hassan Sesay were immediately carried out. Civilians were driven out of Koidu Town and their houses were burnt down.²⁷¹⁵

²⁷¹² Indictment, para. 77.

²⁷¹³ Factual Findings, Unlawful Killings, paras 845-847, *supra*.

²⁷¹⁴ TF1-334, Transcript 18 May 2005, pp. 3-4.

²⁷¹⁵ TF1-334, Transcript 18 May 2005, pp. 4-6.

1514. The Trial Chamber also accepts the evidence of witness TF1-217, not previously examined by this Chamber in this Judgement, who similarly testified that rebels and juntas burnt buildings in Koidu Town in February or March, 1998 to make Koidu into a “farm”. This meant that they did not want any civilians there. The troops were led by Akim Sesay and Lieutenant T.²⁷¹⁶

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

(ii) Tombodu

1516. The Trial Chamber has found that following an order of Johnny Paul Koroma in March 1998, children were abducted and trained to perform amputations on civilians in areas within Kono District including Tombodu.²⁷¹⁷

1517. The Trial Chamber accepts the evidence of Prosecution witness TF1-334, that in March 1998, ‘Savage’, the commander in Tombodu, sent a message to ‘Bazzy’ in Koidu saying that civilians in Tombodu were celebrating because they believed ECOMOG had taken over the area. ECOMOG had not, in fact, taken over the area. Witness TF1-334 testified that, in fact, the civilians had been led to believe this because ‘Savage’ was wearing a Nigerian ECOMOG uniform. As a result, the Witness, together with a certain ‘Colonel Momoh Dorty’, went to Tombodu to see the civilians that ‘Savage’ had said were “jubilating”.²⁷¹⁸

1518. The Trial Chamber has found on the basis of the evidence of Witness TF1-072 that in about March 1998, the Witness and thirteen other civilians were captured by “soldiers” and brought before ‘Savage’ in Tombodu. ‘Savage’ used a cutlass to slap the witness on his back, accusing him of killing soldiers. He then cut the Witness severely with the cutlass on his upper right calf and on his left calf. Witness TF1-072 was also stabbed by one of Savage’s subordinates, ‘Small Mosquito’, in the left rib area following an order by ‘Savage’. The Trial Chamber was able to observe the scars from these incidents.²⁷¹⁹

²⁷¹⁶ TF1-217, Transcript 17 October 2005, pp. 7-9, 32-34, 47-49, 51-53.

²⁷¹⁷ Factual Findings, Physical Violence, para. 1201, *supra*.

²⁷¹⁸ TF1-334, Transcript 20 May 2005, pp. 12.

²⁷¹⁹ TF1-072, Transcript 1 July 2005, pp. 15-16.

1519. ‘Savage’ then announced that he would cut off the hands of the fourteen captives, including witness TF1-072.²⁷²⁰ 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.²⁷²¹ ‘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.²⁷²²

1520. The Trial Chamber relies on its previous findings that when witness TF1-334 arrived in Tombodu, he personally observed ‘Savage’ amputate the hands of about fifteen people.²⁷²³ Witness TF1-334 testified that ‘Savage’ told the victims that they should tell ECOMOG that ‘Savage’ was in Tombodu and that this was a warning to the other citizens.²⁷²⁴ The Trial Chamber has found that ‘Savage’ locked 15 civilians into a house which he then set ablaze and that none of the civilians escaped, and that ‘Savage’ and a certain ‘Guitar Boy’ beheaded 47 and threw their bodies into a diamond pit²⁷²⁵

1521. The Trial Chamber relies on its findings, on the basis of the evidence of witness TF1-033, that the AFRC carried out an unknown number of amputations in March 1998.²⁷²⁶

1522. The Trial Chamber has found on the basis of the evidence of witness TF1-216 that in April 1998, he and other civilians were taken by members of the AFRC to Tombodu. ‘Staff Alhaji’ ordered the hands of the witness and five others to be cut off. Their hands were cut off with a cutlass and they were told to go see President Kabbah as he had a container of hands.²⁷²⁷ The Trial Chamber also relies in particular on its findings with regards to witness TF1-216 that in or about April 1998 on the orders of ‘Staff Alhaji Bayo’ 53 civilians were burnt alive by “juntas” in a house.²⁷²⁸

²⁷²⁰ TF1-072, 1 July 2005, p. 16.

²⁷²¹ TF1-072, 1 July 2005, p. 18.

²⁷²² TF1-072, 1 July 2005, pp. 19, 26.

²⁷²³ Factual Findings, Unlawful Killings, para. 1204, *supra*.

²⁷²⁴ TF1-334, Transcript 20 May 2005, p. 13.

²⁷²⁵ Factual Findings, Unlawful Killings, para. 849, *supra*.

²⁷²⁶ Factual Findings, Physical Violence, para. 1205, *supra*.

²⁷²⁷ Factual Findings, Physical Violence, para. 1206, *supra*.

²⁷²⁸ Factual Findings, Unlawful Killings, para. 855, *supra*.

27446

1523. The Trial Chamber accepts the testimony of Prosecution witness TF1-334, not previously examined by the Chamber, that prior to the pull out of the AFRC from Koidu Town in mid-May 1998, Johnny Paul Koroma ordered that houses should be burnt in Kono District and that following this Tombodu was completely burnt down.²⁷²⁹ The witness testified that he knew this as he was an Operation Commander and monitored orders given to other commanders.²⁷³⁰ At the time that ‘Savage’ had informed ‘Bazzy’ that civilians in Tombodu were celebrating because they believed ECOMOG had overtaken the town, described above, the witness went to Tombodu and personally observed that Tombodu was completely burnt down by a joint SLA and RUF force. The witness testified that Johnny Paul Koroma had given the order to burn the villages so the civilians would not occupy them and that the witness, other Operations Commanders, soldiers and ‘Bazzy’ ensured that these orders were carried out.²⁷³¹

(iii) Yardu Sando

1524. The Trial Chamber relies on its previous findings on the basis of the testimony of Witness TF1-019 that “AFRC soldiers” and “rebels” attacked Yardu Sando on 16 April 1998 and that during the attack soldiers looted valuable property from civilian houses.²⁷³² The Trial Chamber also accepts the testimony of Witness TF1-019, not previously examined, that during this attack the village was largely burnt down by the AFRC/RUF. The Witness stated that prior to the attack there were approximately 100 houses in the village and that following the burning, only 3 or 4 remained standing.²⁷³³

(iv) Findings

1525. The Trial Chamber infers from the circumstances of the attacks against civilians in Koidu Town and Tombodu, namely that civilians were repeatedly targeted and that a great number were deliberately killed; the sustained duration of the attacks; the particularly brutal nature of some of the attacks including civilians who were burnt alive when they were locked in houses which were set on fire; the great number of repeated mutilations of civilians whose missing hands were left as a grotesque and lingering public reminder of the attacks; the widespread destruction of civilian property in Tombodu; as well as the repeated and express statements of members of the AFRC/RUF that such attacks were committed to intimidate civilians; proves that the primary purpose of the

²⁷²⁹ TF1-334, Transcript 20 May 2005, pp. 7-9.

²⁷³⁰ TF1-334, Transcript 20 May 2005, pp. 9-11.

²⁷³¹ TF1-334, Transcript 20 May 2005, pp. 16-17.

²⁷³² Factual Findings, Pillage, para. 19, *supra*.

²⁷³³ TF1-019, Transcript 20 June 2005, pp. 90-91.

23447

attacks was to spread terror among the civilian population. The Trial Chamber is therefore satisfied that acts of terror were committed in Koidu Town and Tombodu.

1526. However, the Trial Chamber is not satisfied that it has been proven that the acts of looting and burning which took place in Yardu Sando were committed with the primary purpose of spreading terror among the civilian population.

1527. The Trial Chamber is further satisfied that the crimes committed in Koidu Town and Tombodu also served as a punishment against protected persons. No evidence has been adduced to indicate whether the protected persons targeted in these attacks did or did not in fact kill any AFRC/RUF soldiers and therefore whether they in fact did or did not fail to provide sufficient support to the AFRC/RUF. The Trial Chamber has held that the material element in the *actus reus* of the crime of collective punishment is not whether the acts were actually committed or not by the victims, but whether the perpetrator indiscriminately and collectively punished these individuals for acts that they might or might not have committed.²⁷³⁴ The Trial Chamber is satisfied, on the basis of the evidence specified above, that protected persons were collectively punished for allegedly having killed an AFRC/RUF soldier by members of the AFRC/RUF.

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

1528. In its Pre-Trial Brief, the Prosecution submitted that from approximately 4 February 1998, after the AFRC/RUF were driven out of Freetown by the ECOMOG intervention force, successive attacks in Koinadugu District involved widespread killings, physical and sexual violence against civilian men, women and children, looting and destruction of property and the abduction and forced labour and/or conscription of men, women and children. The Prosecution submitted that these crimes were committed in furtherance of a campaign of terror and collective punishment during AFRC/RUF troop movements and attacks on towns and villages throughout the entire District, including Fadugu, Heremakono, Kabala, Kamadugu, Katambo, Koinadugu Town, Kumalu, Kurubonla, Moriya, Seraduya, Serekolia, Sokorola, and Yifin.²⁷³⁵

1529. The Prosecution further submits in its Pre-Trial Brief that some acts of physical violence were undertaken by the AFRC/RUF forces in Koinadugu District as collective punishment against the civilian population. It is submitted that AFRC/RUF forces organized amputations of limbs of

²⁷³⁴ Applicable Law, paras. 676-681, *supra*.

²⁷³⁵ Prosecution Pre-Trial Brief, paras 82-91; *See also* Prosecution Opening Statement, Transcript 7 March 2005, pp. 35-36.

JMS

men, women and children, who were given letters and/or told to go to President Kabbah to ask for their limbs back.²⁷³⁶

1530. In its Final Brief, the Prosecution asserted, “The attacks on Yiffin and other villages, all in close proximity to each other, were carefully designed and organised by the three Accused, who intended that the crimes charged would occur, or were aware of the substantial likelihood of the occurrence of all of these crimes. Moreover, these acts or threats of violence were committed with the primary purpose of spreading terror amongst civilians and punishing them collectively for their failure to support the AFRC/RUF.”²⁷³⁷

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

1532. In relation to the crime of terror, the Trial Chamber will consider evidence of burning of civilian property as an act of violence. The Indictment alleges that AFRC/RUF forces engaged in widespread looting and burning of civilian homes in Heremakono, Kabala, Kamadugu and Fadugu.²⁷³⁸ The Trial Chamber has found that the Prosecution conceded that it had not led evidence of burning in Heremakono and Kamadugu.²⁷³⁹ Where evidence has been led on burning in the remaining locations which may go the proof of Count 1, the Trial Chamber will examine it below.

(i) Kabala, Fadugu, Koinadugu Town and Kurubonla

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

²⁷³⁶ Prosecution Pre-Trial Brief, para. 90; Prosecution Supplemental Pre-Trial Brief, paras 17, 300, 583.

²⁷³⁷ Prosecution Final Brief, p. 342-343.

²⁷³⁸ Indictment, para. 76.

²⁷³⁹ Rule 98 Decision, para. 261.

1534. The Trial Chamber has found that Kabala Town was attacked by AFRC/RUF forces in mid-May 1998 and that the hands of an unknown number of civilians were amputated after the forces had successfully captured the town.²⁷⁴⁰ On 27 July 1998 AFRC troops under the command of ‘Savage’ accompanied by “rebels” attacked Kabala Town for four to five days. Seven loyal SLA soldiers were captured and executed²⁷⁴¹ and the fighters looted civilian property.²⁷⁴² The Trial Chamber has found that Kabala was attacked again by ‘Savage’ and fighters under his command on 17 September 1998 and that fighters looted civilian property from houses.²⁷⁴³

1535. The Trial Chamber has found that at a checkpoint in Fadugu on 22 May 1998 eight soldiers belonging to an unidentified faction captured a civilian they believed to be a member of the CDF. The soldiers beat the man to death, cut open his stomach and removed his intestines. The intestines were displayed openly at the checkpoint. In close vicinity to the checkpoint, a teacher and his younger brother were killed.²⁷⁴⁴ The Trial Chamber has also found that during a later attack, on 11 September 1998, there was a second attack on Fadugu by “rebels” in a campaign known as “Operation Die.” An unknown number of civilians were killed in the course of this attack, including the local paramount chief of Mabololo who was burnt to death in his house.²⁷⁴⁵ Four members of the AFRC or RUF under the command of ‘Savage’ raped a girl and forced another civilian who happened upon them to watch as it happened. The girl subsequently died from her injuries.²⁷⁴⁶

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

1537. The Trial Chamber notes, but does not accept, the testimony of Witness TF1-199 with regards to possible evidence of burning in Kabala and Fadugu in 1998.²⁷⁴⁷ While the Witness did not give a specific date with regards to his arrival in Kabala, the Witness testified that he was abducted by the AFRC/RUF in Bombali District at Christmas time in 1998 and travelled with the AFRC/RUF to

²⁷⁴⁰ Factual Findings, Physical Violence, paras 1217-1218, *supra*.

²⁷⁴¹ Factual Findings, Unlawful Killings, para. 871, *supra*.

²⁷⁴² Factual Findings, Pillage, para. 1406, *supra*.

²⁷⁴³ Factual Findings, Pillage, para. 1407, *supra*.

²⁷⁴⁴ Factual Findings, Killings, para. 877, *supra*.

²⁷⁴⁵ Factual Findings, Killings, para. 878, *supra*.

²⁷⁴⁶ Factual Findings, Rape, paras 1021-1025, *supra*.

²⁷⁴⁷ TF1-199, Transcript 06 October 2005, pp. 86-88.

JWS

several places before arriving in Kabala.²⁷⁴⁸ As such, he could not have been in Kabala prior to 30 September 1998, the end of the indicted period for acts of burning.

(ii) Findings

1538. As described above, the Trial Chamber is satisfied that acts of physical violence, specifically amputations such as those carried out in Kabala Town in mid-May 1998, in the context of the conflict in Sierra Leone, are acts of violence the primary purpose of which was to terrorise the civilian population. However, the Trial Chamber finds the evidence does not prove that the other acts of violence committed during the attacks on Kabala Town were acts the primary purpose of which was to spread terror among the civilian population.

1539. Similarly, the Trial Chamber is satisfied that the grotesque mutilation and public display of the body of a civilian suspected to be a member of the CDF is an act the primary purpose of which is to spread terror among the civilian population. However, the Trial Chamber is not satisfied that it can be determined beyond reasonable doubt that the other acts of violence committed during the attacks on Fadugu were acts the primary purpose of which was to spread terror among the civilian population.

1540. The Trial Chamber finds that no evidence has been adduced that would demonstrate that the acts of violence committed in Koinadugu Town were committed with the primary purpose to spread terror among the civilian population.

1541. The Trial Chamber is neither satisfied that the elements in relation to Count 2 (Collective Punishment) are established in relation to Koinadugu District.

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

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

²⁷⁴⁸ TF1-199, Transcript 06 October 2005, pp. 69-70, 75, 89.

slavery and other forms of sexual violence in locations throughout the district including Mandaha and Rosos, mutilations and amputations in several locations throughout the district including Lohondi, Malama, Mamaka, and Rosos, and the burning of houses and looting of property in many locations throughout the district including Karina and Mateboi.²⁷⁴⁹

1543. In its Supplemental Pre-Trial Brief, the Prosecution submits that the amputation of limbs by members of the AFRC/RUF in Bombali District where civilians were told to “go to Kabbah” for new hands and that the burning of civilian property performed as part of the attacks on many villages throughout the District is evidence of collective punishment.²⁷⁵⁰

1544. In its Final Brief, the Prosecution submitted that “[...] the three Accused themselves gave orders for, and actively encouraged, killings physical and sexual violence and the burning of villages amounting to a campaign of terrorism” in Bombali District.²⁷⁵¹

1545. In its Closing Arguments, the Prosecution argued that the evidence has shown that all the Accused travelled as commanders with their troops through Bombali attacking villages on the way. The Prosecution argued that their intent was to spread terror and to punish the civilian population for not supporting them and that their ultimate objective was to retain power.²⁷⁵²

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

1547. The Trial Chamber will consider any evidence of burning in the locations in Bombali District particularised in the Indictment, namely, Karina and Mateboi. The Trial Chamber did not find that any locations were conceded by the Prosecution with regards to Count 14 at the Rule 98

²⁷⁴⁹ Prosecution Pre-Trial Brief, paras 52-53.

²⁷⁵⁰ Prosecution Supplemental Pre-Trial Brief, paras 17, 300, 583.

²⁷⁵¹ Prosecution Final Brief, para. 1516.

²⁷⁵² Prosecution Closing Arguments, Transcript 7 December 2006, p. 41.

stage.²⁷⁵³ The evidence of burning in Karina and Mateboi which was adduced by the Prosecution will be examined below.

(i) Mansofinia (Koinadugu District) to Camp Rosos (Bombali District)

1548. The evidence adduced with regards to Bombali District has demonstrated that AFRC troops moved from Mansofinia (Koinadugu District) to Camp Rosos (Bombali District). Specifically, the Trial Chamber has found that the Accused Brima returned to Mansofinia and led his troops to Rosos via the following path: from Mansofinia they first headed south into Kono district and passed Kondea (Kono), Worodu (Kono) and Yarya (Kono). From Yarya, the ‘hometown’ of the Accused Brima, the troops headed north east, back into Koinadugu district to Yifin (Koinadugu) and from there eastwards passing Kumala (Koinadugu), Bendugu (Koinadugu) toward the area near Bumbuna (Tonkolili district). From there the troops headed further towards the north east into Bombali district and passed Kamagbengbeh²⁷⁵⁴, Bonoya (Bombali), Karina (Bombali), Pendembu²⁷⁵⁵ (Bombali), Mateboi (Bombali) and finally Rosos (Bombali).²⁷⁵⁶ The Trial Chamber has established beyond a reasonable doubt that the civilian population was routinely targeted and attacked by soldiers and fighters on that route. The troops settled in Rosos and later a village named Major Eddie Town until the arrival of SAJ Musa in October/ November 1998.

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

a. Mansofinia (Koinadugu District)

1550. In Mansofinia in May 1998, the First Accused Brima, gave orders to attack civilians. Witness TF1-334 testified that during a meeting convened in Mansofinia to plan the trip North to Bombali District, Brima ordered that any civilian who tried to run away should be shot on sight and that if troops were attacked in any village that village should be burnt down. The Witness testified that Brima warned the soldiers “Minus you, plus you” which TF1-334 explained meant that if a soldier should fail to go by those orders the operation would continue without him.²⁷⁵⁷

²⁷⁵³ Rule 98 Decision, para. 261.

²⁷⁵⁴ Also referred to as Magbengbeh.

²⁷⁵⁵ Also referred to as Gbendembu.

²⁷⁵⁶ Exhibit P-30(a), “Map of Sierra Leone.”

²⁷⁵⁷ TF1-334, Transcript 23 May 2005, pp. 15-17.

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1551. Witness George Johnson gave evidence that he arrived in Mansofinia in April 1998, after the withdrawal of the troops from Kono. On his arrival, Alex Tamba Brima, Santigie Kanu and some other commanders went to meet SAJ Musa at Krubola. Upon their return, Brima and Kanu told Bazy that the troops should be restructured and that a camp, later Camp Rosos, should be made at the Bombali axis.²⁷⁵⁸ A muster parade was called and the fighters were divided into battalions by FAT Sesay and promotions were given by Brima. The Witness was promoted to the rank of Provost-Marshal and given the role of ensuring disciplinary actions were taken against “the fighters” and to ensure that on all operations during the march to Camp Rosos the fighters adhered who broke the laws of “jungle justice” would be arrested and judged.²⁷⁵⁹ These laws included a prohibition against stealing government property, namely arms, ammunition and medical supplies and a prohibition against rape. Fighters who broke these laws would be punished by death or flogging.²⁷⁶⁰

b. Yaya (Kono District)

1552. The Trial Chamber recalls the evidence of witness TF1-033 that Brima addressed his troops publicly in Yaya²⁷⁶¹ and advocated attacks on civilians.²⁷⁶² The Trial Chamber is satisfied that the witness was in fact referring to the speech made by the Accused Brima at Mansofinia and therefore makes no further findings on this evidence.²⁷⁶³

c. Kamagbengbeh (Bombali District)

1553. The Trial Chamber accepts the evidence of Prosecution Witness TF1-334, not previously evaluated by the Chamber, that at Kamagbengbeh in June of 1998, ‘Gullit’ tried to divide the troops and sent one group to attack Kambai and another to attack Karina. The troops argued against this division and ‘Gullit’ agreed instead to focus the attack on Karina. TF1-334 testified that ‘Gullit’ called Karina a strategic point and said that it was the home town of President Ahmed Tejan Kabbah. ‘Gullit’ told the junta forces that they should demonstrate their power in Karina. He ordered the troops to burn down Karina, to capture strong male civilians, and to amputate civilians. ‘Gullit’ stated that he wanted the attack on Karina to shock the whole country and the international

²⁷⁵⁸ George Johnson, Transcript 15 September 2005, pp. 47-48.

²⁷⁵⁹ George Johnson, Transcript 15 September 2005, p. 49.

²⁷⁶⁰ George Johnson, Transcript 15 September 2005, p. 49.

²⁷⁶¹ Also referred to as Yarya.

²⁷⁶² TF1-033, Transcript 11 July 2005, pp. 8-15; Transcript 12 July 2005, p. 56.

²⁷⁶³ See discussion of this evidence in Military Structure of the AFRC Fighting Force, para. 584, *supra*.

community. Kamara and Kanu were present during this speech and during the subsequent attack on Karina. There were no ECOMOG or Kamajor troops in Karina at the time.²⁷⁶⁴

d. Bornoya and Mateboi

1554. In its Opening Statement, the Prosecution submitted that “It is crucial for the Trial Chamber to appreciate that Bornoya, Karina, Mandaha and Mateboi were villages all in extremely close proximity too each other so one attack on one village was followed almost immediately by an attack on one of the other villages.”²⁷⁶⁵ The Prosecution submitted that the neighbouring villages of Bornoya, Daraya and Mayombo were attacked first, followed by an attack against Karina on the same day.²⁷⁶⁶ In its Closing Arguments the Prosecution argued that the attacks on the villages in Bombali are strikingly similar and create a consistent pattern of how the Accused operated against civilians throughout the campaign, namely, attack their village, kill them, amputate them, burn their houses and abduct the strong men and children.²⁷⁶⁷

1555. The Trial Chamber has found that Bornoya was attacked in May of 1998 by AFRC troops including ‘Gullit’, and ‘Five-Five’ ‘and that civilians were targeted and brutally assaulted during the attack. In particular, the Trial Chamber relies on its findings that during the attack, troops split open the stomach of a pregnant woman named ‘Isatta’ and removed the foetus. The woman died as a result. Two children were burnt to death when they were placed under a mattress which was set on fire. An unspecified number of other civilians were killed during the course of the attack.²⁷⁶⁸

1556. The Trial Chamber relies on its previous findings that at an unspecified time in 1998, the Accused Brima sent an AFRC “advance team” under the command of ‘Captain Arthur’ to Mateboi, a village close to Camp Rosos.²⁷⁶⁹ 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.²⁷⁷⁰

e. Karina

²⁷⁶⁴ TF1-334, Transcript 23 May 2005, pp. 56-60, 61, 64-65.

²⁷⁶⁵ Prosecution Final Brief, para. 1500.

²⁷⁶⁶ Prosecution Opening Statement, Transcript 7 March 2005, p. 39.

²⁷⁶⁷ Prosecution Closing Arguments, Transcript 7 December 2006, p. 42.

²⁷⁶⁸ Factual Findings, Unlawful Killings, para. 884, *supra*.

²⁷⁶⁹ George Johnson, Transcript 15 September 2005, pp. 60-61.

²⁷⁷⁰ George Johnson, Transcript 15 September 2005, pp. 61-63.

1557. In its Supplemental Pre-Trial Brief, the Prosecution submitted that the crimes committed during attacks on Mayombo, Bonoyo (or Bonyoyo), Daraya and Karina were carried out in a single day because it was believed that the inhabitants belonged to the Mandingo ethnic group, the same ethnic group as President Kabbah.²⁷⁷¹

1558. In its Final Brief, the Prosecution argued that, “[...] burning down Karina on the basis that it was President Kabbah’s home town clearly amounts to punishing people for acts for which they are not responsible.”²⁷⁷²

1559. The Trial Chamber accepts the evidence of Prosecution Witness TF1-157 that after the attack on Karina, he heard rebels say that the town had been attacked because it was the home town of President Kabbah.²⁷⁷³ The Trial Chamber also accepts the evidence of Witness TF1-033 that he heard ‘Gullit’ say that Karina was the birthplace of President Ahmed Tejan Kabbah who had caused a lot of suffering against the AFRC and its supporters and that the AFRC should now return the same fate against the people of Karina and Bornoya.²⁷⁷⁴ Witness TF1-033 testified that he also heard ‘Gullit’ give an order that civilian women should be stripped naked and raped during the attack on Karina, and the neighbouring town of Bornoya.²⁷⁷⁵ Witness George Johnson also testified that he heard ‘Gullit’, in the presence of Kamara and Kanu, order that Karina should be burnt down and the civilian inhabitants killed because it was the home town of Tejan Kabbah.²⁷⁷⁶

1560. The Trial Chamber has found that following these orders, on or about 8 May 1998, Karina was attacked by AFRC/Junta forces and that a number of such acts of violence were in fact carried out.

1561. The Trial Chamber has found that, the Accused Kamara and two other “juntas” locked five young girls into a house and subsequently set it ablaze. The five girls were burnt alive. “Juntas” threw an unspecified number of little children into the flames of burning houses. The children were burnt alive. Soldiers stabbed a pregnant woman to death. A certain Saccoh Kankoh Fanta was injured during the attack and subsequently died. An unspecified number of children were killed during the attack.²⁷⁷⁷

²⁷⁷¹ Prosecution Supplemental Pre-Trial Brief, paras 17, 300, 583.

²⁷⁷² Prosecution Final Brief, para. 986.

²⁷⁷³ TF1-157, Transcript 25 September 2005, pp. 29-30, 58-60; Transcript 26 September 2005, pp. 9, 23-24, 30.

²⁷⁷⁴ TF1-033, Transcript 11 July 2005, pp. 18-19.

²⁷⁷⁵ TF1-033, Transcript 11 July 2005, pp. 18-20.

²⁷⁷⁶ George Johnson, Transcript 15 September 2005, pp. 53-54.

²⁷⁷⁷ Factual Findings, Unlawful Killings, para. 888, *supra*.

1562. ‘Cyborg’, a security to the Accused Kamara, threw at least four children aged between five and ten years from a two-storey building in Karina; however, it was not established beyond reasonable doubt that these children died as a result.²⁷⁷⁸ 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.²⁷⁷⁹

1563. The Trial Chamber has found that the mosque in Karina was attacked and a number of civilians, including the man leading the prayers, were killed. The Trial Chamber accepts the evidence of witness TF1-334 that the Accused Brima was at the mosque and accused the man leading the prayers of supporting President Kabbah. Brima said to him: "You, you are the one that pray for people. You are one of Pa Kabbah's family [...] [s]o you are the worst people here." The Trial Chamber has found that civilians were killed on a massive scale in Karina.²⁷⁸⁰

f. Gbendembu

1564. The Trial Chamber has found that in or around August 1998, ‘Gullit’ ordered two AFRC commanders to attack Gbendembu because there were purportedly ECOMOG and loyal SLA troops there. Witness TF1-033 heard that 25 civilians were killed in the attack and that ‘Gullit’ commended his men on a ‘job well done’.

g. Rosos

1565. The Trial Chamber accepts the evidence of Prosecution Witness TF1-334 that AFRC troops set up a base at Rosos in June of 1998 and remained there for approximately three months. The Accused Brima ordered that the troops should occupy the surrounding villages and that there should be no civilians within 15 miles of Rosos. He ordered captured civilians be executed rather than brought back to the camp and that he would take disciplinary action against any soldier who brought a civilian to the camp. He ordered “Operation Clear the Area” according to which the villages surrounding Rosos were burnt down and looted.²⁷⁸¹

1566. The Trial Chamber also accepts the evidence of witness TF1-033 that in June 1998, he heard Brima order soldiers to kill any civilians they came in contact with in Rosos.²⁷⁸² The Trial Chamber

²⁷⁷⁸ Factual Findings, Unlawful Killings, para. 889, *supra*.

²⁷⁷⁹ Factual Findings, Unlawful Killings, para. 890, *supra*.

²⁷⁸⁰ Factual Findings, Unlawful Killings, para. 891, *supra*.

²⁷⁸¹ TF1-334, Transcript 23 May 2005, pp. 100-106.

²⁷⁸² TF1-033, Transcript 11 July 2005, pp. 24-25.

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notes that witness TF1-267 similarly testified that rebels told her that civilians who did not leave Rothung near Rosos would be killed.²⁷⁸³

1567. The Trial Chamber has found that while the troops were at Camp Rosos, at least three civilians were raped in or near Rosos²⁷⁸⁴ and that one was gang-raped and was badly beaten and stabbed during the attack.²⁷⁸⁵

(ii) Findings

1568. The acts of violence carried out by members of the AFRC against protected persons or their property in Bornoya, Mateboi, Karina, Gbendembu and Rosos were carried out in the context of a series of attacks in which civilians were deliberately targeted for allegedly failing to sufficiently support the AFRC. There is evidence to suggest that these attacks were explicitly ordered by the First Accused in Mansofinia in May 1998 and in Yaya in April 1998. In Kamagbengbeh in June of 1998, the First Accused ordered the AFRC troops to attack Karina and to deliberately target civilians in order to “shock the whole country and the international community”. In Rosos, in June of 1998, the First Accused ordered that civilians should be cleared from the area within 15 miles from Rosos, that they should be executed rather than brought back to the Camp and that the surrounding villages should be burned and looted.

1569. The Trial Chamber has not been presented with any indication that the civilians in the villages attacked by the AFRC described above were armed. No evidence been adduced to suggest that these villages were military targets in the sense that no discernable strategic advantage was gained from the attacks leading up to Camp Rosos nor was any territory held by the troops following the attacks. Rather, the troops moved on to the next village, ultimately settling in Camp Rosos. Once the troops arrived in Camp Rosos the attacks continued against civilians in the area.

1570. The Trial Chamber notes the particularly brutal nature of a number of the acts of violence committed against civilians during the attacks including the splitting open of the stomach of a pregnant woman and removal of the foetus and the burning of civilians alive. Similarly the Trial Chamber notes that a number of the acts of violence were carried out against particularly vulnerable persons – children and pregnant women.

²⁷⁸³ TF1-267, Transcript 27 July 2005, pp. 8-9, 10-11, 17, 23-26, 29-30.

²⁷⁸⁴ Factual Findings, Rape, para. 1034, *supra*.

²⁷⁸⁵ Factual Findings, Physical Violence, paras 1282-2224, *supra*.

1571. On this basis, the Trial Chamber is satisfied that the acts of violence committed by members of the AFRC against protected persons or the property in Bornoya, Mateboi, Mandaya, Karina, Gbendembu and Rosos can only reasonably be inferred to have been carried out with the primary purpose to spread terror among the civilian population.

1572. The Trial Chamber is further satisfied that the crimes committed also served as a punishment against protected persons. No evidence has been adduced to indicate whether the protected persons targeted in these attacks did or did not in fact support the elected government of President Ahmed Tejan Kabbah or factions aligned with that government. The Trial Chamber has held that the material element in the *actus reus* of the crime of collective punishment is not whether the acts were actually committed or not by the victims, but whether the perpetrator indiscriminately and collectively punished these individuals for acts that they might or might not have committed.²⁷⁸⁶

1573. The Trial Chamber is satisfied, on the basis of the evidence specified above, that protected persons were collectively punished for allegedly supporting the President Ahmed Tejan Kabbah by members of the AFRC/RUF.

(h) Freetown and Western Area (6 January 1999 – 28 January 1999)

1574. In its Final Brief, the Prosecution argued that

“[i]n accounting for the crimes in Freetown the Prosecution stresses the great degree of hatred that already existed amongst the SLA faction towards Nigerian ECOMOG, the police, and the civilian population in general as it attacked Freetown.

That hatred, the Prosecution submits, was a motivating factor behind many of the crimes that were committed in Freetown against the civilian population. Such hatred stemmed from ECOMOG and civilians both killing and targeting soldiers and their families during the Intervention, the continuation of this practice whilst the SLAs were in the jungle, the numerous occasions when the civilians had betrayed the SLAs to the Kamajors and ECOMOG whilst they were in the jungle, and the execution of 24 senior AFRC officials in October 1998 by the Kabbah government whose Chief of Defence Staff at that time was Nigerian General Maxwell Khobe, and whose execution was carried out by Nigerian soldiers.

There is also evidence that SAJ Musa himself gave orders that once in Freetown, all police stations should be burnt down and all policemen, Nigerians [sic] soldiers, and SLPP collaborators should be targeted and killed during the attack on Freetown. An order which was endorsed by the First Accused when he assumed command after the death of SAJ Musa.”²⁷⁸⁷

²⁷⁸⁶ Applicable Law, paras 668-669, *supra*.

²⁷⁸⁷ Prosecution Final Brief, para. 395.

1575. In its Final Brief, the Prosecution asserted that the Accused “ [...] gave orders for, and actively encouraged, killings, mutilations and sexual violence and widespread burning of houses amounting to a campaign of terrorism.”²⁷⁸⁸

1576. The Prosecution has argued that the attacks against civilians continued as the AFRC retreated from Freetown. In its Pre-Trial Brief, the Prosecution submitted that the bulk of the AFRC/RUF forces finally were pushed out of the city of Freetown by early February at which time the AFRC/RUF regrouped in Waterloo and coordinated later attacks on Tombo and Hastings before being completely pushed out of the Western Area.²⁷⁸⁹ In its Opening Statement, the Prosecution submitted that as the rebels were forced to withdraw by ECOMOG, they intensified the pace of their killings, amputations, looting and burning particularly in the Kissy area.²⁷⁹⁰

1577. The Trial Chamber has found that acts of violence were carried out against protected persons or their property in Freetown (Unlawful Killings, Rape, Physical Violence, Pillage, Enslavement) and that civilians were subjected to sexual slavery in Freetown and the Western Area. The Trial Chamber has also found that children were abducted and used for military purposes in Freetown and the Western Area. As discussed above, the Trial Chamber does not consider that acts of enslavement, the abduction and use of child soldiers nor sexual slavery were acts the primary purpose of which was to spread terror among the civilian population. Evidence on these counts will not be considered further in this regard.

