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SCSL-04-14-T
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SPECIAL COURT FOR SIERRA LEONE
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TRIAL CHAMBER I

Before:	Hon. Justice Benjamin Mutanga Itoe, Presiding Judge Hon. Justice Bankole Thompson Hon. Justice Pierre Boutet
Registrar:	Herman von Hebel
Date:	2 August 2007

PROSECUTOR **Against** **MOININA FOFANA**
ALLIEU KONDEWA
(Case No.SCSL-04-14-T)

Public Document

JUDGEMENT

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I. INTRODUCTION

1. This trial has commonly been referred to as the Civil Defence Forces ("CDF") trial. In fact, it was not a trial of the CDF organisation itself, but rather a trial of three individuals, alleged to be its top leaders. Samuel Hinga Norman was the "National Coordinator" of the CDF, Moinina Fofana was its "Director of War", and Allieu Kondewa was its "High Priest".

2. The CDF was a security force comprised mainly of "Kamajors", traditional hunters, normally serving in the employ of local chiefs to defend villages in the rural parts of the country. The CDF fought in the conflict in Sierra Leone, between November 1996 and December 1999. In general terms, it can be said that the CDF supported the elected Government of Sierra Leone in its fight against the Revolutionary United Front ("RUF") and the Armed Forces Revolutionary Council ("AFRC"). Leaving aside the motives behind the conflict, it is clear that atrocities of all sorts were committed by members of all the Parties to the conflict.

3. Each of the three Accused was charged with eight counts of war crimes, crimes against humanity and other serious violations of international humanitarian law, relating to atrocities allegedly committed by them during the conflict. The charges included murder of civilians; violence to life, health and physical and mental well-being; inhumane acts; cruel treatment; pillage; acts of terrorism; collective punishments and enlisting children under the age of 15 or using them to participate actively in hostilities.

1.1 The Case against Samuel Hinga Norman Deceased First Accused

4. The first Accused, Samuel Hinga Norman, died untimely in hospital on 22 February 2007, after the completion of trial but before pronouncement of Judgement.

5. In a decision dated the 21st of May, 2007, on the Registrar's Submission of Evidence of the Death of Accused Samuel Hinga Norman and Consequential Issues, We held that "the trial proceedings against Accused Samuel Hinga Norman are hereby terminated by reason of his death". We further held that "the judgement of the Chamber in relation to the 2 remaining Accused Persons will be based on the evidence that was adduced on the record by all the parties".

6. In this regard, we recall, for the record, that Samuel Hinga Norman, the deceased First Accused, in the conduct of his defence before his death, testified on his behalf, was cross examined

by all the Parties and re-examined by his Counsel. In accordance with this Decision, We have, in our deliberations as a Chamber, considered the entire evidence on the record including that given by the deceased Accused.

7. In addition, in arriving at this decision, we were guided by the legal principle that no finding of guilt or of innocence should be made against a deceased person because he no longer has the status nor is he in a position to exercise his right to challenge such a finding by any legally recognised process since the issue of responsibility in criminal matters is personal and personified.

8. Following this Decision, the deceased Accused's Defence Team filed an application asking for an extension of time within which to file an application with the Chamber for leave to appeal against it. The Chamber, by a unanimous decision dated the 19th of July, 2007, dismissed the application for want of merit.

1.2 Accused Moinina Fofana and Allieu Kondewa

9. The Chamber would also like to mention for the record, and as we have already indicated, that in the conduct of the case for the defence, the late First Accused Samuel Hinga Norman testified and gave evidence on his behalf, was cross examined and re-examined. The two remaining Accused Persons, Moinina Fofana and Allieu Kondewa however, did not testify in their defence.

10. As a Chamber, in this regard, we have cautioned ourselves and while we only make mention of this fact for the record, we desist, as the law requires, from attaching any meaning to it nor should we, in so doing, be understood or be seen to be drawing any adverse inferences one way or the other on the exercise by the Accused, of their right as provided under Article 17(4)(g) of the Statute of this Court.

1.3 President Kabbah's Role in the Conflict

11. In the course of these proceedings, persistent references and allusions were made by the Defence Teams to President Kabbah and his alleged involvement in the conflict on the side of the CDF. Specifically and significantly, the Chamber recalls here that the Accused Persons all along, in the course of the trial raised, as a defence, that all they did and stand indicted for was as a result of their struggle to restore to power, President Kabbah's democratically elected Government that had been ousted in a coup d'Etat by the Armed Forces Revolutionary Council (AFRC) on the 25th of May, 1997.

12. The Chamber, in this Judgement, will consider the nature and the extent of this alleged involvement so as to determine whether the President's alleged role, viewed in the light of his political status and that of his Government in-Exile, constitutes a legal defence that is available to the Accused Persons.

1.4 Deletion of the Name of the Late First Accused from the Heading of this Judgement

13. Following our unanimous decision of 21 May 2007 where we held that "The trial proceedings against the deceased First Accused Samuel Hinga Norman are terminated by reason of his death" and a consequential direction by a Chamber Majority (Hon. Justice Benjamin Mutanga Itoe dissenting) that the name of the deceased Accused should no longer feature on the cover sheet of all Court processes and decisions.

14. The Chamber will now proceed to pronounce Judgement in this case but only in respect of Moinina Fofana and Allieu Kondewa, the two remaining Accused Persons.

II. PRELIMINARY ISSUES

1. Challenges to the Form of the Indictment

1.1. Introduction

15. In their Final Trial Briefs, Norman and Fofana raised challenges to the form of the Indictment. As stated above, as a result of the death of Norman, the Chamber cannot make a final pronouncement on his guilt or innocence and will therefore not consider any of the specific arguments that were raised in his defence. The Chamber will therefore only consider the arguments raised by Counsel for Fofana.

16. Fofana has been charged pursuant to Article 6(1) for having personally committed, planned, ordered, instigated and aided and abetted the crimes charged under all eight counts of the Indictment and with having committed them as part of a Joint Criminal Enterprise ("JCE"). In addition, he has been charged pursuant to Article 6(3) of the Statute with the crimes specified in all eight counts of the Indictment. Counsel for Fofana has challenged the form of the Indictment in relation to the manner in which his liability pursuant to both of these Articles has been pleaded.

1.2. Applicable Law

17. Under Article 17(4)(a) of the Statute, an Accused has the right to be informed promptly and in detail in a language that he or she understands of the nature and cause of the charge against him or her. Article 17(4)(b) provides that every Accused has the right to adequate time and facilities for the preparation of his or her defence.

18. As to the sufficiency of the Indictment, Rule 47(C) of the Rules of Procedure and Evidence of the Special Court (the Rules) provides that:

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

19. Another relevant provision is Rule 26*bis*. It provides, *inter alia*, that:

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

20. This Chamber has considered the specificity with which the Prosecution should plead indictments in the following decisions: *Sesay* Decision,[1] *Kanu* Decision,[2] *Kondewa* Decision[3] *Kamara* Decision[4] and in its *Admissibility of Evidence* Decision.[5]

21. In its *Admissibility of Evidence* Decision, the Chamber held that the Indictment is the fundamental accusatory instrument that sets in motion the criminal adjudicatory process and must be framed in such a manner that it is not repetitive, uncertain or vague.[6] Justice Itoe, in his separate concurring opinion, held that the Indictment is the foundation upon which every

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[1] *Prosecutor v Sesay*, SCSL-2003-05-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 13 October 2003 [*Sesay* Decision].
[2] *Prosecutor v Kanu*, SCSL-2003-13-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 19 November 2003 [*Kanu* Decision].
[3] *Prosecutor v Kondewa*, SCSL-2003-12-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 27 November 2003 [*Kondewa* Decision].
[4] *Prosecutor v Brima, Kamara and Kanu*, SCSL-04-16-PT (TC), 1 April 2004 [*Kamara* Decision], para. 49.
[5] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Reasoned Majority Decision on Prosecution Motion for a Ruling on the Admissibility of Evidence (TC), 24 May 2005 [*Admissibility of Evidence* Decision].
[6] *Ibid.*, para. 18.

prosecution stands and the agenda upon which criminal prosecutions are brought. It is the instrument by which the Prosecution informs the Accused promptly and in detail, in a language that he or she understands of the nature and cause of the charges against him or her, and in so doing, limits the number and nature of the offences on which it has decided to base its prosecution against an Accused.[7] The Indictment should therefore clearly spell out the offences that the Prosecution has selected to prosecute.[8]

22. The Chamber has held that the basic principle emanating from both international and national criminal law on the issue of sufficiency of the Indictment is that an Indictment must embody a concise statement of the facts underpinning the specific crimes such that the Accused is provided with sufficient information to adequately and effectively prepare his defence.[9]

23. The Chamber has held further that, as a general rule, less specificity is required when pleading indictments in international criminal law than is required in national criminal law due to the fact that international criminal law involves the commission of mass crimes, reconfirming, at the same time, that the rights of the Accused must be upheld.[10]

24. Expounding the law further, the Chamber laid down these general principles:[11]

> Allegations in an Indictment are defective in form if they are not sufficiently clear and precise so as to enable the Accused to fully understand the nature of the charges against him.
>
> The fundamental question in determining whether an Indictment was pleaded with sufficient particularity is whether an Accused had enough detail to prepare his defence.
>
> The Indictment must state the material facts underpinning the charges, but need not elaborate on the evidence by which such material facts are to be proved. What is material depends on the facts of the particular case and is not decided in the abstract.

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[7] *Ibid.*, Separate Concurring Opinion of Judge Itoe, para. 25.
[8] *Admissibility of Evidence* Decision, Separate Concurring Opinion of Judge Itoe, para. 38.
[9] *Sesay* Decision, para. 6; *Kanu* Decision, para. 6; *Kondewa* Decision, para. 6; *Kamara* Decision, para. 32. See also *Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumva*, ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber Decision (AC), 18 December 2006, para. 21 [*Bagosora* Appeal Decision], *Prosecutor v. Kupreskic, Kupreskic, Kupreskic and Santic*, IT-95-16-A, Judgement (AC), 23 October 2001, para. 114 [*Kupreskic et al.* Appeal Judgement], *Prosecutor v. Ntagerura, Bagambiki and Imanishimwe*, ICTR-99-46-A, Judgement (AC), 7 July 2006, para. 114 [*Ntagerura et al.* Appeal Judgement].
[10] *Sesay* Decision, para. 9.
[11] *Sesay* Decision, *ibid.*, para. 6; *Kanu* Decision, paras 6 and 10; *Kamara* Decision, para. 33.

25. In addition, the Chamber has held that the degree of specificity required in an Indictment must be determined with reference to the relevant variables, which include:[12]

(a) the nature of the allegations;

(b) the nature of the specific crimes charged;

(c) the scale or magnitude on which the acts or events allegedly took place;

(d) the circumstances under which the crimes were allegedly committed;

(e) the duration of time over which the said acts or events constituting the crimes occurred;

(f) the totality of the circumstances surrounding the commission of the alleged crimes;

(g) the Indictment as a whole and not isolated and separate paragraphs.

1.3. Timing of the Objections Raised by Counsel for Fofana

26. The Chamber notes that Counsel for Fofana has raised its objections to the form of the Indictment for the first time in its Final Trial Brief. Rule 72(b)(ii) of the Rules indicates that challenges to the form of the Indictment should be raised as preliminary motions. The Chamber notes that Counsel for Kondewa raised its objections to the form of the Indictment by way of such a preliminary motion.[13] Counsel for Fofana did not raise these objections by way of such a preliminary motion, nor did it raise any objections during the trial. It has provided no explanation for its failure to object to defects in the form of the Indictment prior to its Final Trial Brief.[14]

27. Generally, if defects in the Indictment are alleged, the Prosecution has the burden of demonstrating that the Accused's ability to prepare his case has not been materially impaired. However, where the Defence has raised no objections during the course of the trial, and raises the

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[12] *Sesay* Decision, para. 8; *Kanu* Decision, para. 42; *Kondewa* Decision, para. 6. See also *Prosecutor v Kvocka*, IT 98-30/1-A, Judgement (AC), 28 February 2005, para. 28; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on the First Accused's Motion for Service and Arraignment on the Consolidated Indictment (TC), 29 November 2004, para. 28 [Decision on the Consolidated Indictment]; Dissenting Opinion of Judge Thompson, para. 10.

[13] *Prosecutor v. Kondewa*, SCSL-03-12-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 27 November 2003 [*Kondewa* Decision].

[14] The Chamber notes that the Prosecution, in its closing arguments, objected to the timing of when these objections were raised by Counsel for Fofana. The Prosecution argued that a challenge to the Indictment should, as a general rule, be raised as a preliminary motion. It submitted that it was only in exceptional circumstances that a party should be allowed to bring such a challenge at a later stage, and Counsel for Fofana had not raised any such arguments. (Transcript of 28 November 2006, Prosecution's closing argument, pp. 46-47).

matter only in its closing brief, the burden shifts to the Defence to demonstrate that the Accused's ability to defend himself has been materially impaired,[15] unless it can give a reasonable explanation for its failure to raise the objection at trial.[16]

28. The Chamber is of the view that preliminary motions pursuant to Rule 72(b)(ii) are the principal means by which objections to the form of the Indictment should be raised, and that the Defence should be limited in raising challenges to alleged defects in the Indictment at a later stage for tactical reasons.[17] The Chamber is of the opinion, therefore, that Counsel for Fofana should have raised these arguments by way of a preliminary motion, or by raising objections during the course of the trial.

29. However, mindful of its obligations under Rule 26*bis* to ensure the integrity of the proceedings and to safeguard the rights of the Accused, the Chamber will nonetheless consider the objections raised by the Counsel for Fofana at this stage in the proceedings. It notes however, that given that Defence has provided no explanation for its failure to raise the objections at trial, the

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[15] *Bagosora* Appeal Decision, paras 45-47. In several cases dealing with the situation where an accused has raised an objection to the form of the Indictment for the first time on Appeal, the Chamber has consider what form of an objection would suffice for the burden to remain with the Prosecution. In *Prosecutor v. Niyitegeka*, ICTR-96-14-A, Judgement (AC), 9 July 2004, para. 199, the Appeals Chamber held that, unless the Defence had made specific objections at the time the evidence was introduced, the burden would shift to the Defence. In *Prosecutor v. Gacumbitsi*, ICTR-01-64-A, Judgement (AC), 7 July 2006, the Chamber held that any objection during the course of the trial, including during a 98*bis* application, would be sufficient (para. 54) and in *Ntagerura et al.* Appeal Judgement, para. 138, the Chamber held that a general pre-trial objection to the form of the Indictment would suffice. *See also Prosecutor v. Simic*, IT-95-9-A , Judgement (AC), 28 November 2006, para. 25. In this case, Counsel for Fofana has raised no previous objection of these kinds.

[16] In the *Bagosora* Appeal Decision, the Appeals Chamber of the ICTR held that "[. . .] an objection raised later at trial will not automatically lead to a shift in the burden of proof; the Trial Chamber must consider relevant factors, such as whether the Defence provided a reasonable explanation for its failure to raise the objections at the trial" (para. 47).

[17] *Prosecutor v. Hadzihasanovic and Kubura*, IT-01-47-AR73.3, Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98bis Motions for Acquittal (AC), 11 March 2005, para. 10. The Fofana Defence submits that in the Sesay Oral Rule 98 Decision, this Chamber held that the appropriate time to raise objections to the form of the Indictment was during final submissions (para. 24, referring to *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Oral Decision on RUF Motions for Judgement of Acquittal Pursuant to Rule 98 (TC), 25 October 2006 [*Sesay et al.* Rule 98 Oral Decision]). The Chamber notes that in this Decision, the Chamber made it clear that the primary instrument for challenging the form of the Indictment was by way of a preliminary motion pursuant to Rule 72(b)(ii). It held, however, that this was without prejudice for the Defence to raise such issues in its final closing arguments. The Chamber notes that unlike Fofana, Sesay had already raised its objections to the form of the Indictment by way of a preliminary motion [*Prosecutor v. Sesay*, SCSL-03-05-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 13 October 2003]. The Chamber is of the view that, while it has the discretion to consider objections to the form of the Indictment at the end of the trial, the burden will shift to the Defence to demonstrate that it has been materially prejudiced if it has not raised any prior objections at trial.

burden has shifted to the Defence to demonstrate that the Accused's ability to defend himself has been materially impaired by the alleged defects.

1.4. The Specific Challenges Raised by Counsel for Fofana

1.4.1. Challenges to the manner in which the Prosecution has pleaded the Article 6(1) modes of liability of committing, planning, instigating, ordering, aiding and abetting and participation in a joint criminal enterprise

1.4.1.1. Fofana's Arguments

1.4.1.1.1. The Prosecution should have pleaded the different heads of liability under Article 6(1) separately

30. Counsel for Fofana admits that in pleading liability under Article 6(1), the Prosecution has simply repeated the language of the Statute and that it is required to do more.[18] The Indictment should describe the particular course of conduct through which Fofana could be understood as having committed, planned, instigated, ordered, aided and abetted or participated in a JCE. [19] Counsel for Fofana argues that Fofana's name is not mentioned in the factual descriptions preceding each count, creating the impression that he has only been charged as a superior, which is contradicted by the repeated references to Article 6(1).[20]

1.4.1.1.2. The Prosecution should have pleaded the identities of victims and co-perpetrators

31. The Defence contends that the Indictment should also contain the identities of the victims and of the principal or co-perpetrators, which aside from Norman and Kondewa and unidentified Kamajors, it does not.[21] It submits that the Indictment is therefore defective in these respects.

1.4.1.1.3. The Prosecution should have pleaded Fofana's participation in the JCE with greater specificity

32. With regards to Fofana's alleged responsibility for having participated in a JCE, Counsel for Fofana argues that it is necessary to plead (i) the form of JCE upon which the Prosecution intends to rely; (ii) the alleged criminal purpose of the JCE; (iii) the identity of the co-perpetrators,

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[18] *Ibid.*
[19] *Ibid.*, para. 44.
[20] *Ibid.*, para. 43.
[21] *Ibid.*, para. 44.

particularly those who physically perpetrated the crime; and (iv) the nature of the Accused's participation in the enterprise.[22]

33. Counsel for Fofana also contends that the third requirement has not been met because the Indictment does not refer clearly to the identities of alleged co-participants, but rather that it refers vaguely to the three Accused and "subordinate members of the CDF." Counsel for Fofana argues further that neither the Pre-Trial Brief nor the Supplemental Pre-Trial Brief cured this defect.[23]

34. In addition, Counsel for Fofana submits that the failure to specify the identities of the other participants in the JCE, in particular those who had personally carried out the crimes, is a material defect and has resulted in the Accused not being able to answer the charges against him.[24]

1.4.1.2. Analysis

1.4.1.2.1. The Prosecution should have pleaded the different heads of liability under Article 6(1) separately

35. In the *Sesay* Decision, this Chamber held that it may in certain cases be necessary to plead the different heads of liability under Article 6(1) separately and that that the material facts to be pleaded would depend on the mode of Article 6(1) liability pleaded.[25] It held further that the degree of specificity that was required would depend on some or all of the factors which it had identified, particularly where the crimes are of an international character and dimension.[26]

36. In the *Kondewa* Decision and the *Kamara* Decision, the Chamber held that the Accused in those cases had not been prejudiced by the Prosecution's failure to plead the different modes of Article 6(1) liability separately.[27] The Chamber held further that the Prosecution possessed the discretion to plead all the different heads of responsibility under Article 6(1) and that where it chose to do so it carried the burden of proving each one at trial.[28]

37. The Chamber therefore rejects Fofana's argument that the Indictment should have pleaded the different heads of Article 6(1) liability separately.

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[22] *Ibid*, para. 212.
[23] *Ibid.*, para. 218.
[24] *Ibid.*, para. 223.
[25] *Sesay* Decision, para. 12.
[26] *Ibid.* See note *supra* 12 and the accompanying text for the list of relevant factors enunciated by the Trial Chamber.
[27] *Kondewa* Decision, para. 10; *Kamara* Decision, para. 49.
[28] *Ibid.*

1.4.1.2.2. The Prosecution should have pleaded the identities of victims and co-perpetrators

38. This Chamber has previously recognised that in the cases before it, the sheer scale of the offences may make it impossible to identify the victims.[29] The Chamber therefore rejects the argument that the Indictment is vague because it failed to identify the victims. The Chamber has also previously acknowledged that it is sufficient to plead the identities of the perpetrators by reference to their category or group.[30] The Chamber therefore also rejects the argument that it was not sufficient to refer to the co-perpetrators as Kamajors without identifying them any further.

1.4.1.2.3. The Prosecution should have pleaded Fofana's participation in the JCE with greater specificity

39. Regarding the argument that the identities of the co-participants in the JCE should have been pleaded with greater specificity and that the Indictment is vague as a result, in the *Sesay* Decision and the *Kamara* Decision, this Chamber held that identifying co-participants in the JCE by reference to their membership of particular groups, for example the Junta, the RUF and/or the AFRC was sufficient.[31] The Chamber therefore also dismisses this argument.

1.4.1.3. Conclusion

40. The Chamber therefore rejects the specific arguments raised by Counsel for Fofana in relation to Article 6(1). In addition, in the *Kondewa* Decision, the Chamber held that "given the international character and dimension of the crimes alleged in the Indictment and the totality of the circumstances surrounding the commission of the alleged crimes, gathered from a review of the Indictment, *as a whole*, the Chamber finds that the Accused is in no way prejudiced by the present state of the pleadings in relation to Article 6(1) [...]."[32]

41. The Chamber also finds similarly that the Fofana has not been prejudiced by the manner in which the Prosecution has pleaded his alleged responsibility under Article 6(1) of the Statute when considering the international character and dimension of the crime in the light of the Indictment viewed as a whole.

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[29] *Sesay* Decision, paras 7(ix) and 7(x) and 20; *Kanu* Decision, para. 24; *Kamara* Decision, paras 33(x) and 33(xi) and 46.
[30] *Sesay* Decision, para. 7(vii); *Kamara* Decision, para. 33(vii).
[31] *Sesay* Decision, *ibid*, para. 23; *Kamara* Decision, para. 23.
[32] *Ibid.*, *Kondewa* Decision

1.4.2. Challenges to the manner in which the Prosecution has pleaded the Second Accused's alleged command responsibility under Article 6(3)

1.4.2.1. Fofana's Arguments

42. Counsel for Fofana admits that the Indictment does contain references to Fofana's alleged leadership position within the CDF. Despite this however, the Prosecution has failed to plead the conduct by which Fofana may be found to have known or had reason to know that crimes were about to be committed, or had been committed, by his alleged subordinates and by which he could be considered to have failed to take the necessary and reasonable measures to prevent such acts or to punish the persons who committed them.[33]

1.4.2.2. Analysis

43. In the *Sesay* Decision, the Chamber held that the relevant indictments did specify the conduct by which it had been alleged that Sesay was responsible for the acts of his subordinates.[34] In the *Kamara* Decision, the Chamber held that the Indictment had pleaded with sufficient particularity the acts or crimes of subordinates for whom the Accused was alleged to be responsible.[35] In addition, the Chamber held that the Indictment had pleaded the acts by which the Accused could be considered to have known or have had reason to know about the crimes of his subordinates and the acts by means of which the Accused failed to take the necessary and reasonable measures to prevent or punish such crimes.[36] The Prosecution has pleaded Fofana's alleged superior responsibility in this case with an analogous degree of specificity to the manner in which the alleged superior responsibility of the Accused was pleaded in those cases.[37] This leads the Chamber to conclude that the Prosecution has pleaded Fofana's alleged superior responsibility with the requisite degree of specificity in the present case.

44. The Chamber is of the opinion that an analysis of the Indictment in the present case confirms this conclusion. Taking into account the material facts of this case, the Pre-trial brief, the totality of the circumstances of the case and the Indictment as a whole, the Chamber finds that

[33] Fofana Final Trial Brief, para. 45.
[34] *Sesay* Decision, para. 16.
[35] *Kamara* Decision, para. 55(iv).
[36] *Ibid.*, para. 55(v).
[37] See in this regard *Prosecutor v Norman, Fofana and Kondewa*, SCSL-2004-14-PT, Indictment, 4 February 2004, paras 14-18 and 21; *Prosecutor v Kamara*, SCSL-2003-10-I, Indictment, 26 May 2003, paras 20-21 and 26; *Prosecutor v Sesay*, SCSL-2003-05-I, Indictment, 7 March 2003, paras 20- 23.

Fofana has been provided with adequate notice of the acts by which he could be considered to have known or had reason to know about the crimes of his subordinates and the acts by which he failed to take the necessary and reasonable measures to prevent or punish such crimes.

45. The Chamber therefore rejects the arguments of Counsel for Fofana in this regard.

1.5. Conclusion

46. The Chamber accordingly concludes that Fofana's alleged criminal responsibility under Articles 6(1) and 6(3) of the Statute has been pleaded in the Indictment with the required degree of specificity. In light of this finding, there is no need for the Chamber to determine whether any defects in the Indictment have been "cured" by subsequent information.[38]

47. The Chamber therefore finds that the Defence has not satisfied its burden of demonstrating that the Accused's ability to defend himself has been materially impaired by the alleged defects, and rejects the challenges to the form of the Indictment as devoid of merit.

2. Interpretation of the Indictment

48. In its Admissibility Decision, the Trial Chamber dismissed evidence of sexual violence that the Prosecution attempted to adduce at trial in support of Counts 3-4. The Chamber held that it would be prejudicial to the Accused to allow such evidence to be admitted, as acts of sexual violence were not plead in the Indictment under these Counts, and the Accused had therefore not been put on notice that they were facing such charges.[39] In line with the reasoning in this Decision, the Chamber has considered only those acts which are listed in the Indictment in relation to Counts 3 and 4 (mental suffering). The Chamber will therefore consider only the following acts for the purposes of its legal findings on Counts 3 and 4:

(i) screening for collaborators;

(ii) unlawfully killing suspected collaborators, often in plain view of friends and relatives;

(iii) illegal arrest and unlawful imprisonment of collaborators;

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[38] See *Kupreskic et al.* Appeal Judgement, where the Chamber held at para. 114 that certain defects in the Indictment may be cured "if the Prosecution provides the Accused with timely, clear and consistent information detailing the basis underpinning the charges". See also *Kvocka et. al.* Appeal Judgement, para. 33.
[39] Admissibility Decision, para. 19(iv).

(iv) the destruction of homes and other buildings;

(v) looting and threats to unlawfully kill, destroy or loot.[40]

49. The Trial Chamber has also adopted a limited interpretation of Counts 6-7. It will consider, under those Counts, only those crimes which are charged and are found to have been committed under Counts 1-5 in the Indictment. If, for example, the Chamber has made a finding about a specific crime (i.e. a murder in Tongo) under another Count in the Indictment (i.e. as a War Crime under Count 2), it will consider this act in relation to Counts 6-7, but it will not consider other killings which may have occurred elsewhere in relation to these Counts.

III. CONTEXT

1. The Conflict Areas

50. Sierra Leone is comprised of the Western Area and three Provinces, namely, the Northern Province, Eastern Province and Southern Province. However, the areas relevant to the Indictment are Bo, Moyamba and Bonthe Districts in the Southern Province and Kenema District in the Eastern Province.

1.1. Kenema District

51. Kenema District is located in the Eastern Province of Sierra Leone.[41] The headquarter town of Kenema District is Kenema Town, which is in Nongowa Chiefdom. Kenema District is composed of 16 chiefdoms with headquarters towns; those relevant to the Indictment are listed below:[42]

Chiefdom	Headquarter Town
Dama	Giema
Gaura	Joru
Kandu Leppeama	Gbando
Koya	Baoma
Lower Bambara	Panguma

[40] Indictment, para. 26(b).
[41] Exhibit 119B.
[42] Exhibit 119B.

Niawa	Sendumei
Nongowa	Kenema
Small Bo	Blama
Tunkia	Gorahun
Dodo	Dodo

52. The towns of Tongo Field are located in Lower Bambara Chiefdom.

1.2. Bo District

53. Bo District is one of four Districts comprising the Southern Province of Sierra Leone, along with Pujehun, Bonthe and Moyamba Districts. The headquarters town of Bo District is Bo Town which is in Kakua Chiefdom. The main road in Bo District is the highway that links Freetown with Kenema Town.[43]

54. Bo District is composed of 15 Chiefdoms. Those relevant to the Indictment are listed below:[44]

Chiefdom	Headquarter Town
Baoma	Baoma
Bumpeh	Bumpeh
Jaima Bongor	Telu
Kakua	Bo
Lugbu	Sumbuya
Valunia	Mongere

55. The town of Koribondo is located in Jaima Bongor Chiefdom.

1.3. Moyamba District

56. Moyamba District is one of the four Districts in the Southern Province of Sierra Leone. The headquarter town, Moyamba Town, is located in Kaiyamba Chiefdom in the centre of Moyamba District. There are 14 chiefdoms in Moyamba District.[45] Those relevant to the Indictment are listed below:[46]

Chiefdom	Headquarter Town
Bagruwa	Sembehun
Bumphe	Rotifunk

[43] Exhibit 119A.
[44] Exhibit 119A.
[45] Exhibit 119G.
[46] Exhibit 119A.

Kagboro	Shenge
Kaiyamba	Moyamba
Ribbi	Bradford

1.4. Bonthe District

57. Bonthe District is located in the south-west of the Southern Province of Sierra Leone. It is the only District in the Southern Province that shares boundaries with the other three Districts in the Province, namely Moyamba and Bo Districts in the north and Pujehun District in the south and east. Bonthe District is bordered by the Atlantic Ocean to the west.

58. Although it is located on Sherbro Island, the Headquarter Town of Bonthe District is not part of the two chiefdoms of the island (Sittia and Dema Chiefdoms). Rather, it is part of another administrative structure, the Sherbro Rural District.

59. There are 11 chiefdoms in Bonthe District. Those relevant to the Indictment are listed below:[47]

Chiefdom	Headquarter Town
Dema	Tissana
Jong	Mattru
Kpanda Kemo	Matuo
Sittia	Yonni
Sogbini	Tihun
Yawbeko	Talia

2. Background to the Armed Conflict and the Political Context in Sierra Leone

2.1. Origin of Kamajors/Role in the Conflict

60. The term "Kamajor"[48] was originally used to refer to "a Mende"[49] male who possessed specialised knowledge of the forest and was an expert in the use of medicines associated with the bush". Kamajors were responsible "not simply for procuring meat but for protecting communities from both natural and supernatural threats said to reside beyond the village boundaries".[50] While

[47] Exhibit 119B.
[48] In the Mende language, traditional hunters are called Kamajoisia, which is the plural of Kamajoi. Transcript of 9 February 2006, Albert Joe Demby, p. 106.
[49] Mende is an ethnic group in Sierra Leone.
[50] Exhibit 165, para. C.1.b.

the Mende referred to them as Kamajors, other ethnic groups referred to them by different names.[51]

61. The genesis of the Kamajor Society[52] can be traced from the Eastern Region Defence Committee (hereinafter ERECOM), which had the late Dr. Alpha Lavalie as Chairman and Dr. Albert Joe Demby as Treasurer. The Kamajor Society at the local level was formed in 1991 and it was structured by Doctor Lavalie in 1992, immediately after the President Strasser's National Provisional Ruling Council took over.[53]

62. When the civil conflict started in 1991, the military decided to enlist Kamajors to use as vigilantes to scout the terrain.[54] Community elders had already suggested to their various chiefs that the hunters should be allowed to protect the communities against the rebels. Due to their limited numbers, arrangements were made by the community leaders and their chiefs to encourage the hunters[55] to expand their defence by increasing manpower through initiation.[56]

63. The Kamajors in their respective chiefdoms were placed at the disposal of the soldiers by their paramount chiefs and acted as allies in the defence of the area. After each deployment, the

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[51] The Kono call them Donsos, and the Korankos, Yalunkas, Madingos call them Tamaboros. In Temne land, the inland Temnes call them Kapras and the river Temnes call them Gbethis. In Freetown, they were referred to as the Organised Body of Hunting Societies (commonly known as OBHS) - which included companies of Ojeh Ogugu hunting society or Padul Ojeh. The latter are confined to the Western Area and are called Western Area hunters, which includes Freetown, Waterloo, and Lumpa. This organization in the Western Area predated the war: Transcript of 24 January 2006, Samuel Hinga Norman, pp. 62-65.

[52] It has variously being described as the Kamajor Society, the Kamajor Movement, the Kamajor Group and the Kamajor Organisation. Initially, it was known as the Kamajor Organisation and later became known as the Kamajor Society when it began to conduct initiations. According to Samuel Hinga Norman, the terms Kamajor Society, Organization and Group are all the same, and refer to "Kamajors". Transcript of 3 February 2006, Samuel Hinga Norman, pp. 36-38.

[53] Transcript of 10 March 2005, Albert J Nallo, pp. 5-8; Transcript of 9 February 2006, Albert Joe Demby, pp. 107-108; Transcript of 17 February 2005, TF2- 222, pp. 10-18 (CS). The Chamber granted protective measures to almost all Prosecution witnesses. The pseudonym assigned to each witness begins with the letters "TF2".

[54] Transcript of 9 February 2006, Albert Joe Demby, pp. 101-102; Transcript of 27 January 2006, Samuel Hinga Norman, p. 37.

[55] Transcript of 27 January 2006, Samuel Hinga Norman, pp. 40-42; The hunter system was a process by which traditional societies prepared their members for their entry into manhood or womanhood. This preparation involved training men to fight, and to be unafraid of the battlefield. The aim of this "preparation" was for traditional warfare, which was initially for the defence of people and property.

[56] Transcript of 27 January 2006, Samuel Hinga Norman, pp. 39-40. The hunters went through a process of initiation, which included military training, and was required before they could be referred to as "soldiers". The initiation would take a few days, weeks or months. The aim of the initiation was to teach recruits not to be afraid, and not to flee from the battlefield.

Kamajors would be returned to their respective communities.[57] This cooperation worked well and the soldiers trained some of the Kamajors.[58]

64. In the Southern regions, Chief Lebbie Lagbeyor of Komboya Chiefdom was the head of the Kamajors.[59] After Chief Lagbeyor's death in 1996, the paramount chiefs in the region decided to appoint Regent Chief Samuel Hinga Norman as Chairman of the Kamajors for the region.[60]

2.2. Coup

65. By November 1996, the Abidjan Peace Accord had been signed between the Government of Sierra Leone and the RUF. However, less than two months later, the war resumed. There was general dissatisfaction in the military mostly among the Soldiers, primarily based on complaints about their welfare.[61]

66. Before the coup took place in 1997, directives came from the government to the army. The army was however unwilling to implement some of these directives. These eventually led to suspicion and distrust from the army.[62]

67. In February / March 1997 the then Vice President Albert Joe Demby organized two meetings. The first was between senior military officials and ministers, while the second was between ministers and non-commissioned officers in the army. The purpose of these meetings was to determine how best to address the needs of the army. At the second meeting, it became apparent that there was dissatisfaction in the army over rice supply and distribution. While senior officers were getting from 50 to 500 bags of rice per person, junior officers were getting one bag for every two people. Demby tried to convince them that they should be paid with money instead of rice. However, all of the sections in the army present at the reception rejected this proposal.[63]

68. Later, at a meeting in late April, President Ahmad Tejan Kabbah expressed concern over the conflicting figures of whether there were 15,000 or 8,000 soldiers in the army. President

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[57] Transcript of 9 February 2006, Albert Joe Demby, p. 107.
[58] Transcript of 10 February 2006, Albert Joe Demby, pp. 43-44.
[59] Transcript of 10 March 2005, Albert J Nallo, pp. 10.
[60] Transcript of 10 March 2005, Albert J Nallo, pp. 10-11.
[61] Transcript of 10 February 2006, Albert Joe Demby, pp. 20-21.
[62] Transcript of 24 January 2006, Samuel Hinga Norman, pp. 69-71.
[63] Transcript of 10 February 2006, Albert Joe Demby, pp. 20-21; Transcript of 8 February 2006, Peter Penfold, p. 9.

Ahmad Tejan Kabbah then ordered that the rice rations be reduced given that so many were being obtained illegally. In this light, Brigadier Conteh proposed to reduce rice rations of the privates and the non-commissioned officers but not those of the senior officers. This decision contributed to the unrest in the army.[64]

69. In April 1997, on the recommendation of Norman, Parliament unanimously passed a decision legitimizing the use of arms by hunters.[65]

70. In April 1997, there was a meeting between President Kabbah, Vice President Demby, Deputy Minister of Defence Norman, Chief of Defence Staff Hassan Conteh, Chief of Army Staff Colonel Max Kanga, Chief of Navy Staff Commander Sesay and the Inspector General of Police Mr. Teddy Williams. During the meeting, Norman Accused two army officials, Hassan Conteh and Colonel Max Kanga of planning a coup, which they both denied.[66]

71. On the morning of 17 May 1997, the British High Commissioner, Peter Penfold, the American Ambassador, John Hirch and the United Nations Special Representative Ambassador, Berhanu Dinka held a meeting with President Ahmad Tejan Kabbah and warned him about a possible coup against his government. President Ahmad Tejan Kabbah told them that he already had heard these rumours and that he would be talking to the military.[67]

72. At around 5:30 a.m. on 25 May 1997, a coup took place.[68] President Ahmad Tejan Kabbah and other members of his Government were forced to leave Sierra Leone and many of them proceeded to Conakry, Guinea.[69]

2.3. Kamajors after the Coup

73. After the overthrow of Kabbah's government on the 25 May 1997, the Kamajors went underground in the bush. Some of the Kamajors based in Pujehun District, Southern Province

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[64] Transcript of 8 February 2006, Peter Penfold, pp. 7-9.
[65] Transcript of 24 January 2006, Samuel Hinga Norman, pp.75-77.
[66] Transcript of 10 February 2006, Albert Joe Demby, pp. 22-23; Transcript of 24 January 2006, Samuel Hinga Norman, pp. 80-83.
[67] Transcript of 8 February 2006, Peter Penfold, pp. 9-10.
[68] Transcript of 24 January 2006, Samuel Hinga Norman, pp. 83-84; Transcript of 8 February 2006, Peter Penfold, p.10.
[69] Transcript of 25 January 2006, Samuel Hinga Norman, pp. 14 and 20-21.

went to Bo Waterside and some stayed in Bo. Those who were in Kenema went to Tunkia Chiefdom.[70]

74. However, the Kamajors were assembled again after an announcement by Eddie Massalay on BBC rallying Kamajors, Kapras, Gbethis, Tamaboros and the Donsos to assemble at Gendema in Pujehun District and to take up arms to fight against the AFRC.[71]

75. One week after the BBC announcement by Eddie Massallay, Norman joined the Kamajors in Gendema. Eddie Massallay relinquished his position and Norman, in his capacity as Deputy Minister of Defence and Chairman of the Kamajors in the Southern Province, became the National Coordinator of the Kamajors.[72]

2.4. President Ahmad Tejan Kabbah in Exile

76. Whilst in Conakry, there were some differences between President Kabbah and Norman, especially after Norman had granted a BBC interview condemning the coup and soliciting the assistance of hunters in reinstating the government.[73]

77. To resolve these disagreements, the Ambassadors of the USA, Great Britain and Nigeria to Sierra Leone and the UNDP representative arranged a meeting with Norman and the President in Conakry.[74] At the meeting, these Ambassadors offered assistance from their respective countries only if both the President and Norman would agree to work together in the interests of Sierra Leone.[75] At the same meeting President Kabbah was told that the Chairman of ECOWAS, General President Sani Abacha of Nigeria, was prepared to support Sierra Leone and convince the rest of the ECOWAS members to assist Sierra Leone, but only he was convinced that it was the wish of the people of Sierra Leone not to accept a military government. President Ahmad Tejan

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[70] Transcript of 10 March 2005, Albert J Nallo, pp. 11-13; Transcript of 26 May 2005, TF2-079, pp. 16-17;
[71] Transcript of 10 March 2005, Albert J Nallo, pp. 11-13; Transcript of 26 May 2005, TF2-079, pp. 16-17.
[72] Transcript of 10 March 2005, Albert J Nallo, p. 14; Transcript of 17 November 2004, TF2-008, pp. 25-28.
[73] Transcript of 25 January 2006, Samuel Hinga Norman, pp.14-17; Transcript of 8 February 2006, Peter Penfold, pp. 24-25.
[74] Transcript of 8 February 2006, Peter Penfold, pp. 24-25.
[75] Transcript of 25 January 2006, Samuel Hinga Norman, pp. 21-24.

Kabbah said that the hunters of Sierra Leone were needed to support the people in rejecting the military government.[76]

78. After this meeting, Norman flew to Monrovia. On 17 June 1997, Norman was briefed on the situation of the Kamajors in Sierra Leone by Eddy Massallay.[77] A meeting was held between General Victor Malu and other senior Nigerian officers with Norman and two leaders of the Kamajors, Eddie Massallay and Bobor Tucker.[78]

79. As a result of the meeting, Norman was charged with mobilizing as much manpower as possible. He was also to be responsible for coordination, especially supply and distribution. Arms and ammunition were brought by helicopter to Gendema.[79]

2.5. Formation of CDF

80. While in exile in Conakry, President Kabbah established the CDF. The creation of the CDF stemmed from the need to coordinate the activities both within these various civil militia groups and with ECOMOG. In addition, President Kabbah, in Conakry, needed a means by which to exercise control over efforts in Sierra Leone to re-establish his government. The Chairman of the CDF was to be the Vice-President, Dr. Demby, who had remained in Lungi and who was to answer directly to President Kabbah.[80]

81. Norman was appointed by President Kabbah as the National Coordinator of the CDF.[81] As the CDF Coordinator, his role was to coordinate the activities of the civil defence/ Kamajors in supporting the military operations of ECOMOG to reinstate the government of President Kabbah. He was also responsible for obtaining assistance and logistics from ECOMOG in Liberia.[82]

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[76] Transcript of 25 January 2006, Samuel Hinga Norman, pp. 24-29.
[77] Transcript of 3 May 2006, Arthur Koroma, pp. 7-9.
[78] Transcript of 25 January 2006, Samuel Hinga Norman, pp. 34-36.
[79] Transcript of 3 May 2006, Arthur Koroma, p.14; Transcript of 25 January 2006, Samuel Hinga Norman, pp. 37-38.
[80] Transcript of 8 February 2006, Peter Penfold, pp. 25-29; Transcript of 10 February 2006, Albert Joe Demby, p. 17.
[81] Transcript of 25 January 2006, Samuel Hinga Norman, pp. 25-27; Transcript of 10 February 2006, Albert Joe Demby, pp. 17-18; Transcript of 8 February 2006, Peter Penfold, pp. 27-28.
[82] Transcript of 8 February 2006, Peter Penfold, pp. 27-29; Transcript of 25 January 2006, Samuel Hinga Norman, p. 27; Transcript of 10 February 2006, Albert Joe Demby, p. 25.

2.6. ECOMOG

82. Upon President Ahmad Tejan Kabbah's arrival in Conakry, the OAU designated ECOWAS to restore Kabbah's government. ECOWAS in turn designated ECOMOG. [83] In furtherance of the ECOWAS policy, the British Government assisted by providing equipment to ECOMOG.[84]

83. In around July 1997 at Bo Waterside, ECOMOG donated logistics to the CDF, including a truck and two Mitsubishi pick-up vans. ECOMOG also provided food and all that was needed for a guerrilla fighting force.[85]

84. In August 1997, ECOMOG provided 430 arms (G3, FN RPG and GPMG) and ammunition to the Kamajors. In addition they provided USD 10,000 for rations and miscellaneous expenses.[86]

85. On 13 August 1997, President Kabbah sent a plan to ECOMOG about action between ECOMOG and the CDF under the coordination of Norman. He also requested logistics for the planned operation.[87]

86. ECOMOG collaborated with the CDF operationally, especially in the Bo-Kenema axis. The Nigerian contingent also supplied arms and ammunition, fuel, food and cash in hard currency, as well as sharing intelligence and medical care with the CDF.[88]

IV. APPLICABLE LAW

1. Introduction

87. The applicable laws of the Special Court include the Statute, the Agreement, and the Rules. The Chamber may also consider customary international law and treaty law. Where

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[83] Transcript of 8 February 2006, Peter Penfold, p. 25.
[84] Transcript of 8 February 2006, Peter Penfold, p. 37.
[85] Transcript of 5 May 2006, Mustapha Lumeh, p. 71; Transcript of 3 May 2006, Arthur Koroma, pp. 15-16.
[86] Exhibit 157.
[87] Exhibit 158.
[88] Exhibit 159.

appropriate, the Chamber may also look to national law, including the laws of the Republic of Sierra Leone.[89]

88. In order to respect the principle of *nullum crimen sine lege*, the Chamber is bound to consider whether the crimes charged in the Indictment were crimes under customary international law at the time they were committed.[90] In determining the state of customary international law, the Chamber has found it useful to consider decisions of the International Criminal Tribunals for Rwanda and the former Yugoslavia. Such decisions have persuasive value, although modifications and adaptations may be required to take into account the particular circumstances of the Special Court.[91]

2. Jurisdiction

89. The Special Court is empowered to prosecute "persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone."[92] Thus, the Chamber has well-defined jurisdictional limitations within which to try cases, notably:

i. Persons who bear the greatest responsibility;

ii. For serious violations of international humanitarian law and Sierra Leonean law;

iii. Committed in the territory of Sierra Leone;

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[89] Provided that they are not inconsistent with the Statute, Agreement, Rules, customary international law and internationally recognised norms and standards. *See* Rule 72 *bis*.