1578. The Prosecution has adduced evidence on acts of burning in Freetown. The Trial Chamber will consider this evidence below.

(i) State House

1579. The Trial Chamber has found that on 6 January 1999, AFRC forces under the command of the Accused Brima, and including the Accused Kamara and Kanu, invaded the city of Freetown. They gained control of Freetown and large parts of the Western Area.²⁷⁹¹

1580. The Trial Chamber accepts the evidence of Prosecution Witness TF1-334 who testified that he was present when ‘Gullit’ announced that it was time to attack Freetown and that the Sierra Leone People’s Party government was responsible for denying the success of the rebel troops. The Witness testified that ‘Gullit’ ordered that Freetown should be looted and burnt down, that anyone

²⁷⁸⁸ Prosecution Final Brief, para. 1640.

²⁷⁸⁹ Prosecution Pre-Trial Brief, para. 63.

²⁷⁹⁰ Prosecution Opening Statement, 7 March 2005, p. 33.

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who opposed the troops should be considered a collaborator and should be killed.²⁷⁹² This testimony is corroborated by Witness TF1-033 who heard Gullit order the burning of houses and the murder of civilians during the attack on Freetown.²⁷⁹³ Witness TF1-157 testified that when the ARFC entered Freetown, they ordered the civilians to sing while they were burning their houses.²⁷⁹⁴

1581. The Trial Chamber relies also on its previous findings that during the subsequent attack on Freetown in January 1999, civilians were mutilated and killed by ARFC forces because the AFRC believed the people of Freetown supported President Tejan Kabbah or failed to support the AFRC/RUF.

1582. In particular, the Trial Chamber relies upon its findings that a certain “Junior Sheriff” brought a boy to the State House who was from Guinea-Bissau and shot him²⁷⁹⁵ and that at least four persons suspected to be Nigerian ECOMOG soldiers were executed, *hors de combat* by AFRC troops in the State House area. An AFRC commander named Lieutenant Colonel Kido shot and killed approximately six civilians because they had “overlooked” him, meaning that they did not pay sufficient respect to him.²⁷⁹⁶

1583. The Trial Chamber has found that ‘Gullit’ told his fighters to force captured civilians to join the AFRC troops on their retreat, in order to replace those fighters killed by ECOMOG. Civilians who refused to join were shot in the presence of the Accused Brima and their dead bodies were thrown out the back of State House. The Trial Chamber has found that at least thirty civilians were killed. The Trial Chamber has found at least six other civilians were killed by AFRC troops at or near State House.²⁷⁹⁷

(ii) Kingtom

1584. The Trial Chamber relies in particular on its findings that an unknown number of civilians in the area of Kingtom were killed by AFRC troops for allegedly collaborating with ECOMOG. The Trial Chamber has found that in the second week of the invasion, during an operation to reclaim Kingtom from ECOMOG soldiers broke civilian houses and killed the civilians inside because they perceived them as ‘traitors’ who were collaborating with ECOMOG. Witness TF1-334 testified that

²⁷⁹¹ Context of Alleged Crimes, paras 202-205, *supra*.

²⁷⁹² TF1-334, Transcript 13 June 2005, pp. 100-104.

²⁷⁹³ TF1-033, Transcript 11 July 2005, pp. 60-64.

²⁷⁹⁴ TF1-157, Transcript 26 September 2005, pp. 18-19, 23-24, 26, 29-30.

²⁷⁹⁵ Factual Findings, Unlawful Killings, para. 904, *supra*.

²⁷⁹⁶ Factual Findings, Unlawful Killings, para. 913, *supra*.

²⁷⁹⁷ Factual Findings, Unlawful Killings, para. 914, *supra*.

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soldiers would knock on the door of the house and if the door was not opened, they would force it open and “[t]he first person who came out was a dead person.”²⁷⁹⁸

(iii) Fourah Bay

1585. The Trial Chamber has found that during the attack on Freetown, in early January, AFRC troops retaliated against civilians in the Fourah Bay area and punished them for allegedly killing an AFRC soldier.

1586. Specifically, the Trial Chamber relies on its findings that after the troops lost State House and Eastern Police, the Accused Brima received information that the people of Fourah Bay had killed one of his soldiers and announced that he would lead the AFRC troops to Fourah Bay to burn houses and kill people in retaliation. The troops attacked Fourah Bay and a large number of civilians were killed including men, women and children burned inside houses. Soldiers shot people who attempted to escape from burning houses. The attack was not limited to Fourah Bay Road but encompassed the entire Fourah Bay area.²⁷⁹⁹

1587. The Trial Chamber has found that prior to the attack the Accused Brima ordered a soldier named “Mines” to go to the SLRA to collect cutlasses. “Mines” subsequently returned with cutlasses, which he distributed to the troops with the assistance of one of the battalion commanders ‘Changabulanga’.²⁸⁰⁰

1588. The Accused Kanu gave a demonstration on amputation of civilians to AFRC troops in the Kissy Old Road area. Kanu demonstrated an amputation on a civilian, explaining to them that a ‘long hand’ is the amputation of the hand, while a ‘short hand’ is the amputation of an arm around the bicep area (above the elbow and below the shoulder).²⁸⁰¹

1589. Brima then ordered the soldiers to move to the Upgun roundabout via Kissy Road. Upon arrival at Upgun, the troops were summoned in a muster parade. The Accused Kanu and the Accused Brima held a discussion and then Kanu told the troops that Brima had said that the civilians should be taught a lesson. Kanu then ordered that any civilian the troops saw from Ross

²⁷⁹⁸ Factual Findings, Unlawful Killings, paras 917-918, *supra*.

²⁷⁹⁹ Factual Findings, Unlawful Killings, paras 919-921, *supra*.

²⁸⁰⁰ Factual Findings, Physical Violence, para. 921, *supra*.

²⁸⁰¹ Factual Findings, Physical Violence, para. 922, *supra*.

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Road until Fourah Bay Road should be amputated and killed and the entire area should be burned down.²⁸⁰²

1590. The troops were divided for the attack on Fourah Bay with the Accused Kanu as the commander of one group. After carrying out the orders, the troops were called back to where 'Gullit' was near Kissy Road.²⁸⁰³ On cross-examination, witness TF1-184 gave more detail about the alleged involvement of the Accused Kamara in burning in Kissy Road, Ross Road and Fourah Bay Road after a muster parade at Uppun, but the evidence was not linked explicitly to the attack involving the retaliatory killing of civilians.

1591. Following the attack on Fourah Bay, the Accused Kanu gave a further demonstration at Uppun. Kanu announced that it was time for the amputations to begin. He stated that he would carry out the first amputations in order to set an example for the others. Kanu called for two civilians nearby to be brought to him and he amputated both hands of both civilians with a machete at their wrists, explaining the difference between what he referred to as 'short sleeve' and 'long sleeve' amputations. Kanu then told the civilians that since they voted for 'Pa Kabbah' they should go to him and ask him for hands. Ten more civilians were then rounded up, amputated at the elbow and told them to go to 'Pa Kabbah' or ECOMOG to complain.²⁸⁰⁴

1592. The Trial Chamber has found on the basis of the evidence of Prosecution Witness TF1-153 that while the AFRC headquarters was at PWD, a soldier came from Fourah Bay "with his head bust" reporting that the civilians there had been fighting the soldiers. The witness subsequently heard that 'Bazzy' had raided a WFP warehouse in the nearby area and collected a number of machetes he found there. Later that evening, the witness saw 'Bazzy' and overheard a conversation between him and SAJ Musa's wife. Tina Musa asked 'Bazzy' why his men were holding machetes. According to the witness, 'Bazzy' replied "We are just [returning] from Operation Cut Hand". The witness testified that from this conversation he understood that the machetes from the warehouse had been used to amputate people.²⁸⁰⁵

(iv) Kissy

a. Good Shepherd Hospital

²⁸⁰² Factual Findings, Unlawful Killings, paras 919-926, *supra*.

²⁸⁰³ Factual Findings, Unlawful Killings, paras 919-926, *supra*.

²⁸⁰⁴ Factual Findings, Physical Violence, para. 1229, *supra*.

²⁸⁰⁵ Factual Findings, Physical Violence, para. 1231, *supra*.

1593. The Trial Chamber has found that on 18 January 1999, a group of “juntas” went to the Good Shepherd Hospital in Kissy and accused personnel there of treating ECOMOG and Kamajors. They forced everybody out of the hospital – patients, nurses, staff, and visitors – and beat them with a large stick called a ‘coboko’, which has a rope tied to it.²⁸⁰⁶

1594. Civilians were taken from the Hospital, to a certain ‘Pa Zubay’s’ house a short distance away. The civilians were made to stand against a wall and the juntas opened fire and began shooting randomly from different directions. Fifteen civilians were killed as a result of the shooting.²⁸⁰⁷

b. Rogbalan Mosque

1595. The Trial Chamber has found that AFRC fighters attacked a mosque in Kissy killing a number of civilians who were accused of being “enemies.” Witnesses testified that the civilians were targeted because the AFRC fighters believed they were supporting President Kabbah and/or ECOMOG. Witness TF1-334 testified that the Accused Brima told commanders prior to the attack that he had received information that civilians were harbouring ECOMOG forces in mosques. Brima further stated that AFRC troops should shoot and kill people they encounter in mosques, as these people were enemies. The witness stated that while the area had many mosques, Brima referred in particular to a mosque “down towards Shell Old Road, towards the junction” that was housing “collaborators”.

1596. Witness TF1-021 testified that over fifteen men armed with guns and machetes, stormed into the compound of the mosque. The men asked the civilians if they were praying, to which the civilians responded affirmatively. The witness stated that the men told the civilians “As you are here now, you are people who voted for Tejan Kabbah. We are going to kill all of you.” The civilians collected money and offered it to their assailants so that they would leave. The men took the money and then began firing indiscriminately, killing people throughout the mosque. According to the witness, the men stated that the killings were not their fault, as they came in peace, but that of President Kabbah, since he did not recognise the People’s Army.

1597. The Trial Chamber has found that at least 70 persons were killed during the attack.²⁸⁰⁸

c. Old Shell Road

²⁸⁰⁶ Factual Findings, Physical Violence, paras 928-930, *supra*.

1598. The Trial Chamber has found that at Old Shell road, immediately prior to the troops' arrival at Kissy Mental Home, Osman Sesay a.k.a. 'Changamulanga' amputated six young civilian men at the elbow. 'Changamulanga' told the men to go to 'Pa Kabbah' and he would give them back their hands because they had voted for him.²⁸⁰⁹

d. Kissy Mental Home

1599. Trial Chamber relies on its findings that one evening in January 1999, on the day that the AFRC troops arrived at Kissy Mental Home during the retreat from Freetown, the Accused Brima, in the presence of commanders including the Accused Kamara and Kanu, ordered troops to go out from the mental home and "clear up" the area. Brima stated that civilians were to be killed and amputated and houses burned as punishment for their support of ECOMOG. Specifically, he ordered the witness, 'Pikin', 'Shrimp', 'Hassim' and others to go as far as they could towards "PWD" killing people.²⁸¹⁰

1600. The witness stated that his group accordingly moved from the Kissy Mental Home, along the Old Road, towards Kissy market, where they heard civilians celebrating. The soldiers began firing machine guns at the civilians, killing an unspecified number of them. The troops went as far as Fisher Lane and then retreated to Kissy Mental Home, where they reported to 'Gullit' that the mission had been accomplished.²⁸¹¹

1601. The Trial Chamber further found on the evidence of witness George Johnson that on the same day the Accused Kanu ordered the soldiers, in the presence of the Accused Brima, the Accused Kamara and other commanders, to go to the eastern part of Freetown and amputate up to 200 civilians and send them to Ferry Junction. After the order was given, the witness observed fighters, including Kabila, 'Born Naked', 'Cyborg', and 'SBU Killer', moving towards the eastern part of Freetown. On their return, their machetes were covered with blood and they brought with them many amputated arms.²⁸¹²

1602. The Trial Chamber relies on its findings on the basis of the evidence of Witness TF1-184 that 'Mines' amputated an unknown number of civilians pursuant to an order issued by the Accused Brima. While the troops were at Kissy Mental Home, AFRC soldier Kabila told 'Gullit' that "the

²⁸⁰⁷ Factual Findings, Unlawful Killings, paras 934-936, *supra*.

²⁸⁰⁸ Factual Findings, Unlawful Killings, para. 1236, *supra*.

²⁸⁰⁹ Factual Findings, Physical Violence, para. 1237, *supra*.

²⁸¹⁰ Factual Findings, Unlawful Killings, para. 1239, *supra*.

²⁸¹¹ Factual Findings, Unlawful Killings, paras 1237-1241, *supra*.

civilians are pointing their hands at our own crowd here," implying that the civilians were divulging the troops' position to ECOMOG. In the presence of the witness, 'Gullit' said "that the hand that they are pointing at us, the fingers that are pointing at us, we shall ensure that all their hands are amputated." When asked if anything occurred as a result of the Accused Brima's words, the witness testified that about one and a half hours later, AFRC soldier 'Mines' returned to Kissy Mental Home with a bag full of hands which he showed to 'Gullit' and others, including the witness. Witness TF1-184 also testified that during the period that the troops were at Kissy Mental Home, he observed 'Gullit' amputating a civilian's hand at Shell Company by Old Road.²⁸¹³

e. Rowe Street

1603. The Trial Chamber has found that at unspecified time in January 1999, at Rowe Street in the Kissy area of Freetown, AFRC fighters or persons associated with them captured eight civilians, lined them up and shot seven of them dead. The rebels put the remaining civilian's hand on the ground, stood on his chest, stretched out his arms, and intentionally chopped off his hand with an axe.²⁸¹⁴

f. Fatamaran Street

1604. The Trial Chamber has found that on approximately 18 January 1999 rebels amputated the hands of the seven captured persons. At least one person died as a result of the amputation.²⁸¹⁵

g. Old Road (Locust and Samuels area)

1605. The Trial Chamber has found that on 22 January 1999, on Old Road in the Locust and Samuels area, witness TF1-083 and his family were captured by a group of rebels. The rebel commander told witness TF1-083 and others to lie flat on their backs to be killed or amputated. The rebels took two people to a 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. The hand of a man named Pa Sorie was also cut. The rebels cut off the fingers of a man named Mussa. The commander

²⁸¹² Factual Findings, Physical Violence, para.1230, *supra*.
²⁸¹³ Factual Findings, Physical Violence, para. 1232, *supra*.
²⁸¹⁴ Factual Findings, Physical Violence, para. 1233, *supra*.
²⁸¹⁵ Factual Findings, Physical Violence, paras 1056-1060, *supra*.

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ordered the rebels to cut off the entire hand and when Mussa begged for mercy, the rebels killed him.²⁸¹⁶

h. Parsonage Street

1606. The Trial Chamber has found that 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. A soldier named ‘Captain Two Hand’ ordered the soldiers to cut off the tenant’s hands. A rebel in civilian clothes used an axe to cut off both of his hands. The soldiers told the tenant to “go and tell Tejan Kabbah this is what we have done. Go and tell no more politics, no more voting.” Soldiers then amputated witness TF1-278’s left hand. The witness testified that his child shouted “Hey, soldier, don't cut my father's hand, please. He is working for us.” One of the soldiers ordered that the child’s hand be amputated. The witness asked the soldier to amputate his right hand in exchange for sparing his child. The rebels amputated his right hand, before releasing the witness and the other civilians, telling them “You are the messenger of Tejan Kabbah. Go and tell Tejan Kabbah that we cut off your hand. Since you did not allow for peace we are saying good-bye to you.”

i. PWD

1607. The Trial Chamber has also found that roughly three weeks after the 6 January 1999 invasion of Freetown, Brima, Kamara and Kanu went to PWD Junction to call for reinforcements from the RUF. After a failed attempt to recapture the State House, Brima returned to PWD which became a temporary headquarters. Around that time, Brima ordered the “troops” to abduct civilians in order to attract the attention of the international community. Kamara and Kanu were present also. Civilians, including a number of young girls were then abducted by the rebels and the commanders from Freetown and brought to the headquarters at PWD.

1608. The Trial Chamber finds additionally that civilian property was wilfully burned by members of the AFRC during the retreat from Freetown. The Trial Chamber accepts the evidence of Prosecution Witness Gibril Massaquoi, not previously evaluated by the Chamber, that during the retreat from Freetown the Accused Kanu ordered “the war candle to be put on” meaning that houses in Freetown should be burnt.²⁸¹⁷ The Trial Chamber also accepts the evidence of Prosecution

²⁸¹⁶ Factual Findings, Unlawful Killings, para. 1235, *supra*.
²⁸¹⁷ Gibril Massaquoi, Transcript 10 October 2005, p. 14.

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Witness TF1-169 that the Kanu ordered the burning of houses at Goba Water.²⁸¹⁸ Witness TF1-184 testified that Kanu distributed petrol for the burning of Freetown.²⁸¹⁹ Witness TF1-344 testified that the Accused Brima ordered Calaba Town burnt down²⁸²⁰ and that the Accused Kanu participated in the burnings.²⁸²¹

(v) Findings

1609. The acts of violence carried out by members of the AFRC against protected persons or their property during the AFRC invasion of Freetown in January 1999, were part of a planned and deliberate attack, ordered or carried out by all three Accused, in which protected persons were specifically targeted. These attacks continued during the AFRC retreat. The Trial Chamber notes the particularly brutal nature of some of the acts of violence. Members of the AFRC repeatedly amputated the hands a great number of protected persons. These mutilations can only be reasonably understood to have served as a grotesque public warning to civilians not to interfere with the AFRC troops. The Trial Chamber notes that a great number of protected persons were deliberately killed by members of the AFRC in targeted attacks or through indiscriminate shooting. The Trial Chamber also notes the repeated and express statements of members of the AFRC that such acts of violence were being committed because the civilian population had allegedly supported opponents of the AFRC, namely President Tejan Kabbah and the ECOMOG forces.

1610. On this basis, the Trial Chamber is satisfied that the acts of violence committed by members of the AFRC against protected persons or property during the AFRC invasion and retreat from Freetown in early 1999 were carried out with the primary purpose to spread terror among the civilian population.

1611. The Trial Chamber is further satisfied that these crimes also served as a punishment against protected persons. No evidence has been adduced to indicate whether the protected persons targeted during the invasion and retreat from Freetown did or did not in fact support the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, in this instance ECOMOG, the Police and Nigerians, nor whether in fact the protected persons failed to provide sufficient support to the AFRC/RUF. The Trial Chamber has held that the material element in the *actus reus* of the crime of collective punishment is not whether the acts were actually committed or

²⁸¹⁸ TF1-169, Transcript 6 July 2005, pp. 20-21.

²⁸¹⁹ TF1-184, Transcript 27 September 2005, p. 65.

²⁸²⁰ TF1-334, Transcript 14 June 2005, p. 100.

²⁸²¹ TF1-334, Transcript 14 June 2005, p. 100.

not by the victims, but whether the perpetrator indiscriminately and collectively punished these individuals for acts that they might or might not have committed.²⁸²²

1612. The Trial Chamber is satisfied, on the basis of the evidence specified above, that protected persons were collectively punished by members of the AFRC/RUF for allegedly supporting President Ahmed Tejan Kabbah, ECOMOG or other factions aligned with the government or for allegedly failing to provide sufficient support to the AFRC/RUF.

(i) Port Loko District (13 February 1998 – June 1999) (January-April 1999)

1613. In its Final Brief, the Prosecution asserts that Kamara “[...] gave orders for, and actively encouraged, killings, physical and sexual violence and the burning of villages amounting to a campaign of terrorism”²⁸²³ in Port Loko District. It also asserted that, “[i]n a similar manner to attacks against civilians carried out by the Junta in other parts of Sierra Leone, those conducted by the Westside Boys in Port Loko District were done as part of the *modus operandi* to terrorise and punish civilians.”²⁸²⁴

1614. The Trial Chamber has found that acts of violence were carried out by members of the AFRC against protected persons or their property in Manaarma (Unlawful Killings) and in Nonkoba (Unlawful Killings). The Trial Chamber has also found that civilians were forced into sexual slavery in Port Loko District, however, as sexual slavery, in the context of the conflict in Sierra Leone, has not been found to be acts the primary purpose of which was to spread terror among the civilian population, the Trial Chamber makes no further findings in this regard. Burning was not particularised in Port Loko District and thus the Trial Chamber makes no findings on the basis of any evidence of such adduced by the Prosecution.

(i) Attacks on the way to and from Gberi Bana

1615. The Trial Chamber accepts the evidence of Prosecution Witness TF1-334, not previously evaluated by the Chamber, that the troops leaving Freetown went through Benguema (Western Area), Waterloo (Western Area), Newton (Western Area), Mamamah (Port Loko District), Mile 38 (Port Loko District), Magbeni (Port Loko District) and ultimately made a camp at a village called Gberi Bana (Port Loko District).²⁸²⁵ This route is largely corroborated by the testimony of Witness George Johnson; however, Witness George Johnson stated that the troops went through Four Mile

²⁸²² Applicable Law, paras 677-681, *supra*.

²⁸²³ Prosecution Final Brief, para. 1724.

²⁸²⁴ Prosecution Final Brief, para. 1766.

close to Newton Junction, not through Newton itself. He also did not mention having gone through Magbeni and testified that the troops set up base at “Gberibana”, also called “West Side” which the Trial Chamber is satisfied is the same location as “Gberi Bana”.²⁸²⁶

1616. During this time, the AFRC troops, under the overall command of the Second Accused Kamara, conducted a series of attacks on the proximate villages.

1617. The Trial Chamber relies in particular on the evidence of Prosecution Witness TF1-334 that after the troops left Newton, in approximately March 1999, they passed through a small village referred to by the Witness as “RDF”. There the Accused Kamara, ordered a certain ‘Kankada’, his personal security officer, to take some men to “decorate” Mamamah Town. The Witness testified that the Accused Kamara explained that by “decorate” he meant that soldiers should execute any civilians they captured and display them at Mamamah Junction. The Witness went to Mamamah Town and observed the bodies of 15 persons who had been executed and mutilated. Two of the victims were women, and three were children. The Witness testified that the Accused Kamara congratulated his men on a job well done.²⁸²⁷ Witness TF1-334 also testified that ‘Bazzy’ said that Mamamah should be set on fire and himself participated in the burning.²⁸²⁸ Similarly, Witness TF1-334 testified that ‘Bazzy’ ordered that Mile 38 should be set on fire and himself participated in the burning.

1618. This evidence is generally corroborated by that of Witness George Johnson who testified that he was with the Accused Kamara in “Mamamah” and that Kamara ordered soldiers to “make the terrain more fearful to slow the movement of the ECOMOG troops.” Witness George Johnson testified that by this Kamara meant that people should be killed and put on display. The Witness testified that five men, civilians of Mamamah, were killed by ‘Cyborg’ with a machete and their remains were put on display on the main highway. The Witness also testified that before the troops pulled out of Mamamah, Kamara ordered a house burnt down. The Witness testified that were a number of civilians in the house, including some children aged 10 to 15. The Witness was present outside the house when one of the children trapped inside tried to escape. Kamara forced him at gunpoint back into the house and the child was burnt to death.²⁸²⁹

²⁸²⁵ TF1-334, Transcript 15 June 2005, pp. 10-31.

²⁸²⁶ George Johnson, Transcript 15 September 2005, pp. 59-67.

²⁸²⁷ TF1-334, Transcript 15 June 2005, pp. 20-21.

²⁸²⁸ TF1-334, Transcript 15 June 2005, p. 23.

²⁸²⁹ George Johnson, Transcript 15 September 2005, pp. 63-67.

23470

1619. This evidence is also generally corroborated by that of Witness TF1-023 that in approximately March of 1999, in Mile 38, he witnessed ‘Bazzy’ ordered the rebels to attack civilians in Mamamah Village in order to spread fear. The Witness stated that ‘Bazzy’ said that the rebels should kill people and instil fear as ECOMOG was already pushing them out.²⁸³⁰ The Witness also testified that following the attack, he saw the rebels kill about 20 people. Their heads were cut off and placed on sticks at roadblocks.²⁸³¹

1620. Defence Witness DBK-129 testified that he was at Mamamah during an SLA battle with ECOMOG during this period. He testified that ‘Junior Lion’ gave the order to ‘Kankada’ to make the area “fearful”. The Witness testified that civilians were killed and their heads displayed at checkpoints in order to scare the ECOMOG troops.²⁸³²

1621. Witness TF1-334 testified that after passing through Mile 38, ‘Bazzy’ and the troops arrived at Magbeni.²⁸³³ There, ‘Bazzy’ ordered some of his men to cross the river and go to a village called Gberi Bana and make it a “civilian free area”. The Witness testified that ‘Bazzy’ explained that civilians should be executed. The Witness subsequently went to Gberi Bana and saw approximately 15 “chopped” bodies. ‘Bazzy’ was present and commended his men on a job well done.²⁸³⁴

1622. Witness TF1-334 testified that from the base in Gberi Bana, ‘Bazzy’ gave a number of orders to attack villages in the surrounding area. ‘Bazzy’ said that ECOMOG has taken over Masiaka and gave an order that those areas where ECOMOG was based should be attacked, burnt down and that any civilian captured should be executed.²⁸³⁵

1623. Witness TF1-334 testified that ‘Bazzy’ called for Port Loko (Town) to be attacked. He also ordered that any village the troops reached on the way should be burnt down and civilians killed. The Witness testified that ‘Bazzy’ stated that he did not want to see any civilians there other than those who were captured with the troops.²⁸³⁶

1624. Witness George Johnson also testified that Kamara, in a meeting at Geri Bana, ordered an attack on Port Loko which was carried out sometime before 27 April 1999 (Independence Day in Sierra Leone)²⁸³⁷. However, George Johnson testified that the purpose of the operation was to get

²⁸³⁰ TF1-023, Transcript 10 March 1005, p. 36-37.

²⁸³¹ TF1-023, Transcript 10 March 1005, p. 36-37.

²⁸³² DBK-129, Transcript 9 October 2006, p. 88.

²⁸³³ TF1-334, Transcript 15 June 2005, p. 24.

²⁸³⁴ TF1-334, Transcript 15 June 2005, pp. 28-29.

²⁸³⁵ TF1-334, Transcript 15 June 2005, p. 32.

²⁸³⁶ TF1-334, Transcript 15 June 2005, p. 35.

²⁸³⁷ George Johnson, Transcript 15 September 2005, p.79.

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arms and ammunition from Malian troops stationed there. George Johnson went on the operation which he described as successful. In unknown villages on the way to Port Loko, witness George Johnson observed civilians who had been killed and amputated. The Witness testified that these acts were committed in part by SLA advance “blocking” troops, who went before him. Witness George Johnson believed ‘Cyborg’ was responsible for these acts and complained about this to Kamara upon his return to Geri Bana. The Witness testified that he complained because the operation was meant to be purely to attack the Malians not to kill civilians.²⁸³⁸

1625. Witness George Johnson testified that during the attack on Port Loko he came across a young woman who had her hands amputated. The Witness instructed a certain ‘Sammy’, an Intelligence Officer’ to write a letter addressed to the Malians and place it around her neck, which he did.²⁸³⁹

1626. Witness TF1-334 testified that from the base in Gberi Bana, ‘Bazzy’ ordered an operation to take place at Makolo. According to the Witness, ‘Bazzy’ stated that ECOMOG forces have a base there and that the troops should destroy the entire village, burn it down and that if they encountered any civilians they should be executed. The Witness went on this operation and observed that three ECOMOG soldiers were executed and that three young women were chopped to death with an axe.²⁸⁴⁰

1627. Witness George Johnson testified that from the base in Geri Bana, Kamara ordered operations on Newton junction and Mile 38. The witness was the operation commander for both these attacks. Unlike the attacks described by witness TF1-334, witness George Johnson testified that the purpose of these attacks was to find arms and ammunition.²⁸⁴¹

(ii) Manaarma

1628. The Trial Chamber has found a group of rebels under the command of ‘Junior Lion’ attacked Manaarma en route to Port Loko, where they engaged the Malian ECOMOG soldiers in combat at Shelenker/Shelenka secondary school. The Trial Chamber has also found that on an unspecified date, soldiers took an unknown number of women to a house where they were all killed. Witness TF1-253 testified that in April 1999, he saw a pregnant woman whose head had been severed and her stomach opened by the “rebels”.

²⁸³⁸ George Johnson, Transcript 15 September 2005, pp. 75-77.
²⁸³⁹ George Johnson, Transcript 15 September 2005, pp. 77-78.
²⁸⁴⁰ TF1-334, Transcript 15 June 2005, p. 39.
²⁸⁴¹ George Johnson, Transcript 15 September 2005, pp. 79-80.

23 CF72

(iii) Nonkoba

1629. 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.²⁸⁴²

(j) Finding

1630. The Trial Chamber finds there is evidence to suggest that a pattern of attacks against protected persons or their property was conducted with the purpose of terrorising the civilian population. However, given the evidence of witness George Johnson, the Trial Chamber is of the opinion that spreading terror was not the only purpose and in fact, may not have been the primary purpose of the attacks ordered by the Accused Brima or others. Regardless, the Trial Chamber finds that there is insufficient evidence linking the acts of violence found by the Chamber to have occurred in Manaarma, Nonkoba and Tendekum - the only acts of violence which have been established beyond a reasonable doubt by this Chamber and the only acts particularised in the Indictment in which the Defence was put on notice - with the attacks ordered by the Accused Brima.

1631. The Trial Chamber is therefore not satisfied that these acts of violence were committed against protected persons or their property in Manaarma or Nonkoba with the primary purpose of spreading terror among the civilian population.

1632. The Trial Chamber is neither satisfied that the crimes committed in Manaarma and Nonkoba served as punishment against protected persons.

3. Finding on Count 1

1633. By virtue of the foregoing and of the Trial Chamber’s findings with regards to the Chapeau elements of war crimes, the Trial Chamber is satisfied that the elements in relation to Count 1 (Terror) are established.

²⁸⁴² DBK-111, Transcript 18 September 2006, pp. 43-45.

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4. Finding on Count 2

1634. By virtue of the foregoing and of the Trial Chamber's findings with regards to the Chapeau elements of war crimes, the Trial Chamber is satisfied that the elements in relation to Count 2 (Collective Punishment) are established.

XI. RESPONSIBILITY OF THE ACCUSED

23474

A. Preliminary Remarks

1635. The Prosecution alleges that “Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu, by their acts or omissions, are individually criminally responsible pursuant to Article 6.1 of the Statute for the crimes referred to in Articles 2,3 and 4 of the Statute as alleged in the Indictment, which crimes each of them planned, instigated, ordered, committed or in whose planning, preparation or execution each Accused otherwise aided and abetted, or which crimes were within a joint criminal enterprise in which each Accused participated or were a reasonably foreseeable consequence of the joint criminal enterprise in which each Accused participated.”²⁸⁴³

1636. The Prosecution further alleges that “In addition, or alternatively, pursuant to Article 6.3 of the Statute, Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu, while holding positions of superior responsibility and exercising effective control, over their subordinates, are each individually criminally responsible for the crimes referred to in Articles 2,3 and 4 of the Statute. Each Accused is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and each Accused failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.”²⁸⁴⁴

1637. The Indictment alleges additionally, in relation to the Counts set out therein, that “by their acts or omissions in relation to these events, Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu, pursuant to Article 6.1. and, or alternatively, Article 6.3. are individually criminally responsible for the crimes alleged [...]”.²⁸⁴⁵

1638. The Trial Chamber’s factual findings with regard to the crimes committed under the various Counts in the Indictment are contained in Chapter 10 of this Judgement.²⁸⁴⁶ In making the following findings on the individual criminal responsibility of each of the Accused, the Trial Chamber takes into account its factual findings in that Chapter and the detailed assessment contained in that Chapter as well as other relevant Chapters of the Judgement. In this Chapter, the Trial Chamber will determine in light of the evidence on record, whether each of the Accused bears individually criminal liability for such crimes under Article 6(1) or 6(3) of the Statute. Where the Parties have

²⁸⁴³ Indictment, para. 35.

²⁸⁴⁴ Indictment, para. 36.

²⁸⁴⁵ Indictment paras 41, 50, 57, 64, 65, 73, 79.

²⁸⁴⁶ See Factual Findings, *supra*.

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made specific submissions with regard to an Accused, crime base or mode of liability, these have been considered as they arise in the findings below.

1639. Finally, in view of the Trial Chamber’s earlier finding that the Prosecution’s pleading of “joint criminal enterprise” as a mode of liability in the Indictment was defective²⁸⁴⁷, the Trial Chamber makes no findings on the alleged individual criminal responsibility of the Accused under a ‘joint criminal enterprise’.

B. The Accused Brima

1. Allegations in the Indictment

1640. The Indictment alleges:

At all times relevant to this Indictment, Alex Tamba Brima was a senior member of the AFRC/RUF forces.

Alex Tamba Brima was a member of the group which staged the coup and ousted the government of President Kabbah. Johnny Paul Koroma, Chairman and leader of the AFRC, appointed Alex Tamba Brima a Public [sic] Liaison Officer (PLO) within the AFRC. In addition, Alex Tamba Brima was a member of the Junta governing body.

Between mid February 1998 and about 30 April 1998, Alex Tamba Brima was in direct command of AFRC/RUF forces in the Kono District. In addition, Alex Tamba Brima was in direct command of AFRC/RUF forces which conducted armed operations throughout the north eastern and central areas of the Republic of Sierra Leone, including, but not limited to, attacks on civilians in Bombali District between about May 1998 and 31 July 1998. As of about 22 December 1998, Alex Tamba Brima was in command of AFRC/RUF forces which attacked Freetown on 6 January 1999.

[...]

In [his] positions referred to above, Alex Tamba Brima, [...] individually or in concert with [the Accused Kamara and the Accused Kanu], Johnny Paul Koroma aka JPK, Foday Saybana Sankoh, Sam Bockarie aka Mosquito aka Maskita, Issa Hassan Sesay aka Issa Sesay, Morris Kallon aka Belai Karim, Augustine Gbao aka Augustine Bao and/or other superiors in the AFRC, Junta and AFRC/RUF forces, exercised authority, command and control over all subordinate members of the AFRC, Junta and AFRC/RUF forces.