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

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

[92] Statute, *Article* 1(1).

iv. Since 30 November 1996;

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

2.1. Greatest Responsibility

91. In its Decision on Personal Jurisdiction, the Chamber considered the requirement in Article 1(1) that the Accused be "persons who bear the greatest responsibility". The Chamber clarified that this requirement was not solely a matter of prosecutorial discretion, but was also a jurisdictional limitation upon the Court, the determination of which is a judicial function.[93] The proper exercise of this judicial authority is made by the Confirming Judge who should, in reviewing the Indictment and accompanying material, apply the test of "whether sufficient information [exists] to provide reasonable grounds for believing that the Accused is a person who bears the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law".[94]

92. The Chamber recalled that the Indictment was reviewed by Judge Bankole Thompson, who, in confirming the Indictment, found that sufficient information did indeed exist.[95] The Chamber therefore found that it had personal jurisdiction to try the Fofana as one of the persons who bear the greatest responsibility for the crimes committed in Sierra Leone during the relevant period.[96] Whether or not *in actuality* the Accused could be said to bear the greatest responsibility can only be determined by the Chamber after considering all the evidence presented during trial.[97] However, the Chamber is of the view that given its finding that this is a jurisdictional issue only, the issue of whether or not the Accused in fact bear the greatest responsibility is not a material element that needs to be proved beyond a reasonable doubt.

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[93] Prosecutor *v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Decision on the Preliminary Defence Motion on the Lack of Personal Jurisdiction filed on behalf of Accused Fofana, 3 March 2004, para. 27 [Decision on Personal Jurisdiction].
[94] Ibid., para. 38.
[95] *Ibid.*, paras 41 *and* 47.
[96] *Ibid.*, para. 48.
[97] *Ibid.*, para. 44.

2.2. Serious Violations of International Humanitarian Law and Sierra Leonean Law

93. No crimes under Sierra Leonean law are charged in the Indictment.[98] The Chamber will therefore consider only serious violations of international humanitarian law.[99]

94. The Chamber must satisfy itself that the crimes charged in the Indictment amount to violations of customary international humanitarian law which would have attracted individual criminal responsibility at the time of the alleged violation. Additionally, in order for the Accused to incur liability under the Statute, any violation must be a serious violation. Such is the case where a rule protecting "important values" is breached, resulting in "grave consequences" for the victim.[100]

2.2.1. Customary Status of Crimes under International Humanitarian Law

95. The Chamber notes that the Appeals Chamber has held that the core provisions in Article 3 of the Statute formed part of customary international law at the relevant time,[101] and that "[a]ny argument that these norms do not entail individual criminal responsibility has been put to rest in ICTY and ICTR jurisprudence."[102] Furthermore, the Appeals Chamber has also held that

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[98] The Statute grants the Special Court power to try certain violations of Sierra Leonean criminal law (Statute, Article 5). None are alleged.

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

[100] Prosecutor *v. Tadic*, IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (AC), 2 October 1995, para. 94 [*Tadic* Appeal Decision on Jurisdiction]. The Appeals Chamber held "[t]hus, for instance, the fact of a combatant simply appropriating a loaf of bread in an occupied village would not amount to a 'serious violation of international humanitarian law' although it may be regarded as falling foul of the basic principle laid down in Article 46, paragraph 1, of the Hague Regulations (and the corresponding rule of customary international law) whereby 'private property must be respected' by any army occupying an enemy territory" (para. 94).

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

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

customary international law "represents the common standard of behaviour within the international community, thus even armed groups hostile to a particular government have to abide by these laws".[103]

96. The Chamber concurs with the reasoning of the ICTY Appeals Chamber in *Tadic* on the issue of the evolution of Common Article 3 and Additional Protocol II from conventional into customary international law, where it held:

> Since the 1930s, the aforementioned distinction [between belligerency and insurgency] has gradually become more and more blurred, and international legal rules have increasingly emerged or have been agreed upon to regulate internal armed conflict [...]
>
> The emergence of international rules governing internal strife has occurred at two different levels: at the level of customary law and at that of treaty law. Two bodies of rules have thus crystallised, which are by no means conflicting or inconsistent, but instead mutually support and supplement each other. Indeed, the interplay between these two sets of rules is such that some treaty rules have gradually become part of customary law. This holds true for common Article 3 of the 1949 Geneva Conventions [...], but also applies [...] to the core of Additional Protocol II of 1977.
>
> Attention must also be drawn to Additional Protocol II to the Geneva Conventions. Many provisions of this Protocol can now be regarded as declaratory of existing rules or as having crystallised emerging rules of customary law or else as having been strongly instrumental in their evolution as general principles.
>
> [C]ustomary international law imposes criminal liability for serious violations of Common Article 3, as supplemented by other general principles and rules on the protection of victims of internal armed conflict [...][104]

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establishment of the two International Tribunals, have been recognized as customarily entailing the individual criminal responsibility of the accused."

[103] *Prosecutor v. Norman, Kondewa and Fofana*, SCSL-04-14-AR72(E), Decision on Preliminary Motion based on Lack of Jurisdiction (Child Recruitment) (AC), para. 22 [Appeal Decision on Child Recruitment], citing Jean-Marie Henckaerts, *Binding Armed Opposition Groups through Humanitarian Treaty Law and Customary Law* in Relevance of International Humanitarian Law to Non-state Actors, Proceedings of the Brugge Colloquium, 25-26 October 2002, which states "[I]t is well-settled that all parties to an armed conflict, whether states or non-state actors, are bound by international humanitarian law, even though only states may become parties to international treaties".

[104] *Tadic* Appeal Decision on Jurisdiction, paras 97-98, 117, 134. *See also* para. 126: "[t]he emergence of the aforementioned general rules on internal armed conflicts does not imply that internal strife is regulated by general international law in all its aspects. Two particular limitations may be noted: (i) only a number of rules and principles governing international armed conflicts have gradually been extended to apply to internal conflicts; and (ii) this

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

> [I]t should be recalled that the relevant Article in the context of the ICTR is Article 4(2) (Fundamental Guarantees) of Additional Protocol II. All of the guarantees, an enumerated in Article 4 reaffirm and supplement Common Article 3 and, as discussed above, Common Article 3 being customary in nature, the Chamber is of the opinion that these guarantees did also at the time of the events alleged in the Indictment form part of existing international customary law. [...]
>
> The list of serious violations which is provided in Article 4 of the Statute is taken from Common Article 3 - which contains fundamental prohibitions as a humanitarian minimum of protection for war victims - and Article 4 of Additional Protocol II, which equally outlines "Fundamental Guarantees". The list in Article 4 of the Statute thus comprises serious violations of the fundamental humanitarian guarantees which, as has been stated above, are recognized as part of international customary law. In the opinion of the Chamber, it is clear that the authors of such egregious violations must incur individual criminal responsibility for their deeds.[105]

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

> Any obstacle to the application of Article 3 to crimes committed during an international armed conflict is nevertheless overcome if the actual violations included in Article 3, sub-paragraphs (a) to (h), are found to be part of customary international law applicable in an identical fashion to both internal and international conflicts.[106]

99. To this end, the Appeals Chamber has held that:

> It has been observed that 'even though the rules applicable in internal armed conflict still lag behind the law that applies in international conflict, the establishment and work of the *ad hoc* Tribunals has

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extension has not taken place in the form of a full and mechanical transplant of those rules to internal conflicts; rather, the general essence of those rules, and not the detailed regulation they may contain, has become applicable to internal conflicts."

[105] *Akayesu* Trial Judgement, paras 610, 616 [footnotes omitted]. A series of other ICTR Trial Chamber decisions have followed this finding, although some have chosen to address the crime only on the basis of treaty law. *See*, for example: *Prosecutor v. Musema*, ICTR-96-13-T, Judgement and Sentence (TC), 27 January 2000, para. 240 [*Musema* Trial Judgement]; and *Prosecutor v. Semanza*, ICTR-97-20-T, Judgement and Sentence (TC), 15 May 2003, para. 353 [*Semanza* Trial Judgement].

[106] Appeal Decision on Nature of Armed Conflict, para. 21.

> significantly contributed to diminishing the relevance of the distinction between the two types of conflict'. The distinction [between the rules applicable in internal armed conflict and the rules applicable in international conflict] is no longer of great relevance in relation to the crimes articulated in Article 3 of the Statute *as these crimes are prohibited in all conflicts*. Crimes during internal armed conflict form part of the broader category of crimes during international armed conflict.[107]

100. In this connection, the ICTY Appeals Chamber has stated that "[i]t is logical that this minimum be applicable to international conflicts as the substance of these core rules is identical. In the Appeals Chamber's view, something which is prohibited in internal conflicts is necessarily outlawed in an international conflict where the scope of the rules is broader".[108] Article 4 of Additional Protocol II provides for "fundamental guarantees" of humane treatment and the Chamber is satisfied that this provision is also meant to provide for minimal guarantees in armed conflict. As a result, the Chamber finds that the reasoning of the ICTY Appeals Chamber is also applicable as it pertains to the provisions of Additional Protocol II relevant to this case.

101. The Chamber notes that the list of crimes against humanity in Article 2 of the Statute follows the enumeration included in the Statutes of the ICTY and ICTR, which were patterned on Article 6 of the Nürnberg Charter. [109]

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

> The customary status of the Nürnberg Charter, and thus the attribution of individual criminal responsibility for the commission of crimes against humanity, was expressly noted by the Secretary-General [in his Report on the Establishment of the ICTY]. Additional codifications of international law have also confirmed the customary law status of the prohibition of

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[107] *Ibid.*, para. 25, citing Frits Kalshoven and Liesbeth Zegveld, *Constraints on the Waging of War, and Introduction to International Humanitarian Law* (Geneva: ICRC, 2001), p. 188; Rodney Dixon and Karim Khan, eds., *Archbold: International Criminal Courts, Practice, Procedure and Evidence* (London: Sweet & Maxwell, 2003), paras 11-26 [*Archbold: International Criminal Courts*].

[108] *Celebici* Appeal Judgement, para. 150. *See also* Appeal Decision on Child Recruitment, para. 28 (footnotes omitted): "[t]he Special Court Statute, just like the ICTR Statute before it, draws on Part II of Additional Protocol II entitled 'Humane Treatment' and its fundamental guarantees, as well as Common Article 3 to the Geneva Conventions in specifying the crimes falling within its jurisdiction. All the fundamental guarantees share a similar character. In recognizing them as fundamental, the international community set a benchmark for the minimum standards for the conduct of armed conflict".

[109] Report of the Secretary-General on the Establishment of the Special Court, para. 14. However, unlike Article 3 of the ICTR Statute and Article 5 of the ICTY Statute, Article 2 of the Statute of the Special Court incorporates sexual slavery, enforced prostitution, forced pregnancy and any other forms of sexual violence in addition to rape in paragraph (g) and includes ethnic grounds as grounds for persecution in paragraph (h).

> crimes against humanity, as well as two of its most egregious manifestations: genocide and apartheid.
>
> Thus, since the Nürnberg Charter, the customary status of the prohibition against crimes against humanity and the attribution of individual criminal responsibility for their commission have not been seriously questioned. It would seem that this finding is implicit in *the* [*Tadic*] *Appeals Chamber Decision* [on Jurisdiction] which found that "[i]t is by now a settled rule of customary international law that crimes against humanity do not require a connection to international armed conflict". If customary international law is determinative of what type of conflict is required in order to constitute a crime against humanity, the prohibition against crimes against humanity is necessarily part of customary international law [...][110]

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

104. The Chamber notes that the Accused are charged with only one count of an "other serious violation of international humanitarian law", namely enlisting children under the age of 15 into armed forces or groups or using them to Participate Actively in Hostilities, pursuant to Article 4(c) of the Statute. The Appeals Chamber has already dismissed a Defence Motion objecting to the jurisdiction of the court on crimes under Article 4(c) of the Statute. It found that that the recruitment of child soldiers below the age of 15 did in fact constitute a crime under customary international law which entailed individual criminal responsibility prior to the time frame of the Indictment.[111]

105. Whilst Sierra Leone has ratified both the Geneva Conventions and the Additional Protocols, there is no national implementing legislation.[112] However, since the Chamber has found that these offences constituted crimes under customary international law at the time of their alleged commission, the Chamber need not further consider the issue.

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

[111] Appeal Decision on Child Recruitment, para. 53. See also paras 184-197.

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

2.2.2. "Serious" Violations

106. The Chamber is also satisfied that all of the crimes charged in the Indictment qualify as *serious* violations of international humanitarian law. Crimes against Humanity and Violations of Common Article 3 to the Geneva Conventions and of Article 4(2) of Additional Protocol II ("War Crimes") have all been held to be serious violations of international humanitarian law during a period prior to the temporal jurisdiction of this Tribunal.[113] The crimes listed under Article 4 of the Statute (Other Serious Violations of International Humanitarian Law) are serious violations of customary international humanitarian law by definition.

107. Whether or not the acts alleged against the Accused would, if proven, amount to the crimes charged, is a matter for legal findings.

3. Law on the Crimes Charged

3.1. Introduction

108. The Indictment charges the Accused with several counts each of Crimes against Humanity and of War Crimes and with one count of Other Serious Violations of International Humanitarian Law. Proof of these crimes requires proof both of the underlying offence (such as Murder) and of the general requirements of the category of crimes of which the underlying offence forms part.

3.2. General Requirements

109. The Chamber notes that the term "Accused" used in the enumeration of the general requirements for each category of crimes under the Statute, was chosen for purposes of convenience and should be understood in a broad sense. The general requirements, including the

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

appropriate mental elements therein, apply, *mutatis mutandis*, to the direct perpetrator of the crime as well as all those whose criminal responsibility may fall under Article 6(1) and (3) of the Statute.

3.2.1. Article 2: Crimes against Humanity

110. The general requirements which must be proved to show the commission of a Crime against Humanity are as follows:

(i) There must be an attack;

(ii) The attack must be widespread or systematic;

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

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

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

3.2.1.1. Attack

111. The Chamber adopts the definition of attack as meaning a "campaign, operation or course of conduct"[114] and notes that, in the context of a Crime against Humanity, the said term is not limited to the use of armed force, but also encompasses any mistreatment of the civilian population.[115] The Chamber further notes that an attack can precede, outlast, or continue during an armed conflict. Thus it may, but need not, be part of an armed conflict.[116] Therefore, in the Chamber's opinion, the distinction between an attack and an armed conflict reflects the position in customary international law that crimes against humanity may be committed in peace time and independent of an armed conflict.[117]

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[114] *Prosecutor v. Brima, Kanu and Kamara*, SCSL-03-16-T, Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98 (TC), 31 March 2006, para. 42 [*Brima et al.* Rule 98 Decision]. *See also Prosecutor v. Naletilic and Martinovic*, IT-03-66-T, Judgement (TC), 31 March 2003, para. 233 [*Naletilic and Martinovic* Trial Judgement]; *Akayesu* Trial Judgement, para. 581.

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

[116] *Kunarac et al.* Appeal Judgement, para. 86; *Limaj et al.* Trial Judgement, para. 182; *Vasiljevic* Trial Judgment, para. 30; *Naletilic and Martinovic* Trial Judgement, IT-03-66-T, para. 233.

[117] *Prosecutor v. Tadic*, IT-94-1-A, Judgement (AC), 15 July 1999, para. 251 [*Tadic* Appeal Judgment]; *Tadic* Appeal Decision on Jurisdiction, para. 141; *Kunarac et al.* Appeal Judgment, para. 86. *See also Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Motions for Judgment of Acquittal pursuant to Rule 98 (TC), 21 October 2005,

3.2.1.2. Widespread and systematic

112. In the Chamber's view, the requirement that the attack must be either widespread *or* systematic is disjunctive and not cumulative.[118] The Chamber is of the opinion that the term "widespread" refers to the large-scale nature of the attack and the number of victims, while the term "systematic" refers to the organised nature of the acts of violence and the improbability of their random occurrence.[119] The Chamber adopts the view that "[p]atterns of crimes – that is the non-accidental repetition of similar criminal conduct on a regular basis – are a common expression of such systematic occurrence"[120] and further subscribes to the interpretation of the ICTY Appeals Chamber in the *Kunarac et al.* case which stated that:

> [T]he assessment of what constitutes a 'widespread' or 'systematic' attack is essentially a relative exercise in that it depends upon the civilian population which, allegedly, was being attacked. A Trial Chamber must therefore 'first identify the population which is the object of the attack and, in light of the means, methods, resources and result of the attack upon the population, ascertain whether the attack was indeed widespread or systematic'. The consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities or any identifiable patterns of crimes, could be taken into account to determine whether the attack satisfies either or both requirements of a 'widespread' or 'systematic' attack vis-à-vis this civilian population.[121]

113. The existence of a policy or plan, or that the crimes were supported by a policy or plan to carry them out, may be evidentially relevant to establish the widespread or systematic nature of the attack and that it was directed against a civilian population, but it is not a separate legal requirement of crimes against humanity.[122] Furthermore, the Chamber is of the view that

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para. 66 [Rule 98 Decision]: "[c]rimes against humanity may be committed in times of peace or times of armed conflict".

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

[119] Rule 98 Decision, para. 56. *See also Kunarac et al.* Appeal Judgement, para. 94; *Prosecutor v. Blaskic*, Case No. IT-95-14-A, Judgement (AC), 29 July 2004, para. 101 [*Blaskic* Appeal Judgement]; *Limaj et al.* Trial Judgement, para. 183.

[120] Rule 98 Decision, para. 56, citing, *inter alia*, *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 & 23/1-A, Judgement (TC), 22 February 2001, para. 429 [*Kunarac et al.* Trial Judgement]; *Kunarac et al.* Appeal Judgment, para. 94.

[121] *Kunarac et al.* Appeal Judgement, para. 95 (original footnotes omitted).

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

customary international law does not presuppose a discriminatory or persecutory intent for all crimes against humanity.[123]

3.2.1.3. Directed against any civilian population

114. The attack must be directed against any civilian population. This requires that the civilian population "be the primary rather than an incidental target of the attack".[124] Accordingly, the Chamber recalls its adoption of the interpretation of the ICTY Appeals Chamber in *Kunarac et al.* which stated that:

> [T]he expression 'directed against' is an expression which 'specifies that in the context of a crime against humanity the civilian population is the primary object of the attack'. In order to determine whether the attack may be said to have been so directed, the Trial Chamber will consider, *inter alia*, the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war. To the extent that the alleged crimes against humanity were committed in the course of an armed conflict, the laws of war provide a benchmark against which the Chamber may assess the nature of the attack and the legality of the acts committed in its midst.[125]

115. The Chamber concurs with the view of the ICTY Appeals Chamber in the *Blaskic* case that there is an absolute prohibition against targeting civilians in customary international law.[126]

116. The term "civilian population" must be interpreted broadly.[127] The Chamber is satisfied that customary international law, determined by reference to the laws of armed conflict, has

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plan, but it may be possible to prove these things by reference to other matters." *Blaskic* Appeal Judgement, paras 100, 120. While there had previously been some uncertainty in the jurisprudence of the ICTY and ICTR, this was resolved by the *Kunarac et al.* Appeal Judgement.

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

[124] Rule 98 Decision, para. 57, citing, *inter alia*, *Kunarac et al.* Appeal Judgment, para. 92.

[125] Rule 98 Decision, para. 57, citing *Kunarac et al.* Appeal Judgment, para. 91.

[126] *Blaskic* Appeal Judgement, para. 109.

established that the civilian population includes all of those persons who are not members of the armed forces or otherwise recognised as combatants.[128]

117. In order for a population to be considered "civilian", it must be predominantly civilian in nature; the presence of certain non-civilians in their midst does not change the character of the population.[129] In determining whether the presence of soldiers within a civilian population deprives it of its civilian character, the Chamber must examine, among other factors, the number of soldiers as well as their status.[130] The presence of members of resistance armed groups or former combatants who have laid down their arms, within a civilian population, does not alter its civilian nature.[131]

118. The Chamber recognises that the protection of Article 2 of the Statute extends to "any" civilian population including, if a state takes part in the attack, that state's own population[132] and that there is no requirement that the victims are linked to any particular side.[133] It is also our view that the existence of an attack upon one side's civilian population would not justify or cancel out that side's attack upon the other's civilian population.[134]

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[127] *Prosecutor v. Jelisic*, IT-95-10-T, Judgement (TC), 14 December 1999, para. 54 [*Jelisic* Trial Judgement]; *Prosecutor v. Kupreskic, Kupreskic, Kupreskic, Josipovic and Santic*, IT-95-16-T, Judgement (TC), 14 January 2000, para. 547 [*Kupreskic* Trial Judgement].

[128] *Blaskic* Appeal Judgement, paras 110-113.

[129] Rule 98 Decision, para. 59, citing *Tadic* Trial Judgement, para. 638; *Kayishema and Ruzindana* Trial Judgement, para. 128; *See also Limaj et al.* Trial Judgement, para. 186; *Jelisic* Trial Judgement, para. 54; *Kupreskic et al.* Trial Judgement, paras 547-549.

[130] *Blaskic* Appeal Judgement, para. 115; *Limaj et al.* Trial Judgement, para. 186.

[131] *Blaskic* Appeal Judgement, para. 113, which states that "Common Article 3 of the Geneva Conventions provides that 'Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.' That these persons are protected in armed conflicts reflects a principle of customary international law". *See also* Rule 98 Decision, para. 58.

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

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

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

119. The Chamber concurs with the interpretation that "the use of the word 'population' does not mean that the entire population of the geographical entity in which the attack is taking place must have been subjected to that attack".[135] However, the targeting of a select group of civilians - for example, the targeted killing of a number of political opponents - cannot satisfy the requirements of Article 2.[136] It would therefore be sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way as to satisfy the Chamber that the attack was in fact directed against a civilian "population", rather than against a limited and randomly selected number of individuals.[137]

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

120. The requirement that the acts of the Accused must be part of the attack is satisfied by the "commission of an act which, by its nature or consequences, is objectively part of the attack."[138] This is established if the alleged crimes were related to the attack on a civilian population, but need not have been committed in the midst of that attack.[139] A crime which is committed before or after the main attack or away from it could still, if sufficiently connected, be part of that attack. However, it must not be an isolated act. "A crime would be regarded as an 'isolated act' when it is so far removed from that attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack."[140] Only the attack, not the individual acts, must be widespread or systematic.[141]

3.2.1.5. Mens rea

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[135] *Kunarac et al.* Appeal Judgement, para. 90; *Limaj et al.* Trial Judgement, para. 187; *Blaskic* Appeal Judgement, para. 105; *Prosecutor v. Galic*, IT-98-29-T, Judgment (TC), 5 December 2003, para. 143 [*Galic* Trial Judgement].

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

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

[138] *Kunarac et al.* Appeal Judgement, para. 99; *Kunarac et al.* Trial Judgement, para. 434. *See also Limaj et al.* Trial Judgement, para. 188; *Tadic* Appeal Judgement, para. 271.

[139] *Kunarac et al.* Appeal Judgement para. 100; *Limaj et al.* Trial Judgement, para. 189.

[140] *Kunarac et al.* Appeal Judgement, para. 100 referring to *Kupreskic* Trial Judgement, para. 550, *Tadic* Trial Judgement, para. 649 and *Prosecutor v. Mrskic, Radic and Sljivancanin*, IT-95-13-R61, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence (TC), 3 April 1996, para. 30 [*Mrksic* Rule 61 Decision]; see also *Limaj et al.* Trial Judgement, para. 189; *Tadic* Appeal Judgement, para. 271; *Kunarac et al.* Appeal Judgement, para. 100.

[141] *Limaj et al.* Trial Judgement, para. 189; *Tadic* Appeal Judgement, para. 251; *Kordic and Cerkez* Appeal Judgement, para. 94.

121. The last general requirement for establishing a Crime against Humanity is the knowledge that there is an attack on the civilian population and that the acts of the Accused are part thereof.[142] The Prosecution must show that the Accused either knew or had reason to know that his acts comprised part of the attack. Evidence of knowledge depends on the facts of a particular case. The manner in which this legal element may be proved may therefore vary from case to case.[143] The Accused must have known or had reason to know that there is an attack on the civilian population and that his acts comprised part of that attack. The Accused needs to understand the overall context in which his acts took place,[144] but need not know the details of the attack or share the purpose or goal behind the attack.[145] The motives for the Accused's participation in the attack are irrelevant.[146] It is also irrelevant whether the Accused intended his acts to be directed against the targeted population or merely against his victim, as it is the attack, and not the acts of the Accused, which must be directed against the targeted population.[147]

3.2.2. Article 3: War Crimes

122. The general requirements which must be proved to show the commission of War Crimes pursuant to Article 3 of the Statute are as follows:

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

(ii) There existed a nexus between the alleged violation and the armed conflict;[148]

(iii) The victim was a person not taking direct part in the hostilities at the time of the alleged violation;[149] and

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[142] *See Kunarac et al.* Appeal Judgement, para. 102; *Kunarac et al.* Trial Judgement, para. 434.
[143] *Blaskic* Appeal Judgement, para. 126.
[144] *Limaj et al.* Judgement, para. 190; *Kordic and Cerkez* Trial Judgement, para. 185.
[145] *Kunarac et al.* Appeal Judgement, paras 102-103.
[146] *Limaj et al.* Trial Judgement, para. 190; *Tadic* Appeal Judgement, paras 248, 252; *Kunarac et al.* Appeal Judgement, para. 103: the Appeals Chamber considered that "[a]t most, evidence that [acts were committed] for purely personal reasons could be indicative of a rebuttable assumption that he was not aware that his acts were part of that attack."
[147] *Kunarac et al.* Appeal Judgement, para. 103; *Limaj et al.* Trial Judgement, para. 190.
[148] *See* Appeal Decision on Nature of Armed Conflict, para. 25, citing *Archbold: International Criminal Courts*, para. 11-27.
[149] *See Prosecutor v. Naletilic and Martinovic*, IT-98-34-A, Judgement (AC), 3 May 2006, para. 116 [*Naletilic and Martinovic* Appeal Judgement]: "[t]he fact that something is a jurisdictional prerequisite does not mean that it does not at the same time constitute an element of a crime".

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

3.2.2.1. The Existence of an Armed Conflict

123. The Chamber concludes that the application of Article 3 of the Statute requires that the alleged acts of the Accused be committed in the course of an armed conflict, and "it is immaterial whether the conflict is internal or international in nature."[150]

124. Relying on the ICTY Appeals Chamber in the *Tadic* case, and as it held in the CDF Rule 98 Decision, the Chamber rules that under Common Article 3, "an armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state".[151] Therefore, the criteria for establishing the existence of an armed conflict are the intensity of the conflict and the organisation of the parties.[152] These criteria are used "solely for the purpose, *as a minimum*, of distinguishing an armed conflict from banditry, unorganised and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law".[153]

125. The Chamber notes that Additional Protocol II contains a stricter threshold for the establishment of an armed conflict than Common Article 3. Article 1 of the Protocol provides in relevant parts:

> 1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts... which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

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[150] Rule 98 Decision, para. 68, citing *Kunarac et al.* Appeal Judgement, paras 57-58; *Celebici* Trial Judgement, para. 303; *Celebici* Appeal Judgement, paras 149, 150; *Prosecutor v. Furundzija*, IT-95-17/1-T, Judgement (TC), 10 December 1998, para. 132 [*Furundzija* Trial Judgement]; *Blaskic* Trial Judgement, para. 161; *Prosecutor v. Brdjanin*, IT-99-36-T, Judgement (TC), 1 September 2004, para. 127 [*Brdjanin* Trial Judgement].

[151] Rule 98 Decision, para. 69, citing *Tadic* Appeal Decision on Jurisdiction, para. 70.

[152] *Limaj et al.* Trial Judgement, paras 84, 89; *Tadic* Trial Judgement, para. 562.

[153] *Tadic* Trial Judgement, para. 562 [emphasis added]; *Limaj et al.* Trial Judgement, paras 84, 89.

> 2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

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

> (i) An armed conflict took place in the territory of Sierra Leone between its armed forces and dissident armed forces or other organized armed groups; and
>
> The dissident armed forces or other organized groups:
>
> (ii) Were under responsible command;
>
> (iii) Were able to exercise such control over a part of their territory as to enable them to carry out sustained and concerted military operations; and
>
> (iv) Were able to implement Additional Protocol II.[154]

127. The first requirement, that there be an armed conflict, has already been discussed in the context of the Common Article 3 test of armed conflict. The Chamber notes, therefore, that any armed conflict satisfying the higher threshold of the Additional Protocol II test would automatically constitute an armed conflict under Common Article 3. The term "armed forces" is to be defined broadly.[155] The armed forces or groups must be under responsible command which implies a degree of organisation to enable them "to plan and carry out concerted military operations, and to impose discipline in the name of a *de facto* authority."[156] They must also be able to control a part of the territory of the country enabling them "to carry out sustained and concerted military operations" and to implement Additional Protocol II.

128. The Chamber also finds that international humanitarian law applies from the beginning of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of

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[154] *Akayesu* Trial Judgement, para. 623; *See also Rutaganda* Trial Judgement, para. 95; *Musema* Trial Judgement, para. 254.
[155] *Akayesu* Trial Judgement, para. 625.
[156] *Ibid.*, para. 626.

peace is reached, or, in the case of internal conflicts, a peaceful settlement is achieved.[157] Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.[158]

3.2.2.2. Nexus

129. What distinguishes a war crime from a purely domestic crime "is that a war crime is shaped by or dependant upon the environment - the armed conflict - in which it is committed".[159] As to the precise nature of the nexus between the alleged violation and the armed conflict, the Chamber, consistent with the decisions of the Appeals Chambers of the ICTY and of the ICTR on this issue, rules that the nexus requirement is fulfilled if the alleged violation was closely related to the armed conflict.[160] When the violation alleged has not occurred at a time and place in which fighting was actually taking place, the ICTY Appeals Chamber has held that "it would be sufficient [...] that the alleged crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict".[161] The crime 'need not have been planned or supported by some form of policy' and the armed conflict 'need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in

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

[158] *Tadic* Appeal Decision on Jurisdiction, para. 70; *Halilovic* Trial Judgement, para. 26. *See also Kunarac et al.* Appeal Judgement, para. 64: "[f]urthermore, the Appeals Chamber considers that the Prosecutor did not have to prove that there was an armed conflict in each and every square inch of the general area. The state of armed conflict is not limited to the areas of actual military combat but exists across the entire territory under the control of the warring parties."

[159] *Kunarac et al.* Appeal Judgement, para. 58; *Prosecutor v. Rutaganda*, ICTR-96-3-A, Judgement (AC), 26 May 2003, paras 569-570 [*Rutaganda* Appeal Judgement].

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

[161] *Halilovic* Trial Judgement, para. 29, citing *Kunarac et al.* Appeal Judgement, para. 57; *Tadic* Appeal Decision on Jurisdiction, para. 70.

which it was committed or the purpose for which it was committed'.[162] The nexus requirement is satisfied where the Accused acted in furtherance of or under the guise of the armed conflict.[163] The expression "under the guise of the armed conflict" does not mean simply "at the same time as an armed conflict" and/or "in any circumstances created in part by the armed conflict".[164]

130. The Chamber subscribes to the jurisprudence of the *Ad Hoc* Tribunals which outlined the following factors in determining whether or not the act in question was sufficiently related to the armed conflict, *inter alia*: "the fact that the [Accused] is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the [Accused's] official duties".[165] It has also been stated that the determination of a close relationship between particular offences and an armed conflict will usually require consideration of several factors, not just one.[166]

3.2.2.3. Protected Persons

131. Finally, Common Article 3 applies to "[p]ersons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause" and Additional Protocol II applies to "all persons who do not take a direct part or who have ceased to take part in hostilities". The Chamber holds that these phrases are so similar that, therefore, they may be treated as synonymous and be categorised as "all persons not taking direct part in the hostilities at the time of the alleged violation".[167]

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[162] *Halilovic* Trial Judgement, para. 29, citing *Kunarac et al.* Appeal Judgement, para. 58.
[163] *Kunarac et al.* Appeal Judgement, para. 58; *Rutaganda* Appeal Judgement, para. 570.
[164] *Rutaganda* Appeal Judgement, para. 570.
[165] *Kunarac et al.* Appeal Judgement, para. 59. The nexus does not imply the requirement that the perpetrator be related or linked to one of the parties to the conflict: *Akayesu* Appeal Judgement, paras 443-444.
[166] *Rutaganda* Appeal Judgement, para. 570.
[167] Rule 98 Decision, para. 70, citing Article 3(1) of Geneva Conventions of 1949; *Akayesu* Trial Judgement, para. 629: "Common Article 3 is for the protection of 'persons taking no active part in the hostilities' (Common Article 3(1)), and Article 4 of Additional Protocol II is for the protection of, 'all persons who do not take a direct part or who have ceased to take part in hostilities'. These phrases are so similar that, for the Chamber's purposes, they may be treated as synonymous". *See* Article 4(1) of Additional Protocol II: "[a]ll persons who do not take a direct part or who have ceased to take part in hostilities". *See* also Article 4(2) of Additional Protocol II: "the following acts against the persons referred to in paragraph I are and shall remain prohibited at any time and in any place whatsoever". *See also Semanza*

132. The Chamber notes that the test applied by the ICTY Trial Chamber in the *Tadic* case was whether, at the time of the alleged offence, the alleged victim of the said offence was directly taking part in the hostilities, "being those hostilities in the context of which the alleged offences are said to have been committed".[168] If the answer to that question is negative, the victim will be a person protected by Common Article 3 and Additional Protocol II.[169] Thus, for the purpose of establishing the commission of an offence under Article 3, the Prosecution must also prove that the victim was a person not taking a direct part in the hostilities at the time the offence was committed.[170]

133. Adopting the position taken by the Trial Chamber in the ICTY *Tadic* Trial Judgement, this Chamber holds that it does not serve any useful purpose to embark upon an exhaustive definition of the categories of persons who may be said not to be taking a direct part in hostilities.

134. Article 13(3) of Additional Protocol II provides that civilians are immune from attack for as long as they do not take a direct part in hostilities.[171] The question of whether civilians have participated directly in hostilities has to be decided on the specific facts of each case and there must be a sufficient causal relationship between the act of participation and its immediate consequences.[172] The Chamber takes the view that the direct participation should be understood to mean "acts which by their nature and purpose, are intended to cause actual harm to the enemy personnel and material."[173]

Trial Judgement, para. 365 and footnoted references: "[i]n essence, both Common Article 3 and Additional Protocol II protect persons not taking an active part in the hostilities."

[168] *See Halilovic* Trial Judgement, para. 33, citing *Tadic* Trial Judgement, para. 615, referring to persons protected by Common Article 3. *See also Semanza* Trial Judgement, para. 366.

[169] *Semanza* Trial Judgement, para. 366; *Halilovic* Trial Judgement, para. 33; *Tadic* Trial Judgement, para. 615.

[170] *Semanza* Trial Judgement, para. 365. *See also Halilovic* Trial Judgement, para. 32.

[171] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 1125 U.N.T.S. 3, Article 13(3) (entered into force 7 December 1978; accession by Sierra Leone on 21 October 1986) [Additional Protocol II]. See also *Juan Carlos Abella* (Argentina), Inter-American Commission on Human Rights, Case 11.137, Report, 18 November 1997, paras 177-178, 189, 328 [*La Tablada* Case].

[172] Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (Geneva: ICRC, 1987), Article 13 of Additional Protocol II, para. 4787 [ICRC Commentary on Additional Protocols].

[173] Third Report on the Human Rights Situation in Colombia, Inter-American Commission on Human Rights, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, 26 February 1999 (Third Report on the Human Rights Situation in Colombia), paras 53 and 56, citing Yves Sandoz, Christophe Swinarski and Bruno Zimmerman, eds., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva: Martinus Nijhoff Publishers, 1987), p. 516: "Direct participation in hostilities implies a direct causal relationship between the activity engaged in and the harm done to the enemy at the time and place where the activity takes place."

135. The Chamber is therefore of the opinion that persons Accused of "collaborating" with the government or armed forces would only become legitimate military targets if they were taking direct part in the hostilities. Indirectly supporting or failing to resist an attacking force is insufficient to constitute such participation. In addition, even if such civilians could be considered to have taken a direct part in hostilities, they would only have qualified as legitimate military targets during the period of their direct participation.[174] If there is any doubt as to whether an individual is a civilian he should be presumed to be a civilian and cannot be attacked merely because he appears dubious.[175] When it comes to establishing civilian status for the purposes of a criminal prosecution, however, it is the Prosecution which bears the onus of doing so.[176]

136. The armed law enforcement agencies of a State are generally mandated only to protect and maintain the internal order of the State. Thus, as a general presumption and in the execution of their typical law enforcement duties, such forces are considered to be civilians for the purposes of international humanitarian law.[177] This same presumption will not exist for military police or gendarmerie who operate under the control of the military.[178] The Chamber notes that, in accordance with the provisions of the *Constitution* of 1991[179] and the *The Police Act*[180] of 1964, the Sierra Leone Police operates under the control of the Minister of Internal Affairs, a civilian authority.

137. The Chamber is of the opinion that the status of police officers in a time of armed conflict must be determined in light of an analysis of the particular facts of a case. A civilian police force, for example, may be incorporated into the armed forces, which will cause the police to be classified

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[174] *La Tablada* Case, paras 177-178, 189 and 328.
[175] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 U.N.T.S. 609, Article 77(2) (entered into force 7 December 1978; accession by Sierra Leone on 21 October 1986), Article 50(1) [Additional Protocol I]; Jean-Marie Henckaerts & Louise Doswald-Beck, International Committee of the Red Cross, *Customary International Humanitarian Law, Volume 1: Rules* (United Kingdom: Cambridge University Press: 2005), p. 24.
[176] *Blaskic* Appeal Judgement, para. 111.
[177] ICRC Commentary on Additional Protocols, Article 43 of Additional Protocol I, paras 1682-1683 and Article 59 of Additional Protocol I, paras 2278-2282.
[178] *See, inter alia, Prosecutor v. Oric*, IT-03-68-T, Judgement (TC), 30 June 2006, paras 185-188 and 215-221 [*Oric* Trial Judgement]; *Akayesu* Trial Judgement, para. 68; *Prosecutor v. Bagilishema*, ICTR-95-1A-T, Judgement (TC), 7 June 2001, para. 177 [*Bagilishema* Trial Judgement]; *Blaskic* Trial Judgement, paras 455-456.
[179] *The Constitution of Sierra Leone*, 1991 (Act No. 6 of 1991), art. 48(4), Part II [Sierra Leone Constitution].
[180] *An Act to Consolidate and Amend the Law Relating to the Organisation, Discipline, Powers and Duties of the Police Force*, (4 June 1964) No. 7, A65, s. 2 [*The Police Act*].

as combatants instead of civilians. This incorporation may occur *de lege*, by way of a formal Act, or *de facto*.

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

138. The general requirements which must be proved to establish the commission of an Other Serious Violation of International Humanitarian Law are as follows:

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

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

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

140. The Indictment charges the Accused with crimes under Article 4(c) of the Statute (Enlistment of Child Soldiers). As the prohibition against enlistment of child soldiers has its foundation in Article 4(3)(c) of Additional Protocol II,[181] the Chamber holds that the definition of armed conflict under Additional Protocol II should be applied as outlined above.

3.3. Specific Offences

3.3.1. Murder (Count 1)

141. The Indictment charges the Accused with murder as a Crime against Humanity. The Indictment also charges the Accused in Count 2 with murder as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(a) of the Statute. The Counts relate to the Accused's alleged responsibility for the unlawful killings by Kamajors resulting in the death of civilians, captured enemy combatants and Sierra Leone Police Officers at or near a series of locations in Kenema District, Bo District, Moyamba District and Bonthe District, between about October 1997 and December 1999.[182] While Counts 1 and 2 reference the same underlying facts, the law applicable to murder as a Crime against Humanity

[181] Article 4(3)(c) of Additional Protocol II provides that "children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities". While Article 4 of the Statute uses slightly different terminology, the Chamber is satisfied that this is the origin of the prohibition.
[182] Indictment, para. 25.

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

142. The crime of murder as a Crime against Humanity is a well-recognised and defined crime under customary international law that entails individual criminal responsibility.[183]

143. The constitutive elements of the offence of murder as a Crime against Humanity are:

(i) The death of one or more persons;
(ii) The death of the person(s) was caused by an act or omission of the Accused; and
(iii) The Accused intended to either kill or to cause serious bodily harm in the reasonable knowledge that it would likely result in death.[184]

144. In this regard, the Chamber is of the opinion that proof beyond reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person has been recovered. The fact of a victim's death can be inferred circumstantially from all the evidence presented to the Trial Chamber.[185] In addition, the Prosecution must prove that the victim or victims died as a result of acts or omissions of the Accused.[186]

3.3.2. Violence to Life, Health and Physical or Mental Well-Being of Persons, in Particular Murder (Count 2)

145. The Chamber notes that the Indictment charges the Accused under Count 2 with: "violence to life, health and physical or mental well-being of persons, in particular murder", as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(a) of the Statute. The Chamber has analysed this offence as murder, since the

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[183] The crime of murder is criminalised in every domestic system and it has been prosecuted as a crime against humanity on numerous occasions before the *Ad Hoc* Tribunals with general agreement as to the elements: *see*, for example, *Kordic and Cerkez* Appeal Judgement, para. 113; *Vasiljevic* Trial Judgement, para. 205; *Prosecutor v. Krstic*, IT-98-33-T, Judgement (TC), 2 August 2001, para. 485 [*Krstic* Trial Judgement]; *Blaskic* Trial Judgement, para. 217; *Akayesu* Trial Judgement, para. 588; *Rutaganda* Trial Judgement, para. 79.

[184] *Sesay et al.* Rule 98 Oral Decision; Rule 98 Decision, para. 72; *Prosecutor v. Kordic and Cerkez*, IT-95-14/2-T, Judgement (TC), 26 February 2001, para. 236 [*Kordic and Cerkez* Trial Judgement].

[185] *Prosecutor v. Krnojelac*, IT-97-25-T, Judgement (TC), 15 March 2002, para. 326 [*Krnojelac* Trial Judgement]. *See* also *Tadic* Trial Judgement, para. 240.

[186] *Kvocka et. al.* Appeal Judgement, para. 540, citing *Krnojelac* Trial Judgement, paras 326-327; *Tadic* Trial Judgement, para. 240.

category of 'violence to life and person' does not exist as an independent offence in customary international law.[187]

146. The Chamber takes the view that the elements of the offence of murder as a serious violation of Common Article 3 and Additional Protocol II are the same as for murder as a Crime against Humanity,[188] except for the general elements outlined in the Introduction for crimes of this type. The constitutive elements are as follows:

(i) The death of one or more persons;

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

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

147. The status of the victim as a person not taking direct part in the hostilities is an element of the offence.[189] This implies that the Prosecution must show that the *mens rea* of the Accused encompassed the fact that the victim was a person not taking direct part in the hostilities.[190]

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

[188] *Kvocka et al.* Appeal Judgement, para. 261; *Celebici* Appeal Judgement, para. 423. *Vasiljevic* Trial Judgement, para. 205; *Krnojelac* Trial Judgement, para. 323: "[i]t is clear from the jurisprudence of the Tribunal that the elements of the offence of murder are the same under both Article 3 and Article 5 of the Statute. These elements have been expressed slightly differently, but those slight variations in expression have not changed the essential elements of the offence". *See also Kordic and Cerkez* Trial Judgement, para. 236. Of course, in order to be characterised as a crime against humanity, a "murder" must have been committed as part of a widespread or systematic attack against a civilian population: *Kordic and Cerkez* Trial Judgement, para. 236; *See also Kvocka et al.* Appeal Judgement, para. 261.