[...]

Alex Tamba Brima, [...] by [his] acts or omissions, [is] individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Indictment, which crimes [he] planned, instigated, ordered, committed or in whose planning, preparation or execution [he] otherwise aided and abetted, or which crimes were within a joint criminal enterprise in which [he] participated or were a reasonably foreseeable consequence of the joint criminal enterprise in which [he] participated.

In addition, or alternatively, pursuant to Article 6.3. of the Statute, Alex Tamba Brima, [...] while holding positions of superior responsibility and exercising effective control over [his] subordinates, [is] individually criminally responsible for the crimes referred to in Articles 2, 3 and

²⁸⁴⁷ Alleged Defects in Form of Indictment, para. 56, *supra*.

4 of the Statute. [The] Accused is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and [...] failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.²⁸⁴⁸

2. Bo, Kenema and Kailahun Districts

1641. In its factual findings, the Trial Chamber found that in Bo District in June 1997 AFRC/RUF forces unlawfully killed an unknown number of civilians, as charged under Counts 4 through 5,²⁸⁴⁹ and terrorised civilians and subjected them to collective punishment, as charged under Counts 1 and 2.²⁸⁵⁰

1642. The Trial Chamber also found that in Kenema District between 25 May 1997 – 14 February 1998, AFRC/RUF forces committed a number of crimes including unlawfully killing a number of civilians, as charged under Counts 4 and 5,²⁸⁵¹ inflicting physical violence on an unknown number of civilians as charged under Count 10,²⁸⁵² illegally recruiting and using children under the age of 15 years for military purposes, as charged under Count 12,²⁸⁵³ abducting an unknown number of civilians and using them as forced labour at Cyborg Pit in Tongo Field, as charged under Count 13,²⁸⁵⁴ and terrorising civilians and subjecting them to collective punishment, as charged under Count 1 and 2.²⁸⁵⁵

1643. The Trial Chamber further found that in Kailahun District during the Junta period, RUF troops abducted civilians and used them as forced labour, as charged under Count 13.²⁸⁵⁶

(a) Responsibility of the Accused Brima under Article 6(1) of the Statute

(i) Submissions

1644. In its Final Trial Brief the Prosecution makes no submissions with regard to the individual criminal responsibility of the Accused Brima pursuant to Article 6(1) of the Statute. The Prosecution only alleges that “[f]or all crimes committed in Kailahun District during the Indictment period, the three Accused are individually criminally responsible under the theory of joint criminal enterprise, in that the crimes were in the contemplation of the common enterprise or were a

²⁸⁴⁸ Indictment, paras 22-24, 31, 35-36.

²⁸⁴⁹ Factual Findings, para. 826, *supra*.

²⁸⁵⁰ Factual Findings, para. 1497, *supra*.

²⁸⁵¹ Factual Findings, para. 840, *supra*.

²⁸⁵² Factual Findings, para. 1197, *supra*.

²⁸⁵³ Factual Findings, para. 1277, *supra*.

²⁸⁵⁴ Factual Findings, para. 1309, *supra*.

²⁸⁵⁵ Factual Findings, paras 1475-1476, *supra*.

²⁸⁵⁶ Factual Findings, para. 1374, *supra*.

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reasonably foreseeable consequence of its implementation”.²⁸⁵⁷ The Prosecution further submits that the Accused Brima held a significant position in the AFRC government and that he attended meetings at which crimes were discussed. The Prosecution submits that this is evidence of planning, instigating and aiding and abetting.²⁸⁵⁸ The Prosecution makes no submissions as to whether or not the Accused Brima ordered or committed the alleged crimes.

1645. In its Final Trial Brief, the Brima Defence submits that no reliable evidence of instigation, ordering, committing, or aiding or abetting has been adduced by the Prosecution against the Accused Brima in relation to the Districts of Bo, Kenema and Kailahun during the relevant Indictment period.²⁸⁵⁹ The Brima Defence further submits that the Prosecution led no evidence of any attack on Bo by the AFRC in general or the Accused Brima in particular;²⁸⁶⁰ nor evidence to prove that the Accused Brima had superior control over the perpetrators of the alleged crimes in those Districts. The Brima Defence instead relies on Brima’s alibi defence for those Districts.²⁸⁶¹ The Brima Defence submits that throughout the Indictment period Kailahun District was under the control of the RUF.²⁸⁶² In addition, it argues that the Accused was detained by the RUF in Kailahun District during the relevant period and was not in a position of superior commander over the perpetrators of the alleged crimes in Kailahun.²⁸⁶³

(ii) Findings

a. Committing

1646. The Prosecution has not adduced any evidence that the Accused Brima committed any of the crimes that occurred in Bo, Kenema and Kailahun Districts during the relevant Indictment period. The Trial Chamber therefore finds pursuant to Article 6(1) of the Statute that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima in respect of the crimes committed in those Districts during the relevant Indictment period.

b. Ordering

1647. The Prosecution has not adduced any evidence that the Accused Brima ordered the commission of any of the crimes committed in Bo, Kenema and Kailahun Districts during the

²⁸⁵⁷ Prosecution Final Brief, para. 1372.

²⁸⁵⁸ Prosecution Final Brief, para. 498.

²⁸⁵⁹ Brima Final Brief, paras 84, 87, 90, 93.

²⁸⁶⁰ Brima Final Brief, para. 241.

²⁸⁶¹ Brima Final Brief, paras 248-255, 206-213.

²⁸⁶² Brima Final Brief, para. 227.

²⁸⁶³ Brima Final Brief, paras 207-213, 224, 288.

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relevant Indictment period. The Trial Chamber therefore finds pursuant to Article 6(1) of the Statute that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima in respect of the crimes committed in those Districts during the relevant Indictment period.

c. Planning

1648. The Trial Chamber recalls its finding that the Accused Brima participated in high-level coordination meetings of the AFRC government during the Junta period but that no evidence was adduced that the crimes committed in Bo, Kenema and Kailahun Districts were planned at these meetings.²⁸⁶⁴ The Trial Chamber is therefore not satisfied that the Accused Brima made a substantial contribution to the planning of these crimes and finds pursuant to Article 6(1) of the Statute that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima in respect of the crimes committed in those Districts during the relevant Indictment period.

d. Instigating

1649. The Prosecution has not adduced any evidence that the Accused Brima prompted or influenced the perpetrators of the crimes committed in Bo, Kenema and Kailahun Districts during the relevant Indictment period. The Trial Chamber therefore finds pursuant to Article 6(1) of the Statute that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima in respect of the crimes committed in those Districts during the relevant Indictment period.

e. Otherwise aiding and abetting

1650. The Prosecution has not adduced any evidence that the Accused Brima gave practical assistance, encouragement or moral support which had a substantial effect on the perpetration of crimes in Bo, Kenema and Kailahun Districts during the relevant Indictment period. The Trial Chamber therefore finds pursuant to Article 6(1) of the Statute that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima in respect of the crimes committed in those Districts during the relevant Indictment period.

²⁸⁶⁴ Role of the Accused, para. 318, *supra*.

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(b) Responsibility of the Accused Brima under Article 6(3) of the Statute(i) Submissions

1651. In its Final Brief, the Prosecution submits that the Accused Brima is individually criminally responsible under Article 6(3) of the Statute for crimes committed by his subordinates during the AFRC Government period by virtue of his membership of the Supreme Council, which had control over the police and political authority over the military.²⁸⁶⁵ The Prosecution points to evidence establishing that the Accused regularly attended Supreme Council meetings and held an important position in the mining industry. The Prosecution further contends that that he had power and authority over soldiers and officers of higher rank during the AFRC/RUF Government period.²⁸⁶⁶

1652. The Brima Defence submits that the Accused Brima possessed no military authority and played “at best” a political role within the AFRC Government.²⁸⁶⁷

(ii) Findingsa. Existence of a superior-subordinate relationship

1653. It is well established that relationships of effective control exist in civilian organisational structures.²⁸⁶⁸ The Trial Chamber reiterates that the existence of a superior-subordinate relationship is a question of fact, to be determined in light of all the available evidence. In each case what is required is proof beyond reasonable doubt that the Accused possessed the actual or material ability to effectively control his or her subordinates.²⁸⁶⁹ Before turning to the crimes committed in each District, the Trial Chamber will set out the evidence relating to the Accused Brima’s superior position in general.

1654. The Trial Chamber found that the Accused Brima was a member of the AFRC Supreme Council and was appointed Principal Liaison Officer 2, in which capacity he supervised and monitored various Government ministries.²⁸⁷⁰ The Prosecution in its Supplementary Pre-Trial Brief stated that the Accused Brima “held a position, individually or in concert with other AFRC/RUF superiors, superior to the AFRC/RUF subordinates”.²⁸⁷¹ The Prosecution therefore relies on the

²⁸⁶⁵ Prosecution Final Brief, paras 521-524.

²⁸⁶⁶ Prosecution Final Brief, paras 500-504.

²⁸⁶⁷ Brima Final Brief, para. 103.

²⁸⁶⁸ Applicable Law, para. 782, *supra*.

²⁸⁶⁹ See *Čelebići* Trial Judgement, paras 735-736; also at paras 377-378, cited with approval in *Čelebići* Appeal Judgement; cited with approval in *Bagilishema* Trial Judgement, 7 June 2001, at paras 42, 45.

²⁸⁷⁰ Role of the Accused, paras 321-325, *supra*.

²⁸⁷¹ Prosecution Supplementary Pre-Trial Brief, paras 24, 32.

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Accused Brima's *de jure* position as a senior member of the AFRC Government to prove that he was in a superior-subordinate relationship with the AFRC/RUF members who committed crimes in the various Districts. The Trial Chamber is not persuaded by this reasoning for three reasons.

1655. Firstly, the Prosecution's general characterisation of both RUF and AFRC members as "the Accused Brima's subordinates" is untenable for the following reasons. Although the two groups were allied in one Government and worked closely together during the AFRC Government period, the available evidence suggests that individuals continued to identify themselves as either RUF or SLA and that at an organisational level separate commanders for each group co-existed in the Districts.²⁸⁷² The Trial Chamber is therefore not satisfied that the Accused Brima exercised effective control over members of the RUF merely by virtue of his *de jure* position within the AFRC Government administration in Freetown.

1656. Secondly, the Trial Chamber found that the Prosecution did not establish that the members of the Supreme Council had the collective ability to effectively control the military, as the military retained its own distinct chain of command and organisational structure. In this regard the Trial Chamber recalls the following evidence. Witness TF1-184 stated in cross-examination that the top army officers during the AFRC period were the Army Chief SO Williams, the Defence Deputy Avivavo, the Chief of Defence Staff Koroma, the battalion commanders and from then on down the ranks of the military. He stated that the military headquarters at Cockerill were distinct from the Council members and that in some cases the military had complete control over military operations, in other cases the civil authorities would 'interfere' with the military and vice versa.²⁸⁷³ There was definite overlap between the two institutions, as witness Gibril Massaquoi testified that Chief of Army Staff Colonel SO Williams and Chief of Defence Staff SFY Koroma were members of Supreme Council,²⁸⁷⁴ as were SAJ Musa and lower ranking soldiers like the three Accused. However, the Supreme Council was the body that oversaw law-making and decision-making in the country. It met once a month, apart from emergency meetings.²⁸⁷⁵ The Trial Chamber is not satisfied, in light of the above evidence, that the Supreme Council was involved in or responsible for planning the day-to-day operations of the military throughout the country.

1657. Thirdly, the Trial Chamber notes that very little evidence has been adduced relating to the Accused Brima's *de facto* position and functions as a senior member of the AFRC so as to enable

²⁸⁷² Gibril Massaquoi, Transcript 10 October 2005, p. 98.

²⁸⁷³ TF1-184, Transcript 30 September 2005, pp. 47-49.

²⁸⁷⁴ Gibril Massaquoi, Transcript 7 October 2005, p. 73.

²⁸⁷⁵ Gibril Massaquoi, Transcript 7 October 2005, p. 72.

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the Trial Chamber to reach any conclusion regarding his relationship with alleged subordinates based on that position alone. Membership of the Supreme Council and attendance at meetings *per se*, does not suffice to prove beyond reasonable doubt that Brima was in a superior-subordinate relationship with the perpetrators of the offences committed in Bo, Kenema and Kailahun Districts during the relevant Indictment period. As stated above in the Trial Chamber's discussion of the applicable law, the authority of members of a power-sharing collegiate body like the Supreme Council must be assessed on a case-by-case basis and requires an analysis of the functions of the particular Accused.²⁸⁷⁶ The Trial Chamber finds that there is no evidence that within the Supreme Council the Accused Brima possessed any individual decision-making capability.

1658. The only evidence before the Trial Chamber relating to his actual functions as PLO 2 is that he was nominally in charge of several Government ministries.²⁸⁷⁷ It is assumed that the Accused Brima would have had the power to give orders in relation to work carried out under his Ministries. However, there is no evidence regarding the type of issues that came within his portfolios or to whom he would have been entitled to issue orders, even apart from the question of whether such orders were issued and obeyed.

1659. The Prosecution submits that the Accused's position as "an Honourable" gave him authority over soldiers and officers of higher rank, on the basis that position precedes rank in the military. The Prosecution consequently submits that the Accused Brima was subordinate only to Johnny Paul Koroma, Foday Sankoh and Abu Sankoh. The Trial Chamber is thus invited to accept that the Accused was capable of exercising control over any other person in the AFRC. The Trial Chamber is not persuaded by this theory. Proof of superior responsibility requires conclusive evidence of the actual exercise of command and control over an identifiable group of subordinates. The Trial Chamber agrees that the Accused Brima enjoyed a privileged position on the Supreme Council as one of the original coup-plotters, as an 'Honourable' and as PLO 2. However, the Prosecution evidence adduced regarding his *de jure* position is insufficient to persuade the Trial Chamber to draw a conclusion, based on that position alone, that Brima had effective control over subordinate perpetrators of the crimes in the said districts, during the AFRC Government period.

1660. The evidentiary burden required to establish 'effective control' is high. For example in *Kordić*, the court failed to find 'control' despite the fact that the defendant, a civilian, wore a military uniform, held the title of 'colonel,' issued orders for military equipment and supplies, managed personnel, represented the Croatian forces in UN negotiations, exercised control over

²⁸⁷⁶ Applicable Law, para. 786, *supra*.

roads, roadblocks, and prisoners, participated in planning, was physically present during military operations, and provided “political authorization” for ethnic cleansing campaigns.²⁸⁷⁸ The Trial Chamber will now examine the evidence adduced by the Prosecution regarding Brima’s alleged superior responsibility in relation to the Districts of Bo, Kenema and Kailahun in which crimes were found to have been committed by AFRC/RUF troops during the Junta period.

i. Bo District (1 – 30 June 1997)

1661. The Prosecution evidence showed that administratively, Bo District fell within the responsibility of AFRC Secretary of State East Eddie Kanneh.²⁸⁷⁹ Although superior responsibility is not precluded by the existence of other superiors in relation to the same subordinates, there is no evidence that the Accused Brima’s responsibilities as PLO 2 overseeing Eddie Kanneh entailed command of AFRC/RUF forces stationed in Bo District.

ii. Kenema District (25 May 1997 – 19 February 1998)

1662. Evidence before the Trial Chamber shows that AFRC forces in Kenema District were under the command of Secretary of State East Eddie Kanneh, who reported directly to Johnny Paul Koroma.²⁸⁸⁰ The Trial Chamber heard evidence that the Accused Brima was involved in mining activities in Kono District but that he did not have any executive powers in relation to these activities.²⁸⁸¹ The Trial Chamber notes that the three Accused have not been charged with enslavement in Kono District during the Junta period. The Accused Brima’s involvement in Kono District is insufficient to prove that he possessed the material ability to prevent or punish the persons responsible for the use of civilians as forced labour in Kenema District during the Junta period.

iii. Kailahun District (27 May 1997 – 14 February 1998)

1663. It has not been established beyond reasonable doubt that AFRC troops were present in Kailahun during this period. Indeed, Prosecution witness TF1-334 testified that there were no AFRC troops in Kailahun during the Junta period.²⁸⁸² The area was controlled by Sam Bockarie of

²⁸⁷⁷ Role of the Accused, Brima, para. 321, *supra*.

²⁸⁷⁸ *Kordić* Trial Judgement, paras 546-631, 838.

²⁸⁷⁹ TF1-334, Transcript 17 May 2005, pp. 54, 57.

²⁸⁸⁰ TF1-334, Transcript 17 May 2005, pp. 54, 57.

²⁸⁸¹ Although witness TF1-334 testified that ‘Gullit’ was in overall charge of mining operations in Kono: Transcript 17 May 2005, pp. 52-53.

²⁸⁸² TF1-334, Transcript 16 June 2005, p. 77.

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the RUF and his deputy Issa Sesay.²⁸⁸³ In the absence of evidence that the Accused Brima exercised any superior authority or control over the RUF troops in Kailahun District, the Trial Chamber finds that the Prosecution has not established beyond reasonable doubt that the Accused Brima is individually criminally responsible pursuant to Article 6(3) of the Statute for the crimes committed in Kailahun District during the Junta period.

b. Findings

1664. The Trial Chamber finds that the Prosecution has not established beyond reasonable doubt that the Accused Brima was in a superior-subordinate relationship with the perpetrators of any of the crimes committed in Bo, Kenema and Kailahun Districts during the Junta period. As the absence this first element of superior responsibility is fatal to proof of liability under Article 6(3), the Trial Chamber will not consider the evidence relating to the Accused Brima's actual or imputed knowledge of crimes committed and his ability to prevent or punish the perpetrators.

3. Kono District

1665. The Trial Chamber found that in the period mid-February to June 1998, AFRC/RUF troops in Kono District unlawfully killed civilians,²⁸⁸⁴ committed sexual slavery and physical violence against civilian population;²⁸⁸⁵ abducted civilians and used them as forced labour;²⁸⁸⁶ and illegally recruited and used children under the age of 15 years for military purposes, as charged under the Indictment.²⁸⁸⁷ The Trial Chamber also found that AFRC/RUF troops engaged in widespread looting;²⁸⁸⁸ and committed various crimes against the civilian population as collective punishments.²⁸⁸⁹

(a) Responsibility of the Accused Brima under Article 6(1)

(i) Submissions

1666. The Prosecution in its Final Brief, submits that all three Accused are liable for crimes committed in Kono District under its theory of JCE. The Prosecution then submits that only Kamara

²⁸⁸³ Context of Alleged Crimes, para. 188, *supra*.

²⁸⁸⁴ Factual Findings, para. 857, *supra*.

²⁸⁸⁵ Factual Findings, paras 1109, 1213, *supra*.

²⁸⁸⁶ Factual Findings, para. 1333, *supra*.

²⁸⁸⁷ Factual Findings, paras 1277-1278, *supra*.

²⁸⁸⁸ Factual Findings, para. 1415, *supra*.

²⁸⁸⁹ Factual Findings, paras 1525-1527, *supra*.

70

bears liability under Articles 6(1) and (3) of the Statute.²⁸⁹⁰ In its closing arguments the Prosecution asserts that

for Kono, during the crimes committed in the Indictment period after the intervention, it is the case of the Prosecution that only Kamara was present when the crimes were committed. Brima and Kanu however can still be held liable for those crimes under the theory of a JCE.²⁸⁹¹

1667. The Brima Defence submits that the Prosecution failed to establish a nexus linking the Accused Brima to the crimes committed in Kono District. Furthermore, the Brima Defence submits that the Accused Brima arrived in Kono around May 1998 only to be arrested and detained by Sam Bockarie in Kailahun.²⁸⁹² The Brima Defence also relies on its submissions regarding the Accused Brima’s alibi for this period,²⁸⁹³ which the Trial Chamber has considered above.²⁸⁹⁴

(ii) Findings

1668. The Trial Chamber has already held above that it will not consider any responsibility under joint criminal enterprise. The Prosecution has not adduced any evidence that the Accused Brima committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes that occurred in Kono District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Brima for the crimes committed in the Kono District.

(b) Responsibility of the Accused Brima under Article 6(3) of the Statute

(i) Submissions

1669. The Prosecution, in its Final Brief, concedes that the Accused Brima left Kono for Kailahun during the ECOMOG Intervention in Freetown of February 1998, but argues that he returned to Kono by late April or early May 1998.²⁸⁹⁵ It contends that while the Accused may have had some disagreement with the RUF faction under Sam Bockarie in Kailahun, this only lasted a few days after which the Accused was “back on good terms with Sam Bockarie and other RUF commanders in Kailahun”.²⁸⁹⁶ In other words, the Prosecution contends that despite his physical absence the Accused continued to play an influential role in the events that took place in Kono District and in the joint criminal enterprise with the RUF.

²⁸⁹⁰ Prosecution Final Brief, para. 1279.
²⁸⁹¹ Transcript, 7 December 2006, pp. 34-35.
²⁸⁹² Brima Final Brief, para 224.
²⁸⁹³ Brima Final Brief, paras 206-210.
²⁸⁹⁴ Role of the Accused, para 342, *supra*.

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1670. The Prosecution in its Final Brief makes no submissions on the superior responsibility of the Accused Brima in relation to Kono District during the period mid-February 1998 to the end of April 1998. The Prosecution concedes that the Accused Brima arrived in Kono District only at the end of April or beginning of May.

1671. The Brima Defence submits that the Prosecution has failed to provide clear evidence on the command and control structure of the SLAs in Kono District.²⁸⁹⁷ The Brima Defence also submits that ‘Savage’ was in command of Tombodu and was not controlled by his SLA superiors.²⁸⁹⁸ The Accused Brima argues that he cannot be held responsible for the activities of persons over whom he exercised no control.²⁸⁹⁹

(ii) Findings

1672. The Trial Chamber has found that the Accused Brima arrived in Kono District from Kailahun District at the end of April or beginning of May 1998.²⁹⁰⁰ Upon his arrival, the Accused Brima assumed command of the AFRC troops from the Accused Kamara.²⁹⁰¹ There are a number of indicia from the evidence that demonstrate that upon assuming command of the AFRC troops, the Accused Brima exercised effective control over the AFRC troops in Kono District. The Accused Brima immediately summoned the Accused Kamara, the Operations Commander and other senior SLA soldiers including ‘Leather Boot’ a.k.a. Idrissa Kamara, ‘Adams’, Colonel Ibrahim Bioh Sesay, ‘Coachy Borno’ and Colonel Momoh Derty to a meeting at Five-Five Spot.²⁹⁰² Both witness TF1-334 and witness George Johnson a.k.a. ‘Junior Lion’ attended this meeting. The Accused Brima ordered the commanders to regroup with their soldiers at Tombodu in preparation for the withdrawal to join SAJ Musa in Koinadugu.²⁹⁰³ Upon arrival at Tombodu, the commanders reported to the Accused Brima.²⁹⁰⁴ He ordered them to withdraw their troops to Mansofinia in Koinadugu District and this occurred.²⁹⁰⁵

1673. The crimes detailed in the factual findings were committed prior to the Accused Brima’s assumption of command. The ICTY Appeals Chamber in *Hadžihasanović* held that there is no

²⁸⁹⁵ Prosecution Final Brief, para. 1214.

²⁸⁹⁶ Prosecution Final Brief, para. 601.

²⁸⁹⁷ Brima Final Brief, para. 105.

²⁸⁹⁸ Brima Final Brief, para. 281.

²⁸⁹⁹ Brima Final Brief, para. 282.

²⁹⁰⁰ Role of Accused, Brima, paras 339-341, *supra*.

²⁹⁰¹ TF1-334, Transcript 20 May 2005, pp. 56-57.

²⁹⁰² TF1-334, Transcript 19 May 2005, p. 10.

²⁹⁰³ TF1-334, Transcript 19 May 2005, pp. 14-15; TF1-334, Transcript 20 May 2005, pp. 28, 38-40.

²⁹⁰⁴ TF1-334, Transcript 20 May 2005, pp. 61, 65-66, 71-72.

²⁹⁰⁵ TF1-334, Transcript 20 May 2005, pp. 56, 72-73.

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support in customary international law for the proposition that a commander can be held responsible for crimes committed by a subordinate prior to his or her assumption of command.²⁹⁰⁶

4. Kailahun District

1674. The Trial Chamber found in relation to Kailahun District that an unknown number of civilians were unlawfully killed by RUF forces in or around February 1998, as charged under Count 5,²⁹⁰⁷ and that RUF troops or troops not established beyond a reasonable doubt to be members of the AFRC abducted civilians and used them as forced labour in the period following 14 February 1998.²⁹⁰⁸

(a) Responsibility of the Accused Brima under Article 6(1) of the Statute

(i) Submissions

1675. In its Final Brief, the Prosecution makes no submissions with regard to the individual criminal responsibility of the Accused Brima pursuant to Article 6(1) of the Statute. The Prosecution only alleges that “[f]or all crimes committed in Kailahun District during the Indictment period, the three Accused are individually criminally responsible under the theory of joint criminal enterprise, in that the crimes were in the contemplation of the common enterprise or were a reasonably foreseeable consequence of its implementation”.²⁹⁰⁹

1676. The Brima Defence submits that throughout the Indictment period Kailahun District was under the control of the RUF.²⁹¹⁰ In addition, it argues that the Accused was detained by the RUF in Kailahun District during the relevant period and was not in a position of superior command over the perpetrators of the alleged crimes in Kailahun.²⁹¹¹

1677. The Trial Chamber found that the Prosecution proved beyond reasonable doubt that AFRC/RUF troops unlawfully killed a number of civilians in Kailahun District between February and June 1998, as charged under Count 5.²⁹¹² The issue for determination here is whether the

²⁹⁰⁶ *Hadžihasanović* Appeal Decision on Command Responsibility, paras 45-46, *but see* Partial Dissenting Opinion of Judge Shahabuddeen, para. 43; Separate and Partially Dissenting Opinion of Judge David Hunt - Command Responsibility Appeal, para. 8; *Orić* Trial Judgement, para. 335.

²⁹⁰⁷ Factual Findings, para. 864, *supra*.

²⁹⁰⁸ Factual Findings, para. 1374, *supra*.

²⁹⁰⁹ Prosecution Final Brief, para. 1409.

²⁹¹⁰ Brima Final Brief, para. 227.

²⁹¹¹ Brima Final Brief, paras 227-229.

²⁹¹² Factual Findings, Unlawful Killings, para. 864, *supra*.

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Accused Brima bears individual criminal responsibility for those crimes pursuant to Article 6(1) of the Statute.

(ii) Findings

1678. The Prosecution has not adduced any evidence that the Accused Brima committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes that occurred in Kailahun District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Brima for the crimes committed in the Kailahun District.

(b) Responsibility of the Accused Brima under Article 6(3) of the Statute

(i) Submissions

1679. Neither the Prosecution nor the Brima Defence in their Final Briefs make submissions on the superior responsibility of the Accused Brima specifically in relation to Kailahun District.

1680. The Trial Chamber notes that Accused Brima submits as part of his alibi defence that he was under RUF arrest in Kailahun District throughout the relevant Indictment period and that as a detainee himself, he was not in a position of superior command over the perpetrators of the alleged crimes in Kailahun.²⁹¹³

(ii) Findings

1681. The Trial Chamber recalls its findings that the only proven perpetrators of crimes committed in Kailahun District during this period were members of the RUF and its finding that the AFRC faction and the RUF were not working together in Kailahun during this period.²⁹¹⁴

1682. The Trial Chamber also recalls its finding that the Accused Brima was detained by the RUF in Kailahun District from February to late April/early May 1998, a much shorter period than he claimed to be under detention.²⁹¹⁵ During this period he was detained by the RUF and did not exercise any control over any troops in the District.

²⁹¹³ Brima Final Brief, paras 209-210.

²⁹¹⁴ Context of Alleged Crimes, para 187, *supra*.

²⁹¹⁵ Role of the Accused, paras 339-341, *supra*.

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1683. The Trial Chamber further found that after his release from detention in Kailahun in early May 1998, the Accused Brima travelled to Kono District and then travelled to Koinadugu and Bombali Districts in June and July 1998.²⁹¹⁶

1684. While the presence of a commander in the location in which crimes were committed is not necessary to prove effective control, the Trial Chamber finds that the Prosecution has not proved beyond reasonable doubt that the Accused Brima was able to exercise effective control over the RUF in Kailahun District after February 1998.

1685. In the absence of this first element of superior responsibility, the Trial Chamber does not consider it necessary to consider whether there is any evidence that the Accused Brima had actual or imputed knowledge of the crimes committed and that he failed to prevent or punish the perpetrators. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima, for the crimes committed in Kailahun District.

5. Koinadugu District

1686. Trial Chamber found that AFRC/RUF forces unlawfully killed or inflicted sexual or physical violence on an unknown number of civilians in Koinadugu District in the period February through September 1998, as charged under Counts 4 through 5, 6 through 9 and 10 respectively.²⁹¹⁷ In addition, the Trial Chamber found that AFRC/RUF forces abducted an unknown number of civilians and used them as forced labour in that District, as charged under Count 13.²⁹¹⁸ In addition, the Trial Chamber found that AFRC/RUF forces illegally recruited children under the age of 15 years and used them for military purposes in that District, as charged under Count 12.²⁹¹⁹ Finally, the Trial Chamber found that AFRC/RUF forces also engaged in widespread looting of civilian homes, as charged in Count 14.²⁹²⁰

(a) Responsibility of the Accused Brima under Article 6(1) of the Statute

(i) Submissions

²⁹¹⁶ Role of Accused, para. 342, *supra*.

²⁹¹⁷ Factual Findings, *supra*, paras 879 (Unlawful Killings), 1026 (Rape), 1133 (Outrages on Personal Dignity), 1218 (Physical Violence).

²⁹¹⁸ Factual Findings, para. 1333, *supra*.

²⁹¹⁹ Factual Findings, Child Soldiers, para. 1277.

²⁹²⁰ Factual Findings, Pillage, para. 1409.

1687. In its Final Brief the Prosecution submits that the three Accused are liable for planning and instigating or otherwise aiding and abetting the crimes committed in Koinadugu District.²⁹²¹ It argues that the crimes committed in Koinadugu followed a consistent pattern. This pattern involved repeated attacks by AFRC/RUF forces against civilians for either supporting ECOMOG or failing to support the AFRC/RUF.²⁹²²

1688. The Prosecution emphasises in particular the evidence regarding the attack on Yifin.²⁹²³ On this submission, the Trial Chamber notes that the Prosecution did not plead the location of Yifin under Counts 3 through 6, 8 through 11 or 14 of the Indictment, and thus no findings have been made on evidence adduced in this regard. The Trial Chamber notes further that the Prosecution did not adduce any with respect to Yifin under Counts 7, 12 or 13.

1689. The Brima Defence submits that the overall commander of the AFRC troops in Koinadugu District was SAJ Musa.²⁹²⁴ It adds that no evidence was adduced that any of the operations in Koinadugu District were associated with the faction which the Prosecution alleges was led by the Accused Brima.²⁹²⁵ Finally, the Brima Defence argues that its own witnesses from Koinadugu District, who were credible and reliable, had never heard the name of the Accused mentioned in connection with the crimes committed in that District.²⁹²⁶

(ii) Findings

a. Committing

1690. The Prosecution has not adduced any evidence that the Accused Brima personally committed any of the crimes found to have been perpetrated in Koinadugu District. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima, for the crimes committed in Koinadugu District.

b. Ordering/Instigating

i. Order at Mansofinia to terrorise the civilian population

²⁹²¹ Prosecution Final Brief, para. 1412.

²⁹²² Prosecution Final Brief, para. 1412.

²⁹²³ Prosecution Final Brief, para. 1412.

²⁹²⁴ Brima Final Brief, para. 233.

²⁹²⁵ Brima Final Brief, paras 234-235, 238.

²⁹²⁶ Brima Final Brief, paras 236-237.

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1691. Witness TF1-334 testified that at Mansofinia, Brima gave a strict warning to the civilians that as they headed into Bombali District, any civilian who tried to run away was a betrayer and would be shot on sight. He warned the troops in his own words “minus you, plus you [...]” The witness further testified that Brima ordered the troops as they moved northwards to capture strong civilians to add to the strength of the troops.²⁹²⁷

1692. This evidence was not challenged in cross-examination. The Trial Chamber recalls that although Prosecution witness George Johnson does not mention this instruction in his evidence, he corroborates other details about the relevant muster parade.²⁹²⁸

1693. Prosecution witness TF1-033 also gave evidence of an order in similar terms; however he stated that this occurred at Yarya.²⁹²⁹ The Trial Chamber has found that the witness was mistaken in his recollection of the location and was in fact referring to the same speech described by witness TF1-334. Witness TF1-033 stated that he heard Alex Tamba Brima claim that civilians had been involved in attacking the AFRC, AFRC families and AFRC sympathisers when the AFRC was ousted from Freetown and that therefore, the AFRC should now do the same to the civilians. Brima declared “Operation Spare No Soul” and instructed his troops to kill, maim or amputate any civilian with whom they came into contact. Towns and villages were to be burned and women and girls were “free to satisfy [the soldiers’] sexual desires”.²⁹³⁰

1694. The Defence disputed this evidence as unreliable on the grounds that Defence witnesses as well as other Prosecution witnesses put Brima elsewhere during the month of March 1998. Prosecution witness TF1-033 recalls ‘Gullit’ stating, “You all know what befell on us when the ECOMOG forces removed us from power in Freetown. Our colleagues, soldiers, sympathisers, relatives, were killed by civilians as well as ECOMOG soldiers. So for that reason, we are going back to Freetown. We are going back to Freetown and we should all return that fell on us [...] So we are not going to spare any civilian, only those we desire to be with us. [...] Young girls and women are free to satisfy your sexual desire. This is Operation Spare No Soul.”²⁹³¹ On cross-

²⁹²⁷ TF1-334, Transcript 23 May 2005, pp. 15-17.

²⁹²⁸ George Johnson, Transcript 15 September 2005, pp. 47-48

²⁹²⁹ TF1-033, Transcript 11 July 2005, pp. 13-15. The witness refers to the location as ‘Yaya’, but the Trial Chamber is satisfied that this is the same place as ‘Yarya’ given that the witness also describes it as Brima’s home town.

²⁹³⁰ TF1-033, Transcript 11 July 2005, pp. 12-14.

²⁹³¹ TF1-033, Transcript 11 July 2005, pp. 12-15; Transcript 12 July 2005 pp. 7, 34-35.