[189] *Naletilic and Martinovic* Appeal Judgement, para. 116: "[t]he fact that something is a jurisdictional prerequisite does not mean that it does not at the same time constitute an element of a crime".

[190] *See Halilovic* Trial Judgement, para. 36, concerning murder pursuant to Common Article 3. *See* also *Halilovic* Trial Judgement, fn 83: "[i]n this respect, the Trial Chamber notes that the knowledge of the status of the victims is one aspect of the *mens rea* that needs to be proven for the conviction on any Article 3 charge based on Common Article 3".

3.3.3. Other Inhumane Acts (Count 3)

148. The Indictment in Count 3 charges the Accused with "other inhumane acts" as a Crime against Humanity under Article 2 of the Statute. This Count relates to the Accused's alleged responsibility for the intentional infliction of serious bodily harm and serious physical suffering between about 1 November 1997 and 30 April 1998, and for the intentional infliction, of serious mental harm and serious mental suffering between November 1997 and December 1999, on civilians by the CDF, largely Kamajors, in a series of locations in Kenema District, Bo District, Moyamba District and Bonthe District. Furthermore, the Indictment in Count 4 charges the Accused with cruel treatment as a serious violation of Common Article 3 and of Additional Protocol II pursuant to Article 3(a) of the Statute for the same underlying facts as other inhumane acts in Count 3.

149. The Chamber is of the opinion that the crime of other inhumane acts is a residual category for serious acts which are not otherwise enumerated in Article 2 but which nevertheless require proof of the same general requirements.[191]

150. In the Chamber's view, the constitutive elements of the crime of other inhumane acts are:

> (i) The occurrence of an act or omission of similar seriousness to the other acts enumerated in Article 2 of the Statute;
> (ii) The act or omission caused serious mental or physical suffering or injury or constituted a serious attack on human dignity;
> (iii) The Accused, at the time of the act or omission, had the intention to commit the inhumane act or acted in the reasonable knowledge that this would likely occur.[192]

151. In order to assess the seriousness of an act or omission, consideration must be given to all the factual circumstances of the case which may include the nature of the act or omission, the

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[191] *Vasiljevic* Trial Judgement, para. 234; *Galic* Trial Judgement, para. 152; *Krnojelac* Trial Judgement, para. 130; *Prosecutor v. Kvocka, Kos, Radic, Zigic and Prcac*, IT-98-30/1-T, Judgement (TC), 2 November 2001, para. 206 [*Kvocka et al.* Trial Judgement].

[192] *Sesay et al.* Rule 98 Oral Decision; Rule 98 Decision, para. 93; *Vasiljevic* Trial Judgement, para. 234; *Galic* Trial Judgement, para. 152.

context in which it occurred, the personal circumstances including the age, gender and health of the victim, and the physical, mental and moral effects of the act or omission on the victim.[193]

152. The Chamber takes the view that the intention to inflict other inhumane acts is satisfied where the Accused, at the time of the act or omission, had the intention to inflict serious mental or physical suffering or injury or to commit a serious attack on the human dignity of the victim, or where he or she had reasonable knowledge that the act or omission would likely cause serious physical or mental suffering or injury or a serious attack on human dignity.[194]

153. The Chamber recognises that a third party could suffer serious mental harm by witnessing acts committed against others, particularly against family or friends. The Chamber is also of the opinion that the Accused may be held liable for causing serious mental harm to a third party who witnesses acts committed against others only where, at the time of the act, the Accused had the intention to inflict serious mental suffering on the third party, or where the Accused had reasonable knowledge that his act would likely cause serious mental suffering on the third party. To this effect, the Chamber endorses the view of the ICTR Trial Chamber in *Kayishema and Ruzindana* that "if at the time of the act, the Accused was unaware of the third party bearing witness to his act, then he cannot be held responsible for the mental suffering of the third party."[195]

3.3.4. Violence to Life, Health and Physical or Mental Well-Being of Persons, in Particular Cruel Treatment (Count 4)

154. The Indictment charges the Accused under Count 4 with cruel treatment as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(a) of the Statute. Under this Count, the Accused are charged with "violence to life, health and physical or mental well-being of persons, in particular cruel treatment". The

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[193] *Galic* Trial Judgement, para. 153; *Vasiljevic* Trial Judgement, para. 234.
[194] Rule 98 Decision, para. 94; *see also Krnojelac* Trial Judgment, para. 132; *Vasiljevic* Trial Judgement, para. 236; *Kayishema and Ruzindana* Trial Judgment, para. 153.
[195] *Kayishema and Ruzindana* Trial Judgement, para. 153.

Chamber has analysed this offence as cruel treatment, since the category of "violence to life and person" does not exist as an independent offence in customary international law.[196]

155. The Chamber endorses the jurisprudence of the ICTY in which cruel treatment, punishable under Article 3 of the ICTY Statute as a violation of the laws or customs of war, including violations of Common Article 3 and other inhumane acts, punishable under Article 5 of the ICTY Statute as a Crime against Humanity, were said to require proof of the same elements.[197] Thus, the Chamber concludes that elements of the offence of cruel treatment as a serious violation of Common Article 3 and Additional Protocol II are the same as of other inhumane acts as a Crime against Humanity, except that the victim of cruel treatment must be a person not taking direct part in the hostilities,[198] and the Accused must have known or had reason to know that the victim was a person not taking direct part in the hostilities.

156. The Chamber considers that the constitutive elements of cruel treatment are as follows:[199]

(i) The occurrence of an act or omission;

(ii) The act or omission caused serious mental or physical suffering or injury, or constituted a serious attack on human dignity, to a person not taking direct part in the hostilities; and

(iii) The Accused intended to cause serious mental or physical suffering or injury or a serious attack on human dignity or acted in the reasonable knowledge that this would likely occur.[200]

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[196] *See Vasiljevic* Trial Judgement, paras 195, 203, quoted above in the context of murder as a serious violation of Common Article 3 and Additional Protocol II under Count 2.

[197] *See Krnojelac* Trial Judgement, para. 130: "[i]t is apparent from the jurisprudence of the [ICTY] that cruel treatment, inhuman treatment and inhumane acts basically require proof of the same elements. Each offence functions as a residual category for serious charges under Articles 2, 3, and 5 respectively which are not otherwise enumerated under those Articles. The definitions adopted for each offence in the decisions of the [ICTY] vary only by the expressions used." [footnote omitted] *See also Jelisic* Trial Judgement, para. 52 and *Prosecutor v. Simic, Tadic and Zaric*, IT-95-9-T, Judgement (TC), 17 October 2003, para. 74 [*Simic et al.* Trial Judgement].

[198] Rule 98 Decision, para. 95.

[199] In the Rule 98 Decision, the Chamber relied on the *Celebici* decision of the ICTY and adopted the following definition: "an intentional act or omission causing serious mental or physical suffering or injury or constituting a serious attack on human dignity. We take the view that such acts may include treatment that does not meet the purposive requirement for the offence of torture." (para. 95).

[200] *See also Limaj et al.* Trial Judgement, para. 231; *Prosecutor v. Strugar*, IT-01-42-T, Judgement (TC), 31 January 2005 [*Strugar* Trial Judgement], para. 261. *See also Simic et al.* Trial Judgement, para. 76.

3.3.5. Pillage (Count 5)

157. The Chamber notes that the Indictment under Count 5 charges the Accused with pillage as a serious violation of Common Article 3 and of Additional Protocol II pursuant to Article 3(f) of the Statute. This Count relates to the Accused's alleged responsibility for the unlawful taking and destruction by burning of civilian owned property between about 1 November 1997 and 1 April 1998 at a series of locations in Kenema District, Bo District, Moyamba District and Bonthe District.

158. As previously observed by the Chamber, the terms "pillage", "plunder" and "spoliation" have been varyingly used to describe the unlawful appropriation of private or public property during armed conflict.[201] The Chamber notes that the ICTR and SCSL Statutes include the crime of pillage, while the ICTY Statute lists the crime of plunder.[202]

159. The Chamber is satisfied that Article 3(f) of the Statute contains a general prohibition against pillage which covers both organised pillage and isolated acts of individuals. Further, the prohibition extends to all types of property, including State-owned and private property.[203]

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[201] Rule 98 Decision, para. 102 referring to *Celebici* Trial Judgement, para. 591. *See also Naletilic and Martinovic* Trial Judgement, para. 612, fn 1499; *Blaskic* Appeal Judgement, paras 147-148. *See also Prosecutor v. Kunarac et al.*, IT-96-23 and IT-96-23/1-T, Decision on Motion for Acquittal (TC), 3 July 2000, fn 34 [*Kunarac et al.* Rule 98*bis* Decision] which stated that the ICRC Dictionary defines the two terms (plunder and pillage) together. These decisions relied on, *inter alia*: Article 6(b) of the Nürnberg Charter ("Plunder of public or private property" was one of the war crimes coming within the jurisdiction of the Tribunal); Article 2(1)(b) of Control Council Law No. 10 ("Plunder of public or private property" was listed as one of the war crimes); Article 47 of The Hague Regulations ("Pillage is formally prohibited"); Article 28 of the Hague Regulations of 1907 ("Pillage is formally forbidden"); Article 33(2) of the Geneva Convention IV ("Pillage is prohibited"); Article 5(b) of the Tokyo Charter (which merely referred to "violations of the laws or customs of war") and Article 8(2)(a)(iv) and Article 8(2)(b)(xvi) of the ICC Statute (Articles 8(2)(a)(iv) lists "Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" under the grave breaches of the Geneva Conventions and Article 8(2)(b)(xvi) lists "Pillaging a town or place, even when taken by assault" under "Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law").

[202] Article 4(f) of the ICTR Statute lists pillage among the serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims and of Additional Protocol II thereto of 8 June 197; Article 3(e) of the ICTY Statute lists plunder of public or private property among violations of the laws or customs of war; Although the official English versions of the ICTY and ICTR Statutes use the terms plunder and pillage, respectively, the official French versions of both the ICTY and ICTR Statutes use the term 'le pillage."

[203] Commentary, Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Convention IV (Geneva: ICRC, 1960), pp. 226-227 [ICRC Commentary on Geneva Convention IV]; *Celebici* Trial Judgement, para. 590; ICRC Commentary on Additional Protocols, para. 4542: "[t]he prohibition of pillage is based on Article 33, paragraph 2, of the Fourth Convention. It covers both organized pillage and pillage resulting from isolated acts of indiscipline. It is prohibited to issue order whereby pillage is authorized. The prohibition has a general tenor and applies to all categories of property, both State-owned and private."

160. The Chamber notes that the ICTY Trial Chamber in the *Celebici* case found that this prohibition "extends both to acts of looting committed by individual soldiers for their private gain, and to the organized seizure of property undertaken within the framework of a systematic economic exploitation of occupied territory".[204] In light of the foregoing, the Chamber is of the view that the inclusion of the requirement that the appropriation be for private or personal use is an unwarranted restriction on the application of the offence of pillage.[205]

161. In addition, under international law, pillage does not require the appropriation to be extensive or to involve a large economic value.[206] Whether pillage committed on a small scale fulfils the jurisdictional requirement of the Special Court that the violation be *serious*, is, however, a different question.[207]

162. The seriousness of the violation must be ascertained on a case by case basis, taking into consideration the specific circumstances in each instance.[208] Thus, the Chamber concurs with the ICTY Trial Chamber in *Naletilic and Martinovic* that pillage:

> may be a serious violation not only when one victim suffers severe economic consequences because of the appropriation, but also, for example, when property is appropriated from a large number of people. In the latter case, the gravity of the crime stems from the reiteration of the acts and from their overall impact.[209]

163. The *mens rea* for pillage is satisfied where it is established that the Accused intended to appropriate the property by depriving the owner of it.[210]

164. The Chamber has already noted that the offence of pillage is provided for in Article 4(2) of Additional Protocol II.

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[204] *Celebici* Trial Judgement, para. 590. *See also* Rule 98 Decision, para. 102.
[205] Rule 98 Decision, para. 102, where the Chamber found that one of the elements of pillage was that: "[t]he perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use". This element was not included in the *Sesay et al.* Oral Rule 98 Decision.
[206] *Naletilic and Martinovic* Trial Judgement, para. 612.
[207] *Tadic* Appeal Decision on Jurisdiction, para. 94: In order for a violation to be serious, it must constitute a breach of a rule protecting important values and the breach must involve grave consequences for the victim.
[208] *Naletilic and Martinovic* Trial Judgement, para. 614 (in the context of 'plunder of public or private property' as a violation of the laws or customs of war pursuant to Article 3(e) of the ICTY Statute).
[209] *Naletilic and Martinovic* Trial Judgement, para. 614 (in the context of determining whether the violation - plunder in this case - is a serious violation pursuant to Article 1 of the ICTY Statute).
[210] *Kordic and Cerkez* Appeal Judgement, para. 84. *See also Naletilic and Martinovic* Trial Judgement, para. 612, fn. 1498; *Celebici* Trial Judgement, para. 590.

165. The Chamber finds that the elements of pillage are as follows:

(i) The Accused unlawfully appropriated the property;[211]

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

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

166. Although Count 5 of the Indictment is entitled: "Looting and burning," the offence charged under this count is pillage, a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(f) of the Statute. The acts of burning, as charged in some paragraphs in Count 5 of the Indictment, will not be considered for the purposes of the offence of pillage as charged under Count 5. According to the definition of pillage as stated above, an essential element of pillage is the unlawful appropriation of property. Black's Law Dictionary defines appropriation as "the exercise of control over property; a taking or possession."[212] In the act of looting, the offender unlawfully appropriates the property. Destruction of property by burning, however, does not, by itself, necessarily involve any unlawful appropriation. Thus, while both looting and burning deprive the owner of their property, the two actions are distinct since the latter crime may be committed without appropriation *per se*. As a result, the Chamber is of the view that the destruction by burning of property does not constitute pillage. The Chamber will not, therefore, take into account acts of destruction by burning for the purposes of determining the individual criminal responsibility of the Accused under Count 5.

3.3.6. Acts of Terrorism (Count 6)

167. The Indictment charges the Accused under Count 6 with acts of terrorism as a serious violation of Common Article 3 and of Additional Protocol II pursuant to Article 3(d) of the Statute. This Count relates to the Accused's alleged responsibility for the crimes charged in Counts 1 through 5, including threats to kill, destroy and loot, as part of a campaign to terrorise the civilian populations in those areas.

168. The prohibition against acts of terrorism in Article 3(d) of the Statute is taken from Article 4(2)(d) of Additional Protocol II which prohibits acts of terrorism as a violation of the

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[211] *Kordic and Cerkez* Appeal Judgement, paras 79 and 84.
[212] Black's Law Dictionary, 7th Edition, (St. Paul: West Group, 1999) [Black's Law Dictionary], "appropriation".

"fundamental guarantees" of humane treatment under the Additional Protocol. This prohibition was, in turn, based on Article 33 of the Fourth Geneva Convention which prohibited "all measures of intimidation or of terrorism" of or against protected persons.

169. Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II further prohibit "acts or threats of violence the primary purpose of which is to spread terror among the civilian population". The Chamber concurs with the ICTY Appeals Chamber in *Galic*, where it found that the prohibition of terror against the civilian population was a part of customary international law from at least the time it was included in those treaties[213] and that the offence gave rise to individual criminal responsibility pursuant to customary international law.[214]

170. In addition to these general elements, the specific elements of crime of acts of terrorism can be described as follows:

> (i) Acts or threats of violence directed against persons or property;
>
> (ii) The Accused intended to make persons or property the object of those acts and threats of violence or acted in the reasonable knowledge that this would likely occur; and
>
> (iii) The acts or threats of violence were committed with the primary purpose of spreading terror among persons.

171. The first element relates to the *actus reus* of the offence. In *Galic*, the Appeals Chamber of the ICTY addressed the elements of the crime of acts or threats of violence the primary purpose of which is to spread terror among the civilian population. The Chamber held:

> The acts or threats of violence constitutive of the crime of terror shall not however be limited to direct attacks against civilians or threats thereof but may include indiscriminate or disproportionate attacks or threats thereof. The nature of the acts or threats of violence directed against the civilian population can vary; the primary concern [...] is that those acts or threats of violence be committed with the specific intent to spread terror among the civilian population.[215]

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[213] *Prosecutor v. Galic*, IT-98-29-A, Judgement (AC), 30 November 2006, paras 87-90 [*Galic* Appeal Judgement].
[214] *Ibid.*, paras 93-98. Justice Schomburg dissented on this finding and concluded that there is no basis to find that this act was penalised beyond any doubt under customary international criminal law at the relevant time, *see* para. 2 of the Separate and Partially Dissenting Opinion of Judge Schomburg.
[215] *Galic* Appeal Judgement, para. 102.

172. The offence of acts of terrorism under Article 4(2)(d) of Additional Protocol II is very broad. The Chamber is satisfied that this prohibition includes both acts and threats of violence.[216]

173. Indeed, as the Chamber held in the Rule 98 Decision in this case, the offence "extend[s] beyond acts or threats of violence committed against protected persons to 'acts directed against installations which would cause victims terror as a side-effect'".[217] Thus, if attacks on property are carried out with the specific intent of spreading terror among the protected population, this will fall within the proscriptive ambit of the offence of acts of terrorism. The Chamber emphasises that all types of civilian property, including that which belongs to individual civilians, are protected. The focus of the offence is clearly on protecting persons from being subjected to acts of terrorism and the means used to spread this terror may include acts or threats of violence against persons or property.

174. The *mens rea* requirement of the offence of the acts of terrorism is found in the next two elements. To satisfy these elements, the Prosecution need only establish that the Accused intended to spread terror and does not need to demonstrate that the protected population actually was terrorised. The argument that actual terrorisation of the civilian population is a required element of the offence was rejected by both the Trial Chamber and the Appeals Chamber of the ICTY in *Galic* based on the rejection of attempts in the *travaux préparatoires* to Additional Protocol I to replace the intent to terrorise with actual terror.[218] The Chamber is persuaded by this reasoning and finds that the actual infliction of terror is not a required element of the offence.

175. As the Chamber has already observed, the defining element of the offence of acts of terrorism is the specific intent to spread terror among the protected population. It is clear that civilian populations are frightened by war and that legitimate military actions may have a consequence of terrorising civilian populations. This offence is not concerned with these types of terror: it is meant to criminalise acts or threats that are undertaken for the primary purpose of spreading terror in the protected population. Thus, the specific intent to spread terror must be proven as an element of the offence. This is not to say, however, that the intent to spread terror

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[216] Following the wording of Article 4(2) of Additional Protocol II, Article 3(h) of the Statute specifically provides that threats to commit any of the acts listed in Article 3 are also included. *See further Galic* Appeal Judgement, para. 102.
[217] Rule 98 Decision, para. 112. *See also* ICRC Commentary on Additional Protocols, para. 4538.
[218] *Galic* Appeal Judgement, paras 103-104 and *Galic* Trial Judgement, para. 134.

must be established by direct evidence or that it needed to have been the only purpose behind the act or threat.[219]

3.3.7. Collective Punishments (Count 7)

176. The Indictment under Count 7 charges the Accused with the offence of collective punishments as a serious violation of Common Article 3 and of Additional Protocol II pursuant to Article 3(b) of the Statute. This Count relates to the Accused's alleged responsibility for the commission by the CDF, largely Kamajors, of the crimes charged in Counts 1 through 5 in order to punish the civilian population for their support to, or failure to actively resist, the combined RUF/AFRC forces.

177. The prohibition against collective punishments in Article 3(b) of the Statute derives from Article 4(2)(b) of Additional Protocol II, which is in turn based on the first paragraph of Article 33 of Geneva Convention IV.

178. The prohibition on collective punishments has been included in conventions on international humanitarian law since 1899[220] and was relied on by the ICTY Trial Chamber in *Martic* to find that the prohibition on reprisals is also part of customary international law.[221] In light of the above, the Chamber finds that there is individual criminal responsibility for the offence of collective punishments at customary international law.[222]

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[219] In addressing the specific intent requirement, the Appeals Chamber of the ICTY stated "[T]he purpose of the unlawful acts or threats to commit such unlawful acts need not be the only purpose of the acts or threats of violence. The fact that other purposes may have coexisted simultaneously with the purpose of spreading terror among the civilian population would not disprove this charge, provided that the intent to spread terror among the civilian population was principal among the aims. Such intent can be inferred from the circumstances of the acts or threats, that is from their nature, manner, timing and duration" (*Galic* Appeal Judgment, para. 104)

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

[221] *Prosecutor v. Martic*, IT-95-11-R6 ., Decision (TC), 8 March 1996. The Chamber found that the argument that the prohibition of reprisals against civilians in non-international armed conflicts is part of customary international law is "strengthened by the inclusion of the prohibition of 'collective punishments' in paragraph 2(b) of Article 4 of [Additional] Protocol II."