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examination the witness stated that these were ‘Gullit’s exact words.’²⁹³² The witness stated that as a result, “the journey of atrocities destined for Freetown started that evening”.²⁹³³

1695. The Trial Chamber finds that the above orders, insofar as they were targeted at civilians, were intended to spread fear among the civilian population. The Prosecution has proved beyond reasonable doubt that Accused Brima, while at Mansofinia, did order the AFRC forces subordinate to him to commit acts of terror against the civilian population. However, the Trial Chamber has found that the crimes arising out of this particular order were not committed in Koinadugu District, but in Bombali District. Therefore the Trial Chamber finds that the Prosecution has not proved these modes of individual criminal responsibility against the Accused Brima in relation to the crimes committed in Koinadugu District.

c. Planning and otherwise aiding and abetting

1696. No evidence was adduced that the Accused Brima planned the commission of crimes or gave practical assistance, encouragement or moral support which had a substantial effect on the commission of crimes in Koinadugu District. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima, for the crimes committed in Koinadugu District.

(b) Responsibility of the Accused Brima Under Article 6(3) of the Statute

(i) Submissions

1697. The Prosecution in its Final Brief submits that each of the three Accused bears superior responsibility for crimes committed in the attack on Yifin.²⁹³⁴ As stated above, the Trial Chamber notes the Prosecution did not include the location of Yifin in the particulars under Counts 3 through 6, 8 through 11 or 14, and thus no findings have been made on evidence adduced in this regard. The Trial Chamber notes further that no evidence with respect to Yifin has been adduced under Counts 9, 12 or 13.

1698. The Brima Defence makes no submissions specific to Koinadugu District in relation to the superior responsibility of the Accused Brima.

(ii) Findings

²⁹³² TF1-033, Transcript 12 July 2005, pp. 34-35.

²⁹³³ TF1-033, Transcript 11 July 2005, p. 15.

²⁹³⁴ Prosecution Final Brief, paras 1415-1416.

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1699. The Trial Chamber finds that the crimes committed in Koinadugu District were perpetrated by AFRC/RUF forces associated with groups led by SAJ Musa and 'Superman'. While there is evidence that the Accused Brima was in sporadic contact with SAJ Musa between May and July 1998, the Prosecution has not submitted, nor is there evidence to the effect that, the Accused Brima exercised effective control over the troops of SAJ Musa or Superman. In the absence of proof of the existence of a superior-subordinate relationship between the Accused Brima and the perpetrators of the crimes in Koinadugu District, it is unnecessary to consider whether there is any evidence that the Accused Brima had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima, for the crimes committed in Koinadugu District.

6. Bombali District

1700. The Trial Chamber found that AFRC troops in Bombali District engaged in unlawful killings of civilians²⁹³⁵ and inflicted sexual violence on civilians,²⁹³⁶ as charged in the Indictment. AFRC troops also abducted civilians and used them as forced labour and illegally recruited and used children for military purposes.²⁹³⁷ Finally, the Trial Chamber found that AFRC troops terrorised and committed crimes of collective punishments against the civilian population.²⁹³⁸

(a) Responsibility of the Accused Brima Under Article 6(1) of the Statute

(i) Submissions

1701. The Prosecution conceded that with regards to the Accused Brima, it did not adduce evidence of sexual violence in respect of Mandaha.²⁹³⁹ In its Final Brief, the Prosecution submits that the Accused Brima committed, planned, ordered, instigated and otherwise aided and abetted attacks on Karina, Bornoya, Mateboi and Mandaha and the crimes associated with those locations outlined in the Indictment.²⁹⁴⁰ More specifically, it argues that the Accused Brima ordered the attack on Karina in order to demonstrate the power of his forces. Attacks on the surrounding villages were carefully designed and organised by the Accused who intended the commission of all the crimes pleaded in the Indictment. In addition, the Prosecution submits that the Accused

²⁹³⁵ Factual Findings, Unlawful Killings, para. 897, *supra*.

²⁹³⁶ Factual Findings, Sexual Violence, paras 1041, 1145, *supra*.

²⁹³⁷ Factual Findings, Child Soldiers, paras 1227-1228, *supra*.

²⁹³⁸ Factual Findings, Acts of Terror and Collective Punishment, paras 1605-1606, *supra*.

²⁹³⁹ Prosecution Response to Defence Motions for Judgement of Acquittal Pursuant to Rule 98, 23 January 2006, para. 146.

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prompted others to participate in the unlawful acts.²⁹⁴¹ The Prosecution further submitted that “[...] the three Accused themselves gave orders for, and actively encouraged, killings physical and sexual violence and the burning of villages amounting to a campaign of terrorism” in Bombali District.²⁹⁴² The Prosecution further submitted that the First Accused ordered ‘Operation Clear the Area’ meaning that all villages surrounding Rosos were to be burnt down and looted, and that these orders were in fact carried out.²⁹⁴³

1702. The Brima Defence argues that the Prosecution witnesses who testified regarding crimes committed in Bombali District provided contradictory and self-serving accounts of the events.²⁹⁴⁴ The Brima Defence refers to the testimony of its own witnesses that they did not hear the Accused’s name mentioned in connection with the events that took place in Bombali.²⁹⁴⁵ The Brima Defence therefore submits that Defence witnesses have established reasonable doubt regarding the responsibility of the Accused Brima for instigating or aiding and abetting the crimes committed in Bombali District.²⁹⁴⁶

(ii) Findings

a. Committing

i. Murder and Extermination at Karina

1703. The Trial Chamber considered the evidence presented by the Prosecution witness TF1-334 on the killing of 12 civilians at a mosque in Karina and found that on 8 May 1998, the Accused Brima participated in a mass killing of 12 civilians at a mosque in Karina. The finding was based on the testimony of eye witness TF1-334 who was with the Accused Brima during the attack on the mosque at Karina. Witness TF1-334 stated that he moved with the Accused Brima to the town of Karina where they found a mosque. While the witness was standing with soldiers at the mosque, Brima questioned the Imam for praying for the people and accused him of being a relative of ‘Pa Kabbah’s family.’ When the Imam responded, Brima shot dead the Imam, six men and five women, in front of the witness.²⁹⁴⁷

²⁹⁴⁰ Prosecution Final Brief, para. 1497, 1503-1508.

²⁹⁴¹ Prosecution Final Brief, paras 1503-1505.

²⁹⁴² Prosecution Final Brief, para. 1516.

²⁹⁴³ Prosecution Final Brief, para. 633.

²⁹⁴⁴ Brima Final Brief, paras 241-242.

²⁹⁴⁵ Brima Final Brief, paras 243-245.

²⁹⁴⁶ Brima Final Brief, paras 245-246.

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1704. Witness George Johnson also testified that he met and saw “plenty of dead bodies with gun shot wounds” inside and outside the mosque at Karina town. Although the witness did not see what had happened to the dead bodies, he stated that they were attacked by Alhaji Kamanda a.k.a. “Gun Boot”²⁹⁴⁸ without giving further information on the means with which he committed the attack. The evidence of Defence witness DBK-094, a relative to the Imam of the mosque, is corroborated by that of DBK-089. Both witnesses claim that during the attack on the mosque in Karina, the Imam’s brother was the one actually leading the prayers and that the Imam himself had left the town three days before the attack and could therefore not have been killed during this attack.

1705. The Trial Chamber notes that there are inconsistencies in the evidence of the identity of the person who led the prayers that day, with Prosecution witnesses stating that it was “the Imam” and the defence witnesses stating that the Imam is still alive. The Chamber is of the view that the exact identity of the individual who led the prayers that day is not paramount but rather the fact that the leader of the prayers was indeed killed. This fact is not in dispute. In that regard, the Trial Chamber finds the evidence of eye witness TF1-334 who was present at the mosque and actually saw the Accused Brima shooting civilians including the leader of the prayers at the mosque in Karina is credible and reliable. The fact that several civilians died as a result of the shooting is corroborated by TF1-167. In the Trial Chamber’s view, the Prosecution evidence is not challenged by the evidence of DBK-094 and DBK-089 who only testified about the absence of the Imam during the attack on the mosque. They do not dispute the fact that mass killings of civilians including the person who led the prayers that day, took place at the mosque. However, before the Trial Chamber relies on the Prosecution evidence to determine whether the Accused Brima is individually criminally responsible for the Karina killings, it must take the following factors into account.

1706. The Indictment does not plead the material facts of this specific incident with regard to the Accused Brima.²⁹⁴⁹ The Prosecution failed to include these particulars in the Indictment and rendered the Indictment defective.

1707. From the outset of its case, the Prosecution was aware of material facts regarding the Karina attack including the means with which the Accused Brima committed this attack on Karina and details of the killings at the mosque in Karina. The Prosecution Supplemental Pre-Trial Brief generally provides information that the Accused Brima ordered that AFRC/RUF should make its

²⁹⁴⁷ TF1-334, Transcript 23 May 2005, pp. 68-69.
²⁹⁴⁸ George Johnson, Transcript 15 September 2005, pp. 56-57.

mark on Karina and that no one should be spared. It also alleges that the Accused Brima participated in the shooting on the attack on Karina.²⁹⁵⁰ However, it does not specify the details of the attack on the mosque; that is the means and purpose of the attack or a description of the victims. In addition, the OTP Opening Statement does not specify the Accused Brima participation in the killing of civilians at a mosque in Karina. Instead, the Prosecution indicated that when the people of Karina village were assembled at the mosque at 5:00 o'clock for morning prayers, AFRC/RUF forces led by the three Accused descended on them with guns, machetes and axes. They lined them up and one after the other hacked them to death.²⁹⁵¹

1708. The Trial Chamber notes that the Prosecution disclosure materials of a Witness Statement of TF1-334 dated 6 November 2003, does not mention the shooting of the Imam by the Accused Brima. However, it specifically states that Witness TF1-334 saw 'Gullit' going to a mosque in Karina and questioned the people as morning prayers were going on. Thereafter, the witness saw 'Gullit' remove his pistol and shoot the civilians dead.²⁹⁵² Therefore, the Trial Chamber finds that the above constitutes sufficient notice of the material particulars relating to Brima's participation in the Karina killings and that the defect in the Indictment with regard to this crime was cured by clear, timely and consistent notice to the Defence.

1709. In light of the foregoing considerations and the Trial Chamber's finding that the Accused Brima participated in a mass killing of at least 12 civilians at a mosque in Karina, the Trial Chamber finds that the Prosecution has established beyond reasonable doubt the Accused's responsibility by committing on a large scale the massacre of civilians at a mosque in Karina. The Trial Chamber is further satisfied that the Accused Brima was aware that his participation in the killings on such a massive scale amounted to the crime of extermination.

b. Ordering

i. Order to terrorise and kill the civilian population at Karina

1710. Around June 1998, at Kamagbengbe and in the presence of Kamara and Kanu, the Accused Brima gave orders to the AFRC troops to attack Karina. Brima referred to Karina as a strategic location because it was the home town of President Ahmed Tejan Kabbah. The witness stated that

²⁹⁴⁹ See test applied by the Trial Chamber in Alleged Defects in Form of Indictment, para. 55, *supra*.

²⁹⁵⁰ Prosecution Supplemental Pre-Trial Brief, p. 24.

²⁹⁵¹ Prosecution Opening Statement, Transcript 7 March 2005, p. 39.

²⁹⁵² Statement of Witness TF1-334, 6 November 2003, CMS p. 6557 [confidential].

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Brima ordered the troops to burn down Karina, capture strong male civilians, and amputate civilians. Brima concluded that he wanted the attack on Karina to shock “the whole country” and the international community. The Trial Chamber has found that there were no ECOMOG or Kamajor troops in Karina at the time and that all the victims were civilians.²⁹⁵³ Witness TF1-157 testified that after the attack on Karina, he heard rebels say that the town had been attacked because it was the home town of President Kabbah.²⁹⁵⁴ Witness TF1-033 testified that he heard ‘Gullit’ order that civilian women should be stripped naked and raped during the attack on Karina, and the neighbouring town of Bornoya.²⁹⁵⁵ The Trial Chamber found this evidence detailed, consistent and credible.

1711. The Trial Chamber is therefore satisfied that the Accused Brima ordered his subordinates to perpetrate crimes against the civilian population in Karina and its environs with the specific intent of instilling terror in the civilian population.

ii. Order to terrorise the civilian population around Rosos

1712. Witness TF1-334 testified that during the rainy season in 1998, the AFRC/Junta forces established a base at Rosos and remained there for approximately three months. While at Rosos, the witness heard Brima order the troops to occupy the surrounding villages and ensure that no civilians remained within 15 miles of the village.²⁹⁵⁶ Brima ordered that any civilians be executed rather than brought back to the camp, and added that he would take disciplinary action against any soldier who brought a civilian to the camp. Brima named this action “Operation Clear the Area”. Witness TF1-334 testified that villages surrounding Rosos were burnt down and looted following this order.²⁹⁵⁷ Witness TF1-033 corroborated the evidence of Witness TF1-334 testifying that he heard Brima order his soldiers to kill any civilians in the area of Rosos.²⁹⁵⁸ Witness TF1-267 also testified that rebels told her that civilians who did not leave a village near Rosos would be killed.²⁹⁵⁹

1713. The Indictment does not charge unlawful killings at Rosos and therefore will not make any findings on the killings perpetrated following Brima’s order. However, the evidence shows that the Accused Brima, in issuing such orders to his subordinates specifically intended to terrorise the civilian population in the areas surrounding Rosos. The Trial Chamber concludes that Brima’s

²⁹⁵³ TF1-334, Transcript 23 May 2005, pp. 56-60, 61, 64-65; George Johnson, Transcript 15 September 2005, pp. 53-54.

²⁹⁵⁴ TF1-157, Transcript 25 September 2005, pp. 29-30, 58-60; Transcript 26 September 2005, pp. 9, 23-24, 30.

²⁹⁵⁵ TF1-033, Transcript 11 July 2005, pp. 18-20.

²⁹⁵⁶ TF1-334, Transcript 23 May 2005, p. 104; Transcript 24 May 2005, pp. 2-5.

²⁹⁵⁷ TF1-334, Transcript 23 May 2005, pp. 100-106.

²⁹⁵⁸ TF1-033, Transcript 11 July 2005, pp. 24-25.

generalised instruction created a climate of criminality which endured in the months following the order.

iii. Order for killings at Mateboi and Gbendembu

1714. Witness TF1-334 testified that after the Accused Brima banned civilians from the area surrounding 'Camp Rosos',²⁹⁶⁰ an AFRC commander executed six civilians, four men and two women, with an AK-47 rifle in a village near Mateboi.²⁹⁶¹

1715. Witness TF1-033 testified that in or around August 1998 at 'Colonel Eddie Town,' the Accused Brima ordered two AFRC commanders named Salifu Mansaray and 'Arthur' to attack Gbendembu because ECOMOG and "loyal" Sierra Leonean Army troops were present there.²⁹⁶² When the Operations Commander returned from the operation he reported to Brima that the troops had captured arms and ammunition and that 25 civilians had been killed. Brima commended his men for "a job well done."²⁹⁶³

1716. The Trial Chamber finds that as overall commander in Bombali District the Accused Brima had sufficient authority over his troops to order the commission of the crimes in the expectation that his orders would be implemented. The Trial Chamber is therefore satisfied that the Accused Brima was aware of the substantial likelihood that crimes would be committed in the execution of the order given at 'Colonel Eddie Town.' The Trial Chamber therefore finds that the Accused Brima ordered the murder of civilians in the villages of Mateboi and Gbendembu.

iv. Order at Rosos to recruitment children for military purposes

1717. Witness TF1-334 testified that during a three week training program at Rosos²⁹⁶⁴ 77 civilian abductees, including children under the age of 15 years, underwent military training. He was able to provide this estimate because he conducted head counts during muster parades.²⁹⁶⁵ Witness George Johnson also confirmed this training at Rosos but estimated that 520 civilians were trained at Rosos. The Trial Chamber observes that Witness TF1-334 referred to the number of civilians trained

²⁹⁵⁹ TF1-267, Transcript 27 July 2005, pp. 8-9, 10-11, 17, 23-26, 29-30

²⁹⁶⁰ TF1-334, Transcript 23 May 2005, p. 105.

²⁹⁶¹ TF1-334, Transcript 24 May 2005, pp. 2-5; exhibit P-16 (under seal).

²⁹⁶² TF1-033, Transcript 11 July 2005, pp. 32-33; TF1-334, Transcript 23 May 2005, pp. 81, 84.

²⁹⁶³ TF1-033, Transcript 11 July 2005, p. 34.

²⁹⁶⁴ TF1-334, Transcript 24 May 2005, p. 28.

²⁹⁶⁵ TF1-334, Transcript 24 May 2005, p. 23; TF1-334, Transcript 23 May 2005, pp. 74-75.

during one three week period, while George Johnson refers to the number of civilians trained overall at Rosos. Therefore the Trial Chamber does not consider the discrepancy in numbers to be significant. Witness TF1-334 testified that following the completion of the training period, the trainees were addressed by both the Accused Kanu and the Accused Brima. Brima then ordered that the male children be distributed to the various company commanders, while the girls and women were to be turned over to “their husbands” meaning the soldiers and commanders.²⁹⁶⁶

1718. Witness TF1-158, a former child soldier, testified that he was abducted by the AFRC forces and spent one week at Rosos. Upon arrival in Rosos, a commander named ‘Staff Alhaji’ gave the civilians guns and ordered them to search the town for food.²⁹⁶⁷ ‘Staff Alhaji’ told witness TF1-158 and the other civilians that this order came from the Accused Brima.²⁹⁶⁸ During the week at Rosos, the witness was given military training together with approximately 300 other civilians.²⁹⁶⁹

1719. The Trial Chamber has found these witnesses to be credible and is therefore satisfied that the Accused Brima ordered the abduction of children under the age of 15 years for military purposes.

c. Planning, Instigating and otherwise aiding and abetting

1720. The Prosecution has not adduced any evidence that the Accused Brima planned, instigated or otherwise aided and abetted any of the crimes committed under Counts 1-6, 10 and 14 in Bombali District. The Trial Chamber finds that the Prosecution has not proved any of these modes of criminal responsibility against the Accused Brima for the crimes committed under Counts 1-6, 10 and 14 in Bombali District. In view of the continuing nature of the crimes charged under Counts 9, 12 and 13 and the fact that they span across several Districts, the Trial Chamber will discuss the Accused Brima’s responsibility for these crimes below.²⁹⁷⁰

(b) Responsibility of the Accused Brima under Article 6(3) of the Statute

(i) Submissions

²⁹⁶⁶ TF1-334, Transcript 24 May 2005, pp. 29-31.

²⁹⁶⁷ TF1-158, Transcript 26 July 2005, pp. 38-39.

²⁹⁶⁸ TF1-158, Transcript 26 July 2005, p. 38.

²⁹⁶⁹ TF1-158, Transcript 26 July 2005, pp. 39-40.

²⁹⁷⁰ Responsibility of the Accused, Brima, paras 1820-1838, *infra*.

1721. The Prosecution in its Final Brief submits that the Accused Brima, as a superior over the subordinate perpetrators, bears individual criminal responsibility for all crimes committed in Bombali District from 1 May 1998 until 30 November 1998.²⁹⁷¹

1722. The Brima Defence in its Final Brief submitted that the Accused Brima was under arrest at Colonel Eddie Town and therefore not in a position to command the alleged perpetrators of the crimes.²⁹⁷² The crimes in Bombali District were committed by AFRC troops prior to their arrival in 'Colonel Eddie Town' in September 1998.

(ii) Findings

a. Existence of a superior-subordinate relationship

1723. The Trial Chamber has found that the Accused Brima was the overall commander of the AFRC forces that committed the crimes in Bombali District.²⁹⁷³ It has been established that the AFRC in this period had a functioning chain of command, planning and orders process, and disciplinary system.²⁹⁷⁴ Structures were therefore in place to facilitate the effective control by the Accused Brima of his subordinates. The Trial Chamber will now examine the evidence pertaining to the troops' activities in this period to determine whether the command structure functioned and the Accused Brima was able to actually exercise effective control over the AFRC troops on a day-to-day basis.

1724. There is ample unchallenged evidence that the Accused Brima's orders were obeyed.²⁹⁷⁵ For example, upon arrival at Rosos, the Accused Brima gave orders distributing the companies out to various surrounding villages.²⁹⁷⁶ The Accused Brima ordered an advance troop to depart from Rosos to find a suitable new location for the camp.²⁹⁷⁷ Upon this location being found at 'Colonel Eddie Town', Brima ordered the entire brigade to move there.²⁹⁷⁸ In addition the Trial Chamber refers to its previous findings that the Accused Brima gave a number of orders to commit crimes which were obeyed by AFRC troops.²⁹⁷⁹

²⁹⁷¹ Prosecution Final Brief, para. 1513.

²⁹⁷² Brima Final Brief, para. 105.

²⁹⁷³ Role of the Accused, Brima, para. 378, *supra*.

²⁹⁷⁴ Military Structure of the AFRC Fighting Force, para. 600, *supra*.

²⁹⁷⁵ George Johnson, Transcript 15 September 2005, pp. 60, 61; TF1-334, Transcript 23 May 2005, pp. 42, 52-53, 74, 79, 81-87, 104-106; TF1-033, Transcript 11 July 2005, pp. 32-33.

²⁹⁷⁶ TF1-334, Transcript 23 May 2005, p. 106; *see also* George Johnson, Transcript 15 September 2005, p. 60.

²⁹⁷⁷ TF1-334, Transcript 24 May 2005, pp. 72-73.

²⁹⁷⁸ TF1-334, Transcript 24 May 2005, pp. 73-74.

²⁹⁷⁹ Responsibility of the Accused, Brima, paras 1709-1718, *supra*.

1725. The Trial Chamber is satisfied that the Accused Brima's exercise of effective control was not sporadic, but constant. His orders remained effective and applicable to incidents that occurred some time after their issuance. For example, at Kamagbengbe, prior to arrival at Rosos, a number of civilian abductees attempted to escape from the troops. They were recaptured and brought before the Accused Brima. He ordered one of the company commanders, Lieutenant Tito, to immediately execute them, on the basis of his prior order at Mansofinia that persons attempting to escape would be shot. Lieutenant Tito shot the civilians.²⁹⁸⁰

1726. Similarly, at Rosos, the Accused Brima warned the troops that disciplinary action would be taken against soldiers that brought captured civilians to camp.²⁹⁸¹ There is evidence of the subsequent implementation of this order by his subordinates in his absence. Witness TF1-334 testified that on one occasion, he and a number of other troops captured six civilians in a village and brought them to their commander, whose identity was revealed in closed session. The commander ordered their execution on the basis that this was what the Accused Brima had ordered.²⁹⁸²

1727. The Trial Chamber has observed that the Accused Brima habitually addressed the troops publicly, often using this as a forum to issue orders. One example of this is the speech made by the Accused Brima at Kamagbengbe, in the course of which he ordered the attack on Karina.²⁹⁸³ Witness TF1-334 described a particular field at Rosos as 'the field where Gullit normally addressed the troops'.²⁹⁸⁴ Witness TF1-334 also testified that at the completion of the military training program for civilian abductees at Rosos, the trainees were addressed by 'Gullit' and 'Five-Five'.²⁹⁸⁵ Thus, the Accused Brima clearly had a high public profile among the troops and was able to assemble and address them.

1728. On the basis of the foregoing evidence, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Brima was able to effectively control the AFRC troops under his command. The Trial Chamber accordingly finds that a superior-subordinate relationship existed between the Accused Brima and the perpetrators of crimes committed in Bombali District.

b. Actual or Imputed Knowledge

²⁹⁸⁰ TF1-334, Transcript 23 May 2005, pp. 55-56.
²⁹⁸¹ TF1-334, Transcript 23 May 2005, pp. 104-106.
²⁹⁸² TF1-334, Transcript 24 May 2005, pp. 2-4.
²⁹⁸³ TF1-334, Transcript 23 May 2005, p. 56; TF1-033, Transcript 11 July 2005, pp. 18-19.
²⁹⁸⁴ TF1-334, Transcript 24 May 2005, pp. 9-10.
²⁹⁸⁵ TF1-334, Transcript 24 May 2005, pp. 9-10.

1729. The Prosecution submits that ‘based on the fact that in most cases the orders to commit crimes were given to the subordinates directly by the Accused or at least in their presence, the Accused either knew or at the very least had reason to know that the subordinates were about to commit the offences or had done so, especially since on many occasions the Accused were personally present [...] while the crimes were being carried out’.²⁹⁸⁶

1730. The Trial Chamber is satisfied that in many cases actual knowledge of the crimes committed by the Accused Brima’s subordinates without his direct participation can be inferred from circumstantial evidence for three reasons.

1731. Firstly, the occurrence of the crimes was widespread and involved a typical *modus operandi* of attacks against civilians.²⁹⁸⁷ The frequency and pattern of crimes, coupled with the evidence that the Accused Brima ordered attacks on civilians on several occasions,²⁹⁸⁸ indicates that he had actual knowledge that crimes were about to occur whenever his troops went on operations.

1732. Secondly, actual knowledge can be inferred from the evidence that the troops systematically reported to their commanders, and often to the Accused Brima himself, at the conclusion of operations.²⁹⁸⁹

1733. Thirdly, the Accused Brima was at all times physically proximate to the locations in which crimes were committed. The Trial Chamber observes that the context in which the Accused Brima exercised effective control was different to that of overall commanders in traditional military armies, who are often removed from the front line of the conflict and may receive reports of incidents that have passed through several commanders up a vertical chain of command. Instead, the AFRC troops in Bombali District moved together to Rosos and upon arrival were all located in Rosos itself or satellite camps nearby. The Accused Brima was thus consistently on the ground with the troops, even if he did not accompany them on every operation.

1734. The Trial Chamber is also satisfied that the Accused Brima had reason to know of the crimes committed in Bombali District. The standard for proof of imputed knowledge is strict. Nonetheless, the Trial Chamber finds that there can be no reasonable doubt that the Accused Brima was in possession of information that put him on notice of the likelihood of illegal acts being committed by his subordinates. He directly participated in the commission of a number of

²⁹⁸⁶ Prosecution Final Brief, para. 1515.

²⁹⁸⁷ See General Requirements of Articles 2, 3 and 4 of the Statute, paras 233-235, *supra*.

²⁹⁸⁸ 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, pp. 26, 27.

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crimes.²⁹⁹⁰ He witnessed the commission of crimes by his subordinates.²⁹⁹¹ He received reports of the commission of crimes.²⁹⁹²

1735. The Trial Chamber accordingly finds that the Accused Brima knew, or had reason to know, of the crimes committed by his subordinates in Bombali District in which he did not directly participate.

c. Failure to Prevent or Punish

1736. In its Final Trial Brief the Prosecution submits that as one of “the key commanders in the field”, the Accused Brima had “necessary and reasonable measures” at his disposal to prevent or punish his subordinates but that he did not do so.²⁹⁹³

1737. The Brima Defence does not make any submissions on whether the Accused Brima attempted to prevent the commission of crimes or punish offending subordinates. Rather, the Brima Defence submits that this third limb of superior responsibility is only applicable where the first two limbs have been established. The Brima Defence argues that the Prosecution has failed to prove these first two elements and the case against the Accused Brima under Article 6(3) of the Statute must therefore be dismissed.²⁹⁹⁴

1738. Before turning to the available evidence, the Trial Chamber wishes to emphasise that any analysis of the type of preventative or punitive measures required on the part of the Accused Brima must recognise that the AFRC was not a traditional military organisation. It is not useful to inquire whether the Accused Brima adopted measures commonly cited in the jurisprudence, such as reporting the perpetrators to competent authorities or commencing formal investigations.²⁹⁹⁵ Nonetheless, the fundamental question remains whether there were measures of any type reasonably open to the Accused Brima, taking into account the extent of his ability to control his subordinates, which he failed to take.

1739. The Trial Chamber found that the AFRC faction had a functioning disciplinary system in Bombali District.²⁹⁹⁶ The Trial Chamber accepts that this system was not advanced in the sense of being properly codified and formally sanctioned by competent authorities. Nevertheless, the Trial

²⁹⁸⁹ TF1-334, Transcript 23 May 2005, p. 96, 98-99, 101.

²⁹⁹⁰ See Responsibility of the Accused, paras 1698-1716, *supra*.

²⁹⁹¹ TF1-334, Transcript 23 May 2005, pp. 61, 65.

²⁹⁹² TF1-334, Transcript 23 May 2005, pp. 96, 98-99, 101.

²⁹⁹³ Prosecution Final Brief, para. 1516.

²⁹⁹⁴ Brima Final Brief, paras 109-110.

²⁹⁹⁵ See Applicable Law, para. 799, *supra*.

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Chamber finds that that this disciplinary system could have been employed by the Accused Brima. Instead, there is no evidence that the Accused Brima took measures to punish subordinates for the commission of crimes. To the contrary, witnesses testified that on occasion the Accused Brima commended offending subordinates.²⁹⁹⁷ The only evidence that soldiers were punished for crimes refers to their punishment for the rape of other soldiers' wives.²⁹⁹⁸ The Trial Chamber does not consider this sufficient, as the soldier in such cases was not being punished for committing the crime of rape, but for the fact that his victim 'belonged' to another perpetrator.

1740. Insofar as the prevention of offences is concerned, the Trial Chamber recalls that the nature of the measures that must be taken by commanders depends on the degree of their control over their subordinates as well as the severity and imminence of the crimes.²⁹⁹⁹ The Trial Chamber notes that it is likely that the Accused Brima had less control over his troops than a commander would have over highly disciplined troops in a regular army. It is possible that some of the Accused Brima's troops may have committed crimes even if they were not ordered to do so. This is similarly possible in a traditional military organisation. The law does not require proof that the Accused Brima could have prevented the commission of the crimes. The law requires that the Accused Brima took all steps reasonably open to him in an attempt to do so.

1741. The only evidence of the Accused Brima taking any steps to prevent the crimes committed is that he appointed a Provost Marshal who was in charge of ensuring that "jungle justice" was adhered to. "Jungle justice" included a "law" prohibiting rapes during operations³⁰⁰⁰ and permitted that any fighter who raped another fighter's 'wife' would be put to death.³⁰⁰¹ The Trial Chamber finds that rules regarding which troops were entitled to rape civilians or rules that prohibited rape at specified times do not demonstrate the Accused's attempt to prevent or punish these crimes. Rather they are indicative of the tolerance and institutionalised nature of the commission of the crimes within the AFRC forces.

1742. There is also evidence that the Provost Marshal was in charge of ensuring that "government property," meaning arms, ammunition and medical supplies belonging to the AFRC fighting forces,

²⁹⁹⁶ Military Structure of AFRC Fighting Force, para. 1739, *supra*.

²⁹⁹⁷ TF1-033, Transcript 11 July 2005, pp. 32-35.

²⁹⁹⁸ Military Structure of AFRC Fighting Force, para. 595, *supra* for discussion on laws regulating the use of women by troops at Rosos.

²⁹⁹⁹ Applicable Law, paras 797-798, *supra*.

³⁰⁰⁰ Military Structure of AFRC Fighting Force, para. 594, *supra*.

³⁰⁰¹ TF1-033, Transcript 12 July 2005, p. 9.

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was not stolen.³⁰⁰² The Trial Chamber is of the opinion that this prohibition does not demonstrate the Accused's intention to prevent general looting of civilian property by the troops.

1743. The Trial Chamber accordingly finds that the Accused Brima failed to take necessary and reasonable measures to prevent the crimes committed in Bombali District or punish the perpetrators thereof.

(iii) Conclusion

1744. On the basis of the foregoing, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that the Accused Brima as a superior, bears individual criminal responsibility under Article 6(3) for the crimes committed by his subordinates in Bombali District between 1 May 1998 and 30 November 1998 in which he did not directly participate.

7. Freetown and Western Area

1745. The Trial Chamber found in relation to Freetown and the Western Area that AFRC troops committed unlawful killings of civilians³⁰⁰³ and inflicted sexual³⁰⁰⁴ and physical³⁰⁰⁵ violence on civilians; that AFRC troops also abducted civilians and used them as forced labour;³⁰⁰⁶ that AFRC troops illegally recruited and used children under the age of 15 years for military purposes in the attack on Freetown;³⁰⁰⁷ and that AFRC troops engaged in looting,³⁰⁰⁸ and committed collective punishments and acts of terror against the civilian population,³⁰⁰⁹ as charged in the Indictment.

(a) Responsibility of the Accused Brima under Article 6(1) of the Statute

(i) Submissions

1746. In its Final Trial Brief, the Prosecution asserts that the Accused Brima together with the Accused Kamara and Kanu planned and led the invasion of Freetown, and that the attack on Freetown was designed and organised by Brima. The Prosecution further asks the Trial Chamber to infer that the Accused, based on his position and participation in the commission of crimes in Freetown, intended the commission of the crimes pleaded in the Indictment in Freetown 1999, or

³⁰⁰² George Johnson, Transcript 15 September 2005, p. 49.

³⁰⁰³ Factual Findings, Unlawful Killings, paras 902-949, *supra*.

³⁰⁰⁴ Factual Findings, Sexual Violence, paras 1048-1049, 1056-1057, *supra*.

³⁰⁰⁵ Factual Findings, Physical Violence, paras 1229-1242, *supra*.

³⁰⁰⁶ Factual Findings, Enslavement, para. 1389, *supra*.

³⁰⁰⁷ Factual Findings, Child Soldiers, para. 1278, *supra*.

³⁰⁰⁸ Factual Findings, Pillage, para. 1429, *supra*.

³⁰⁰⁹ Factual Findings, Acts of Terror and Collective Punishments, paras 1609-1611, *supra*.

was aware of the substantial likelihood that the crimes would occur.³⁰¹⁰ Alternatively, it submits that the Accused Brima is liable for aiding and abetting all of the crimes charged through his presence on the ground, his position of authority and his active support for operations.³⁰¹¹

1747. The Prosecution further contends that Freetown was attacked pursuant to the orders of the Accused Brima, and that given his position of authority, it may reasonably be inferred that Brima ordered the commission of all the crimes in Freetown.³⁰¹² It adds that the Accused gave specific orders to burn down police stations and all of Calaba Town; issued a general order to execute “collaborators”; and ordered specific unlawful killings, amputations, abductions and looting.³⁰¹³

1748. In addition, the Prosecution submits, the Accused Brima committed numerous killings, amputations and burnings and that he further committed, instigated or aided and abetting acts of sexual violence.³⁰¹⁴

1749. The Brima Defence contends that the evidence adduced by the Prosecution is insufficient to support any theory that the Accused was liable by his acts or omissions for the crimes committed in Freetown and the Western Area in 1999.³⁰¹⁵ The Brima Defence argues that Brima never came to Freetown during the January 1999 invasion nor was he part of the attack there, a fact supported by various Defence witnesses.³⁰¹⁶

(ii) Findings

a. Committing

i. Killings of three persons at State House

1750. Prosecution evidence that during the 6 January 1999 invasion of Freetown by the AFRC forces, the Accused Brima personally shot and killed three men whom he believed to be Nigerians at State House went unchallenged.³⁰¹⁷ Witness TF1-184, who was an AFRC commander at the time, stated that whilst inside State House, he saw junior soldiers bring four civilians including one woman to State House from the Paramount Hotel. The Accused Kanu took the woman and the three

³⁰¹⁰ Prosecution Final Brief, para. 1615.

³⁰¹¹ Prosecution Final Brief, para. 1617.

³⁰¹² Prosecution Final Brief, para. 1618.

³⁰¹³ Prosecution Final Brief, paras 1619-1620.

³⁰¹⁴ Prosecution Final Brief, paras 1621-1623.

³⁰¹⁵ Brima Final Brief, para. 250.

³⁰¹⁶ Brima Final Brief, paras 211-213.

³⁰¹⁷ TF1-184, Transcript 27 September 2005, pp. 61-62.

civilians who were accused of being “Nigerians”. The witness then saw the Accused Brima shoot and kill them.³⁰¹⁸ The testimony of witness TF1-184 was corroborated by that of witness TF1-334. In support of Brima’s alibi defence, Defence witness DBK-126 stated that she would take food to the Accused Kamara at the State House but that she did not see the Accused Brima while there.³⁰¹⁹

1751. The Trial Chamber is of the view that the evidence of witness DBK-126 does not undermine the evidence of Prosecution witnesses TF1-184 and TF1-334³⁰²⁰ who were present at State House and saw the Accused Brima commit crimes there. The Trial Chamber will now determine whether the Indictment particularised these crimes.

1752. The Indictment provided not one material fact regarding the specific incident described above. Instead, it alleged that “AFRC/RUF conducted armed attacks throughout the city of Freetown.” Given this failure to adequately plead critical material facts, the Trial Chamber finds the Indictment defective. The Trial Chamber must therefore determine whether this defect in the Indictment was cured by clear, timely and consistent notice of the material facts to the Brima Defence.

1753. Material facts were not provided in the Prosecution Supplemental Pre-Trial Brief nor its Opening Statement. The only document referring to the incident is a pre-trial statement of Prosecution witness TF1-184 stating that:

On the 7 January 1999, a Nigerian Civilian was captured by our soldiers. This man told us that his friends were staying at the Paramount Hotel. After that, the three other Nigerians, two men and one woman, were captured and all of them were brought to State House and presented to Gullit. Gullit said that the men should die. Then he took his pistol and shot one Nigerian in the head, one in the chest and the last one in the side.³⁰²¹

1754. The Trial Chamber notes that among its disclosure materials the Prosecution included a document entitled “Additional Information provided by Witness TF1-184 on 20 May 2005 and 17 June 2005.” In that document, the witness said that the Accused Brima murdered three civilians at State House on 7 January 1999. This document might have put the Defence on notice of the particulars of the charge against Brima, as it details the manner in which the three men were captured and killed. The Trial Chamber, however, observes that this information was not disclosed to the Defence until at least two months after the opening of the trial. Thus, the notice provided cannot be described as ‘timely’ nor can it qualify as ‘consistent.’ However, the Brima Defence did

³⁰¹⁸ TF1-184, Transcript 27 September 2005, pp. 61-62.

³⁰¹⁹ DBK-126, Transcript 25 October 2006, pp. 56, 57.

³⁰²⁰ TF1-334, Transcript 14 June 2005, pp. 22, 27.

³⁰²¹ Additional Information provided by witness TF1-184 on 20 May 2005 and 17 June 2005, CMS p. 9830 [confidential].

not object to the leading of evidence of this incident. The Trial Chamber therefore finds that the failure to give notice did not materially impair the ability of the Brima Defence to prepare its case.

1755. Accordingly, the Trial Chamber finds the Accused Brima criminally responsible for committing the murder of three civilian Nigerian men at State House as part of a widespread and systematic attack against the civilian population.

ii. Killing of a soldier's wife at the State House Area

1756. The Trial Chamber has found that the Accused Brima personally killed the wife of one of his soldiers outside State House in Freetown in early January 1999.³⁰²² Witness TF1-184 stated that he heard the husband of the victim assert that “[t]his Papay [the Accused Brima] had been after my woman for quite sometime.”³⁰²³

1757. Yet again this incident is not pleaded in the Indictment, rendering the Indictment defective. The Trial Chamber must therefore determine whether this defect in the Indictment was cured by clear, timely and consistent notice to the Brima Defence. The Prosecution Supplemental Pre-Trial Brief and the Prosecution's Opening Statements do not refer to this incident. The only document that does refer to the incident is a prior statement of Prosecution witness TF1-334, dated 7 November 2003, which described the killing in the following terms:

[...] I returned to State House. Surprisingly Gullit started firing soldiers who, according to him, were not members of the troop, who were not cooperating. Also, some Nigerian soldiers we have captured, Gullit fired them. Also, in my presence, he killed a certain lady we had brought from the jungle.³⁰²⁴

1758. As the date of disclosure was not provided to the Trial Chamber, it is unable to determine the timeliness of the notice to the Defence.

1759. Prosecution witness TF1-334 did not ultimately give evidence of this incident in his oral testimony, but Prosecution witness TF1-184 did. The Trial Chamber is unable to determine the passage of time between the initial disclosure of the Prosecution material and the testimony of witness TF1-184, and is therefore unable to determine the timeliness of the notice. However, the Brima Defence did not object. The Trial Chamber therefore finds that the failure to give notice did not materially impair the ability of the Brima Defence to prepare its case.

³⁰²² TF1-184, Transcript 27 September 2005, p. 62; TF1-334, Transcript 14 June 2005, pp. 22, 27.

³⁰²³ TF1-184, Transcript 27 September 2005, p. 62.

³⁰²⁴ Statement of Witness TF1-334 dated 7 November 2003, CMS p. 6585 [confidential].

1760. The Trial Chamber accordingly finds that the Accused Brima is criminally responsible for personally killing a soldier's wife at the State House area.

iii. Unlawful killings at Kissy Mental Home/Portee area

1761. The Trial Chamber heard unchallenged evidence that shortly after the AFRC forces invaded Freetown in early January 1999, on the way from Kissy Mental Home towards the Portee area, the Accused Brima personally shot dead a nun.³⁰²⁵ Witness TF1-153 stated that he moved together with the AFRC troops to the Portee area by the Cotton Tree where they met nuns and that after 'Gullit' ordered the nuns to walk faster, he later took out his pistol and shot dead "a black nun".³⁰²⁶

1762. The Trial Chamber finds that once again, the Indictment does not plead the incident of the killing of a nun by the Accused Brima around the Portee area, which renders the Indictment defective. The Trial Chamber observes that the Prosecution Supplemental Pre-Trial Brief and its Opening Statement do not mention the killing of a nun in the Portee area. However, this defect was cured by the information provided in the pre-trial statement of witness TF1-153 dated 28 February 2003.

1763. Although the pre-trial statement of witness TF1-153 does not provide specific details on the killing of a nun by the Accused Brima, the information contained therein put the Defence on adequate notice.³⁰²⁷ Further information was contained in the pre-trial statement of witness TF1-153 on the conduct of the Accused Brima upon the AFRC troops' retreat from Freetown, and the witness responded to the question put to him in relation to the killing of the black nun. In addition, the Defence cross examined the witness on this incident.³⁰²⁸

1764. Taking these statements together, the Trial Chamber finds that adequate notice was given to the Brima Defence of this incident. Accordingly, the Trial Chamber finds the Accused Brima individually criminally liable for committing the murder of a nun around the Kissy Mental Home/Portee area, as part of a widespread and systematic attack against the civilian population.

iv. Unlawful killings in the Wellington area

³⁰²⁵ TF1-153, Transcript 23 September 2005, pp. 21-22.

³⁰²⁶ TF1-153, Transcript 23 September 2005, p. 22.

³⁰²⁷ TF1-153, Prior Witness Statement, 28 February 2003, CMS pp. 10269-10272 [confidential].

³⁰²⁸ TF1-153, Transcript 23 September 2005, pp. 50-51.

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1765. Witness TF1-334 testified that in early January 1999, AFRC forces in the Wellington area, including the Accused Brima, shot at civilians.³⁰²⁹ The witness stated that all the three Accused participated in the shooting of civilians and that he saw 'Gullit' shooting with his own gun. The witness did not state whether any persons died as a result of the shooting.

1766. Furthermore, the Indictment does not plead the particulars of the incidents that took place around the Wellington area in which the Accused Brima is alleged to have shot at civilians, and the Prosecution Supplemental Pre-Trial Brief, Opening Statement and witness statements provide no information on this specific incident with regard to the Accused Brima. The Trial Chamber will therefore make no finding on this incident.

v. Amputation of a civilian's hand at Old Road area

1767. The Trial Chamber heard unchallenged evidence that 'Gullit' (the Accused Brima) intentionally amputated the hand of a man at Shell Company by Old Road in Freetown in January 1999.³⁰³⁰ The Indictment does not plead the material facts regarding this specific incident with regard to the Accused Brima and is therefore defective. The Trial Chamber must therefore determine whether this defect was cured by clear, timely and consistent notice to the Brima Defence.

1768. The Prosecution's Pre-Trial Brief and Opening Statement do not refer to this incident. Annex A of the Prosecution Supplemental Pre-Trial Brief states that "Alex Tamba Brima *ordered* amputations of civilians because they had pointed out the rebel positions to ECOMOG" [emphasis added].³⁰³¹ This information does not put the Defence on notice of the Prosecution's intent to charge the Accused with the personal commission of an amputation. The Trial Chamber notes however, that the pre-trial statement of witness TF1-184 specifically refers to the commission of the act by the Accused Brima:

In late January 1999, around the Kissy mental hospital, I saw Kabila telling members of the high command including Gullit that the civilians were showing ECOMOG where we were hiding. I then heard Gullit say 'well those hands that point against us, cut them off'. After this I saw several victims' amputations. The commander in charge of cutting hands was Lt Col Changabulanga. The amputations were done on the Old Road, Shell Company. Changabulanga, Gullit and 55 were

³⁰²⁹ TF1-334, Transcript 14 June 2005, p. 98.

³⁰³⁰ TF1-184, Transcript 27 September 2005, p. 80.

³⁰³¹ Prosecution Supplemental Pre-Trial Brief, Annexure A, p. 100.

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there. I saw Gullit cutting hands of one man with [a] cutlass. The boys were doing this too. I saw 6 persons whose hands were cut.³⁰³²

The Trial Chamber cannot determine whether this information was disclosed to the Defence before the start of trial. Therefore the Trial Chamber considers that the Defence was not given timely and consistent notice of critical material facts.

1769. The Trial Chamber notes however that the Defence cross examined the witness with respect to this incident,³⁰³³ and therefore finds that the failure to provide adequate notice did not materially impair the ability of the Brima Defence to prepare its case. Accordingly, the Trial Chamber finds the Accused Brima individually criminally liable, pursuant to Article 6(1) of the Statute, for committing the amputation of one civilian at Shell Company, Old Road, as part of a widespread and systematic attack against the civilian population in January 1999.

b. Ordering/Instigating

i. Order to kill civilians in Fourah Bay area

1770. The Trial Chamber has found that the Accused Brima ordered his soldiers to kill civilians in the Fourah Bay area in retaliation for the killing of an AFRC soldier.³⁰³⁴ The Trial Chamber is satisfied that the Accused Brima ordered the commission of these crimes in the awareness that the crimes were likely to be committed.

ii. Orders to terrorise and collectively punish the civilian population

1771. The Trial Chamber heard the following unchallenged evidence of witness TF1-184 who was with the AFRC troops during the Freetown invasion of January 1999. The witness testified that in the presence of the Accused Kanu, 'Gullit' ordered 'Major Mines' to collect cutlasses and to distribute them to the soldiers so that amputations could be carried out. 'Changabulanga' distributed the cutlasses to the soldiers. Describing the manner in which the amputations were carried out, the witness stated that "[c]ivilians were given either "long sleeves" meaning that the hand from the wrist downwards was removed, or "short sleeves" meaning that the entire arm from the bicep or elbow downwards was removed".³⁰³⁵ The witness further stated that a new battalion under the command of 'Changabulanga' was created by 'Kande'. The aim of the battalion was to create fear

³⁰³² Statement of witness TF1-184 dated 20 May 2005, CMS p. 9824 [confidential].

³⁰³³ TF1-184, Transcript 27 September 2005, p. 80.

³⁰³⁴ Factual Findings, Unlawful Killings, para. 925, *supra*.

³⁰³⁵ TF1-184, Transcript 27 September 2005, p. 74.

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among the civilian population. To do this, they amputated civilians' hands.³⁰³⁶ The Trial Chamber also heard that during the retreat, the Accused Brima ordered the hands of all those who were pointing out the AFRC positions to ECOMOG forces to be amputated. As a result, "Mines" came back with a bag full of hands an hour and a half later.³⁰³⁷ From the pattern of the events, the Trial Chamber has no doubt that the hands were amputated from civilians by AFRC forces.

1772. Witness TF1-334 told the Trial Chamber that on an unspecified day during the January 1999 invasion of Freetown, AFRC troops occupied the area of Kissy Mental Home in the eastern part of Freetown. In the evening hours 'Gullit' (the Accused Brima), in the presence of senior AFRC commanders including 'Bazzy' (the Accused Kamara) and 'Five-Five' (the Accused Kanu), ordered his troops to "clear up" the area by killing civilians as punishment for their support of ECOMOG.³⁰³⁸ The Accused Brima in presence of the Accused Kamara and Accused Kanu, ordered his troops to go to the "low-cost area" and amputate the arms of civilians, kill civilians and burn property "because the civilians were celebrating the arrival of ECOMOG".³⁰³⁹

1773. The orders of the Accused Brima to the perpetrators of the amputations, together with the fact that a battalion was created not for military strategy but specifically to instil fear amongst the civilian population in Freetown, clearly indicate an intention to terrorise the civilians. The Trial Chamber also heard the following unchallenged evidence of witness TF1-084 who stated that during the rebel attack on Freetown in January 1999, civilians were mutilated and killed by AFRC forces because the AFRC believed that the people of Freetown supported President Tejan Kabbah.³⁰⁴⁰ Witness TF1-334 was present when 'Gullit' announced that it was time to attack Freetown and that the Sierra Leone People's Party government was responsible for denying the success of the rebel troops. He ordered that Freetown should be looted and burnt down, that anyone who opposed the troops should be considered a "collaborator" and should be killed.³⁰⁴¹ This testimony is corroborated by witness TF1-033 who also heard 'Gullit' order the burning of houses and the murder of civilians during the attack on Freetown.³⁰⁴² This evidence was unchallenged and is credible.

1774. The Trial Chamber also heard that in early January 1999 during the Freetown invasion, at State House, the Accused told his fighters to force captured civilians to join the AFRC forces in

³⁰³⁶ TF1-184, Transcript 29 September 2005, pp. 15-16.

³⁰³⁷ TF1-184, Transcript 27 September 2005, pp. 81-82.

³⁰³⁸ TF1-334, Transcript 14 June 2005, pp. 83-84.

³⁰³⁹ Prosecution Final Brief, para. 1663; TF1-334, Transcript 14 June 2005, pp. 84, 87.

³⁰⁴⁰ TF1-084, Transcript 6 March 2005, pp. 42-47; TF1-227, Transcript 11 March 2005, pp. 62-63, 101-103.

³⁰⁴¹ TF1-334, Transcript 13 June 2005, pp. 100-104.

order to compensate for those fighters killed by ECOMOG. Following the order, civilians who refused to join the AFRC forces were shot in the presence of the Accused Brima, and their dead bodies thrown out of the back of State House.³⁰⁴³ In addition, witness TF1-334 also testified that Brima ordered the abduction of civilians from Freetown during the attack “so as to attract the attention of the international community”.³⁰⁴⁴ During the attack civilians were indeed abducted. Another witness testified that when the ARFC entered Freetown, they ordered the civilians to sing while they were burning their houses.³⁰⁴⁵ The Trial Chamber found the above Prosecution evidence, which was unchallenged, credible.

1775. The Trial Chamber also heard evidence that soon after the troops lost State House the Accused Brima was informed by a soldier that one of the troops had been hacked to death by civilians at the Fourah Bay crossroad.³⁰⁴⁶ In response, the Accused Brima called ‘Major Mines’, one of his subordinates, and instructed him to collect cutlasses at the SLRA³⁰⁴⁷ compound. ‘Major Mines’ returned with cutlasses, some of which he kept for himself while the remainder he distributed to ‘Changabulanga’ who was the “battalion commander for amputations”. The Accused Brima then ordered his men to go to Uppgun roundabout where he told his fighters that “these people we should teach them a lesson.” He ordered his men to amputate and kill civilians and burn the area down. The Trial Chamber has found that the order to commit these crimes was carried out.³⁰⁴⁸ On the basis of this evidence the Trial Chamber is satisfied that the Accused Brima ordered the commission of crimes in full awareness that the crimes were likely to be committed. Witnesses TF1-334 and TF1-104 testified that the amputations and killings of civilians continued during the AFRC retreat from Freetown. When it became clear that Guinean troops had taken over, ‘Gullit’ saw that the civilian population was celebrating. In the presence of the Accused Kamara and Kanu, ‘Gullit’ stated that the people of Freetown were ungrateful and ordered the troops to go as far as they could burning and killing people. Attacks on civilians were then carried out by the troops around the area of the Kissy Mental Hospital, Blackhall Road and the Kissy Police Station up to PWD Junction near Shankardass.³⁰⁴⁹ Witness TF1-334 testified that he personally saw six civilians

³⁰⁴² TF1-033, Transcript 11 July 2005, pp. 60-64.

³⁰⁴³ TF1-024, Transcript 7 March 2005, pp. 46-48, 72-74.

³⁰⁴⁴ TF1-334, Transcript 14 June 2005, pp. 62-64.

³⁰⁴⁵ TF1-157, Transcript 26 September 2005, pp. 18-19, 23-24, 26, 29-30.

³⁰⁴⁶ TF1-184, Transcript 27 September 2005, pp. 71-72.

³⁰⁴⁷ “Sierra Leone Roads Authority”, clarified upon question from the Bench, Transcript 30 September 2005, p. 5.

³⁰⁴⁸ Factual Findings, Unlawful Killings, paras 919-926, *supra*.

³⁰⁴⁹ TF1-334, Transcript 14 June 2005, pp. 83-87; TF1-104, Transcript 30 June 2005, pp. 31-33.

whose arms were amputated by 'Changabulanga'. The arms of the civilians were chopped off at the elbow and 'Osman Sesay' told them to "go to Pa Tejan Kabbah to get new hands".³⁰⁵⁰

1776. Prosecution witness TF1-033 testified that after the AFRC lost the battle in Freetown he remained with the AFRC troops during their retreat for three weeks. During this time the eastern part of Freetown was occupied by AFRC fighters under the command of 'Gullit'. The witness saw and heard 'Gullit' ordering his men to commit atrocities against the civilian population as they were retreating. As a result of the order, girls and women were raped by the fighters.³⁰⁵¹ This evidence was not challenged. The Trial Chamber finds that through the above unchallenged evidence, the Prosecution has proved beyond reasonable doubt that the Accused Brima is individually criminally responsible for ordering his subordinates to commit those crimes, as part of a widespread attack on the civilian population during the January 1999 invasion of and retreat from Freetown.

iii. Orders to kill collaborators

1777. The Trial Chamber also heard evidence that during the January 1999 attack on Freetown, the police were specifically targeted and punished by the AFRC troops who saw them as "collaborators" of the Kabbah Government. Witness TF1-334 heard 'Gullit' giving orders to the AFRC troops in Freetown, specifying that "[p]olice stations should be targeted and burnt down" and "collaborators" killed.³⁰⁵² Witness TF1-157 confirmed the fact that the invading AFRC troops searched Freetown for police officers and killed them and "their people", meaning their families. The witness also saw the AFRC troops attack the Eastern Police Station.³⁰⁵³

iv. Order to loot UN Vehicles and civilian property

1778. The Trial Chamber heard the unchallenged evidence of witness TF1-334 that on 6 January 1999, the Accused Brima ordered the Operations Commander to loot vehicles at United Nations headquarters and to bring them back to State House and that the Operations Commander complied with the order.³⁰⁵⁴ Another witness, Gibril Massaquoi, testified that soon after the January 1999 Freetown invasion, he saw the Accused Kanu and other commanders driving UN vehicles in Freetown.³⁰⁵⁵ The Trial Chamber is satisfied on the basis of this evidence that the Accused Brima

³⁰⁵⁰ TF1-334, Transcript 14 June 2005, pp. 81-82.

³⁰⁵¹ TF1-033, Transcript 11 July 2005, pp. 65-66.

³⁰⁵² TF1-334, Transcript 13 June 2005, pp. 100-102.

³⁰⁵³ TF1-157, Transcript 25 September 2005, pp. 19-20, 22, 29-30, 58-60; Transcript 26 September 2005, pp. 23-24.

³⁰⁵⁴ TF1-334, Transcript 14 June 2005, pp. 5, 21-26.

³⁰⁵⁵ Gibril Massaquoi, Transcript 7 October 2005, p. 126.

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ordered the commission of this crime in full awareness that the crime was likely to be committed and that the order was carried out. The Trial Chamber heard evidence that in Allen Town, on the eve of the invasion of Freetown in January 1999, the Accused Brima gathered his troops and instructed them to execute “collaborators” - a term witness TF1-334 explained was used to refer to any person who did not support the AFRC troops. Brima also informed his troops that as he did not have the means to pay them they were free to loot from the civilian population. Brima also instructed the troops to burn down all police stations.³⁰⁵⁶

v. Order to kill 14 captive Nigerian ECOMOG soldiers at State House

1779. The Trial Chamber has found that at State House on an unknown date during the Freetown attack, Brima ordered the execution of 14 to 16 captive and unarmed Nigerian ECOMOG soldiers.³⁰⁵⁷ Although the Prosecution witnesses TF1-334 and TF1-033 gave varying accounts of why the Nigerians were killed, they were all consistent regarding the fact that the Accused Brima gave the order for the Nigerians to be killed.³⁰⁵⁸ The Trial Chamber found that these ECOMOG soldiers, *hors de combat*, were subsequently killed.³⁰⁵⁹ On the basis of this evidence the Trial Chamber is satisfied that the Accused Brima ordered the commission of crimes in full awareness that the crimes were likely to be committed.

vi. Order to kill three nuns at Kissy Mental Home

1780. A number of Prosecution witnesses testified that on an unspecified day in early January 1999, AFRC troops captured two clerics and eight nuns at Kissy Mental Home. After ECOMOG began bombarding the troops there, the two abducted clerics escaped. ‘Gullit’ ordered his fighters to execute the eight nuns “so as to prevent them escaping and leaking information”. Pursuant to this order, Foday Bah Marah a.k.a. ‘Bulldoze’ executed five nuns.³⁰⁶⁰ The witness stated that following the execution of the nuns, the Accused explained to his troops that they were trapped and that it was time “for a complete bulldoze.” The entire brigade then began to withdraw towards Wellington killing civilians and burning houses as they went.³⁰⁶¹ Witness George Johnson also testified that the troops had eight abducted nuns at Kissy Mental Home. However, he stated that when ECOMOG

³⁰⁵⁶ TF1-334, Transcript 13 June pp. 100-103.

³⁰⁵⁷ Factual Findings, Unlawful Killings, paras 911-912, *supra*.

³⁰⁵⁸ TF1-033, Transcript 11 July 205, pp 63-65; Gibril Massaquoi, Transcript 7 October 2005, pp. 115-116; TF1-334, Transcript 14 June 2005, pp. 22-28.

³⁰⁵⁹ Factual Findings, Unlawful Killings, para. 912, *supra*.

³⁰⁶⁰ TF1-334, Transcript 14 June 2005, pp. 95-97; George Johnson, Transcript 16 September 2005, p. 55; TF1-184, Transcript 27 September 2005, pp. 82-84.

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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.³⁰⁶² 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.³⁰⁶³ The Trial Chamber is satisfied that the Accused Brima gave the order to kill the nuns and that the killing was carried out. On the basis of this evidence the Trial Chamber is satisfied that the Accused Brima ordered the commission of crimes in full awareness that the crimes were likely to be committed.

vii. Order to massacre civilians in Rogbalan Mosque

1781. The Trial Chamber heard unchallenged evidence that at Kissy Mental Home while the AFRC were retreating from Freetown, the Accused Brima called several senior commanders together and informed them that he had received information that civilians were harbouring ECOMOG troops in a nearby mosque. He told his commanders not to assume that mosques were housing civilians and ordered that all those found in the mosque be killed. On these instructions, the Accused Kanu set off with the soldiers. Once they reached the mosque the Accused Kanu ordered the troops to begin firing. The witness observed that the mosque was full of civilians and that many people were killed.³⁰⁶⁴ The evidence of this massacre was corroborated by the following witnesses.

1782. Witnesses TF1-083 and TF1-021 both testified about a massacre at Rogbalan Mosque in Freetown in January 1999. Towards the end of January 1999,³⁰⁶⁵ witness TF1-083 was told that there was an ongoing fire fight between ECOMOG troops and rebels. He therefore decided to seek refuge in Rogbalan Mosque. When he arrived he found approximately 70 dead bodies inside the mosque.³⁰⁶⁶ Witness TF1-021 testified that he was present in Rogbalan Mosque at midday on a Friday in January 1999 when men wearing "mixed clothing" (partly combat uniform and partly civilian clothing) and carrying guns and machetes attacked the mosque. The attackers first robbed the worshippers and then told them that they would all be killed for supporting President Kabbah. The attackers then began shooting. The witness estimated that 71 worshippers were killed in this attack. The witness stressed that the victims were civilian worshippers who had gathered for the traditional 14:00 prayers.³⁰⁶⁷ The Trial Chamber is satisfied that the Accused Brima gave the order

³⁰⁶¹ TF1-334, Transcript 14 June 2005, pp. 97-98.

³⁰⁶² George Johnson, Transcript 16 September 2005, p. 55.

³⁰⁶³ TF1-184, Transcript 27 September 2005, pp. 82-84.

³⁰⁶⁴ TF1-334, Transcript 14 June 2005, pp. 87-89.

³⁰⁶⁵ TF1-083, Transcript 8 April 2005, p. 58.

³⁰⁶⁶ TF1-083, Transcript 8 April 2005, pp. 69-71.

³⁰⁶⁷ TF1-021, Transcript 15 April 2005, pp. 25-32.

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to kill the civilians at Rogbalan Mosque and that the killing was carried out by his subordinates. On the basis of this evidence the Trial Chamber is satisfied that the Accused Brima ordered the commission of crimes in full awareness that the crimes were likely to be committed.

viii. Order to abduct and enslave civilians including child soldiers

1783. The Trial Chamber heard evidence that during the retreat of the AFRC fighters from Freetown, the Accused Brima ordered the abduction of civilians “in order to attract the attention of the international community”. Civilians were then abducted by the AFRC troops and used to carry loads. On Brima’s orders, the young boys under the age of fifteen years were later trained and forced into Small Boys Units.³⁰⁶⁸ The Trial Chamber notes the evidence of Prosecution witness TF1-024 that the Accused Brima ordered the abduction of civilians because he had lost so many troops and needed reinforcements from among the civilian population.³⁰⁶⁹ On the basis of all the Prosecution evidence narrated above, the Trial Chamber is satisfied that the Accused Brima ordered the commission of these crimes in full awareness that they were likely to be committed. The Trial Chamber finds, pursuant to Article 6(1) of the Statute, that the Prosecution has proved beyond reasonable doubt that the Accused Brima ordered his subordinates to commit crimes against the civilian population in Freetown in January 1999 as part of a widespread attack on the population.

c. Planning

1784. No evidence was adduced that the Accused Brima planned any of the crimes committed under Counts 1-6, 10 and 14 in Freetown and the Western Area. The Trial Chamber finds that the Prosecution has not proved this mode of criminal responsibility against the Accused Brima in relation to Counts 1-6, 10 and 14 in Freetown and the Western Area. In view of the continuing nature of the crimes charged under Counts 9, 12 and 13 and the fact that they span across several Districts, the Trial Chamber will discuss the Accused Brima’s responsibility for these crimes below.³⁰⁷⁰

d. Otherwise aiding and abetting

1785. As stated above with regards to liability for commission of crimes in Fourah Bay, the Trial Chamber has found that there is evidence that the Accused Brima participated in the attack on

³⁰⁶⁸ Factual Findings, Child Soldiers, para. 1278, *supra*; TF1-334, Transcript 14 June 2005, pp. 62-64, 118-121; Transcript 15 June 2005, pp. 14-15.

³⁰⁶⁹ TF1-024, Transcript 7 March 2005, p. 47.

³⁰⁷⁰ Responsibility of the Accused, Brima, paras 1820-1838, *infra*.

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Fourah Bay in which civilians were killed and houses burnt. The Trial Chamber found that the Accused Brima was present during the commission of the crimes and either himself participated or failed to admonish the troops from committing the crimes.

1786. Given his authority as commander of the troops, the Trial Chamber finds Brima's presence at the scene gave moral support which had a substantial effect on the perpetration of the crime. In addition, given the systematic pattern of crimes committed by the AFRC troops throughout the District, the Trial Chamber is satisfied that the Accused Brima was aware of the substantial likelihood that his presence would assist the commission of the crime by the perpetrators.

(b) Responsibility of the Accused Brima Under Article 6(3) of the Statute

(i) Submissions

1787. The Prosecution submits in its Final Brief that the Accused Brima has superior responsibility for all crimes committed by his subordinates in Freetown between 6 January 1999 until around 28 January 1999.³⁰⁷¹

1788. The Brima Defence submits that the evidence of mutiny by junior soldiers at Colonel Eddie Town, which led to the arrest and 'long detention' of the three Accused, 'weakens any responsible chain of command and the existence of superior authority'.³⁰⁷² The Brima Defence further submits that there was no effective command or control over the fighters that attacked Freetown, citing in support of this argument the Prosecution Military Expert's conclusion that 'the AFRC faction had a strong command capability which failed on 6th January 1999'.³⁰⁷³

(ii) Findings

a. Existence of a superior-subordinate relationship

1789. The Trial Chamber has found that the Accused Brima was overall commander of the troops in Freetown.³⁰⁷⁴ The Trial Chamber will now consider the evidence pertaining to the Accused Brima's control of the troops from the time he regained command throughout the attack on Freetown until the retreat of the troops to Benguema in February 1999 in order to ascertain whether a superior-subordinate relationship existed.

³⁰⁷¹ Prosecution Final Brief, paras 1637-1640.

³⁰⁷² Brima Final Brief, para. 105.

³⁰⁷³ Brima Final Brief, para. 195; *see also* exhibit P-36, Iron Report, para. E6.1.

³⁰⁷⁴ Role of the Accused, Brima, para. 420, *supra*.

1790. At Allen Town on 5 January 1999, the Accused Brima ordered the invasion of Freetown and specified the locations to be captured, including State House. 'Gullit' announced that the troops were entitled to loot civilian property as he was unable to pay them. However, he also stated that diamonds and dollars were 'government' property and should be given to the Brigade.³⁰⁷⁵ The Trial Chamber considers the limits placed by the Accused Brima on the permissible excesses of his troops indicative of his ability to control their behaviour.

1791. Witness TF1-334 described at length the movement of the troops towards State House on 6 January 1999. His evidence reveals a steady, organised advance pursuant to the orders of the Accused Brima who had specified the locations to be captured. The witness was part of the advance troop and he refers to a number of occasions where they captured new ground and then waited for the brigade senior command, including the Accused Brima, to arrive and tell them what to do next.³⁰⁷⁶ At one point the witness stated that he and the other soldiers "will not do anything without the command of Gullit".³⁰⁷⁷ The witness states that Gullit ordered the soldiers to set fire to vehicles and this was a deliberate tactic to create an obstacle to prevent ECOMOG armoured cars reaching the AFRC position.³⁰⁷⁸ The witness refers to a number of other occasions prior to the troops' arrival at State House on which the Accused Brima gave orders which were obeyed.³⁰⁷⁹

1792. Witness George Johnson also describes a co-ordinated advance to State House. The troops advanced in battalions and his role as task force commander was to ensure that they moved the right way and maintained discipline. He reported throughout this time to the Accused Brima, who gave orders to the troops throughout the advance.³⁰⁸⁰

1793. The troops' acquiescence in the Accused Brima's assumption of command suggests that he was able to effectively control them, notwithstanding any lingering loyalties to SAJ Musa. The Trial Chamber therefore rejects the submission of the Brima Defence that the disruption to Brima's authority due to his arrest in Eddie Town prevented him from resuming the control necessary for a finding of superior responsibility.

³⁰⁷⁵ TF1-334, Transcript 25 May 2005, pp. 100-103.

³⁰⁷⁶ TF1-334, Transcript 13 June 2005, pp. 104-112.

³⁰⁷⁷ TF1-334, Transcript 13 June 2005, p. 112.

³⁰⁷⁸ TF1-334, Transcript 13 June 2005, pp. 110-111.

³⁰⁷⁹ TF1-334, Transcript 13 June 2005, pp. 105, 107, 109, 118.

³⁰⁸⁰ George Johnson, Transcript 16 September 2005, pp. 20-26.