[222] While the offence of collective punishments has not yet been prosecuted by either the ICTY or the ICTR, this Chamber has considered relevant jurisprudence from the cases of the international military tribunals from World War

179. The Chamber notes that the prohibition against collective punishments is identified broadly as one of the fundamental guarantees of humane treatment in Article 4 of Additional Protocol II. The Chamber finds that this prohibition is to be understood as encompassing not only penal sanctions but also any other kind of sanction that is imposed on persons collectively.[223]

180. Based on Article 4 of Additional Protocol II to the Geneva Conventions and Article 33 of the Fourth Geneva Convention, the Chamber is of the view that the constitutive elements of the crime of collective punishments under Article 3(b) of the Statute are:

(i) A punishment imposed collectively upon persons for omissions or acts that they have not committed; and

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II. See, for example, *Haas and Priebke case*, Italy, Military Court of Appeal of Rome, Judgement, 22 July 1997 (available at http://www.difesa.it/GiustiziaMilitare/RassegnaGM/Processi/Priebke+Erich/08_22-07-97.htm, last visited July 2007); *In re von Mackensen and Maelzer* (Ardeatine Caves Massacre Case), Rome British Military Court, 30 November 1946, in Hersch Lauterpacht, ed., *Annual Digest and Report of Public International Law Cases*, Year 1946 (London: Butterworth & Co., 1940-1955) pp. 258-259; *The Trial of Albert Kesselring*, British Military Court at Venice, 17 February - 6 May 1947, United Nations War Crimes Commission, *Law Reports of Trials of War Criminals* (London: H.M.S.O., 1947-1948), vol. 8, 1949, pp. 9-14; and *In re Kappler*, Military Tribunal of Rome, 20 July 1948, in Hersch Lauterpacht, ed., *Annual Digest and Report of Public International Law Cases*, Year 1946 (London: Butterworth & Co., 1940-1955), pp. 471-482; R. John Pritchard and Sonia Magbanua Zaide, eds., *The Tokyo War Crimes Tribunal* Volume 20, annex No. A-6 (New York: Garland Publishing, 1981), pp. 59, 49, and 705; M.J. Thurman and Christine A. Sherman, *War Crimes: Japan's World War II Atrocities* (Paducah: Kentucky: Turner Publishing Company, 2001), p. 245. Furthermore, this Chamber takes the view that the prohibition of collective punishments in international humanitarian law is based on one of the most fundamental principles of domestic criminal law that is reflected in national systems around the world: the principle of individual responsibility. The principle of individual criminal responsibility requires that, whether an accused be tried singly or jointly, a determination must be made as to the penal responsibility and appropriate punishment of each individual on trial. Most civil law and Islamic states contain explicit references to this principle in their constitutions or penal legislation. See, for example, *Loi No. 92-1336 du 16 décembre 1992 relative à l'entrée en vigueur du nouveau code pénal et à la modification de certaines dispositions de droit pénal et de procédure pénale nécessaires à cette entrée en vigueur*, published in the Journal Officiel de la République française, No. 292, 23 December 1992, pp. 17563-17595, Article 121-1 (France); *Costituzione della Repubblica Italiana*, effective since 1 January 1948, published in La Gazzetta Ufficiale 27 dicembre 1947, No. 298, at Article 27(1) (Italy); *Constitución de la Nación Argentina*, adopted on 22 August 1994, Section 119 (Argentina); *Constitución de la República Bolivariana de Venezuela*, adopted on 30 December 1999, published in La Gaceta Oficial del jueves 30 de diciembre de 1999, No. 36.860, Article 44(5) (Venezuela); *Constitution of the Arab Republic of Egypt*, 11 September 1971, Article 66 (Egypt); *The Constitution of the Kingdom of Saudi Arabia*, adopted by Royal decree of King Fahd bin Abdul Aziz in March 1992, Article 38 (Saudi Arabia); *The Constitution of Tunisia*, adopted on 1 June 1959, Article 13 (Tunisia). In common law countries, on the other hand, the principle is implicit and is considered as a corollary to the principle of *nullum crimen sine lege* and the requirement of proof of *mens rea* to establish criminal responsibility. This principle is also contained in international human rights treaties, including Article 5(3) of the American Convention on Human Rights, (1978), 1144 U.N.T.S. 123 and Article 7 of the African Charter on Human and Peoples' Rights, (1986), O.A.U. Doc. CAB/LEG/67/3 Rev. 5).

[223] See ICRC Commentary on Geneva Convention IV, Article 33, p. 225 and ICRC Commentary on Additional Protocols, paras 4535-4536.

(ii) The Accused intended to punish collectively persons for these omissions or acts or acted in the reasonable knowledge that this would likely occur.

181. As noted above, the term punishment in the first element is meant to be understood in its broadest sense and refers to all types of punishments. It does not refer only to punishments imposed under penal law.

3.3.8. Enlisting Children under the Age of 15 into Armed Forces or Groups or Using Them to Participate Actively in Hostilities (Count 8)

182. The Indictment under Count 8 charges the Accused with the offence of enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities as an "other serious violation of international humanitarian law" pursuant to Article 4(c) of the Statute.[224] This Count alleges that the Accused are responsible for the initiation or enlistment of children under the age of 15 into armed forces or groups, or the use of children under the age of 15 to participate actively in hostilities, throughout the Republic of Sierra Leone, at all times relevant to the Indictment.[225]

183. The Chamber observes that the offences related to child soldiers, viewed against the background of the Statutes of the ICTY and the ICTR where no such provisions exist, are novel in the Statute of the Special Court for Sierra Leone that came into force on 16 January 2002.[226]

184. In this regard, the Chamber recalls the preliminary motion filed by the Accused Norman, challenging the jurisdiction of the Special Court to try him for any offence under Article 4(c) of the Statute, on the basis that it would violate the principle of *nullum crimen sine lege*, since it did not amount to a crime under customary international humanitarian law at the time of the alleged offence. The Chamber determined that the motion raised a serious issue relating to jurisdiction under the mandatory provisions of Rule 72(E) of the Rules, and referred the matter to the Appeals Chamber. The Appeals Chamber dismissed the motion, and ruled that the offence of recruitment

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[224] Indictment, para. 29.
[225] Indictment, paras 9, 16-17.
[226] These offences were later codified in the Rome Statute instituting the International Criminal Court that came into force on 1 July 2002, respectively in its Article 8(2)(b)(xxvi) as war crimes in relation to international armed conflicts, as well as under its Article 8(2)(e)(vii), as war crimes in respect of armed conflicts not of an international character.

of child soldiers below the age of 15 did in fact constitute a crime under customary international law which entailed individual criminal responsibility prior to the time frame of the Indictment.[227]

185. The Chamber is cognisant of the fact that there are no express treaty provisions in the Geneva Conventions of 1949 proscribing the recruitment, conscription and enlistment, or use of children under the age of 15 to participate actively in hostilities except to the extent only of a prohibition under Article 51(1) of the Fourth Geneva Convention on "compelling protected persons to serve in the armed or auxiliary forces."

186. The Chamber notes that the Geneva Conventions do not directly address the recruitment of children for the following reason:

> Where children had participated in hostilities [during World War II] it had been as irregulars - partisans or resisters. Such participation was consequently seen by the Allied powers as voluntary and heroic or (at best) an unfortunate necessity. *It was seen as something exceptional and not, consequently, requiring legal regulation; being unlikely to be repeated.*[228]

187. The Chamber considers that, by the time the Additional Protocols were negotiated, the need to explicitly prohibit the recruitment of children had emerged. As noted by the Appeals Chamber, both Additional Protocol I and Additional Protocol II explicitly proscribe the recruitment of children under the age of 15. Article 4(3)(c) of Additional Protocol II states categorically that "children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities".[229] Although the prohibition in Article 77(2) of Additional Protocol I is more narrowly circumscribed, it also clearly prohibits the recruitment of children "[t]he Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces."[230]

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[227] Appeal Decision on Child Recruitment, para. 53.

[228] Matthew Happold, *Child Soldiers in International Law* (Manchester: Manchester University Press, 2005), p. 55 (emphasis added) [Happold, *Child Soldiers*]. Happold also cites the perception, prevalent during the period when the Additional Protocols were drafted, that "the regulation of children's participation in hostilities was ... primarily an internal matter."

[229] Additional Protocol II, Article 4(3)(c).

[230] Additional Protocol I, Article 77(2). The second sentence of Article 77(2) states: "In recruiting among those persons who have attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest."

188. The Appeals Chamber also derived some support for its conclusion as to the proscription of the offences in question from the *Convention on the Rights of the Child*[231] which prohibits the recruitment of children under the age of 15 as soldiers.[232]

189. Relying on the Appeals Chamber Decision, this Chamber acknowledges, as existing law, that "child recruitment was criminalised before it was explicitly set out as a criminal prohibition in treaty law and certainly by November 1996, the starting point of the time relevant to the Indictment", the implication being that "the principle of legality and the principle of specificity are both upheld".[233]

190. In this Decision, the Appeals Chamber dealt specifically with the offence of "recruitment" of child soldiers. The actual language of Article 4(c) of the Statute uses the terms "conscription," "enlistment" and "using [children] to participate actively in hostilities". Count 8 of the Indictment, however, makes reference to the concepts of "enlistment", "using children to participate actively in hostilities", and also "initiation" of children into the armed forces or groups. The Chamber deems it necessary to examine these terms and their relevance to this case, specifically, whether "enlistment", "using children to participate actively in hostilities", and also "initiation" of children into the armed forces or groups, are prohibited under customary international law.

191. The Chamber notes that "recruitment" is the subject of the proscription under the Geneva Conventions of 1949 and the Additional Protocols of 1977 rather than "enlistment", "conscription" or "use" of child soldiers, the terms used in the Statute. However, it is pertinent that the notion of "recruitment", is interpreted in the ICRC Commentary to Article 4(3)(c) of Additional Protocol II compendiously to encompass "conscription", "enlistment" and the "use of children to participate actively in hostilities". To this effect, paragraph 4557 of the Commentary states:

> The principle of non-recruitment also prohibits accepting voluntary enlistment. Not only can a child not be recruited, or enlist himself, but furthermore he will not be 'allowed to take part in hostilities', i.e. to participate in military operations such as gathering information,

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[231] *Convention on the Rights of the Child*, United Nations, Treaty Series, Vol. 1577, p. 3, 20 November 1989.
[232] See also the *African Charter on the Rights and Welfare of the Child*, OAU Doc. CAB/LEG/24.9/49 (1990), Articles 22(1) and 22(2).
[233] Appeal Decision on Child Recruitment, para. 53.

> transmitting orders, transporting ammunition and foodstuffs, or acts of sabotage.[234]

192. Both in everyday language,[235] and in the commentary quoted above, it is clear that voluntary enlistment is but one type of enlistment. The Chamber therefore finds that the term "enlistment" could encompass both *voluntary* enlistment and *forced* enlistment into armed forces or groups, forced enlistment being the aggravated form of the crime. In the Chamber's opinion however, the distinction between the two categories is somewhat contrived. Attributing voluntary enlistment in the armed forces to a child under the age of 15 years, particularly in a conflict setting where human rights abuses are rife, is, in the Chamber's view, of questionable merit. Nonetheless, for the purposes of the Indictment, where "enlistment" alone is alleged, the Accused is put on notice that both voluntary and forced enlistment are charged.

193. In defining the phrase "using children to participate actively in hostilities", the Chamber has considered the Commentary given on the relevant statutory provision in the Rome Statue establishing the ICC on the issue, which states *inter alia*:

> The words "using" and "participate [actively]" have been adopted in order to cover both direct participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and use of children as decoys, couriers or at military checkpoints. It would not cover activities clearly unrelated to the hostilities such as food deliveries to an airbase or the use of domestic staff in an officer's accommodation. However, use of children in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself, would be included within the terminology.[236]

194. The Chamber recognises that the phrase "armed forces or groups" has been the subject of a variety of legal interpretations. Noting some treaty variations in the use of this phrase, as is the case with the reference in the Brussels Declaration of 1874 of "militia and volunteer corps" and *levées en masse* as loyal combatants, and similar usages in the Hague Convention II of 1899, the Hague Convention IV of 1907, and the Geneva Conventions of 1949, the Chamber deems it appropriate to adopt the definition of "armed groups" given in the *Tadic* Appeal Judgement to the effect that:

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[234] ICRC Commentary on Additional Protocols, para. 4557.
[235] The Concise OED gives the definition of "enlist" as "enroll or be enrolled in the armed service" (Concise Oxford English Dictionary, 10th Edition, Revised (New York: Oxford University Press, 2002)).
[236] Report of the Preparatory Committee on the Establishment of an International Criminal Court, A/CONF.183/2/Add.1, 14 April 1998, p. 21, fn 12.

> One should distinguish the situation of individuals acting on behalf of a State without specific instructions, from that of individuals making up *an organised and hierarchically structured group*, such as a military unit or, in case of war or civil strife, armed bands of irregulars or rebels. Plainly, an organised group differs from an individual in that the former normally has a structure, a chain of command and a set of rules as well as the outward symbols of authority. Normally a member of the group does not act on his own but conforms to the standards prevailing in the group and is subject to the authority of the head of the group.[237]

In the Chamber's view, such a group may be either State or Non-State controlled.

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

(i) One or more persons were enlisted, either voluntarily or compulsorily, into an armed force or group by the Accused;

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

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

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

196. The specific elements of using children under the age of 15 years to participate actively in hostilities are as follows:

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

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

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

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

197. The Appeals Chamber ruled that the offence of recruitment of child soldiers had crystallised under customary international humanitarian law prior to the events alleged in the Indictment. In so finding, it dismissed the applicant's argument that the offences listed under Article 4(c) of the Statute did not constitute crimes during the time of the events. Enlistment is clearly a form of recruitment However, the "use" of child soldiers, in ordinary language, could not

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[237] *Tadic* Appeal Judgement, para. 120 [emphasis in original].

be said to be a form of recruitment. Whilst the Appeals Chamber did not enunciate specifically on "using child soldiers to participate actively in hostilities" the Chamber, having considered the dismissal by the Appeals Chamber of the whole Motion relating to Article 4(c) in its totality, and having considered the available authorities, considers that "using child soldiers to participate actively in hostilities" was also proscribed under customary international humanitarian law prior to the events charged in the Indictment.[238] Indeed, this is the only logical conclusion. For it would make no sense to say that recruiting children under 15 years of age for the armed forces was prohibited, but using them to fight was not.

198. The Indictment also charges the Accused with "initiation" of child soldiers, which is not listed as an offence in the Statute. However, it is the opinion of the Chamber that evidence of "initiation" may be of relevance in establishing liability under Article 4(c) of the Statute.

199. It is the Chamber's view that the rules of international humanitarian law apply equally to all parties in an armed conflict, regardless of the means by which they were recruited.[239] Furthermore, the Chamber is mindful that the special protection provided by Article 4(3)(d) of Additional Protocol II remains applicable in the event that children under the age of 15 are conscripted, enlisted, or used to participate actively in the hostilities.

4. Law on the Forms of Liability Charged

200. In order to assess and determine the culpability or otherwise of each Accused, it is necessary for the Chamber to examine the criminal responsibility of each Accused on all the forms of liability which have been alleged against them in the Indictment, either collectively or individually. In this regard, it is alleged that the Accused are responsible, pursuant to Article 6(1) of the Statute, for planning, instigating, ordering, committing (including through participation in a joint criminal enterprise) or otherwise aiding and abetting the planning, preparation, or execution of the crimes charged in the Indictment.[240] In addition or in the alternative, the Accused

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[238] Article 4(3)(c) of Additional Protocol II provides that "children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups *nor allowed to take part in hostilities*" (italics added), which would appear to proscribe the "use" of child soldiers. The Appeals Chamber found that this formed part of customary international law (Appeal Decision on Child Recruitment, para. 18).

[239] Peter Rowe, *The Impact of Human Rights Law on Armed Forces* (Cambridge: Cambridge University Press, 2006), p. 21: "[I]nternational humanitarian law draws no distinction between volunteer and conscript soldiers."

[240] Indictment, para. 20.

are also alleged to be criminally responsible pursuant to Article 6(3) of the Statute, as superiors of members of the CDF.[241]

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

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

202. The Chamber is of the view that the principle of legality demands that the Court shall apply the law which was binding upon individuals at the time of the acts charged.[242] The application of the law of Sierra Leone to the forms of liability within the jurisdiction of the Special Court is restricted to the crimes envisaged in Article 5 of the Statute. As stated earlier, no Accused has been charged with any crime under this article.[243] The Chamber finds that for the purposes of the crimes envisaged in Articles 2 to 4 of its Statute, the Court has jurisdiction to consider only modes of liability which both (a) are contemplated by its Statute, and (b) existed in customary international law at the time of the alleged offences under consideration.[244] The Chamber finds that all modes of liability listed in the indictment are contemplated by the Statute of the Special

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[241] Indictment, paras 21, 18.

[242] *See, for example, Prosecutor v. Milutinovic, Sainovic and Ojdanic*, IT-99-37-AR72, Decision on Dragoljub Ojdanic's Motion Challenging Jurisdiction - Joint Criminal Enterprise (AC), 21 May 2003, para. 10 [*Ojdanic* Appeal Decision on Joint Criminal Enterprise].

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

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

Court and were recognized as such under customary international law at the time of the acts or omissions alleged in the Indictment.[245]

203. The Chamber is of the opinion that to establish individual criminal responsibility under Article 6(1) of the Statute for committing, planning, instigating, ordering or otherwise aiding and abetting in the planning, preparation or execution of a crime over which the Special Court has jurisdiction, or under Article 6(3) of the Statute, the Prosecution must prove that the crime in question has been completed by the Accused.[246]

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

4.1.1. Committing

204. The Chamber notes that the Prosecution charges the Accused pursuant to Article 6(1) of the Statute with committing the crimes referred to in the Indictment.[247]

205. Consistent with established jurisprudence, the Chamber adopts the definition of "committing" a crime as "physically perpetrating a crime or engendering a culpable omission in violation of criminal law".[248] The *actus reus* for committing a crime consists of the proscribed act of participation, physical or otherwise direct, in a crime provided for in the Statute, through positive

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[245] See *Prosecutor v. Hadzihasanovic, Alagic and Kubura*, IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility (AC), 16 July 2003, para. 44 [*Hadzihasanovic et al.* Appeal Decision on Command Responsibility]: "it has always been the approach of this Tribunal not to rely merely on a construction of the Statute to establish the applicable law on criminal responsibility, but to ascertain the state of customary law in force at the time the crimes were committed." *See also Tadic* Trial Judgement, paras 663-669. The *Tadic* Trial Chamber went through a number of sources and reached the following conclusion at para. 669: "the foregoing establishes the basis in customary international law for both individual responsibility and of participation in the various ways provided by Article 7 of the [ICTY] Statute. The International Tribunal accordingly has the competence to exercise the authority granted to it by the Security Council to make findings in this case regarding the guilt of the accused, whether as a principal or an accessory or otherwise as a participant." This finding has been followed in trial judgements of the ICTY and ICTR and has never been altered on appeal; *see Furundzija* Trial Judgement, para. 226; *Prosecutor v. Aleksovski*, IT-95-14/1-T, Judgement (TC), 25 June 1999, para. 60 [*Aleksovski* Trial Judgement]; *Celebeci* Trial Judgement, para. 321; *Kordic and Cerkez* Trial Judgement, para. 373; and *Oric* Trial Judgement, para. 268. For further discussion of the status at customary international law of joint criminal enterprise, see paras 209 *infra*, and command responsibility, see paras 233 *infra*.

[246] *Semanza* Trial Judgement, para. 378: "[p]ursuant to Article 6(1), a crime within the Tribunal's jurisdiction must have been completed before an individual's participation in that crime will give rise to criminal responsibility. Article 6(1) does not criminalize *inchoate* offenses" [italics in original]. *See also Akayesu* Trial Judgement, para. 473; *Brdjanin* Trial Judgement, para. 267, and accompanying references.

[247] Indictment, para. 20.

[248] *Tadic* Appeal Judgement, para. 188; *Kunarac et al.* Trial Judgement, para. 390; *Limaj et al.* Trial Judgement, para. 509; *Rutaganda* Trial Judgement, para. 41.

acts or culpable omissions, whether individually or jointly with others.[249] The Chamber takes the view that the *mens rea* requirement for committing a crime is satisfied if the Prosecution proves that the Accused acted with intent to commit the crime, or with the reasonable knowledge that the crime would likely occur as a consequence of his conduct.

4.1.2. Committing through Participation in a Joint Criminal Enterprise

206. The Indictment charges the Accused with participating in a common purpose, plan or design. The Chamber notes that the phrases "common purpose doctrine" on the one hand, and "joint criminal enterprise" on the other have been used interchangeably in the international jurisprudence and they refer to one and the same thing. The latter term, which this Chamber adopts, refers to the same form of liability as that known as the common purpose doctrine or liability.[250]

207. For the Court to exercise its jurisdiction on the basis of this form of liability, it must conclude that, even though Article 6(1) does not make a specific reference to joint criminal enterprise, it is indeed included in Article 6(1) as a means of "committing".[251]

208. The Chamber adopts the position that, although "committing" in Article 6(1) of the Statute "covers first and foremost the physical perpetration of a crime by the offender himself, or the culpable omission of an act that was mandated by a rule of criminal law,"[252] the verb "commit" is sufficiently protean in nature as to include participation in a joint criminal enterprise to commit the crime.[253] The view that "committing" also describes participation in a joint criminal enterprise is reinforced "to the extent that, insofar as a participant shares the purpose of the joint criminal enterprise (as he or she must do) as opposed to merely knowing about it, he or she cannot be

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[249] *Limaj et al.* Trial Judgement, para. 509; *Kvocka et al.* Trial Judgement, para. 251; *Kordic and Cerkez* Trial Judgement, para. 376; *Kunarac et al.* Trial Judgement, para. 390; *Prosecutor v. Stakic*, IT-97-24-T, Judgement (TC), 31 July 2003, para. 439 [*Stakic* Trial Judgement]; *Musema* Trial Judgement, paras 122-123; *Semanza* Trial Judgement, para. 383.
[250] *Ojdanic* Appeal Decision on Joint Criminal Enterprise, para. 36.
[251] *Ibid.*, para. 23.
[252] *Tadic* Appeal Judgement, para. 188; *Limaj et al.* Trial Judgement, para. 509.
[253] *Prosecutor v. Milutinovic, Sainovic and Ojdanic*, IT-99-37-AR72, Separate Opinion of Judge David Hunt on Challenge by *Ojdanic* to Jurisdiction – Joint Criminal Enterprise (AC), 21 May 2003, para. 26 [Separate Opinion of Judge Hunt to *Ojdanic* Appeal Decision on Joint Criminal Enterprise], citing *Tadic* Appeal Judgement, para. 188.

regarded as a mere aider and abettor to the crime which is contemplated".[254] The Chamber also recalls that this mode of liability has been routinely applied in the jurisprudence of the *Ad Hoc* Tribunals.[255] The Chamber is therefore satisfied that individual criminal responsibility for participation in a joint criminal enterprise to commit a crime over which the Court has jurisdiction is included within Article 6(1) of the Statute.[256]

209. In *Tadic*, the ICTY Appeals Chamber found that, by 1992, joint criminal enterprise was a mode of liability which was "firmly established in customary international law".[257] The Chamber concurs with this position and finds as a result that joint criminal enterprise existed under customary international law at the time of the acts charged in the Indictment.

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

> The first category is a "basic" form of joint criminal enterprise. It is represented by cases where all co-perpetrators, acting pursuant to a common purpose, possess the same criminal intention. An example is a plan formulated by the participants in the joint criminal enterprise to kill where, although each of the participants may carry out a different role, each of them has the intent to kill.
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> The second category is a "systemic" form of joint criminal enterprise. It is a variant of the basic form, characterised by the existence of an organised

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[254] *Ojdanic* Appeal Decision on Joint Criminal Enterprise, para. 20. *See also ibid.*, para. 31: "joint criminal enterprise is to be regarded, not as a form of accomplice liability, but as a form of 'commission' and that liability stems not [...] from mere membership of an organization, but from participating in the commission of a crime as part of a criminal enterprise".

[255] *Prosecutor v. Stakic*, IT-97-24-A, Judgement (AC), 22 March 2006, para. 62 [*Stakic* Appeals Judgement] referring to *Kvocka et al.* Appeal Judgement, para. 79; *Prosecutor v. Vasiljevic*, IT-98-32-A, Judgement (AC), 25 February 2004, para. 95 [*Vasiljevic* Appeal Judgement]; *Prosecutor v. Krstic*, IT-98-33-A, Judgement (AC), 19 April 2004, paras 79-134 [*Krstic* Appeal Judgement]; *Prosecutor v. Furundzija*, IT-95-14/1-A, Judgement (AC), 21 July 2000 [*Furundzija* Appeal Judgement], para. 119; *Prosecutor v. Krnojelac*, IT-97-25-A, Judgement (AC), 17 September 2003, paras 29-32 [*Krnojelac* Appeal Judgement]; *Celebici* Appeal Judgement, para. 366; *Tadic* Appeal Judgement, para. 220; *Prosecutor v. Brdjanin and Talic*, IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend (TC), 26 June 2001, para. 24; *Prosecutor v. Babic*, IT-03-72-A, Judgement on Sentencing Appeal (AC), 18 July 2005, paras 27, 38, 40 [*Babic* Judgement on Sentencing Appeal]. *See also Prosecutor v. Gacumbitsi*, ICTR-01-64-A, Judgement (AC), 7 July 2006, paras 158-179 [*Gacumbitsi* Appeal Judgement]; *Prosecutor v. Ntakirutimana and Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004, paras 463-468 [*Ntakirutimana* Appeal Judgement].

[256] Rule 98 Decision, para. 130.

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

> system of ill-treatment. An example is extermination or concentration camps, in which the prisoners are killed or mistreated pursuant to the joint criminal enterprise.
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> The third category is an "extended" form of joint criminal enterprise. It concerns cases involving a common purpose to commit a crime where one of the perpetrators commits an act which, while outside the common purpose, is nevertheless a natural and foreseeable consequence of the effecting of that common purpose. An example is a common purpose or plan on the part of a group to forcibly remove at gun-point members of one ethnicity from their town, village or region (to effect "ethnic cleansing") with the consequence that, in the course of doing so, one or more of the victims is shot and killed. While murder may not have been explicitly acknowledged to be part of the common purpose, it was nevertheless foreseeable that the forcible removal of civilians at gunpoint might well result in the deaths of one or more of those civilians.[258]

211. In the present case, however, the pleading in the Indictment is limited to an alternative pleading of the first and third categories of joint criminal enterprise.

212. Regardless of the category at issue or the charge under consideration, the *actus reus* of the participant in a joint criminal enterprise is common to each of the three above-mentioned categories and comprises three requirements.[259]

213. First, a plurality of persons is required. They need not be organised in a military, political or administrative structure.[260] However, it needs to be shown that this plurality of persons acted in concert with each other.[261]

214. Second, the existence of a common purpose which amounts to or involves the commission of a crime provided for in the Statute is required.[262] There is no need for this purpose to have been previously arranged or formulated. It may materialise extemporaneously and be inferred from the facts.[263]

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[258] *Vasiljevic* Appeal Judgement, paras 97-99 [footnotes omitted]; *Tadic* Appeal Judgement, paras 196, 202, 204.
[259] *Vasiljevic* Appeal Judgement, para. 100.
[260] *Stakic* Appeal Judgement, para. 64; *Tadic* Appeal Judgement, para. 227.
[261] *Prosecutor v. Krajisnik*, IT-00-39-T, Judgement (TC), 27 September 2006 [*Krajisnik* Trial Judgement], para. 884.
[262] *Stakic* Appeal Judgement, para. 64; *Tadic* Appeal Judgement, para. 227.
[263] *Ibid.*

215. Third, the participation of the Accused in the common purpose is required.[264] "This participation need not involve the commission of a specific crime under one of the provisions (for example murder, extermination, torture or rape), but may take the form of assistance in, or contribution to, the execution of the common purpose."[265] It must be shown that the plurality of persons acted in concert with each other in the implementation of a common purpose.[266] As to the required extent of the participation, the Prosecution need not demonstrate that the Accused's participation is necessary or substantial, but the Accused must at least have made a significant contribution to the crimes for which he is held responsible.[267]

216. The principal perpetrator need not be a member of the joint criminal enterprise, but may be used as a tool by one of the members of the joint criminal enterprise. The Chamber adopts the view of the ICTY Appeals Chamber in *Brdjanin et al.*, that "where the principal perpetrator is not shown to belong to the JCE, the trier of fact must further establish that the crime can be imputed to at least one member of the joint criminal enterprise, and that this member – when using the principal perpetrator – acted in accordance with the common plan".[268]

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

218. In the first category of joint criminal enterprise the Accused must intend to commit the crime and intend to participate in a common plan whose object was the commission of the crime.[269] The intent to commit the crime must be shared by all participants in the joint criminal enterprise.[270]

219. The *mens rea* for the third category of joint criminal enterprise is two-fold: in the first place, the Accused must have had the intention to take part in and contribute to the common purpose. In the second place, responsibility under the third category of joint criminal enterprise for a crime

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[264] *Stakic* Appeal Judgement, para. 64.
[265] *Tadic* Appeal Judgement, para. 227.
[266] *Krajisnik* Trial Judgement, para. 884.
[267] *Prosecutor v. Brdjanin*, IT-99-36-A Judgement (AC), para. 430 [*Brdjanin* Appeal Judgement], citing *Kvocka et al.* Appeal Judgement, para. 97.
[268] *Brdjanin et al.* Appeal Judgement, para. 430. *See also* para. 413.
[269] *Tadic* Appeal Judgment, para. 228, *Brdjanin et al.* Appeal Judgement, para. 365. *See also Vasiljevic* Appeal Judgement, paras 97, 101; *Kvocka et al.* Appeal Judgement, para. 82 (requiring "intent to further the common purpose").
[270] *Tadic* Appeal Judgement, para. 228.

that was committed beyond the common purpose of the joint criminal enterprise, but which was "a natural and foreseeable consequence thereof", arises only if the Prosecution proves that the Accused had sufficient knowledge that the additional crime was a natural and foreseeable consequence to him in particular.[271] The Accused must also know that the crime which was not part of the common purpose, but which was nevertheless a natural and foreseeable consequence of it, *might* be perpetrated by a member of the group (or by a person used by the Accused or another member of the group).[272] The Accused must willingly take the risk that the crime might occur by joining or continuing to participate in the enterprise.[273] The Chamber can only find that the Accused has the requisite intent "if this is the only reasonable inference on the evidence".[274]

4.1.3. Planning

220. The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with planning the crimes referred to in the Indictment.[275]

221. The Chamber adopts the view of the various Chambers of the *Ad Hoc* Tribunals which have consistently stated that "planning" a crime implies that one or several persons plan or design the commission of a crime at both the preparatory and execution phases.[276] The Chamber agrees with the ICTY Appeals Chamber in the *Kordic and Cerkez* case that the *actus reus* of planning a crime requires that one or more persons design the criminal conduct constituting one or more crimes provided for in the Statute, which are later perpetrated.[277] "It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct."[278] The Chamber is of the opinion that the *mens rea* requirement for planning an act or omission is satisfied if the Prosecution proves that the Accused acted with an intent that a crime provided for

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[271] *Kvocka et al.* Appeal Judgement, para. 86.
[272] *Brdjanin* Appeal Judgement, para. 411.
[273] *Kvocka et al.* Appeal Judgement, para. 83; *Vasiljevic* Appeal Judgement, para. 99; *Tadic* Appeal Judgement, paras 204, 227-228; *Stakic* Appeal Judgement, para. 65.
[274] *Brdjanin* Appeal Judgment, para. 429.
[275] Indictment, para. 20.
[276] *Limaj et al.* Trial Judgement, para. 513; *Brdjanin* Trial Judgement, para. 268; *Krstic* Trial Judgement, para. 601; *Blaskic* Trial Judgement, para. 279.
[277] *Kordic and Cerkez* Appeal Judgement, para. 26, citing *Kordic and Cerkez* Trial Judgement, para. 386; *see also Limaj et al.* Trial Judgement, para. 513.
[278] *Kordic and Cerkez* Appeal Judgement, para. 26.

in the Statute be committed or with reasonable knowledge that the crime would likely be committed in the execution of that plan.

4.1.4. Instigating

222. The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with instigating the crimes referred to in the Indictment.[279]

223. The Chamber is of the view that "instigating" a crime means urging, encouraging or "prompting another to commit an offence".[280] The *actus reus* required for instigating a crime is an act or omission, covering both express and implied conduct of the Accused,[281] which is shown to be a factor substantially contributing to the conduct of another person committing the crime.[282] A causal relationship between the instigation and the perpetration of the crime must be demonstrated; although it is not necessary to prove that the crime would not have occurred without the Accused's involvement.[283] To establish the *mens rea* requirement for "instigating" a crime, the Prosecution must prove that the Accused intended to provoke or induce the commission of the crime, or had reasonable knowledge that a crime would likely be committed as a result of that instigation.

4.1.5. Ordering

224. The Chamber notes that the Prosecution charges the Accused pursuant to Article 6(1) of the Statute with ordering the crimes referred to in the Indictment.[284]

225. The Chamber takes the view that the *actus reus* of "ordering" a crime requires that a person who is in a position of authority orders a person in a subordinate position to commit an offence.[285] It is our opinion that no *formal* superior-subordinate relationship between the superior and the

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[279] Indictment, para. 20.

[280] *Kordic and Cerkez* Appeal Judgement, para. 27; *Semanza* Trial Judgement, para. 381; *Krstic* Trial Judgement, para. 601; *Limaj et al.* Trial Judgement, para. 514.

[281] *Brdjanin* Trial Judgement, para. 269; *Blaskic* Trial Judgement, para. 280; *Limaj et al.* Trial Judgement, para. 514; *Oric* Trial Judgement, para. 273.

[282] *Kordic and Cerkez* Appeal Judgement, para. 27; *Gacumbitsi* Appeal Judgement, para. 129; *Limaj et al.* Trial Judgement, para. 514.

[283] *Kordic and Cerkez* Appeal Judgement, para. 27; *Limaj et al.* Trial Judgement, para. 515; *Brdjanin* Trial Judgement, para. 269; *Bagilishema* Trial Judgement, para. 30.

[284] Indictment, para. 20.

[285] *Kordic and Cerkez* Appeal Judgement, para. 28; *Limaj et al.* Trial Judgement, para. 514.

subordinate is required. It is sufficient that there is proof of some position of authority on the part of the Accused that would compel another to commit a crime in compliance with the Accused's order.[286] Such authority can be *de jure* or *de facto* and can be reasonably implied.[287] The Chamber is of the view that a "causal link between the act of ordering and the physical perpetration of a crime [...] also needs to be demonstrated as part of the *actus reus* of ordering" but that this "link need not be such as to show that the offence would not have been perpetrated in the absence of the order."[288]

226. The Chamber finds that to establish the *mens rea* requirement for "ordering" a crime, the Prosecution must prove that the Accused either intended to bring about the commission of the crime or that the Accused had reasonable knowledge that the crime would likely be committed as a consequence of the execution or implementation of that order.

4.1.6. Aiding and Abetting

227. The Chamber notes that the Prosecution charges the Accused pursuant to Article 6(1) of the Statute with aiding and abetting in the planning, preparation or execution of the crimes referred to in the Indictment.[289]

228. It is the view of the Chamber that "aiding and abetting" consists of the act of rendering practical assistance, encouragement or moral support, which has a substantial effect on the perpetration of a certain crime.[290] "Aiding and abetting" can include providing assistance, helping, encouraging, advising, or being sympathetic to the commission of a particular act by the principal offender.[291]

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

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

[288] *Strugar* Trial Judgement, para. 332.

[289] Indictment, para. 20.

[290] *Krstic* Trial Judgement, para. 601; *Limaj et al.* Trial Judgement, para. 516; *Tadic* Appeals Judgement, para. 229.

[291] *Limaj et al.* Trial Judgement, para. 516; *Kvocka et al.* Trial Judgement, para. 254; *Semanza* Trial Judgement, para. 384; *Prosecutor v. Gacumbitsi*, ICTR-2001-64-T, Judgment (TC), 17 June 2004, para. 286 [*Gacumbitsi* Trial Judgement].

229. The Chamber is of the opinion that the *actus reus* of aiding and abetting requires that the Accused carries out an act specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime and that this act of the aider and abettor must have a substantial effect upon the perpetration of the crime.[292] "Proof of a cause-effect relationship between the conduct of the aider or abettor and the commission of the crime, or proof that such conduct served as a condition precedent to the commission of the crime, is not required."[293] Further, taking into account the specific wording of Article 6(1) of the Statute that "[a] person who [...] aided and abetted *in the planning, preparation or execution* of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime", this Chamber is of the opinion that the *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated and at a location geographically removed from the location of the principal crime.[294] The Chamber reiterates, however, that the act of the aider and abettor must have a substantial effect upon the perpetration of the crime.

230. Mere presence at the scene of a crime will not usually constitute aiding and abetting. Where, however, such presence provides encouragement or support to the principal offender, that may be sufficient. For example, the presence of a person with superior authority at the scene of a principal crime may be probative to determining whether such person encouraged or supported the principal perpetrator.[295] The Chamber also notes that a superior's failure to punish for past crimes might result in acts that would constitute instigation or aiding and abetting for *further* crimes.[296]

231. The Chamber recognises that the *mens rea* of aiding and abetting is the knowledge that the acts performed by the Accused assist the commission of the crime by the principal offender.[297]

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[292] *Vasiljevic* Appeal Judgement, para. 102; *see also Blaskic* Appeal Judgement, para. 46 referring to *Furundzija* Trial Judgement, para. 249.
[293] *Blaskic* Appeal Judgement, para. 48; *see* also *Gacumbitsi* Appeal Judgement, para. 140.
[294] *Blaskic* Appeal Judgement, para. 48; *see also Vasiljevic* Trial Judgement, para. 70, *Aleksovski* Trial Judgement, para. 62.
[295] *Blaskic* Appeal Judgement, para. 47; *see also Limaj et al.* Trial Judgement, para. 517; *Brdjanin* Trial Judgement, para. 271 and footnoted references; *Aleksovski* Trial Judgement, para. 65.
[296] *Blaskic* Trial Judgement, para. 337;
[297] *Vasiljevic* Appeal Judgement, para. 102; *see also Blaskic* Appeal Judgement, para. 49; *Tadic* Appeal Judgement, para. 229.

Such knowledge may be inferred from all relevant circumstances.[298] The Accused need not share the *mens rea* of the principal offender, but he must be aware of the principal offender's intention.[299] In the case of specific intent offences, the aider and abettor must have knowledge that the principal offender possessed the specific intent required.[300] The aider and abettor, however, need not know the precise crime that is intended by the principal offender. If he is aware that one of a number of crimes will probably be committed by the principal offender, and one of those crimes is in fact committed, then he has intended to assist or facilitate the commission of that crime, and may be guilty of aiding and abetting.[301]

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

232. The Chamber notes that the Prosecution, in addition or in the alternative, alleges that the Accused are responsible pursuant to Article 6(3) of the Statute for the crimes alleged in Counts 1 through 8 of the Indictment since these crimes were allegedly committed while the Accused were holding positions of superior responsibility and exercising command and control over their subordinates.[302]

233. The principle of superior responsibility is today anchored firmly in customary international law.[303] The Chamber endorses the views expressed by the ICTY Appeals Chamber in *Celebici* that the individual criminal responsibility of superiors for failure to prevent or to punish crimes committed by subordinates was already an established principle of customary international law in 1992,[304] whether the crimes charged were committed in the context of an international or an

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[298] *Limaj et al.* Trial Judgement, para. 518 referring to *Celebici* Trial Judgement, para. 328; *Tadic* Trial Judgement, para. 676.

[299] *Prosecutor v. Aleksovski*, IT-95-14/1-A, Judgement (AC), 24 March 2000, para. 162 [*Aleksovski* Appeal Judgement] referring to *Furundzija* Trial Judgement, para. 245; see also *Limaj et al.* Trial Judgement, para. 518; *Brdjanin* Trial Judgement, para. 273; *Kunarac et al.* Trial Judgement, para. 392.

[300] *Krnojelac* Appeal Judgement, para. 52, *Krstic* Appeal Judgement, para. 140, *Vasiljevic* Appeal Judgement, para. 142.

[301] *Blaskic* Appeal Judgement, para. 50, *Furundzija* Trial Judgement, para. 246, *Limaj et al.* Trial Judgement, para. 518.

[302] Indictment, paras 18, 21.

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

[304] *Celebici* Appeal Judgement, para. 195: "[t]he principle that military and other superiors may be held criminally responsible for the acts of their subordinates is well-established in conventional and customary law". *See* also *Celebici* Trial Judgement, para. 343; *Strugar* Trial Judgement, para. 357; *Limaj et al.* Trial Judgement, para. 519; *Oric* Trial Judgement, para. 291; *Halilovic* Trial Judgement, paras 39-54.

internal armed conflict.[305] The Chamber further concurs with the finding of the Appeals Chamber of the *Ad Hoc* Tribunals that the principle of individual criminal responsibility of superiors is applicable, albeit not exactly in the same way, to both civilian and military superiors.[306]

234. The Chamber is of the opinion that the nature of responsibility pursuant to Article 6(3) is based upon the duty of a superior to act, which consists of a duty to prevent and a duty to punish criminal acts of his subordinates.[307] It is thus the failure to act when under a duty to do so which is the essence of this form of responsibility.[308] It is responsibility for an omission[309] where a superior may be held criminally responsible when he fails to take the necessary and reasonable measures to prevent the criminal act or punish the offender.[310]

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

> (i) the existence of a superior-subordinate relationship between the superior and the offender of the criminal act;
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> (ii) the superior knew or had reason to know that the criminal act was about to be or had been committed; and
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> (iii) the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the offender thereof.[311]

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[305] *See* for the application of the principle of command responsibility to internal armed conflicts, *Hadzihasanovic et al.* Appeal Decision on Command Responsibility, paras 27, 31; *see* also *Brdjanin* Trial Judgement, para. 275; *Strugar* Trial Judgement, para. 357; *Limaj et al.* Trial Judgement, para. 519; *Oric* Trial Judgement, para. 291.

[306] *Bagilishema* Appeal Judgement, paras 35, 51-52; *Celebici* Appeal Judgement, paras 195-197; for the distinction in the application of the principle to civilian and military superiors, *see* para. 163 *infra.*

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

[308] *Halilovic* Trial Judgement, para. 38 and footnoted references.

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

[310] *Bagilishema* Appeal Judgement, para. 35.

[311] *See Blaskic* Appeal Judgement, para. 484; *Kordic and Cerkez* Appeal Judgement, para. 827; *Aleksovski* Appeal Judgement, para. 72; *Gacumbitsi* Appeal Judgement, para. 143.

4.2.1. Superior-Subordinate Relationship

236. Under Article 6(3) of the Statute, a superior is someone who possesses the power or authority in either a *de jure* or a *de facto* capacity to prevent the commission of a crime by a subordinate or to punish the offender of the crime after the crime has been committed.[312] It is thus this power or authority of the superior to control the actions of his subordinates which forms the basis of the superior-subordinate relationship.[313]

237. The power or authority of the superior to prevent or to punish does not arise solely from a *de jure* status of a superior conferred upon him by official appointment.[314] Someone may also be judged to be a superior based on the existence of *de facto* powers or degree of control. This may often be the case in contemporary conflicts where only *de facto* armies and paramilitary groups subordinated to self-proclaimed governments may exist.[315]

238. In assessing the degree of control to be exercised by the superior over the subordinate, the Appeals Chambers of the *Ad Hoc* Tribunals have determined that the "effective control" test should be applied. According to this test, the superior must possess the "material ability to prevent or punish criminal conduct".[316] The indicators of effective control are more a matter of evidence than of substantive law.[317] The Chamber adopts the view that this is the appropriate test to apply in determining whether a superior–subordinate relationship exists. Mere substantial influence that does not meet the threshold of effective control is not sufficient under customary international law to serve as a means of exercising superior criminal responsibility.[318] Moreover, *de jure* power in and of itself is not conclusive of whether a superior-subordinate relationship exists, although it may be

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[312] *Celebici* Appeal Judgement, para. 192; *Bagilishema* Appeal Judgement, para. 50.
[313] *Kordic and Cerkez* Appeal Judgement, para. 840; *see* also *Celebici* Trial Judgement, para. 377; *Strugar* Trial Judgement, para. 359.
[314] *Celebici* Appeal Judgement, para. 193; *Bagilishema* Appeal Judgement, para. 50; *Gacumbitsi* Appeal Judgement, para. 143.
[315] *Celebici* Appeal Judgement, para. 193.
[316] *Celebici* Appeal Judgement, para. 256.
[317] *Blaskic* Appeal Judgement, para. 69 referring to *Aleksovski* Appeal Judgement, paras 73-74, 76 and *Celebici* Appeal Judgement, para. 206.
[318] *Celebici* Appeal Judgement, para. 266.

evidentially relevant to such a determination.[319] The Chamber is therefore of the view that the effective control test must be satisfied even if the Accused has *de jure* status as a superior.