1794. Upon capturing State House, the AFRC established its headquarters there. The Accused Brima was in command.³⁰⁸¹ Other senior commanders including the Accused Kamara and Kanu were also present there from time to time.³⁰⁸² On arrival at State House, Brima ordered the opening of Pademba Road prison.³⁰⁸³ There is evidence of the Accused Brima giving other orders at this time which were obeyed.³⁰⁸⁴

1795. The movement of the troops throughout 6 January remained ordered and strategic. Witness George Johnson describes the deployment of the various battalions at different locations, which he marked on a map of Freetown.³⁰⁸⁵ There is evidence of commanders reporting the progress of their troops to the Accused Brima.³⁰⁸⁶ Witness Gibril Massaquoi testified that on the evening of 6 January he attended a meeting at State House to plan an attack on ECOMOG at Wilberforce. All three Accused were present and Gullit commanded the meeting.³⁰⁸⁷

1796. 'Mosquito' announced over Radio France International on 6 January that the troops commanded by the Accused Brima had captured Freetown and would continue to defend Freetown.³⁰⁸⁸ Later that same day, Brigade Administrator Colonel FAT Sesay, in the presence of all of the Accused, gave a message in the same terms over BBC Radio.³⁰⁸⁹ Witnesses DBK-037 and DBK-012 also stated that FAT Sesay gave an interview to the BBC while in Freetown, although they did not testify as to its content.³⁰⁹⁰

1797. However, the presence of the AFRC headquarters at State House was the high point of the AFRC dominance during invasion. It appears from the evidence of Prosecution and Defence witnesses that in the days following 6 January, ECOMOG regained the upper hand and in the next two to three weeks the AFRC was dislodged from Freetown and was in continual retreat. The precise movement of the troops during the retreat was difficult to ascertain from the testimony of Prosecution and Defence witnesses. Witness George Johnson testified that approximately a week after 6 January, with ECOMOG advancing, the AFRC headquarters moved to Ferry Junction, near Shankardass.³⁰⁹¹ From Shankardass, they pulled out to Kissy Mental Home.³⁰⁹² Witness TF1-334

³⁰⁸¹ 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.

³⁰⁸² TF1-334, Transcript 14 June 2005, pp. 21-22; TF1-153, Transcript 22 September 2005, p. 99.

³⁰⁸³ George Johnson, Transcript 16 September 2005, p. 27.

³⁰⁸⁴ TF1-334, Transcript 14 June 2005, pp. 17, 23-24.

³⁰⁸⁵ George Johnson, Transcript 16 September 2005, pp. 29-37.

³⁰⁸⁶ George Johnson, Transcript 16 September 2005, p. 34; TF1-334, Transcript 14 June 2005, p. 100.

³⁰⁸⁷ Gibril Massaquoi, Transcript 7 October 2006, pp. 119-120.

³⁰⁸⁸ TF1-334, Transcript 14 June 2005, p. 20; TF1-153, Transcript 23 September 2005, pp. 4-6.

³⁰⁸⁹ TF1-334, Transcript 14 June 2005, pp. 20-21 ; George Johnson, Transcript 16 September 2005, p. 39.

³⁰⁹⁰ DBK-037, Transcript 4 October 2006, p. 30; DBK-012, Transcript 9 October 2006, p. 45.

³⁰⁹¹ George Johnson, Transcript 16 September 2005, pp. 45-46.

states that towards the third week the troops then retreated to Eastern Police.³⁰⁹³ Witness George Johnson testified that after several days at Kissy the troops pulled out and retreated through Calaba Town and eventually to Benguema.³⁰⁹⁴

1798. Prosecution military expert Colonel Iron’s report notes that the command structure began to break down in Freetown and the military chain of command failed after the capture of State House, since commanders gave orders to soldiers nearest them without using battalion structure.³⁰⁹⁵

1799. Colonel Iron further concludes that the fighting force retained cohesion in retreat although the battalion structure had completely broken down.³⁰⁹⁶ He opines that the AFRC force “was still a capable fighting force. Commanders were still able to make sound decisions, and the command structure was effective enough to be able to conduct a relatively complex manoeuvre.”³⁰⁹⁷

1800. The Trial Chamber examined the following evidence in light of the above expert opinion of Colonel Iron.

1801. Witness TF1-334 testified that he remained mostly with the brigade administration while in Freetown, but he states that “the troops were all scattered, everybody was just about”.³⁰⁹⁸ He stated that any time the commanders needed reinforcements to go on a battle, he and his supervisor needed to move around raising soldiers to go on the mission.³⁰⁹⁹ This evidence was corroborated by witness TF1-184, who was ordered by ‘Gullit’ to find manpower to carry out a mission,³¹⁰⁰ and Gibril Massaquoi who reports ‘Five-Five’ issuing a similar order to look for men.³¹⁰¹ Witness George Johnson no longer described the movement of the troops in terms of battalions led by commanders, rather his testimony becomes a description of a series of isolated incidents that he witnessed as he moved around Freetown. He states that after the headquarters lost State House arms and ammunition were nearly finished and were no longer being distributed by the G4, but “everybody had his or her own arms and ammunition”.³¹⁰² Witness TF1-184 agreed with Colonel Iron’s conclusion that the battalion structure was no longer operating. He stated that “everyone was disorganised” and “everybody was just doing what he want [sic]”. Commanders took the soldiers

³⁰⁹² George Johnson, Transcript 16 September 2005, p. 52.
³⁰⁹³ TF1-334, Transcript 14 June 2005, pp. 54-55.
³⁰⁹⁴ George Johnson, Transcript 16 September 2005, pp. 58-59.
³⁰⁹⁵ Exhibit P-36, Iron Report, para. D4.
³⁰⁹⁶ Exhibit P-36, Iron Report, para. D5-1.
³⁰⁹⁷ Exhibit P-36, Iron Report, para. D5-6.
³⁰⁹⁸ TF1-334, 14 June 2005, p. 41.
³⁰⁹⁹ TF1-334, 14 June 2005, pp. 41-42.
³¹⁰⁰ TF1-184, Transcript 30 September 2005, pp. 8-9.
³¹⁰¹ Gibril Massaquoi, Transcript 7 October 2005, pp. 13-15.
³¹⁰² George Johnson, Transcript 16 September 2005, p. 48.

around them “who they think they were able to control and were listening to them” and started amputations.³¹⁰³

1802. Witness TF1-334 testified that Gullit told the troops at Kissy mental home ‘Gentleman (sic), now the jungle has started’.³¹⁰⁴ Witness Gibril Massaquoi testified that after losing State House, looting and burning increased. He described an incident in which a female civilian complained to ‘Five-Five’ about her house being burned down, in response to which Five-Five arrested the soldier responsible. Five-Five stated that there had been no order to do this and that things were becoming ‘very rampant’.³¹⁰⁵ Witness TF1-184 stated that the troops at Kissy with ‘Gullit’ and ‘Bazzy’ were losing ground because they were in ‘a confused state’.³¹⁰⁶ ‘Gullit’ complained to the witness that ‘Five-Five’ had been acting contrary to his wishes.³¹⁰⁷ He testified that during the retreat from Kissy, the soldiers called on the civilian carrying their ammunition so that they could stage an attack, but he had thrown it away while running.³¹⁰⁸ Witness Gibril Massaquoi stated under cross-examination that by the time the troops left Freetown he did not believe that the commanders knew everything that was being done by their men.³¹⁰⁹

1803. The Trial Chamber notes from the above evidence that the Accused Brima remained able to exercise command over the troops in his immediate surroundings. There is ample evidence of the Accused Brima giving orders to troops in Freetown which were obeyed.³¹¹⁰ A number of these orders were issued by the Accused Brima in the presence of the Accused Kamara and Kanu.³¹¹¹ He was also able to refuse requests from his subordinates. Witness TF1-153 at one point approached ‘Gullit’ to ask him to release the priests and nuns held captive at PWD, but ‘Gullit’ refused.³¹¹²

1804. The Trial Chamber agrees with Col. Iron’s opinion above that the AFRC fighting force “retained cohesion in retreat although the battalion structure had completely broken down” and that the AFRC force “was still a capable fighting force. Commanders were still able to make sound

³¹⁰³ TF1-184, Transcript 29 September 2005, pp. 104-105.

³¹⁰⁴ TF1-334, Transcript 14 June 2005, p. 83.

³¹⁰⁵ Gibril Massaquoi, Transcript 7 October 2005, pp. 13-15.

³¹⁰⁶ TF1-184, Transcript 27 September 2005, p. 71.

³¹⁰⁷ TF1-184, Transcript 27 September 2005, p. 77.

³¹⁰⁸ TF1-184, Transcript 27 September 2005, p. 83.

³¹⁰⁹ Gibril Massaquoi, Transcript 11 October 2005, p. 60.

³¹¹⁰ TF1-184, Transcript 27 September 2005, pp. 64, 71-75, 81-84; TF1-334, Transcript 14 June 2005, pp. 19-21, 32, 63, 66-67, 83-88, 95-97, 100; TF1-104, Transcript 30 June 2005, pp. 31-33; George Johnson, Transcript 16 September 2005, pp. 25, 27, 42-43, 55; TF1-023, Transcript 10 March 2005, pp. 29-30, 33; Gibril Massaquoi, Transcript 7 October 2005, pp. 115-116; TF1-024, Transcript 7 March 2005, p. 45, 51-52; TF1-033, Transcript 11 July 2005, pp. 63-66.

³¹¹¹ TF1-104, Transcript 30 June 2005, pp. 31-33; TF1-334, 14 June 2005, pp. 54, 62-63, 83-87, 118-119.

³¹¹² TF1-153, 23 September 2005, pp. 12-14; Gibril Massaquoi, Transcript 11 October p. 19.

decisions, and the command structure was effective enough to be able to conduct a relatively complex manoeuvre”.

1805. The foregoing evidence establishes a superior-subordinate relationship existed between the Accused Brima and the AFRC troops in Freetown after the troops lost State House. The Trial Chamber therefore finds that the Accused Brima was in a superior-subordinate relationship with the AFRC troops that committed crimes in Freetown even after the “Headquarters” were dislodged from State House.

b. Actual or Imputed Knowledge

1806. The Prosecution submits that ‘based on the fact that in most cases the orders to commit crimes were given to the subordinates directly by the Accused or at least in their presence, the Accused either knew or at the very least had reason to know that the subordinates were about to commit the offences or had done so.’³¹¹³

1807. The Trial Chamber is satisfied that the Accused Brima ought reasonably to have known of the commission of crimes committed in which he was not directly involved. He directly participated in the commission of a number of crimes.³¹¹⁴ The crimes were committed on a wide scale in physical proximity to the Accused Brima at State House.

1808. The Trial Chamber therefore finds that there can be no reasonable doubt that the Accused Brima was in possession of information to put him on notice that crimes were being committed by his subordinates, although he may not have been directly involved in such crimes.

c. Failure to prevent or punish

1809. There is no evidence that the Accused Brima took any measures to prevent the troops under his control in Freetown from committing crimes against or punish the perpetrators of such crimes.

(iii) Conclusion

1810. The Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that the Accused Brima is liable as a superior under Article 6(3) for crimes committed in Freetown and the Western Area during the relevant Indictment period.

³¹¹³ Prosecution Final Brief, para. 1639.

³¹¹⁴ See Responsibility of the Accused, Brima, paras 1750-1786 *supra*.

8. Port Loko District

1811. The Trial Chamber has found that AFRC/RUF troops unlawfully killed a number of civilians in Port Loko District as charged under Counts 4 through 5.³¹¹⁵ In addition, AFRC troops held persons in sexual slavery as charged under Count 9.³¹¹⁶ AFRC/RUF troops used abducted civilians for forced labour, as charged under Count 13.

(a) Responsibility of the Accused Brima under Article 6(1) of the Statute

(i) Submissions

1812. In its Final Brief, the Prosecution argues that the Accused Brima is liable for the crimes committed in Port Loko District as a principal in a joint criminal enterprise.³¹¹⁷

1813. The Brima Defence invites the Trial Chamber to disregard the testimony of witness TF1-256 on the grounds that it is unreliable and alternatively submits that as the Accused Brima was under detention at the material time, he had no relationship with the alleged perpetrators of the crimes committed in Port Loko District and there is no nexus between the events in Nonkoba described by witness TF1-256 and the Accused.³¹¹⁸

(ii) Findings

1814. No evidence was adduced that the Accused Brima individually committed, ordered, planned, instigated or aided and abetted the commission of any of the crimes that occurred in Port Loko District. The Trial Chamber finds that the Prosecution has not proved these modes of individual criminal responsibility against the Accused Brima for the crimes committed in Port Loko District during the relevant Indictment period.

(b) Responsibility of the Accused Brima Under Article 6(3) of the Statute

(i) Submissions

1815. The Indictment alleges that the Accused Brima, while holding a position of superior responsibility and exercising effective control over his subordinates, is individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute.³¹¹⁹ The Trial Chamber

³¹¹⁵ Factual Findings, Unlawful Killings, para. 965.

³¹¹⁶ Factual Findings, Outrages upon Personal Dignity, para. 1187.

³¹¹⁷ Prosecution Final Brief, paras 1755-1756.

³¹¹⁸ Brima Final Brief, paras 251-252.

³¹¹⁹ Indictment, para. 36.

finds that this is sufficient to charge the Accused Brima with liability under 6(3) for crimes committed in Port Loko District, although it is not specifically referred to in the Indictment as one of the Districts in which the Accused Brima held a command position.³¹²⁰ The Trial Chamber notes that the charge of superior responsibility is subsequently reiterated separately in relation to all Counts for which crimes are alleged in Port Loko District.³¹²¹ In addition, the Prosecution in its Supplementary Pre-Trial Brief stated its case that the Accused Brima is liable under Article 6(3) for crimes committed by his subordinates in Port Loko.³¹²² The Brima Defence were therefore put on notice at an early stage of the charge against the Accused.

1816. The Prosecution in its Final Brief makes no submissions as to the superior responsibility of the Accused Brima for crimes committed in Port Loko District after the retreat from Freetown in late January 1999.³¹²³

1817. The Brima Defence submits that the alleged perpetrators of the crimes in Port Loko District were not under the control of the Accused Brima as he was not in Port Loko District at the material time.³¹²⁴

(ii) Findings

1818. The Trial Chamber found that following the second unsuccessful attack on Freetown staged jointly by AFRC/RUF commanders, the Accused Brima, accompanied by the Accused Kanu and a group of AFRC troops, went to Lunsar to assist 'Superman', who was fighting against Issa Sesay at the time.³¹²⁵ No evidence has been adduced on the organisation of the troops accompanying the Accused Brima or whether this group fought alongside 'Superman' or under his overall command. The Trial Chamber finds that the Prosecution has failed to establish that the Accused Brima had effective control over the AFRC troops fighting in these areas.

(iii) Conclusion

1819. The Trial Chamber finds pursuant to Article 6(3) of the Statute, that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima, for the crimes committed in Port Loko District during the relevant Indictment period.

³¹²⁰ See Indictment, para. 24.

³¹²¹ Indictment, paras 41, 50, 57, 64, 65, 73.

³¹²² Prosecution Supplementary Pre-Trial Brief, paras 80-82, 129-131.

³¹²³ Submissions on superior responsibility for crimes committed in Port Loko District are made only in relation to the Accused Kamara: see Prosecution Final Brief, paras 1761-1764.

³¹²⁴ Brima Final Brief, para. 252.

³¹²⁵ Role of Accused, para. 478, *supra*.

9. Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers

1820. The Trial Chamber has found that civilians were subjected to sexual slavery as charged under Count 9; that children under the age of 15 were conscripted into the AFRC forces and/or used to participate in active hostilities as charged under Count 12; and that civilians were enslaved as charged under Count 13. Because of the continuing nature of these crimes and the fact that victims were in most cases forced to follow the perpetrators on a journey that spans across a number of districts, the Trial Chamber has deemed it fit to consider these additional findings on responsibility of the Accused Brima for these crimes here. These findings do not detract from the Trial Chamber's findings elsewhere in this Judgement with regard to these three crimes.

1821. The evidence demonstrates that abducted civilians were used to perform a multiplicity of critical tasks for the troops. Both in Bombali District and Freetown, abducted civilians were used to carry food, military supplies and ammunition.³¹²⁶ At 'Colonel Eddie Town', abductees were used to harvest rice crops, the main source of food.³¹²⁷ At Lunsar, civilians were abducted specifically to help guide the troops as they moved at night.³¹²⁸ Once brutalised, trained and often forced to ingest illicit substances, child soldiers were forced to perform a number of military functions. More generally, the large number of abducted civilians gave the impression to the local population that the troops enjoyed greater support than they actually did.

1822. Once the AFRC troops had established a base at Camp Rosos in Bombali District, abductees were forced to undergo a three week military training program. Civilians that attempted to escape were executed.³¹²⁹ The Prosecution Military Expert, Colonel Iron, stated: "The AFRC had little choice but to run this training: there was a finite number of trained ex-SLA soldiers, and each casualty or loss could not be otherwise replaced".³¹³⁰ Although the Trial Chamber accepts that the primary purpose of these abductions was to support the military effort, it rejects Colonel Iron's conclusion that the AFRC had "little choice" in adopting this strategy.

1823. The Trial Chamber heard that sexual slavery was systemic amongst the perpetrators. Abducted women were distributed to soldiers and commanders who signed for them. There were disciplinary measures regulating the conduct of sexual slaves and their rebel 'husbands'. This system was overseen by commanders who appointed a 'Mammy Queen' to assist them. At Camp

³¹²⁶ Factual Findings, Enslavement, paras 1379-1380, *supra*; exhibit P-36, Iron Report, paras C5.7-C5.8.

³¹²⁷ Exhibit P-36, Iron Report, para. C3.8.

³¹²⁸ Exhibit P-36, Iron Report, para. C5.9

³¹²⁹ George Johnson, Transcript 15 September 2005, pp. 65-66. *See also* TF1-334, Transcript 24 May 2005, p. 28 on the length of military training program for civilians at Rosos.

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Rosos, abducted young women were forced to provide sexual services and to perform domestic tasks.³¹³¹

1824. The magnitude of commission of the three enslavement crimes by AFRC troops indicates their systemic nature. The Trial Chamber notes that the Brigade included a position in which an individual was appointed specific responsibility for abducted civilians.³¹³² Although the Trial Chamber is unable to make a finding on the total number of civilians abducted and forced to undergo military training, the example provided by Colonel Iron that one battalion at ‘Colonel Eddie Town’ consisted of approximately 150 trained soldiers supplemented by approximately 200 abducted civilians³¹³³ corroborates the evidence of fact-based witnesses that these crimes were committed on a large scale.³¹³⁴

1825. Indeed, it would appear that once established the *modus operandi* of enslavement became so deeply entrenched that it was difficult to break. Col. Iron’s conclusion about the abduction of civilians during the withdrawal from Freetown is instructive.

There can be little military justification for what happened” during the retreat from Freetown [...] The abductions seem particularly self-defeating: at a time when there was benefit in reducing the size of the force to make it faster moving during the escape, the abductees swelled the size of the column, slowed it down, and made it a bigger target. One reason given for the abductions was to make the fighting strength seem larger than it was; *but I suspect that the truth is more simply that abductions were now common practice for the AFRC.*³¹³⁵ [emphasis added]

1826. Based on the large scale, continuous and organised nature of the enslavement crimes, the Trial Chamber is satisfied that the only reasonable inference is that a substantial degree of planning and preparation were required to commit the crimes.

1827. On the basis of the evidence below, the Trial Chamber is further satisfied that the Accused Brima, alone or with others, designed the commission of the three crimes (enslavement, sexual slavery and recruitment and use of child soldiers) and that although these crimes were largely committed by his subordinates, his contribution was substantial.

1828. The Accused played a substantial role in the system of exploitation and cruelty. The Trial Chamber has found that the Accused Brima was the overall commander of both the AFRC troops that moved from Mansofinia, Koinadugu District to Camp Rosos, Bombali District and of the

³¹³⁰ Exhibit P-36, Iron Report, para. C3.2.

³¹³¹ Factual Findings, Outrages upon Personal Dignity, paras 1138-1139, *supra*.

³¹³² Exhibit P-36, Iron Report, para. C3.5; TF1-153, Transcript 23 September 2005, p. 102.

³¹³³ Exhibit P-36, Iron Report, para. C3.5.

³¹³⁴ Factual Findings, Enslavement, para. 1359, *supra*.

³¹³⁵ Exhibit P-36, Iron Report, para. D5.4.

AFRC troops that later invaded Freetown on 6 January 1999. As the overall commander, the Accused Brima was substantially involved in planning the various operations in these Districts.³¹³⁶

1829. The Trial Chamber has found that, on a number of occasions, the Accused Brima publicly addressed the troops and advocated criminal conduct.³¹³⁷

1830. The Accused Brima also directly participated in and made a substantial contribution to the planning and execution of the said crimes. In Mansofinia, at the start of the journey of the AFRC troops through Bombali District, the Accused Brima ordered that any strong civilian encountered by the troops on the journey should be captured and made to join the troops.³¹³⁸ Following this order, hundreds of civilians were abducted in Bombali District.³¹³⁹ These civilians were used as forced labour.³¹⁴⁰ During the attack on Karina, Bombali District, Brima ordered the distribution of children captured among the commanders.³¹⁴¹ Upon completion of civilian military training at Camp Rosos, the trainees were addressed by both the Accused Kanu and the Accused Brima. Brima then ordered that the boys should be distributed to the various companies, while the women were sent back to the soldiers and commanders who had taken them as their “wives”.³¹⁴²

1831. During the withdrawal from Freetown in January 1999, the Accused Brima held a meeting attended by the Accused Kamara and Kanu, among others. At this meeting, the Accused Brima ordered his troops to begin abducting civilians, saying that this would attract the attention of the international community.³¹⁴³ Troops immediately began breaking into houses and capturing civilians, especially young girls, and taking them to headquarters at the PWD.³¹⁴⁴ Witness TF1-334 testified that “[a]lmost everybody” had civilians, including the commanders,³¹⁴⁵ and abducting commanders were formally responsible for ensuring that civilians did not escape.³¹⁴⁶ Several days later, the Accused Brima ordered the further abduction of civilians.³¹⁴⁷ This order was also implemented by the troops.³¹⁴⁸

³¹³⁶ Military Structure of the AFRC Fighting Force, paras 586-590, *supra*.
³¹³⁷ Responsibility of the Accused, Brima, paras 1770-1783, *supra*.
³¹³⁸ Factual Findings, Enslavement, para. 1355, *supra*; TF1-334, Transcript 23 May 2005, p. 17.
³¹³⁹ Factual Findings, Enslavement, para. 1359, *supra*; George Johnson, Transcript 15 September 2005, pp. 58-59.
³¹⁴⁰ Factual Findings, Enslavement, para. 1359, *supra*; George Johnson, Transcript 15 September 2005, p. 64.
TF1-334, Transcript 24 May 2005, pp. 29-31.
³¹⁴³ TF1-334, Transcript 14 June 2005, pp. 62-63.
³¹⁴⁴ TF1-334, Transcript 14 June 2005, pp. 63-64.
³¹⁴⁵ TF1-334, Transcript 14 June 2005, pp. 118-119.
³¹⁴⁶ TF1-334, Transcript 14 June 2005, p. 119.
³¹⁴⁷ TF1-334, Transcript 14 June 2005, pp. 77-78.
³¹⁴⁸ TF1-334, Transcript 14 June 2005, pp. 79-80.

1832. As was the pattern with all operations overseen by the Accused Brima, AFRC fighters exhibited a depraved indifference towards human life in abducting and enslaving civilians. Children watched their abductors executing family members.³¹⁴⁹ Throughout the conflict women and young girls were treated as war bounty, abducted from their homes and repeatedly raped.³¹⁵⁰ Child soldiers were terrorised, drugged and forced to commit crimes against other civilians.³¹⁵¹ Given his authority, the Accused was in a position to shut down this system of exploitation entirely, to deter the excesses committed by his troops, and to alleviate the plight of the victims. On the evidence adduced the Trial Chamber finds that he failed to do so.

1833. The Trial Chamber stresses that the above evidence relates entirely to enslavement crimes committed in Bombali and the Western Area. The Trial Chamber has found that the Accused Brima was not involved in the commission of crimes in Bo, Kenema, Kailahun, Kono, Koinadugu and Port Loko Districts.

1834. The Trial Chamber is satisfied that the Accused planned, ordered, organised and implemented the system to abduct and enslave civilians which was in fact committed by AFRC troops in Bombali and Western Area. It is further satisfied that the Accused had the direct intent to set up and implement the system of exploitation involving the three enslavement crimes, namely, sexual slavery, conscription and use of children under the age of 15 for military purposes, and abductions and forced labour.

(a) Responsibility under Article 6(1) for Count 9 (Outrages on Personal Dignity)

1835. On the basis of the foregoing, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Brima is individually criminally responsible under Article 6(1) of the Statute for planning the commission of the crime of outrages on personal dignity in Bombali District and Freetown and the Western Area.

(b) Responsibility under Article 6(1) for Count 12 (Child Soldiers)

1836. On the basis of the foregoing, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Brima is individually criminally responsible under Article 6(1) of the Statute for planning the commission of conscription of children under the age of 15 into the armed group or using them to participate actively in hostilities in Bombali District and the Western Area.

³¹⁴⁹ TF1-158, Transcript 26 July 2005, pp. 33-34.

³¹⁵⁰ Factual Findings, Sexual Violence, paras 973-980, 1044-1049, *supra*.

³¹⁵¹ Factual Findings, Child Soldiers, para. 1254, *supra*.

(c) Responsibility under Article 6(1) for Count 13 (Enslavement)

1837. On the basis of the foregoing, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Brima is individually criminally responsible under Article 6(1) of the Statute for planning the commission of enslavement in Bombali District and the Western Area.

(d) Responsibility under Article 6(3) for Counts 9, 12 and 13

1838. As the Trial Chamber has already found the Accused Brima criminally responsible for the planning of the enslavement crimes, it is not necessary to examine his responsibility under Article 6(3).

C. The Accused Kamara

1. Allegations in the Indictment

1839. The Indictment alleges:

At all times relevant to this Indictment, Brima Bazzy Kamara was a senior member of the AFRC/Junta and RUF forces.

Brima Bazzy Kamara was a member of the group which staged the coup and ousted the government of President Kabbah. Johnny Paul Koroma, Chairman and leader of the AFRC, appointed Brima Bazzy Kamara a Public [sic] Liaison Officer (PLO) within the AFRC. In addition, Brima Bazzy Kamara was a member of the Junta governing body.

Between about mid February 1998 and about 30 April 1998, Brima Bazzy Kamara was a commander of AFRC/RUF forces based in Kono District. In addition, Brima Bazzy Kamara was a commander of AFRC/RUF forces which conducted armed operations throughout the north, eastern and central areas of the Republic of Sierra Leone, including, but not limited to, attacks on civilians in Koinadugu and Bombali Districts between about mid February 1998 and 31 December 1998. Brima Bazzy Kamara was a commander of AFRC/RUF forces which attacked Freetown on 6 January 1999.

[...]

In [his] positions referred to above, [...] Brima Bazzy Kamara [...], individually or in concert with [the Accused Brima and the Accused Kanu], Johnny Paul Koroma aka JPK, Foday Saybana Sankoh, Sam Bockarie aka Mosquito aka Maskita, Issa Hassan Sesay aka Issa Sesay, Morris Kallon aka Belai Karim, Augustine Gbao aka Augustine Bao and/or other superiors in the AFRC, Junta and AFRC/RUF forces, exercised authority, command and control over all subordinate members of the AFRC, Junta and AFRC/RUF forces.

[...]

[...] Brima Bazzy Kamara [...], by [his] acts or omissions, [is] individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Indictment, which crimes [he] planned, instigated, ordered, committed or in whose planning, preparation or execution [he] otherwise aided and abetted, or which crimes were within a joint criminal enterprise in which [he] participated or were a reasonably foreseeable consequence of the joint criminal enterprise in which [he] participated.

In addition, or alternatively, pursuant to Article 6.3. of the Statute, Brima Bazzy Kamara [...], while holding positions of superior responsibility and exercising effective control over [his] subordinates, [is] individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute. [The] Accused is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and [...] failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.³¹⁵²

1840. The Trial Chamber notes that the Indictment alleges additionally, in relation to the Counts set out therein, that “by their acts or omissions in relation to these events, Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu, pursuant to Article 6.1. and, or alternatively, Article 6.3. are individually criminally responsible for the crimes alleged [...]”.³¹⁵³

1841. Where there have been submissions by the Parties specific to each Accused, District and mode of liability, they have been considered as they arise in the findings below.

2. Bo, Kenema and Kailahun Districts (25 May 1997 – 14 February 1998)

1842. In its factual findings, the Trial Chamber has found that an unknown number of civilians were unlawfully killed by AFRC/RUF forces in Bo District in June 1997, as charged under Counts 4 through 5. Civilians were also terrorised and subjected to collective punishment, as charged under Counts 1 and 2.³¹⁵⁴

1843. The Trial Chamber has also found that AFRC/RUF forces committed a number of crimes in Kenema District in this period. Civilians were unlawfully killed, as charged under Counts 4 and 5,³¹⁵⁵ and physical violence was inflicted on an unknown number of civilians as charged under Count 10.³¹⁵⁶ Children were illegally recruited and used for military purposes, as charged under Count 12.³¹⁵⁷ An unknown number of civilians were abducted and used as forced labour at Cyborg Pit in Tongo Field, as charged under Count 13.³¹⁵⁸ Finally, civilians were terrorised and subjected to collective punishment, as charged under Counts 1 and 2.

1844. The Trial Chamber has further found that RUF troops abducted civilians and used them as forced labour in Kailahun District during the AFRC Government period, as charged under Count

³¹⁵² Indictment, paras 25-27, 31, 35-36.

³¹⁵³ Indictment, paras 41, 50, 57, 64, 65, 73, 79.

³¹⁵⁴ Factual Findings, Unlawful Killings, paras 1475-1476, *supra*.

³¹⁵⁵ Factual Findings, Physical Violence, para. 840, *supra*.

³¹⁵⁶ Factual Findings, Child Soldiers, para. 1197, *supra*.

³¹⁵⁷ Factual Findings, Enslavement, para. 1277, *supra*.

³¹⁵⁸ Factual Findings, Acts of Terror and Collective Punishments, para. 1309, *supra*.

13.³¹⁵⁹ Finally, civilians were terrorised and subjected to collective punishment, as charged under Counts 1 and 2.

(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute

(i) Submissions

1845. In its Final Brief, the Prosecution argues that given his position in the government, the Accused Kamara must have been aware of AFRC government policies which included the use of forced labour in Bo and Kenema Districts.³¹⁶⁰ The Prosecution concludes that Kamara is therefore liable for planning, instigating or otherwise aiding and abetting the crime of enslavement in Kenema and Bo, as well as killings and other crimes committed during the AFRC Government period.³¹⁶¹

1846. In its Final Brief, the Kamara Defence submits that the Prosecution failed to prove beyond reasonable doubt that the Accused Kamara planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of the crimes committed in Bo and Kenema Districts.³¹⁶²

(ii) Findings

1847. The Prosecution adduced no evidence that the Accused Kamara committed, ordered, instigated, planned or otherwise aided and abetted any of the crimes that occurred in Bo, Kenema and Kailahun Districts. The Prosecution has not proved beyond reasonable doubt that the Accused Kamara is criminally responsible for crimes committed in the Kono District. The Trial Chamber finds that the Prosecution has not proved any mode of individual criminal responsibility against the Accused Kamara for the crimes committed in the Bo, Kenema and Kailahun Districts.

(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute

(i) Submissions

1848. The Prosecution submits in its Final Brief that the Accused Kamara bears superior responsibility for crimes committed during the period 25 May 1997 to 14 February 1998 by virtue

³¹⁵⁹ Factual Findings, Enslavement, para. 1374, *supra*.

³¹⁶⁰ Prosecution Final Brief, paras 508-509.

³¹⁶¹ Prosecution Final Brief, para. 512

³¹⁶² Kamara Final Brief, paras 121, 134.

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of his position as Principal Liaison Officer 3 and membership of the Supreme Council, which had control over the police and political authority over the military.³¹⁶³

1849. The Kamara Defence submits that the Accused Kamara possessed no military authority and played “at best” a political role within the AFRC Government.³¹⁶⁴ The Kamara Defence further submits that the Prosecution failed to show that the Accused Kamara had command and control over Sam Bockarie, Eddie Kanneh or any of the soldiers in Kenema.³¹⁶⁵ The Kamara Defence further submitted that Sam Bockarie was in command of Kailahun District and no evidence was led to prove that persons under the command of the Accused Kamara took part in the crimes committed there.³¹⁶⁶ No submissions were made specific to Bo District.

(ii) Findings

a. Existence of a superior-subordinate relationship

1850. The Trial Chamber finds that the Prosecution has not established beyond reasonable doubt that the Accused Kamara was in a superior-subordinate relationship with the perpetrators of any of the crimes committed in Bo, Kenema and Kailahun Districts during the period 25 May 1997 to 14 February 1998.

1851. As preliminary observation, the Trial Chamber reiterates that the existence of a superior-subordinate relationship is not precluded by the superior’s civilian status.³¹⁶⁷

1852. The Trial Chamber refers to its findings above in relation to the Accused Brima, where it was found that membership of the Supreme Council and proof of a *de jure* position of authority as a Principal Liaison Officer within the AFRC government is insufficient *per se* to prove the existence of a superior-subordinate relationship. The Prosecution must prove that the Accused Kamara’s individual functions as PLO 3 and/or member of the Supreme Council enabled him to exercise effective control over the perpetrators of the crimes committed in Bo, Kenema and Kailahun Districts.

1853. The Trial Chamber notes that there is little evidence on the Accused Kamara’s activities during the AFRC Government period, apart from his attendance at Supreme Council meetings.³¹⁶⁸ It

³¹⁶³ Prosecution Final Brief, paras 506, 522.

³¹⁶⁴ Kamara Final Brief, para. 64.

³¹⁶⁵ Kamara Final Brief, para. 135.

³¹⁶⁶ Kamara Final Brief, para. 162.

³¹⁶⁷ Applicable Law, paras 784-790, *supra*.

³¹⁶⁸ Exhibit P-34, “Minutes of Emergency Meeting.”

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has not been established that the Accused Kamara possessed any individual decision making capacity within the Council. Witnesses testified that ‘Bazzy’ had people working under him in the ministries he supervised, but did not specify what the work of these people involved.³¹⁶⁹ The Trial Chamber has found that there is no evidence that the Accused Kamara had any particular responsibility for internal or external security.³¹⁷⁰

1854. The Trial Chamber therefore accepts the Kamara Defence’s submissions that the Prosecution has failed to prove that the Accused Kamara was in a superior-subordinate relationship with the perpetrators of the crimes in Kenema and Kailahun Districts. It has similarly not been established that the Accused Kamara was in a superior-subordinate relationship with the perpetrators of crimes committed in Bo District. As the absence this first element of superior responsibility is fatal to proof of liability under Article 6(3), the Trial Chamber will not consider the evidence relating to the Accused Kamara’s actual or imputed knowledge of crimes committed and his ability to prevent or punish the perpetrators.

b. Conclusion

1855. The Trial Chamber finds that it has not been established beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed in Bo, Kenema and Kailahun Districts between 25 May 1997 and 14 February 1998.

3. Kono District

1856. The Trial Chamber has found that in the period February through June 1998, AFRC/RUF troops in Kono District unlawfully killed civilians, as charged under Counts 3 through 5,³¹⁷¹ and inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively.³¹⁷² AFRC/RUF troops also abducted civilians and used them as forced labour, as charged under Count 13,³¹⁷³ and used illegally recruited children for military purposes, as charged under Count 12.³¹⁷⁴ Finally, AFRC/RUF troops engaged in widespread looting, as charged under

³¹⁶⁹ TF1-334, Transcript 20 June 2005, p. 93; George Johnson, Transcript 15 September 2005, pp. 17, 20.
³¹⁷⁰ Role of Accused, Kamara, para 439, *supra*.
³¹⁷¹ Factual Findings, Unlawful Killings, para. 857, *supra*.
³¹⁷² Factual Findings, Sexual Violence, para 1109, *supra*; Physical Violence, para. 1213, *supra*.
³¹⁷³ Factual Findings, Enslavement, para. 1333, *supra*.
³¹⁷⁴ Factual Findings, Child Soldiers, para. 1278, *supra*.

Count 14, terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.³¹⁷⁵

(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute

(i) Submissions

1857. In its Final Brief, the Prosecution contends that the Accused Kamara was the second in command to Denis Mingo (RUF) in Kono District and as such was involved in planning and designing the operations and crimes committed in Kono District.³¹⁷⁶ The Prosecution then submits that only Kamara bears liability under articles 6(1) and (3) of the Statute.³¹⁷⁷ Furthermore, the Prosecution submits in its closing arguments that:

for Kono, during the crimes committed in the Indictment period after the intervention, it is the case of the Prosecution that only Kamara was present when the crimes were committed. Brima and Kanu however can still be held liable for those crimes under the theory of a JCE.³¹⁷⁸

The Prosecution adds given the position of the Accused, his role in planning, and the reports he received, the Accused intended that the crimes would occur, or was aware of the substantial likelihood of the occurrence of all the crimes. It concludes that he is therefore liable for planning and instigating the crimes charged, or in the alternative that he actively encouraged the commission of such acts.³¹⁷⁹

1858. Finally, the Prosecution alleges that the Accused Kamara gave direct orders to burn houses, and argues that given his position it may be inferred that he gave orders for all the crimes charged in Kono District.³¹⁸⁰

1859. In its Final Trial Brief, the Kamara Defence submits that the RUF was in complete control of Kono District, and that the Prosecution failed to prove that the Accused Kamara planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of the crimes committed in Kono District. It further argues that numerous witnesses who testified regarding crimes committed in Kono did not mention Kamara.³¹⁸¹

(ii) Findings

³¹⁷⁵ Factual Findings, Pillage, paras 1525-1527, *supra*.

³¹⁷⁶ Prosecution Final Brief, para. 1281.

³¹⁷⁷ Prosecution Final Brief, para. 1279.

³¹⁷⁸ Transcript, 7 December 2006, p. 34-35.

³¹⁷⁹ Prosecution Final Brief, para. 1282.

³¹⁸⁰ Prosecution Final Brief, para. 1283.

³¹⁸¹ Kamara Final Brief, paras 152-157.

1860. The Trial Chamber has found that in the period February through June 1998, AFRC/RUF troops in Kono District unlawfully killed civilians, as charged under Counts 3 through 5,³¹⁸² and inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively.³¹⁸³ AFRC/RUF troops also abducted civilians and used them as forced labour, as charged under Count 13,³¹⁸⁴ and used illegally recruited children for military purposes, as charged under Count 12.³¹⁸⁵ Finally, AFRC/RUF troops engaged in looting, as charged under Count 14, terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.³¹⁸⁶

1861. The Prosecution has not adduced any evidence that the Accused Kamara committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes committed in the Kono District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kamara for the crimes committed in the Kono District.

(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute

(i) Submissions

1862. The Prosecution submits that the evidence ‘coupled with the high level of authority possessed by the Second Accused’ proves that there was a superior-subordinate relationship between the Second Accused and the perpetrators of crimes committed in Kono District in this period.³¹⁸⁷

1863. The Kamara Defence submits that the evidence of both Prosecution and Defence witnesses alike proves that Kono District after February 1998 was completely controlled by the RUF, to whom the AFRC troops were subordinate.³¹⁸⁸

(ii) Findings

a. Existence of a superior-subordinate relationship

³¹⁸² Factual Findings, Unlawful Killings, para. 857, *supra*.

³¹⁸³ Factual Findings, Sexual Violence, para. 1109, *supra*; Physical Violence, para. 1213, *supra*.

³¹⁸⁴ Factual Findings, Enslavement, para. 1333, *supra*.

³¹⁸⁵ Factual Findings, Child Soldiers, para. 1278, *supra*.

³¹⁸⁶ Factual Findings, Pillage, paras 1525-1527, *supra*.

³¹⁸⁷ Prosecution Final Brief, paras 1284-1287.

³¹⁸⁸ *See for example*: Kanu Final Brief, para. 341; Kamara Final Brief, paras 151-157.

1864. The Prosecution has not demonstrated beyond a reasonable doubt that crimes were committed by members of the AFRC/RUF during the initial attack on Koidu Town in early March 1998 as troops advanced together into Kono District. Thus there can be no findings of liability pursuant to Article 6(3) during this attack.

1865. The Trial Chamber recalls its finding that after the departure of Johnny Paul Koroma from Kono District, the AFRC was subordinated to the RUF and the Accused Kamara became the highest ranking AFRC soldier in the District. The Trial Chamber further found that the AFRC and RUF worked closely together in Kono District. AFRC and RUF commanders each supervised mixed battalions of AFRC and RUF troops.³¹⁸⁹

1866. The Trial Chamber is satisfied, on the basis of the evidence that follows, that the Prosecution has proved beyond reasonable doubt that the Accused Kamara exercised effective control over some mixed battalions of AFRC/RUF troops in Kono District.

1867. Witness TF1-334 testified in cross-examination that while Kamara was subordinate to Denis Mingo, the AFRC maintained their own command. He stated that Kamara received orders from Denis Mingo and was answerable to him in terms of operations, but that the AFRC operated under their command and were answerable to the AFRC commanders.³¹⁹⁰ Witness George Johnson corroborated the evidence of witness TF1-334 that the Accused Kamara was the senior AFRC commander, subordinate to Denis Mingo.³¹⁹¹

1868. Witness TF1-334 testified that the Accused Kamara gave orders through his subordinate the Operations Commander, whose name was given to the Court in closed session.³¹⁹² The Accused Kamara also appointed Colonel Foday Kallay as Deputy Operations Commander.³¹⁹³ Battalions consisting of both RUF and AFRC soldiers (but predominantly the latter) were under AFRC command in Jagbwema Fiama, Tombodu, Bumpe, Sewafe, Yengema, and Woama.³¹⁹⁴ Witness TF1-334 testified that the battalion commanders were subordinate to the Operations Commander and reported directly to him.³¹⁹⁵ Witness TF1-334 testified that the Accused Kamara promoted these individuals in rank after the capture of Kono District.³¹⁹⁶

³¹⁸⁹ Role of the Accused, para. 183, *supra*. Military Structure of the AFRC Fighting Force, para. 450, *supra*.

³¹⁹⁰ TF1-334, Transcript 21 June 2005, pp. 17-19.

³¹⁹¹ George Johnson, Transcript 15 September 2005, pp. 37-38.

³¹⁹² TF1-334, Transcript 18 May 2005, pp. 22-23, Transcript 19 May 2005, p. 15.

³¹⁹³ TF1-334, Transcript 19 May 2005, p. 16.

³¹⁹⁴ TF1-334, Transcript 19 May 2005, pp. 16-26.

³¹⁹⁵ TF1-334, Transcript 19 May 2005, p. 21.

³¹⁹⁶ TF1-334, Transcript 19 May 2005, p. 50.

1869. The Accused Kamara was based, along with other senior commanders, at the AFRC headquarters in Kono District, in Masingbi Road.³¹⁹⁷ Witness TF1-334 testified that discussions were held regularly between the military supervisors, the Accused Kamara and the Operations Commander.³¹⁹⁸ The witness went on patrol with the Operations Commander and soldiers under his command as they monitored the various battalions.³¹⁹⁹ Witness TF1-334 also testified that the AFRC troops held muster parades every week in Kono, until they were prohibited from doing so by Morris Kallon (RUF).³²⁰⁰ The Trial Chamber notes that the prohibition on AFRC musters therefore occurred only at the end of the period in which crimes were committed in Kono. The witness explained that ‘mustering’ is a military term that refers to the force being brought together and addressed publicly. This procedure is indicative of an organised force that is responsive to superior command.

1870. There is evidence that the Accused Kamara’s orders were followed. Witness TF1-334 testified that Kamara ordered the troops to attack ECOMOG forces.³²⁰¹ In May 1998, the Accused Kamara ordered the burning of houses surrounding the AFRC headquarters in Masingbi Road. This order was obeyed by soldiers including witness TF1-334.³²⁰² The commanders of surrounding villages including Yengema, Bumpe, Jagbwema Fiana and Tombodu were also ordered to burn those villages and witness TF1-334 accompanied the Operations Commander to monitor the carrying out of these orders. Witness TF1-334 also testified that Kamara organised a squad called “wild dogs” who were responsible for “raising”, that is, taking things from other soldiers.³²⁰³

1871. The Trial Chamber recalls that there was a parallel presence and authority of RUF and AFRC commanders active in Kono District in this period.³²⁰⁴ While the Trial Chamber is satisfied that the Accused Kamara maintained effective control over some mixed battalions of AFRC and RUF troops, given evidence of the Accused Kamara’s subordination to Denis Mingo: evidence of RUF dominancy over the AFRC; and indications that independent RUF chains of command may have also existed during this time period, the Trial Chamber finds that it has not been established beyond reasonable doubt that the Accused Kamara’s authority extended to all battalions active in Kono District. Thus, it cannot be stated with certainty that Kamara exercised effective control over

³¹⁹⁷ TF1-334, Transcript 19 May 2005, pp. 26-27.

³¹⁹⁸ TF1-334, Transcript 19 May 2005, p. 38.

³¹⁹⁹ TF1-334, Transcript 19 May 2005, pp. 20, 23, 25-26, 32.

³²⁰⁰ TF1-334, Transcript 19 May 2005, pp. 9-10.

³²⁰¹ TF1-334, Transcript 20 May 2005, p. 7.

³²⁰² TF1-334, Transcript 20 May 2005, pp. 7-8, 10.

³²⁰³ TF1-334, Transcript 20 May 2005, p. 34.

³²⁰⁴ Role of Accused, paras 460-461, *supra*. Military Structure of the AFRC Fighting Forces, paras 564-571, *supra*.

the entire AFRC and RUF troops in Kono District during this period. This however does not exclude that he had effective control over some troops.

1872. The Prosecution did not generally attempt to differentiate between crimes committed by AFRC troops and those committed by RUF rebels. They instead referred to ‘AFRC/RUF troops’ as the perpetrators of crimes in Kono District. For many crimes, the Trial Chamber has been unable to determine beyond reasonable doubt the affiliation of the perpetrators nor to which specific commanders they were subordinate.

1873. The Trial Chamber is, however, satisfied that it has been established beyond a reasonable doubt that crimes were committed by ‘Savage’ and persons under his authority in Tombodu during this period.³²⁰⁵ The question that remains to be determined is whether he was subordinate to the Accused Kamara, and whether Accused Kamara was in a position to exercise effective control over him.

1874. Witness TF1-334 testified that Captain Mohamed ‘Savage’ (alias Changabulanga) was a commander in Tombodu. His deputy was Staff Alhaji and he reported to the AFRC Operation Commander.³²⁰⁶ Witness TF1-334 testified that the Accused Kamara promoted Staff Alhaji to Lieutenant after the capture of Kono District.³²⁰⁷ He was a staff sergeant until ‘Savage’ recommended him for promotion.³²⁰⁸ Witness George Johnson also stated that ‘Savage’ was in charge of a battalion in Tombodu and described him as being an SLA soldier.³²⁰⁹

1875. There is also evidence that the Accused Kamara actively exerted authority over ‘Savage’ by directly or indirectly supervising his activities in Tombodu. Witness TF1-334 testified that the AFRC Operation Commander,³²¹⁰ subordinate to the Accused Kamara, patrolled the battalions in various locations including Tombodu. Witness George Johnson testified that Kamara, the Operations Commander and others went to Tombodu on several occasions during the Kono period.³²¹¹ The witness testified that the Accused Kamara, together with Hassan Papa Bangura and others went to Tombodu to drink palm wine. On one of these occasions, the witness observed ‘Savage’ order the flogging of approximately seven civilians. On cross-examination he testified that

³²⁰⁵ Factual Findings, Physical Violence, para. 1202, *supra*.
³²⁰⁶ TF1-334, Transcript 19 May 2005, pp. 16, 21.
³²⁰⁷ TF1-334, Transcript 19 May 2005, pp. 50-51.
³²⁰⁸ TF1-334, Transcript 19 May 2005, p. 22.
³²⁰⁹ George Johnson, Transcript 15 September pp. 38, 40.
³²¹⁰ Name of Company Commander admitted under seal: exhibit P-12.
³²¹¹ George Johnson, Transcript 15 September 2005, pp. 45-46.

'Savage' would beat people nearly every day and that it was a "common drill".³²¹² The Trial Chamber notes that there is no indication on the evidence that the Accused Kamara also observed this event.³²¹³ Witness TF1-334 testified that the Accused Kamara visited Tombodu with other military supervisors to ensure that Johnny Paul Koroma's orders to burn Tombodu were carried out.³²¹⁴

1876. Witness TF1-334 testified that 'Savage' informed the Accused Kamara that civilians in Tombodu were celebrating because they believed that ECOMOG had taken over the area and that as a result of this communication the AFRC Operations Commander, the witness and Colonel Momoh Derty went to Tombodu to see what was happening.³²¹⁵ When the witness arrived he observed that 'Savage' and his soldiers had amputated and killed a large number of civilians – actions which this Trial Chamber has found constitute crimes as alleged by the Prosecution.³²¹⁶

1877. Witness George Johnson similarly testified that as the Nigerian ECOMOG troops pressured them out of the District, the Witness together with the three Accused, passed through Tombodu.³²¹⁷ There, they met Battalion Commander 'Savage' and the three Accused saw that a large number of civilians had been killed by machete and their bodies had been thrown into a pit.³²¹⁸

1878. The Trial Chamber notes that there is also evidence that 'Savage' was subordinate to the RUF. Witness TF1-334 stated that in addition to reporting to the Operations Commander, 'Savage' also reported to Denis Mingo.³²¹⁹ Significantly, the witness puts Denis Mingo in Tombodu shortly after the crimes were committed. The witness testified that Denis Mingo reacted to the crimes by telling 'Savage' that he was committing crimes against humanity.³²²⁰

1879. Prosecution witness George Johnson similarly testified that 'Savage' was battalion commander at Tombodu but that he was appointed to the rank of Lieutenant by Denis Mingo³²²¹ He also testified that 'Savage' remained under the command of Denis Mingo while some of his battalion fighters left with the witness's group to go to Mansofinia.³²²²

³²¹² George Johnson, Transcript 15 September 2005, p. 49.

³²¹³ George Johnson, Transcript 19 May 2005, p. 46.

³²¹⁴ TF1-334, Transcript 20 May 2005, p. 18.

³²¹⁵ TF1-334, Transcript 20 May 2005, pp. 11-15.

³²¹⁶ Factual Findings, Unlawful Killings, para. 854, *supra*; Physical Violence, paras 1201-1206, *supra*.

³²¹⁷ George Johnson, Transcript 19 May 2005, pp. 43-44.

³²¹⁸ George Johnson, Transcript 19 May 2005, p. 45.

³²¹⁹ TF1-334, Transcript 19 May 2005, pp. 22-23.

³²²⁰ TF1-334, Transcript 20 May 2005, p. 17.

³²²¹ George Johnson, Transcript 19 September 2005, p. 46.

³²²² TF1-334, Transcript 20 May 2005, pp. 56, 58, 70.

1880. Defence witness DAB-095 testified that Savage was the commander of a battalion of mixed AFRC and RUF troops in Tombodu.³²²³ Defence witness DBK-117 testified on re-examination that he visited Tombodu after December 1998.³²²⁴ He stated that by that time, ‘Staff Alhaji’ was the commander in Tombodu and that ‘Savage’ was his deputy. At that time they were all under the control of the RUF.³²²⁵

1881. The Trial Chamber also notes that there is evidence that regardless of which faction he adhered to, ‘Savage’ was unruly in character and operated independently from his superiors. Prosecution witness George Johnson testified in cross-examination that ‘Savage’ was very difficult to control and was an “unpredictable character”.³²²⁶

1882. He testified that “in the early stages” ‘Savage’ was under the command of Denis Mingo and would listen to his instructions and carry them out, but later became “abnormal” and stated that he would not listen to anyone except Johnny Paul Koroma.³²²⁷ On one occasion, prior to the time ‘Savage’ became “abnormal”, the witness saw ‘Savage’ flogging two individuals in the presence of the Accused Brima and the Accused Kanu. Brima told him to stop, which he did, but witness George Johnson testified that after they returned to Koidu Town, ‘Savage’ executed the two men.³²²⁸

1883. He also testified that ‘Savage’ had possession of enough weapons to protect himself and his men and that because of this no one dared to tell him what to do or not to do.³²²⁹

1884. On the basis of the evidence examined above, the Trial Chamber is satisfied that the Accused Kamara exercised effective control over ‘Savage’. There is clear evidence that ‘Savage’ was subordinate to the Accused Kamara; that Kamara both directly and indirectly through the SLA Operations Commander was in a position to supervise the activities of ‘Savage’; that the Accused Kamara promoted ‘Savage’; that ‘Savage’ himself reported to the Accused Kamara; and that the Accused Kamara was physically present in Tombodu when it was under the control of ‘Savage.’

1885. The fact that ‘Savage’ also reported to Denis Mingo and remained with Denis Mingo after Kamara departed from the District does not preclude Kamara exercising effective control over him.³²³⁰

³²²³ DAB-095, Transcript 28 September 2006, p. 34.

³²²⁴ DBK-117, 16 October 2006, pp. 43-44

³²²⁵ DBK-117, 16 October 2006, p. 38.

³²²⁶ George Johnson, 19 September 2005, pp. 41, 51.

³²²⁷ George Johnson, 19 September 2005, p. 48.

1886. The Trial Chamber is also satisfied that ‘Savage’s alleged unpredictable character in and of itself does not bar a finding that Kamara was in a position of effective control over him. Evidence of a subordinate’s unpredictability or irresponsibility in no way vitiates a superior’s responsibility to exercise authority over that subordinate. Rather, it is exactly this type of situation to which a superior is under an obligation to respond by putting in place measures to prevent the commission of crimes by a subordinate or to punish such a subordinate once such crimes have been committed.

1887. Similarly, the Trial Chamber finds the fact that ‘Savage’ and his men were well armed does not raise a reasonable doubt vis-à-vis the Accused Kamara’s ability to exercise effective control over him. Subordinates in any organisation engaged in active combat will be armed or have access to weapons. It remains in all cases for superiors to put in place measures to prevent a malcontent or unstable subordinate from using those weapons for his own purposes. Should a subordinate use the weaponry of the organisation to shore up his own power, it falls also to superiors to quell or at the very least attempt to quell such an initiative. The Trial Chamber is satisfied that as a senior commander of the AFRC, the Accused Kamara himself, or together with other senior commanders such as his immediate superior Denis Mingo, would have had the material ability to control ‘Savage’ and his subordinates.

b. Actual or Imputed Knowledge

1888. The Prosecution submits that the Accused Kamara either knew or, at least had reason to know, that the subordinates were about to or had committed the offences as the orders were given by him or in his presence. The Prosecution further submits the crimes committed by ‘Savage’ in Tombodu were so notorious that the Accused must have known.³²³¹

1889. The Trial Chamber finds it is not necessary to establish whether the crimes committed by ‘Savage’ and his battalion in Tombodu were “notorious” as there is clear evidence which establishes beyond a reasonable doubt that the Accused Kamara knew or ought to have known of the crimes. As examined above, there is evidence which establishes that Kamara was routinely apprised of the situation in Tombodu. He was himself repeatedly present in Tombodu and indirectly

³²²⁸ George Johnson, 19 September 2005, pp. 49-50.

³²²⁹ George Johnson, 19 September 2005, p. 47.

³²³⁰ The Trial Chamber recalls that in *Aleksovski*, the ICTY Trial Chamber stated that once effective control was established then “whether the [subordinate] guards came concurrently under another authority, such as the military police commander, in no way detracts from the fact that the accused was their superior within the confines of Kaonik prison.” [*Aleksovski* Trial Judgement, para. 106]; and in *Orić* the Trial Chamber held that a superior can have effective control over a subordinate even if another superior has concurrent, effective control and issues contradictory orders. [*Orić* Trial Judgement, para. 313.]

supervised the activities in Tombodu through patrols carried out by the SLA Operation Commander. He worked together with Denis Mingo to whom 'Savage' also reported. There is also evidence that the Accused Kamara was apprised specifically of the crimes committed by 'Savage' and his battalion. 'Savage' sent a message to Kamara prior to the commission of the crimes indicating that the civilians in Tombodu were celebrating. Witness George Johnson testified that the Accused Kamara passed through Tombodu after the commission of the crimes and himself observed the bodies of the civilians killed.

c. Failure to prevent or punish

1890. The Prosecution submits that 'as the key commander in the field, the Second Accused clearly had the material ability to prevent offences or to punish those subordinates responsible for committing crimes.'³²³²

1891. The Trial Chamber finds on the basis of the evidence examined above that the Accused Kamara had the ability to issue orders which were followed; that he took over authority for promoting AFRC soldiers after Johnny Paul Koroma left Kono District; and that generally, the AFRC troops maintained an effective day-to-day chain of command and regularly mustered, that therefore it was within the Accused's material ability to prevent crimes committed by his subordinates or to punish subordinates for committing crimes.

1892. The Trial Chamber finds further on the evidence the Accused Kamara did not attempt to prevent or punish the crimes committed by 'Savage' and his battalion in Tombodu.

(iii) Conclusion

1893. The Trial Chamber finds that the Accused Kamara was in a position of superior responsibility and criminally responsible under article 6(3) of the Statute, for crimes committed by his subordinates in Kono District; namely, unlawful killings and physical violence, committed with the primary purpose to spread terror and to collectively punish civilians for allegedly failing to provide sufficient support to the AFRC/RUF.

³²³¹ Prosecution Final Brief, para. 1286.

³²³² Prosecution Final Brief, para. 1287.

4. Kailahun District

1894. The Trial Chamber has found that an unknown number of civilians were unlawfully killed by RUF forces in or around February 1998, as charged under Count 5³²³³ and that RUF troops or troops not established beyond a reasonable doubt to be members of the AFRC abducted civilians and used them as forced labour in Kailahun District in the period following 14 February 1998.³²³⁴

(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute

(i) Submissions

1895. In its Final Brief, the Prosecution alleges only that the Accused was a principal in a joint criminal enterprise and is therefore liable for the crimes committed in Kailahun District.³²³⁵

1896. The Kamara Defence, in its Final Brief, argues that Kailahun District was an RUF stronghold and that the Accused Kamara had no role there.³²³⁶

(ii) Findings

1897. The Prosecution has not adduced any evidence that the Accused Kamara committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes committed in the Kailahun District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kamara for the crimes committed in the Kailahun District.

(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute

(i) Submissions

1898. The Prosecution in its Final Brief makes no submissions that the Accused Kamara bears superior responsibility for crimes committed in Kailahun District in the period after the Intervention in February 1998.

1899. The Kamara Defence submits that the Prosecution did not lead any evidence to show that the Accused Kamara was in Kailahun throughout the relevant period and that all the witnesses indicate that the entire Kailahun District was a RUF stronghold.

³²³³ Factual Findings, Unlawful Killings, para. 864, *supra*.

³²³⁴ Factual Findings, Enslavement, para. 1374, *supra*.

³²³⁵ Prosecution Final Brief, para. 1372.

³²³⁶ Kamara Final Brief, para. 162.

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(ii) Findings

1900. The Trial Chamber recalls its findings that the only proven perpetrators of crimes committed in Kailahun District during this period were members of the RUF. The Trial Chamber also recalls its finding that the AFRC and the RUF were not working together in Kailahun during this period.³²³⁷

1901. The Trial Chamber finds the evidence insufficient to establish that the Accused Kamara exercised effective control over members of the RUF in Kailahun District after February 1998.

1902. In the absence of this first element of superior responsibility, it is not necessary to consider whether there is any evidence that the Accused Kamara had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators.

1903. The Trial Chamber accordingly finds that the Prosecution has not proved beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed in Kailahun District.

5. Koinadugu District

1904. The Trial Chamber found that AFRC/RUF forces unlawfully killed or inflicted sexual or physical violence on an unknown number of civilians in Koinadugu District in the period February through September 1998, as charged under Counts 4 through 5, 6 through 9 and 10 respectively.³²³⁸ In addition, an unknown number of civilians were abducted and used as forced labour, as charged under Count 13.³²³⁹ Children were used for military purposes, as charged under Count 12.³²⁴⁰ Finally, AFRC/RUF forces also engaged in looting of civilian homes, as charged in Count 14.³²⁴¹

(a) Responsibility of the Accused Kamara under Article 6(1) of the Statute

(i) Submissions

³²³⁷ Context of the Alleged Crimes, paras 187-188, *supra*.

³²³⁸ Factual Findings, Unlawful Killings, para. 879, *supra*; Sexual Violence, paras 1026, 1133, *supra*; Physical Violence, para. 1218, *supra*.

³²³⁹ Factual Findings, Enslavement, para. 1350, *supra*.

³²⁴⁰ Factual Findings, Child Soldiers, para. 1277, *supra*.

³²⁴¹ Factual Findings, Pillage, para. 1409, *supra*.

1905. In its Final Brief, the Prosecution alleges that the three Accused are liable for planning and instigating or otherwise aiding and abetting the crimes committed in Koinadugu District. It argues that the crimes followed a consistent pattern.³²⁴²

1906. In its Final Brief, the Kamara Defence contends that those witnesses who testified that the Accused Kamara was present in Koinadugu District during the Indictment period did not allege that he participated in the offences alleged or that he instructed any other persons to do so.³²⁴³

(ii) Findings

1906a. The Prosecution has not adduced any evidence that the Accused Kamara committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes committed in the Koinadugu District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kamara for the crimes committed in the Koinadugu District.

(b) Responsibility of the Accused Kamara under Article 6(3)

(i) Submissions

1907. The Prosecution submits that the Accused Kamara has superior responsibility for all crimes committed in the attack on Yifin.³²⁴⁴

(ii) Findings

1908. As stated above, Yifin was not a location pleaded in the Indictment.

1909. The Trial Chamber has found that the crimes committed in Koinadugu District were perpetrated by AFRC/RUF forces associated with groups led by SAJ Musa and Denis Mingo.³²⁴⁵ The Prosecution has not submitted, nor is there evidence to the effect that, the Accused Kamara exercised effective control over the troops of SAJ Musa or Denis Mingo. In the absence of a superior-subordinate relationship between the Accused Kamara and the perpetrators of the crimes in Koinadugu District, it is unnecessary to consider whether there is any evidence that the Accused Kamara had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators.

³²⁴² Prosecution Final Brief, paras 1412-1413.

³²⁴³ Kamara Final Brief, para. 184.

³²⁴⁴ Prosecution Final Brief, paras 1414-1416.

³²⁴⁵ Factual Findings, Unlawful Killings, para. 892, *supra*.

1910. The Trial Chamber accordingly finds that the Prosecution has not established beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed by AFRC/RUF troops in Koinadugu District.

6. Bombali District

1911. The Trial Chamber has found that AFRC troops in Bombali District engaged in unlawful killings of civilians as charged under Counts 3 through 5³²⁴⁶ and inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively.³²⁴⁷ AFRC troops also abducted civilians and used them as forced labour and used children illegally recruited for military purposes, as charged under Counts 13 and 12 respectively.³²⁴⁸ Finally, AFRC troops terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.³²⁴⁹

(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute

(i) Submissions

1912. In its Final Trial Brief, the Prosecution submits that the Accused Kamara was present when the order was given to burn down Karina and kill its inhabitants. On this evidence the Prosecution asks the Trial Chamber to infer that Kamara assisted in planning the attack. In addition, the Prosecution contends that Kamara was present in Karina and saw his own security guard carry out unlawful killings. The Prosecution further argues that given that he was present when the order was given to make Camp Rosos a civilian “no go” area, the systematic nature of crimes committed, and his position within the AFRC hierarchy, the Trial Chamber may be able to infer that the Accused promoted or encouraged the commission of crimes, and that he intended the commission of such crimes or was aware of the substantial likelihood that they would be committed.³²⁵⁰

1913. In its Final Brief, the Kamara Defence submits that the command structure during the attacks in Bombali District the command structure was not the one described by Prosecution witnesses.³²⁵¹ It refers to Prosecution witnesses who testified that the Accused Kamara was detained during a part of the relevant time period.³²⁵² It further contends that most of the witnesses

³²⁴⁶ Factual Findings, Unlawful Killings, paras 897-899, *supra*.

³²⁴⁷ Factual Findings, Physical Violence, para. 1219, *supra*; Sexual Violence, para. 1041, *supra*.

³²⁴⁸ Factual Findings, Child Soldiers, para. 1278, *supra*; Enslavement, para. 1363, *supra*.

³²⁴⁹ Factual Findings, Acts of Terror and Collective Punishment, para. 1538, *supra*

³²⁵⁰ Prosecution Final Brief, para. 1509.

³²⁵¹ Kamara Final Brief, paras 195, 197, 201, 203.

³²⁵² Kamara Final Brief, paras 198-200.

who testified that the Accused Kamara was present in Bombali District during the Indictment period did not allege that he participated in the offences alleged or that he instructed any other persons to do so. Finally, it argues that those witnesses who did allege such participation - in particular TF1-334 and George Johnson - failed to corroborate each others' testimonies.³²⁵³

(ii) Findings

a. Committing

1914. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kamara for the crimes committed in the Bombali District.

b. Ordering

1915. The Trial Chamber finds that the Accused Kamara ordered the unlawful killing of five young girls in Karina. Kamara ordered that the girls be locked in a house and that the house then be set on fire. This order was obeyed by AFRC troops.³²⁵⁴

1916. The Trial Chamber finds that as the deputy commander in Bombali District the Accused Kamara had sufficient authority over the troops to instruct the commission of the crimes. On all the evidence adduced, the Trial Chamber finds that the Accused Kamara was aware of the substantial likelihood that the burning to death of the five young girls in Karina would be carried out.

c. Planning

1917. The Trial Chamber recalls its finding that the Accused Brima ordered the attack on Karina in an address to the troops at Kamagbengbe.³²⁵⁵ In the course of this address, the Accused Brima stated that he wanted to divide the troop and make attacks on both Karina and Kamabai, but that the other commanders suggested to him that keeping the troop together would result in fewer casualties. The Accused Brima agreed to this.³²⁵⁶ The Trial Chamber notes that this incident was a strategic discussion between commanders which could constitute planning of the attack on Karina and the crimes committed therein. However, witness TF1-334 does not name the commanders involved in this discussion. The Trial Chamber is not prepared to infer merely by virtue of the Accused Kamara's position as deputy commander that he was one of them.

³²⁵³ Kamara Final Brief, para. 204.

³²⁵⁴ TF1-334, Transcript 23 May 2005, pp. 66-67.

1918. No evidence was adduced that the Accused Kamara made a substantial contribution to the planning of any crimes under Counts 3 through 6, 10 through 11 and 14 in Bombali District.

1919. In view of the continuing nature of the crimes charged under Counts 9, 12 and 13 and the fact that they span across various Districts the Trial Chamber will discuss the Accused Kamara's criminal responsibility for Counts 9, 12 and 13 below.³²⁵⁷

d. Instigating and otherwise Aiding and Abetting

1920. No evidence was adduced that the Accused Kamara prompted or influenced or gave practical assistance, encouragement or moral support to the perpetrators of the crimes committed in Bombali District. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kamara for the crimes committed in the Bombali District.

(b) Responsibility of the Accused Kamara under Article 6(3) of the Statute

(i) Submissions

1921. The Prosecution submits that the Accused Kamara bears superior responsibility for all crimes committed in Bombali District from 1 May 1998 until 30 November 1998 by virtue of the high level of authority possessed by him as second in command of the AFRC troops.³²⁵⁸

1922. The Kamara Defence submits that the evidence adduced does not prove that persons under the 'command, authority or direction' of the Accused Kamara participated in the crimes committed in Bombali District.³²⁵⁹

(ii) Findings

a. Existence of a superior-subordinate relationship

1923. The Trial Chamber has found that the Accused Kamara was the deputy commander of the AFRC troops in Bombali District.³²⁶⁰ Evidence of a *de jure* position of authority does not *per se* suffice to prove the existence of a superior-subordinate relationship, especially in the context of a

³²⁵⁵ Factual Findings, Unlawful Killings, para. 886, *supra*.

³²⁵⁶ TF1-334, Transcript 23 May 2005, p. 57.

³²⁵⁷ Responsibility of the Accused, Kamara, paras 1970-1976, *infra*.

³²⁵⁸ Prosecution Final Brief, paras 1513-1516.

³²⁵⁹ Kamara Final Brief, para. 204.

³²⁶⁰ Military Structure of the AFRC Fighting Force, paras 465-468, *supra*.

non-traditional military organisation such as the AFRC troops.³²⁶¹ The Trial Chamber must therefore look at the available evidence to determine whether the Accused Kamara, as deputy commander, was able to exercise effective control over the AFRC troops in Bombali District.

1924. There is evidence that the Accused Kamara played a role at a senior level in military operations in Bombali District. Witness TF1-334 testified that the Accused Kamara was Deputy Brigade Commander³²⁶² and, at Karina, “[...] the commanders have been monitoring each and every soldier”³²⁶³ The Accused Kamara was one of the senior AFRC commanders who was present at the meeting with SAJ Musa at Kurubonla at which the restructuring of the troops was discussed; however, no evidence was adduced as to his contribution.³²⁶⁴ Within the structure which was subsequently established by the Accused Brima, the Operations Commander and the Provost-Marshal were required to report to the Accused Kamara. At Rosos, the Accused Kamara was based at ‘headquarters’, from where operations were planned and orders issued. Whilst there is no direct evidence on the Accused Kamara’s precise involvement³²⁶⁵ Witness TF1-334 testified that the Accused Kamara was one of the commanders who made decisions regarding the brigade;

- Q. Witness, I'm going to ask you to clarify. My question to you was what did you subsequently see the deputy chief in command do as second in command? Just focus on him specifically, please.
- A. He, the chief in command, the chief of staff and the senior military supervisors were responsible for taking decisions in the brigade.
- Q. How do you know that?
- A. I myself was present whenever they want to take a decision in my presence. I was there whenever they were deciding on anything before they can send it out.³²⁶⁶

1925. The Trial Chamber has found that the Accused Kamara issued an order to the troops in Karina which was obeyed.³²⁶⁷ The Trial Chamber is satisfied on the evidence that the Accused Kamara participated in decision making. On the evidence the Trial Chamber is satisfied that the Accused Kamara exercised effective control over the AFRC troops and was aware that the troops under his control committed crimes in Bombali District.

1926. The Trial Chamber finds on the foregoing evidence that there was a formal command structure in the AFRC faction in Bombali District, that the Accused Kamara, in his capacity as

³²⁶¹ Applicable Law, para. 784; Military Structure of the AFRC Fighting Force, para. 580.
³²⁶² TF1-334 Transcript 23 May 2005, p. 95.
³²⁶³ TF1-334 Transcript 23 May 2005, p. 67.
³²⁶⁴ George Johnson, Transcript 15 September 2005, p. 47.
³²⁶⁵ George Johnson, Transcript 15 September 2005, p. 60.
³²⁶⁶ TF1-334, Transcript 20 May 2005, p. 95.
³²⁶⁷ Factual Findings, Unlawful Killings, para. 887, *supra*.

Deputy Brigade Commander had and exercised effective control over the troops under his command.

1927. Accordingly the Trial Chamber finds on the evidence adduced that a superior-subordinate relationship existed between the Accused Kamara and the AFRC troops in Bombali District and that the Accused Kamara had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators.

1928. The Trial Chamber accordingly finds that the Prosecution established beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed in Bombali District.

7. Freetown and the Western Area

1929. The Trial Chamber had found that AFRC troops engaged in unlawful killings of civilians as charged under Counts 3 through 5³²⁶⁸ and inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively.³²⁶⁹ AFRC troops also abducted civilians and used them as forced labour and used children illegally recruited for military purposes in the attack on Freetown, as charged under Counts 13 and 12 respectively.³²⁷⁰ Finally, AFRC troops engaged in widespread looting, as charged under Count 14, terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.³²⁷¹

(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute

(i) Submissions

1930. In its Final Brief, the Prosecution submits that the Accused Kamara was present when the attack on Freetown was planned and that it can be inferred from his position as second in command that he was therefore actively involved in the planning phase. It further contends that Kamara was often present when the Accused Brima issued unlawful orders.³²⁷²

³²⁶⁸ Factual Findings, Unlawful Killings, para. 951, *supra*.

³²⁶⁹ Factual Findings, Rape, para. 1068, *supra*; Outrages on Personal Dignity, para. 1170, *supra*; Physical Violence, para. 1203, *supra*.

³²⁷⁰ Factual Findings, Enslavement, para. 1389, *supra*; Child Soldiers, para. 1278, *supra*.

³²⁷¹ Factual Findings, Acts of Terror and Collective Punishment, para. 1612, *supra*.

³²⁷² Indictment, para.1624

1931. The Prosecution further asserts that ‘Captain Blood’ carried out Kamara’s order to execute civilians, ordered the burning of houses during the retreat towards Waterloo and was present when the Accused Brima ordered other burnings in Freetown and the Western Area.³²⁷³

1932. Finally, the Prosecution argues that the Accused Kamara carried out killings in Freetown, participated in burnings during the retreat from Freetown, and committed, instigated or aided and abetted the commission of sexual violence in Freetown.³²⁷⁴

1933. In its Final Brief, the Kamara Defence submits that the command structure during the Freetown invasion was not as it was described by Prosecution witnesses and that the Accused Kamara was not in Freetown at any time relevant to the Indictment. Therefore, he did not participate directly or indirectly in any of the crimes committed in Freetown.³²⁷⁵

(ii) Findings

a. Committing

i. Killings of civilians in the Fourah Bay Area

1934. The Trial Chamber has found that AFRC troops killed an unknown number of civilians at Fourah Bay in retaliation for an alleged murder of an AFRC soldier during the 1999 attack on Freetown.³²⁷⁶ Although the evidence shows that the Accused Kamara “partook” in the attack, it does not specify the way in which he participated in the incident. The Trial Chamber has found that this evidence does not establish that the Accused Kamara personally killed any civilians.³²⁷⁷

1935. The Trial Chamber will assess his responsibility with regard to the mode of aiding and abetting.

ii. Killings of civilians at Wellington

1936. In early January 1999, on the way to Wellington, AFRC forces, including the Accused Kamara, shot at civilians.³²⁷⁸ In the absence of specific evidence that civilians died as a result of Kamara’s actions the Trial Chamber is not satisfied that the Accused Kamara personally killed any civilians.

³²⁷³ Prosecution Final Brief, para. 1626, citing TF1-334, Transcript 14 June 2005, pp. 72-73.

³²⁷⁴ Prosecution Final Brief, paras 1627-1628.

³²⁷⁵ Kamara Final Brief, paras 210-219.

³²⁷⁶ TF1-334, Transcript 14 June 2005, pp. 66-67.

³²⁷⁷ Factual Findings, Unlawful Killings, paras 919-926, *supra*.

³²⁷⁸ TF1-334, Transcript 14 June 2005, p. 98.

b. Ordering, Planning and Instigating

1937. The Trial Chamber finds no evidence that the Accused Kamara ordered, planned or instigated the commission of crimes in Freetown and the Western Area. The Trial Chamber finds that the Prosecution has not proved these modes of individual criminal responsibility against the Accused Kamara for the crimes committed in the Western Area.

1938. In view of the continuing nature of these crimes charged under Counts 9, 12 and 13 and the fact that they span across various districts the Trial Chamber will discuss the Accused Kamara's criminal responsibility for Counts 9, 12 and 13 below.³²⁷⁹

c. Otherwise aiding and abetting

i. Killings of civilians in Fourah Bay

1939. As stated above with regards to liability for commission of crimes in Fourah Bay, the Trial Chamber has found that there is evidence that the Accused Kamara "partook" in the attack on Fourah Bay in which civilians were killed and houses. While the precise meaning of "partook" is unclear, the Trial Chamber has found that Kamara was present during the commission of the crimes and either himself participated or failed to admonish the troops from committing the crimes.

1940. Given his authority as deputy commander of the troops, the Trial Chamber finds Kamara's presence at the scene gave moral support which had a substantial effect on the perpetration of the crime. In addition, given the systematic pattern of crimes committed by the AFRC troops throughout the District, the Trial Chamber is satisfied that the Accused Kamara was aware of the substantial likelihood that his presence would assist the commission of the crime by the perpetrators.

ii. "Operation Cut Hand" in Freetown

1941. The Accused Kamara led an mission to loot machetes from the World Food Program warehouse. He later explained to Tina Musa, the late SAJ Musa's wife, that they had been used that day in "Operation Cut Hand," meaning that his troops had used the machetes to amputate civilians.³²⁸⁰ The Trial Chamber is satisfied that the Accused, in providing weapons to the troops, with knowledge of how these weapons were to be used, the Accused Kamara gave practical assistance which had a substantial effect on the perpetration of unlawful killings and physical

³²⁷⁹ Responsibility of the Accused, Kamara, paras 1970-1976, *infra*.

violence in Freetown. It further finds that the Accused Kamara was aware of the substantial likelihood that the use of the machetes would assist in the commission of these crimes. The Trial Chamber therefore finds the Accused Kamara liable for aiding and abetting physical violence.

(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute

(i) Submissions

1942. The Prosecution submits that the Accused Kamara bears superior responsibility for all crimes committed by his subordinates in Freetown between 6 January 1999 until around 28 January 1999.³²⁸¹

1943. The Kamara Defence submits that there was an absence of effective command and control over the fighters that attacked Freetown on 6 January 1999.³²⁸²

(ii) Findings

a. Existence of a superior-subordinate relationship

1944. The Trial Chamber has found that the Accused Kamara was deputy commander of the AFRC troops during the invasion of Freetown and that a functioning chain of command and a planning and orders process was in place until the senior command moved from State House.³²⁸³

1945. The Trial Chamber notes that evidence was adduced on the activities of the Accused Kamara during the Freetown invasion. The Accused Kamara was present at the meeting chaired by Brima at Orugu Village on 5 January 1999 in which the invasion of Freetown was planned; however, no evidence was adduced as to Kamara's contribution. The Accused Kamara was present at headquarters at State House immediately after it was captured on 6 January 1999.³²⁸⁴ There is also evidence that he attended a meeting of senior commanders when an attack on Wilberforce, where ECOMOG forces were based, was discussed; however, no evidence was adduced as to his contribution.³²⁸⁵ After the capture of the State House, the Accused Brima ordered that Pademba Road Prison should be opened and the prisoners released. The Accused Kamara, together with troops from 1st, 4th and 5th battalion, went to the prison and the door was blasted open. The Accused Kamara ordered that the released prisoners should move to State House; however, while some

³²⁸⁰ TF1-153, Transcript 23 September 2005, p. 18.

³²⁸¹ Prosecution Final Brief, paras 1637-1640.

³²⁸² Kamara Final Brief, para. 66.

³²⁸³ Role of the Accused, paras. 470-473, *supra*.

³²⁸⁴ TF1-334, Transcript 14 June 2005, pp. 3-4; George Johnson, Transcript 16 September 2005, p. 39.

prisoners followed this order, others did not do so.³²⁸⁶ The Accused Kamara spoke with ‘Mosquito’ on the radio prior to the capture of State House.³²⁸⁷

1946. Given the limited resources of the AFRC, the Trial Chamber is satisfied that this evidence proves that the Accused Kamara exercised a degree of authority over the AFRC faction.

1947. The Accused Kamara was present at the State House when the Accused Brima announced to the battalion commanders and others, that they were likely to lose “the ground totally” and that the burning of Freetown should start.³²⁸⁸ After the loss of State House, the Accused Kamara gave an order to AFRC troops to burn houses.³²⁸⁹

1948. The Trial Chamber finds the evidence adduced indicates the continual presence of the Accused Kamara during the invasion of Freetown up until State House was lost. He was often in the company of other senior commanders, including the Accused Brima and the Accused Kanu, and gave a number of orders himself, he participated in decision making and did not distance himself from decisions made. The Trial Chamber is satisfied that the Accused’s had both a *de jure* position of authority during this period, and the *de facto* ability to effectively control the AFRC troops under his command in Freetown.

b. Knowledge and failure to prevent or punish

1949. The Accused Kamara had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators.

c. Conclusion

1950. The Trial Chamber finds that the Prosecution has established beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed in Freetown.

8. Port Loko District

1951. The Trial Chamber has found that AFRC/RUF troops unlawfully killed a number of civilians in Port Loko District as charged under Counts 4 through 5.³²⁹⁰ In addition, AFRC troops

³²⁸⁵ Gibril Massaquoi, Transcript 7 October 2005, pp. 119-120.

³²⁸⁶ George Johnson, Transcript 16 September 2005, pp. 27-29.

³²⁸⁷ TF1-184, Transcript 29 September 2005, p. 61.

³²⁸⁸ TF1-334, Transcript 14 June 2005, p. 47.

³²⁸⁹ TF1-184 Transcript 30 September 2005, p. 9.

³²⁹⁰ Factual Findings, Unlawful Killings, para. 965, *supra*.

held persons in sexual slavery as charged under Count 9.³²⁹¹ AFRC/RUF troops used abducted civilians for forced labour, as charged under Count 13.

1952. The Trial Chamber has found that the unlawful killings committed in Manaarma are attributable to troops working with the Accused Kamara.³²⁹² The Trial Chamber has found that the unlawful killings committed in Nonkoba and the sexual crimes are not attributable beyond reasonable doubt to any particular group of fighters.

(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute

(i) Submissions

1953. In its Final Brief, the Prosecution asks the Trial Chamber to infer, based on the position of the Accused Kamara and his management of the troops, that he “designed and organised” the attacks on Port Loko District and that he is therefore liable for planning, instigating and/or aiding and abetting the crimes associated with the attacks.³²⁹³ The Prosecution further contends that the Accused Kamara ordered the commission of crimes in Port Loko District.³²⁹⁴

1954. Finally, the Prosecution submits that the Accused Kamara committed a killing at Mamamah and a rape at Gberibana.³²⁹⁵ The Trial Chamber notes that Mamamah and Gberibana were not locations specified in the Indictment under Counts 3-5 and 6 respectively.

1955. In its Final Brief, the Kamara Defence submits that the Accused Kamara was not in Port Loko District at any time relevant to the Indictment and that the command structure in Port Loko District was not as described by Prosecution witnesses.³²⁹⁶

(ii) Findings

1955a. The Prosecution has not adduced any evidence that the Accused Kamara committed, ordered, planned, instigated or otherwise aided and abetted any of the crimes committed in the Port Loko District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kamara for the crimes committed in Port Loko District.

³²⁹¹ Factual Findings, Outrages upon Personal Dignity, para. 1187, *supra*.

³²⁹² Factual Findings, Unlawful Killings, paras 955-957, *supra*.

³²⁹³ Prosecution Final Brief, paras 1756-1758.

³²⁹⁴ Prosecution Final Brief, para. 1759.

³²⁹⁵ Prosecution Final Brief, para. 1760.

³²⁹⁶ Kamara Final Brief, paras 224-234.

(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute(i) Submissions

1956. The Prosecution submits in its Final Brief that the Accused Kamara bears superior responsibility for crimes committed by the AFRC troops in Port Loko District between January and April 1999 by virtue of his position as their commander.³²⁹⁷

1957. The Kamara Defence makes no submissions on the superior responsibility of the Accused specific to Port Loko District. The Kamara Defence relied on the testimony of four Defence witnesses to assert that the Accused Kamara was not commander in the West Side.

(ii) Findingsa. Existence of a superior-subordinate relationship

1958. The Trial Chamber has found that the Accused Kamara was the overall commander of AFRC troops in the area known as the 'West Side' in Port Loko District.³²⁹⁸ The Trial Chamber has further found that the AFRC faction in Port Loko District had a chain of command and a planning and orders process.³²⁹⁹

1959. The Trial Chamber is satisfied, on the basis of the evidence, that the Accused Kamara had effective control over AFRC troops operating in the District. As examined above, Kamara was present in the District throughout the relevant period; established the command structure of the AFRC in the 'West Side'; gave orders to captains and troops which were carried out; appointed and promoted commanders; enforced discipline within the ranks and was in a position of *de jure* authority to other high level commanders including the Operations Commander³³⁰⁰ who reported to him.

1960. The Trial Chamber is satisfied on the basis of the consistent evidence of both Prosecution and Defence witnesses, including the evidence of George Johnson himself, that George Johnson held a position of command and exercised active authority during the relevant period. However, evidence which suggests the presence and authority of other commanders in the District during the relevant period, does not, in and of itself, create a reasonable doubt of the ability of the Accused Kamara to exercise effective control over subordinates.

³²⁹⁷ Prosecution Final Brief, paras 1753-1754, 1761-1764.

³²⁹⁸ Role of Accused, para. 500, *supra*.

1961. The Trial Chamber recalls its findings that unlawful killings were committed in Nonkoba, Tendekum and Manaarma.³³⁰¹ The Trial Chamber is satisfied on the basis of the following evidence that only the unlawful killings in Maararma are attributable to AFRC troops under the command of the Accused Kamara.

1962. The Trial Chamber will now consider the available evidence on the role of Kamara in relation to the attack on Port Loko and Manaarma in order to determine whether the Accused Kamara was in effective control of Junior Lion and the troops underneath him.

1963. Witness George Johnson testified that some time prior to 27 April 1999, a meeting of commanders was held, attended by himself, the Accused Kamara, the Operations Director, Tito and the battalion commanders. At this meeting the commanders planned an attack on Port Loko to capture arms and ammunition from the Malians.³³⁰² Witness TF1-334 also testified that witness George Johnson was the commander that led the operation to Port Loko. He testified that 'Bazzy' ordered Junior Lion to lead the attack and also ordered that troops were to burn down any village and kill civilians en route.³³⁰³

1964. Witness George Johnson testified that after he led the operation on Port Loko which included the attacks on Manaarma, he established communication with 'Bazzy' who sent 'Tito' with some civilians to collect the arms and ammunition.³³⁰⁴ On his return to camp, he reported to the Accused Kamara and informed him of the alleged conduct of Cyborg. However, the witness stated that Kamara was so happy about the success of the operation that he neglected to take any action.³³⁰⁵ Rather, the Accused Kamara sent a 'signal message' to Sam Bockarie in Kailahun recommending the witness for promotion. Bockarie endorsed the recommendation and the witness became a colonel.³³⁰⁶ Witness George Johnson testified that subsequent operations to obtain arms and ammunition were planned by him and carried out at Newton, Mile 38 and Gberi Junction before the signing of the peace process.³³⁰⁷ He does not refer to Manaarma in his evidence.

³²⁹⁹ Military Structure of AFRC Fighting Force, para. 635, *supra*.

³³⁰⁰ Name admitted under seal: exhibit P-12.

³³⁰¹ Factual Findings, Unlawful Killings, paras 955-957, *supra*.

³³⁰² George Johnson, Transcript 16 September 2005, pp. 72-74, 79.

³³⁰³ TF1-334, Transcript 15 June 2005, p. 35.

³³⁰⁴ George Johnson, Transcript 16 September 2005, p. 78.

³³⁰⁵ George Johnson, Transcript 16 September 2005, pp. 76, 78-79.

³³⁰⁶ George Johnson, Transcript 16 September 2005, p. 79.

³³⁰⁷ George Johnson, Transcript 16 September 2005, pp. 79-80.

1965. Both witnesses TF1-334 and George Johnson testified that after the attack, ‘Bazzy’ contacted Mosquito to inform him of its success and the capture of the Malian soldiers.³³⁰⁸ The Trial Chamber notes that witness Gibril Massaquoi testified that Bazzy sent a message to Gullit regarding the attack on Port Loko.³³⁰⁹ Neither witnesses George Johnson nor TF1-334 mention this.

b. Actual or Imputed Knowledge

1966. Prosecution Witness George Johnson testified that en route to Port Loko, he sent an advance troop to secure a village ahead. Upon arrival there, he observed a number of dead civilians and ‘Sheriff’ complained to him that ‘Cyborg’ had amputated and killed civilians in the villages.³³¹⁰ The Trial Chamber has found that this village was Manaarma.

1967. George Johnson further testified that on his return to camp after the successful operation to Port Loko, he reported to the Accused Kamara, informing him of the conduct of ‘Cyborg’. The Trial Chamber is accordingly satisfied that the Accused Kamara had actual knowledge of the commission of crimes in Manaarma by his subordinates.

c. Failure to prevent or punish

1968. George Johnson stated that the Accused Kamara did not take any disciplinary action in response to his report regarding the killings in Manaarma. Rather, the Accused Kamara radioed Sam Bockarie in Kailahun and recommended that the witness be promoted to Colonel, and Bockarie subsequently endorsed this promotion. George Johnson testified that the Accused Kamara did not take any action.³³¹¹ Trial Chamber is satisfied that the Accused Kamara failed to punish his subordinates for committing unlawful killings in Port Loko District.

d. Conclusion

1969. The Trial Chamber finds that it has been established beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed in Manaarma in Port Loko District.

³³⁰⁸ TF1-334, Transcript 15 June 2005, pp. 36-37.

³³⁰⁹ Gibril Massaquoi, Transcript 9 October 2005, pp. 87-102.

³³¹⁰ George Johnson, Transcript 16 September 2005, pp. 75-76.

³³¹¹ George Johnson, Transcript 16 September 2005, pp. 78-79.

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9. Responsibility of the Accused Kamara for Crimes of Enslavement

(a) Responsibility Under Article 6(1) of the Statute

1970. The Trial Chamber has found that civilians were subjected to outrages upon personal dignity as charged under Count 9; that children under the age of 15 were conscripted into the AFRC forces and/or used to participate in active hostilities as charged under Count 12; and that civilians were enslaved as charged under Count 13.

1971. As with the Accused Brima, the Trial Chamber will examine the evidence in relation to the responsibility of the Accused Kamara for each of the enslavement crimes as a whole. The Trial Chamber recalls its finding that the only reasonable inference available from the systemic commission of these crimes on a large scale is that these crimes were planned.³³¹²

1972. While the Trial Chamber has found that the Accused Kamara was overall commander in Kono District after the departure of Johnny Paul Koroma, the Prosecution has not established that he was involved or substantially contributed in this position to the enslavement crimes in that district.³³¹³ However the Trial Chamber finds that, in his position as overall commander, he was aware that civilians were abducted and subjected to enslavement in that district.

(b) Responsibility Under Article 6(3) of the Statute

(i) Kono District

1973. The Trial Chamber has found that in Kono District an unknown number of civilians were abducted and used as forced labour; civilians were subjected to sexual slavery; and children under the age of 15 were conscripted into armed groups or used to participate in active hostilities. The Trial Chamber recalls its finding that the Accused Kamara had effective control over the AFRC forces in Kono District led by known SLA commanders 'Savage', SLA Operation Commander and witness TF1-334 while Brima was in detention in Kailahun. The Trial Chamber must therefore determine whether the enslavement crimes proven in Kono District are attributable to AFRC forces under the command of the Accused Kamara.

1974. The Trial Chamber has found, on the evidence of witness TF1-334, that from early March 1998, the Operations Commander and other soldiers went to villages in Kono District and captured civilians who were then used as forced labour or subjected to sexual slavery. Children were also

³³¹² Responsibility of the Accused, Brima, para. 1823, *supra*.

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captured who were conscripted into the AFRC force.³³¹⁴ While the Trial Chamber is satisfied that the Operations Commander was under the effective control of the Accused Kamara after the departure of Johnny Paul Koroma from Kono District. The evidence adduced does not establish beyond reasonable doubt whether these crimes were committed prior to the departure of Johnny Paul Koroma or subsequently when the Accused Kamara had effective command over the AFRC commanders who were among the perpetrators.

1975. The Trial Chamber has found that Witnesses DAB-098, TF1-072 and TF1-216, along with an unknown number of other civilians, were captured in approximately March 1998 in Kono District and enslaved in Tombodu. The Trial Chamber is satisfied, from the testimony of these witnesses, that the perpetrators of these crimes were led by AFRC commanders 'Savage' and 'Staff Alhaji', who were under the effective control of the Accused Kamara.

1976. The Trial Chamber accordingly finds the Accused Kamara liable as a superior under Article 6(3) for the crime of enslavement in Kono District.

(ii) Port Loko District

1977. The Trial Chamber has made no findings on Counts 12 and 13. The Trial Chamber notes the evidence of witnesses TF1-282 and TF1-085 who were subjected to sexual slavery in Port Loko District.³³¹⁵ However, the evidence adduced does not establish beyond reasonable doubt that the perpetrators of these crimes were troops under the command of the Accused Kamara.

³³¹³ Role of the Accused, para. 461, *supra*.

³³¹⁴ Name admitted under seal: exhibit P-12. See Factual Findings, Child Soldiers, para. 1278, *supra*.

³³¹⁵ Factual Findings, Outrages on Personal Dignity, paras 1087-1099, 1174-1184, *supra*.

D. The Accused Kanu

1. Allegations in the Indictment

1978. The Indictment alleges:

At all times relevant to this Indictment, Santigie Borbor Kanu was a senior member of the AFRC, Junta and AFRC/ RUF forces.

Santigie Borbor Kanu was a member of the group of 17 soldiers which staged the coup and ousted the government of President Kabbah. In addition, Santigie Borbor Kanu was a member of Junta governing body, the AFRC Supreme Council.

Between mid February 1998 and 30 April 1998, Santigie Borbor Kanu was a senior commander of the AFRC/RUF forces in Kono District. In addition, Santigie Borbor Kanu was a commander of AFRC/RUF forces which conducted armed operations throughout the north, eastern and central areas of the Republic of Sierra Leone, including, but not limited to, attacks on civilians in Koinadugu and Bombali Districts between about mid February 1998 and 31 December 1998. Santigie Borbor Kanu, along with Alex Tamba Brima and Brima Bazzy Kamara, was also one of three commanders of AFRC/RUF forces during the attack on Freetown on 6 January 1999.

[...]

In [his] positions referred to above, [...] Santigie Borbor Kanu, individually or in concert with [the Accused Brima and the Accused Kamara], Johnny Paul Koroma aka JPK, Foday Saybana Sankoh, Sam Bockarie aka Mosquito aka Maskita, Issa Hassan Sesay aka Issa Sesay, Morris Kallon aka Belai Karim, Augustine Gbao aka Augustine Bao and/or other superiors in the AFRC, Junta and AFRC/RUF forces, exercised authority, command and control over all subordinate members of the AFRC, Junta and AFRC/RUF forces.

[...]

[...] Santigie Borbor Kanu, by [his] acts or omissions, [is] individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Indictment, which crimes [he] planned, instigated, ordered, committed or in whose planning, preparation or execution [he] otherwise aided and abetted, or which crimes were within a joint criminal enterprise in which [he] participated or were a reasonably foreseeable consequence of the joint criminal enterprise in which [he] participated.

In addition, or alternatively, pursuant to Article 6.3. of the Statute, [...] Santigie Borbor Kanu, while holding positions of superior responsibility and exercising effective control over [his] subordinates, [is] individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute. [The] Accused is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and [...] failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.³³¹⁶

1979. The Trial Chamber notes that the Indictment alleges additionally, in relation to the Counts set out therein, that “by their acts or omissions in relation to these events, Alex Tamba Brima,

³³¹⁶ Indictment, paras 28-30, 31, 35-36.

Brima Bazzy Kamara and Santigie Borbor Kanu, pursuant to Article 6.1. and, or alternatively, Article 6.3. are individually criminally responsible for the crimes alleged [...].³³¹⁷

1980. Where there have been submissions by the Parties specific to each Accused, District and mode of liability, they have been considered as they arise in the findings below.

1981. In view of the continuing nature of the crimes charged under Counts 9, 12 and 13 and the fact that such crimes span various districts, the Trial Chamber has dealt with these counts separately below.

2. Bo, Kenema and Kailahun Districts

1982. In its factual findings, the Trial Chamber found that an unknown number of civilians were unlawfully killed by AFRC/RUF forces in Bo District in June 1997, as charged under Counts 4 through 5. Civilians were also terrorised and subjected to collective punishment, as charged under Counts 1 and 2.³³¹⁸

1983. The Trial Chamber also found that AFRC/RUF forces committed a number of crimes in Kenema District in this period. Civilians were unlawfully killed, as charged under Counts 4 and 5,³³¹⁹ and physical violence was inflicted on an unknown number of civilians as charged under Count 10.³³²⁰ Children were illegally recruited and used for military purposes, as charged under Count 12.³³²¹ An unknown number of civilians were abducted and used as forced labour at Cyborg Pit in Tongo Field, as charged under Count 13.³³²² Finally, civilians were terrorised and subjected to collective punishment, as charged under Counts 1 and 2.

1984. The Trial Chamber further found that RUF troops abducted civilians and used them as forced labour in Kailahun District during the Junta period, as charged under Count 13.³³²³

(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute

(i) Submissions

³³¹⁷ Indictment paras 41, 50, 57, 64, 65, 73, 79.
³³¹⁸ Factual Findings, Acts of Terror and Collective Punishment, para. 826, *supra*.
³³¹⁹ Factual Findings, Unlawful Killings, para. 840, *supra*.
³³²⁰ Factual Findings, Physical Violence, para. 1197, *supra*.
³³²¹ Factual Findings, Child Soldiers, paras 1276-1278, *supra*.
³³²² Factual Findings, Enslavement, para. 1309, *supra*.
³³²³ Factual Findings, Enslavement, para. 1374.

1985. In its Final Brief, the Prosecution argues that given his position in the Government, the Accused Kanu was aware of the AFRC Government policies which included the use of forced labour in Bo and Kenema Districts.³³²⁴ It submits that the Accused Kanu is therefore liable for planning, instigating or otherwise aiding and abetting the crime of enslavement in Kenema and Kono, as well as killings and other crimes committed during the AFRC government period.³³²⁵

1986. In its Final Brief, the Kanu Defence submits that the perpetrators of the crimes in Bo and Kenema Districts were soldiers who were present in the District before the AFRC coup and who were under the command of their local commanders during the Indictment period.³³²⁶ The Defence submits that the SLA brigades based in Bo and Kenema Districts operated independently from the AFRC Government seated in Freetown.³³²⁷

(ii) Findings

a. Committing and Ordering

1987. The Prosecution has not adduced any evidence that the Accused Kanu committed or ordered any of the crimes that occurred in Bo, Kenema and Kailahun Districts. The Trial Chamber accordingly finds that the Prosecution has not proved either of these modes of individual criminal responsibility against the Accused Kanu for the crimes that occurred in Bo, Kenema and Kailahun Districts.

b. Planning

1988. The Trial Chamber recalls its finding that the Accused Kanu participated in high-level coordination meetings of the AFRC government, but that no evidence was adduced that the crimes committed in Bo, Kenema and Kailahun Districts were planned at these meetings.³³²⁸

1989. The Prosecution has not adduced any evidence that the Accused Kanu made a substantial contribution to the planning of the crimes committed in Bo, Kenema and Kailahun Districts. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for the crimes committed in Bo, Kenema and Kailahun Districts.

³³²⁴ Prosecution Final Brief, para. 516.

³³²⁵ Prosecution Final Brief, para. 520.

³³²⁶ Kanu Final Brief, paras 369-371.

³³²⁷ Kanu Final Brief, para. 372.

³³²⁸ Role of the Accused, Kanu, para. 511, *supra*

c. Instigating

1990. The Prosecution has not adduced any evidence that the Accused Kanu prompted or influenced the perpetrators of the crimes committed in Bo, Kenema and Kailahun Districts. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for the crimes committed in Bo, Kenema and Kailahun Districts.

d. Otherwise aiding and abetting

1991. The Prosecution has not adduced any evidence that the Accused Kanu gave practical assistance, encouragement or moral support which had a substantial effect on the perpetration of crimes in Bo, Kenema and Kailahun Districts. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for crimes committed in Bo, Kenema and Kailahun Districts.

(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute

(i) Submissions

1992. The Prosecution submits in its Final Brief that the Accused Kanu bears superior responsibility for crimes committed during the AFRC Government period by virtue of his position as a member of the Supreme Council.³³²⁹ The Prosecution also submits that the Accused Kanu was “only beneath Johnny Paul Koroma, SAJ Musa and the 3 PLOs in the Junta hierarchy”.³³³⁰

1993. The Kanu Defence submits that superior responsibility cannot be based on the Accused Kanu’s mere participation in or membership of the AFRC, as this would be “tantamount to strict liability on the basis of organizational responsibility”.³³³¹

(ii) Findings

1994. The Trial Chamber reiterates its earlier observations that asserting *de jure* seniority does not suffice to prove liability under Article 6(3).³³³² The Trial Chamber emphasises that in evaluating the evidence, the first element of the test for superior responsibility is whether the Accused Kanu was

³³²⁹ Prosecution Final Brief, paras 521-524.

³³³⁰ Prosecution Final Brief, para. 515.

³³³¹ Kanu Final Brief, para. 190. *See generally* paras 186-193.

³³³² Responsibility of the Accused, para. 1923, *supra*.

personally able to exercise effective control over subordinates. Membership of the Supreme Council alone does not satisfy the evidentiary burden on the Prosecution.

1995. Little evidence was adduced with respect to the role of the Accused Kanu during the AFRC Government period. It has been established that the Accused Kanu was a member of the Supreme Council and attended Council meetings.³³³³ There is no evidence that he possessed any particular responsibility or performed any individual functions at such meetings. The Trial Chamber has found that it was not established whether the Accused Kanu made any real practical contributions to the policies or running of the AFRC government.³³³⁴ Beyond his position in the AFRC Government, there is no evidence which links the Accused Kanu as a superior to crimes perpetrated by the troops in Bo, Kenema and Kailahun Districts.

1996. The Trial Chamber therefore finds that the Prosecution has not proved beyond reasonable doubt that a superior-subordinate relationship existed between the Accused Kanu and these troops. In the absence of this first element of superior responsibility, it is unnecessary to consider whether the Accused Kanu had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators thereof.

3. Kono District

1997. The Trial Chamber found that in the period February through June 1998, AFRC/RUF troops in Kono District unlawfully killed civilians, as charged under Counts 3 through 5,³³³⁵ and inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively.³³³⁶ AFRC/RUF troops also abducted civilians and used them as forced labour, as charged under Count 13,³³³⁷ and used illegally recruited children for military purposes, as charged under Count 12.³³³⁸ Finally, AFRC/RUF troops engaged in widespread looting, as charged under Count 14, terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.³³³⁹

(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute

(i) Submissions

³³³³ Role of Accused, paras 509-510, *supra*.

³³³⁴ Role of the Accused, para 511, *supra*.

³³³⁵ Factual Findings, Unlawful Killings, para. 857, *supra*.

³³³⁶ Factual Findings, Sexual Violence, para. 1213, *supra*.

³³³⁷ Factual Findings, Physical Violence, para. 1333, *supra*.

³³³⁸ Factual Findings, Child Soldiers, para. 1278, *supra*.

³³³⁹ Factual Findings, Pillage, paras 1525, 1527, *supra*.