239. Hierarchy, subordination and chains of command need not be established in the sense of a formal organisational structure as long as the test of effective control is met.[320] The superior can also be found responsible for a crime committed by a subordinate two levels down in the chain of command.[321]

240. The Chamber further endorses the finding of the ICTY Appeals Chamber that an Accused could not be held liable under Article 6(3) of the Statute for crimes committed by a subordinate before the said Accused assumed command over that subordinate.[322] In order to "hold a commander liable for the acts of troops who operated under his command on a temporary basis it must be shown that *at the time* when the acts charged in the indictment were committed, these troops were under the effective control of that commander."[323]

241. A superior-subordinate relationship may be of a military or civilian character.[324] When examining whether a superior exercises effective control over his subordinates, the Chamber must take into account inherent differences in the nature of military and civilian superior-subordinate relationships. Effective control may not be exercised in the same manner by a civilian superior and by a military commander and, therefore, may be established by the evidence to have been exercised in a different manner.[325] Whether the evidence regarding a civilian's *de jure* or *de facto* authority establishes effective control over subordinates must be determined on a case-by-case basis.

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[319] *Celibici* Appeal Judgement, para. 197, *Kayishema and Ruzindana* Appeal Judgement, para. 294. See also *Kunarac* Trial Judgement, paras 396-397.
[320] *Celibici* Appeal Judgment, para. 254.
[321] *Strugar* Trial Judgement, para. 361.
[322] *Hadzihasanovic et al.* Appeal Decision on Command Responsibility. The Appeals Chamber found that individual criminal responsibility for superior command responsibility did not exist at customary international law for crimes that occurred before an accused became a superior. *See* para. 51: "[The ICTY] Appeals Chamber holds that an accused cannot be charged under Article 7(3) of the [ICTY] Statute for crimes committed by a subordinate before the said accused assumed command over that subordinate. The Appeals Chamber is aware that views on this issue may differ. However, the Appeals Chamber holds the view that this Tribunal can impose criminal responsibility only if the crime charged was clearly established under customary law at the time the events in issue occurred. In case of doubt, criminal responsibility cannot be found to exist, thereby preserving full respect for the principle of legality".
[323] *Halilovic* Trial Judgment, para. 61 [emphasis added]; *Kunarac et al.* Trial Judgement, para. 399.
[324] *Celebici* Appeal Judgement, para. 195; *Celebici* Trial Judgement, paras 735-736; *Kayishema and Ruzindana* Trial Judgement, para. 216; *Aleksovski* Appeal Judgement, para. 76.
[325] *Bagilishema* Appeal Judgement, para. 52.

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

242. In order to hold a superior responsible under Article 6(3) of the Statue for crimes committed by a subordinate, the Chamber is of the opinion that the Prosecution must prove that the superior knew or had reason to know that his subordinate was about to commit or had committed such crimes. Responsibility under Article 6(3) of the Statute is not a form of strict liability.[326]

243. The actual knowledge of the superior, *i.e.* that he knew that his subordinate was about to commit or had committed the crime, cannot be presumed and, in the absence of direct evidence, may be established by circumstantial evidence.[327] Various factors or indicia may be considered by the Chamber when determining the actual knowledge of the superior. Such indicia would include: the number, type and scope of the illegal acts; the time during which the illegal acts occurred; the number and type of subordinates involved; the logistics involved, if any; the means of communication available; the geographical location of the acts; the widespread occurrence of the acts; the tactical tempo of operations; the *modus operandi* of similar illegal acts; the officers and staff involved; and the location of the superior at the time and the proximity of the acts to the location of the superior.[328]

244. The Chamber accepts the jurisprudence of the *Ad Hoc* Tribunals that the "had reason to know" standard will only be satisfied if information was available to the superior which would have put him on notice of offences committed by his subordinates or about to be committed by his subordinates.[329] Such information need not be such that, by itself, it was sufficient to compel

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

[327] *Oric* Trial Judgement, para. 319 and footnoted references.

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

[329] *Galic* Appeal Judgement, para. 184 referring to *Celebici* Appeal Judgement, para. 241; *see also Blaskic* Appeal Judgement, paras 62-63, *Celebici* Trial Judgement, para. 393, *Strugar* Trial Judgement, para. 369, *Krnojelac* Appeal Judgement, para. 154.

the conclusion of the existence of such crimes.[330] It need not, for example, take "the form of specific reports submitted pursuant to a monitoring system" and "does not need to provide specific information about unlawful acts committed or about to be committed".[331] It can be general in nature, but it must be sufficiently alarming so as to alert the superior to the risk of the crimes being committed or about to be committed,[332] and to justify further inquiry in order to ascertain whether indeed such crimes were committed or were about to be committed by his subordinates.[333]

245. The information in question must in fact be available to the superior, who may not be held liable for failing to acquire such information in the first place.[334] In any event, an assessment of the mental element required by Article 6(3) of the Statute should be conducted in the particular circumstances of each case, taking into account the specific situation of the superior concerned at the time in question.[335]

4.2.3. Necessary and Reasonable Measures

246. The Chamber is of the opinion that a superior may be held responsible pursuant to Article 6(3) of the Statute if he has failed to take necessary and reasonable measures to prevent the commission of a crime or punish the perpetrators thereof. The question of whether a superior has failed to take such measures is connected to his possession of effective control. In other words, a superior will be liable if he failed to take measures that are within his material ability.[336] Hence, the question of whether the superior had the explicit legal capacity to do so is irrelevant if it is proven that he had the material ability to act.[337]

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

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

[332] *See*, for example, *Krnojelac* Appeal Judgement, para. 155.

[333] *Celebici* Appeal Judgement, paras 233, 223; *see also Limaj et al.* Trial Judgement, para. 525 and footnoted references.

[334] *Blaskic* Appeal Judgement, paras 62-63; *Celebici* Appeal Judgement, para. 226.

[335] *Krnojelac* Appeal Judgement, para. 156 referring to *Celebici* Appeal Judgement, para. 239.

[336] *Limaj et al.* Trial Judgement, para. 526; *Halilovic* Trial Judgement, para. 73.

[337] *Celebici* Trial Judgement, para. 395: "lack of formal legal competence to take the necessary measures to prevent or repress the crime in question does not necessarily preclude the criminal responsibility of the superior"; *Limaj et al.* Trial Judgement, para. 526; *Halilovic* Trial Judgement, para. 73.

247. Under Article 6(3), the superior has a duty both to prevent the commission of the offence and punish the perpetrators. These are not alternative obligations - they involve different crimes committed at different times: the failure to punish concerns past crimes committed by subordinates, whereas the failure to prevent concerns future crimes of subordinates.[338] The duty to prevent arises from the time a superior acquires knowledge, or has reason to know that a crime is being or is about to be committed, while the duty to punish arises after the superior acquires knowledge of the commission of the crime.[339] "A superior must act from the moment that he acquires such knowledge. His obligations to prevent will not be met by simply waiting and punishing afterwards."[340]

248. The Chamber is of the opinion that whether a superior has discharged his duty to prevent the commission of a crime will depend on his material ability to intervene in a specific situation. In making this determination, the Chamber may take into account factors such as those which have been enumerated in the *Strugar* case on the basis of the case law developed by the military tribunals in the aftermath of World War II: the superior's failure to secure reports that military actions have been carried out in accordance with international law, the failure to issue orders aimed at bringing the relevant practices into accord with the rules of war, the failure to protest against or to criticise criminal action, the failure to take disciplinary measures to prevent the commission of atrocities by the troops under the superior's command and the failure to insist before a superior authority that immediate action be taken.[341] As part of his duty to prevent subordinates from committing crimes, the Chamber is of the view that a superior also has the obligation to prevent his subordinates from following unlawful orders given by other superiors.

249. The Chamber notes that a causal link between the superior's failure to prevent the subordinates' crimes and the occurrence of these crimes is not an element of the superior's responsibility; it is a question of fact rather than of law.[342] "Command responsibility is

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[338] *Blaskic* Appeal Judgement, para. 83.
[339] *Limaj et al.* Trial Judgement, para. 527 referring to *Blaskic* Appeal Judgement, para. 83 and *Kordic and Cerkez* Trial Judgement, paras 445-446.
[340] *Limaj et al.* Trial Judgement, para. 527; *Strugar* Trial Judgement, para. 373.
[341] *Strugar* Trial Judgement, para. 374 and footnoted references; *see* also *Limaj et al.* Trial Judgement, para. 528; *Oric* Trial Judgement, para. 331; *Halilovic* Trial Judgement, para. 89.
[342] *Blaskic* Appeal Judgement, para. 77; *Kordic and Cerkez* Appeal Judgement, para. 832, *Halilovic* Trial Judgement, para. 78.

responsibility for omission, which is culpable due to the duty imposed by international law upon a commander" and does not require his involvement in the crime.[343]

250. The Chamber is of the opinion that the duty imposed on a superior to punish subordinate offenders includes the obligation to investigate the crime or to have the matter investigated to establish the facts in order to assist in the determination of the proper course of conduct to be adopted.[344] The superior has the obligation to take active steps to ensure that the offender will be punished.[345] The Chamber further takes the view that in order to discharge this obligation, the superior may exercise his own powers of sanction, or if he lacks such powers, report the offender to the competent authorities.[346]

4.3. Conviction under Article 6(1) and Article 6(3) of the Statute

251. The Chamber takes the view that where the Indictment charges the Accused with both Article 6(1) and Article 6(3) responsibility under the same count, and where the legal requirements pertaining to both of these heads of responsibility are met, a Trial Chamber may only enter a conviction on the basis of Article 6(1).[347]

V. FACTUAL AND LEGAL FINDINGS

1. Evaluation of Evidence

1.1. Introduction

252. The Rules confer upon the Chamber discretion to apply rules of evidence which best favour a fair determination of the proceedings.[348] The Appeals Chamber has stated that the

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[343] *Halilovic* Trial Judgement, para. 78; *see also Oric* Trial Judgement, para. 293.

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

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

[346] *Kordic and Cerkez* Trial Judgement, para. 446; *Strugar* Trial Judgement, para. 376.

[347] *Blaskic* Appeal Judgement, para. 91; *Kordic and Cerkez* Appeal Judgement, para. 34; *Gacumbitsi* Appeal Judgement, para. 142; *Prosecutor v. Kajelijeli*, ICTR-98-44A-A, Judgement (AC), 23 May 2005, para. 81 [*Kajelijeli* Appeal Judgement]; *Celebici* Appeal Judgement, para. 745.

[348] Rule 89 - General Provisions (A) The rules of evidence set forth in this Section shall govern the proceedings before the Chambers. The Chambers shall not be bound by national rules of evidence. (B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law. (C) A Chamber may admit any relevant evidence.

language used in the Rules "should be given its ordinary meaning". However the Rules must be "applied in their context and according to their purpose in progressing the relevant stage of the trial process fairly and effectively".[349] This gives the Chamber a wide discretion, which makes it appropriate for the Chamber to outline some of the basic standards it has applied.

1.2. Admission of "Relevant" Evidence

253. Under the Rules, the Chamber may admit all "relevant evidence".[350] The Chamber understands relevant evidence to be any evidence that could have a bearing on the guilt or innocence of the Accused for the crimes charged under the Indictment. The assessment of evidential weight is a separate issue and, unless otherwise stated, has been made by the Judges during final deliberations.[351] This approach is consonant with established international criminal procedure.[352]

1.3. Standard of Proof

254. Article 17(3) of the Statute enshrines the principle that an Accused person is presumed innocent until proven guilty. The Prosecution alone bears the burden of establishing the guilt of the Accused, and the high standard which must be met before there can be a conviction on any Count is proof *beyond reasonable doubt*. Each fact on which the Accused's conviction is based must be proved beyond a reasonable doubt. However, the standard of proof does not need to be applied to every individual piece of evidence.[353]

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[349] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Amendment of the Consolidated Indictment (AC), 16 May 2005, para. 45. *See also* para. 46.
[350] Rule 89 (C).
[351] *See*, for example, *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR65, Fofana - Appeal Against Decision Refusing Bail (AC), 11 March 2005, paras 22-24 [*Fofana* Bail Appeal]; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on Gbao Application to Exclude Evidence of Mr. Koker (TC), 23 May 2005, paras 4-6.
[352] "The principle... is one of extensive admissibility of evidence - questions of credibility or authenticity being determined according to the weight given to each of the materials by the judges at the appropriate time." (*Blaskic* Trial Judgement, para. 34).
[353] *Ntagerura et al.* Appeal Judgement, paras 174-175. *See also R. v. Morin*, [1988] 2 S.C.R. 345, paras 40-41.

1.4. Circumstantial Evidence

255. The Chamber is composed of professional judges who do not make inferences without proper evidentiary basis or foundation.[354] Where it has been necessary for the Chamber to resort to circumstantial evidence in proof of a fact at issue,[355] the Chamber has been careful to consider whether there is any other reasonable conclusion rather than that which leads to a finding of guilt. If such a conclusion is possible, the Chamber has erred on the side of caution and adopted that explanation which best favours the Accused.[356]

1.5. Credibility and Reliability of Oral Testimony

256. In assessing the credibility and reliability of oral witness testimony, the Chamber has considered factors such as the internal consistency of the witness' testimony, its consistency with other evidence in the case, any personal interest a witness may have that may influence his motivation to tell the truth, as well as observational criteria such as the witness' demeanour, conduct and character.[357] In addition, the Trial Chamber has considered the witnesses' knowledge of the facts on which they testify, and the lapse of time between the events and the testimony.[358]

257. The Trial Chamber has also kept in mind that "the fact that a witness gives evidence honestly is not in itself sufficient to establish the reliability of that evidence. The issue is not

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[354] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT and *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-PT, Decision on the Prosecution Motion for Concurrent Hearing of Evidence Common to Cases SCSL-04-15-PT and SCSL-04-16-PT (TC), 11 May 2004, para. 38; *Prosecutor v. Gbao*, SCSL-03-09-I, Order on the Urgent Request for Direction on the Time to Respond to and/or an Extension on Time for the Filing of a Response to the Prosecution Motions And The Suspension of any Ruling on the Issue of Protective Measures that may be Pending before other Proceedings before the Special court as a Result of Similar Motions Filed to those that have been Filed by the Prosecution in this Case (TC), 16 May 2003, p. 2; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Motion to Admit into Evidence a Document Referred to in Cross-Examination (TC), 2 August 2006, p. 4.

[355] *Limaj et al.* Trial Judgement, para. 10. *See also Halilovic* Trial Judgement, para. 15: "[c]ircumstantial evidence is evidence of circumstances surrounding an event or offence from which a fact at issue may be reasonably inferred."

[356] "A circumstantial case consists of evidence of a number of different circumstances which, taken in combination, point to the guilt of the accused person because they would usually exist in combination only because the accused did what is alleged against him. [...] Such a conclusion must be established beyond reasonable doubt. It is not sufficient that it is a reasonable conclusion available from the evidence. It must be the *only* reasonable conclusion available. If there is another conclusion which is also reasonably open from that evidence, and which is consistent with the innocence of the accused, he must be acquitted." (*Celebici* Appeal Judgement, para. 458 [emphasis in original]).

[357] *Prosecutor v. Blagojevic*, IT-02-60-T, Judgement (TC), 17 January 2005, para. 23 [*Blagojevic* Trial Judgement]. *See also Brdjanin* Trial Judgement, para. 25.

[358] *Blagojevic* Trial Judgement, para. 23; *Halilovic* Trial Judgment, para. 17.

merely whether the evidence of a witness is honest; it is also whether the evidence is objectively reliable."[359]

258. The Chamber may accept or reject the evidence of a witness in part or in whole, and may find a witness to be credible and reliable about certain aspects of their testimony and not credible or reliable with respect to others.[360]

1.6. Identification Evidence

259. It is well-accepted that identification evidence is affected by the vagaries of human perception and recollection. Its probative value depends not only upon the credibility of the witness, but also on other circumstances surrounding the identification. In assessing the reliability of identification evidence, the Chamber has taken account of "the circumstances in which each witness claimed to have observed the Accused, the length of that observation, the familiarity of a witness with the Accused prior to the identification and the description given by the witness of their identification of the Accused."[361] The Chamber is mindful that the ICTY Appeals Chamber has drawn attention to the need for "extreme caution" in relation to visual identification evidence[362] and has highlighted that the evaluation of an individual witness's evidence, as well as the evidence as a whole, should be conducted with considerations such as those enunciated in *Reg. v. Turnbull* in mind.[363]

260. During the course of the trial, some witnesses have been asked to identify one or more of the Accused in the courtroom. The Chamber is aware that it may be possible for a witness to point out an Accused person (whomever they may be) due to their physical placement in the courtroom

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[359] *Brdjanin* Trial Judgement, para. 25, relying on, *inter alia*, *Celebici* Appeal Judgement, paras 491, 506.
[360] Kupreskic Appeal Judgement, para. 332.
[361] *Vasiljevic* Trial Judgement, para. 16.
[362] *Kupreskic et al.* Appeal Judgment, paras 34-40 and footnoted references.
[363] *Limaj et al.* Trial Judgement, para. 17, citing *Reg v. Turnbull*, [1977] QB 224 (CA) [*Turnbull*]; *Reid v. Reg*, [1991] I AC 363; *Auckland City Council v. Brailey*, [1988] 1 NZLR 103 (New Zealand); *R v. Mezzo*, [1986] 1 SCR 802 ; *Dominican v. R*, [1992] 173 CLR 555. *See also Kupreskic et al.* Appeal Judgement, para. 34. These considerations include the amount of time the witness observed the Accused, the distance between the witness and the Accused, the level of visibility, the presence of any impediments in the line of view, whether the witness had specific reasons to remember the Accused, whether the Accused was previously known to the witness, the time lapse between the original observation and the subsequent identification to the authorities, and any discrepancies between the original description given by the witness and the actual appearance of the Accused (*Turnbull*, pp. 228-229).

and, in multi-Accused trial, to pick out the Accused person who most closely resembles an individual they previously saw.[364]

261. The Chamber considers identification by a witness of someone previously known to be more reliable than identification of someone previously unknown.[365]

1.7. Inconsistencies

262. Minor inconsistencies in testimony do not necessarily discredit a witness. The events in question took place several years ago and, due to the nature of memory, some details will be confused, and some will be forgotten.

263. The Chamber's preference is for oral testimony.[366] It is not expected that a witness' oral evidence will be identical to evidence given in prior statements. As we have stated, "it is foreseeable that witnesses, by the very nature of oral testimony, will expand on matters mentioned in their witness statements, and respond more comprehensively to questions asked at trial."[367] A witness may be asked questions at trial which were not asked before. Also, many witnesses remember, in court, details which they had previously forgotten.

1.8. Hearsay

264. There is no bar to the admission of hearsay evidence at the Special Court.[368] Although admitted during the course of trial, the Chamber is aware that hearsay evidence has inherent deficiencies. It cannot be tested by cross-examination, its reliability may be affected by compounded errors of perception and memory, and its source is not subject to solemn

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[364] *See also Limaj et al.* Trial Judgement, para. 18, citing *Vasiljevic* Trial Judgement, para. 19; *Kunarac et al.* Trial Judgement, para. 562.

[365] *Kayishema and Ruzindana* Trial Judgement, paras 455-458.

[366] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Disclosure of Witness Statements and Cross-Examination (TC), 16 July 2004, para. 25 [*Norman* Decision on Disclosure of Witness Statements]; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasoned Ruling on Defence Evidentiary Objections Concerning Witness TF1-108 (TC), 15 June 2006, para. 8.

[367] *Norman* Decision on Disclosure of Witness Statements, para. 25.

[368] *Fofana* Bail Appeal, para. 29. *See also Halilovic* Trial Judgement, para. 15, citing *Prosecutor v. Aleksovski*, IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence (AC), 16 February 1999, para. 14 [*Aleksovski* Decision on Hearsay Evidence]: hearsay evidence is "the statement of a person made otherwise than in the proceedings in which it is being tendered, but nevertheless being tendered in those proceedings in order to establish the truth of what that person says."

declaration.[369] However, hearsay evidence is not necessarily without probative value, and the Chamber will consider any indicia of reliability before according appropriate weight to it.

1.9. Corroboration

265. In some instances, only one witness has given evidence on a material fact. While the testimony of a single witness on a material fact does not, as a matter of law, require corroboration,[370] it has been the practice of the Chamber to examine such evidence very carefully, and in light of the overall evidence adduced, before placing reliance upon it.

1.10. Measures to Protect Witnesses

266. Concerns for the safety of certain witnesses and their families necessitated the granting of protective measures, including anonymity during trial.[371] To preserve that anonymity in this Judgement, these witnesses are referred to only by the pseudonym under which they testified.

267. Occasionally, it is also possible to identify a protected witness by the events or knowledge they testified to. To safeguard the anonymity of these protected witnesses, it has on occasion unfortunately proved necessary for the Chamber to omit from this Judgement factual details that might otherwise have been included.

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[369] *Krnojelac* Trial Judgement, para. 70. *See also Aleksovski* Decision on Hearsay Evidence, para. 15, where the ICTY Appeals Chamber clarified that: "[t]he absence of the opportunity to cross-examine the person who made the statements, and whether the hearsay is 'first-hand' or more removed, are also relevant to the probative value of the evidence. The fact that the evidence is hearsay does not necessarily deprive it of probative value, but it is acknowledged that the weight or probative value to be afforded to that evidence will usually be less than that given to the testimony of a witness who has given it under a form of oath and who has been cross-examined, although even this will depend upon the infinitely variable circumstances which surround hearsay evidence".

[370] *Limaj et al.* Trial Judgement, para. 21, citing *Aleksovski* Appeal Judgement, para. 62. *See also Vasiljevic* Trial Judgement, para. 22; *Krnojelac* Trial Judgement, para. 71.

[371] See *Prosecutor v. Norman*, SCSL-03-08-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (TC), 23 May 2003; *Prosecutor v. Fofana*, SCSL-03-11-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (TC), 16 October 2003; *Prosecutor v. Kondewa*, SCSL-03-12-PT, Ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure and urgent Request for Interim Measures until Appropriate Protective Measures are in Place (TC), 10 October 2003. *See also Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses (TC), 8 June 2004.

1.11. Expert Evidence

268. During the course of trial, the Chamber ruled that an expert witness is a "person whom by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute"[372] and that expert testimony is "testimony intended to enlighten the Judges on specific issues of a technical nature, requiring special knowledge in a specific field" whose purpose "is to provide a court with information that is outside its ordinary experience and knowledge".[373]

269. The Chamber admitted testimony from expert witnesses for both the Prosecution and the Defence. The admission into evidence of expert testimony does not mean that the Chamber is bound to accept it. It is the prerogative of the Chamber to assign what probative value to attach to it.[374] In evaluating the probative value of this evidence, the Chamber has considered the professional competence of the expert, the methodologies and reasoning used by the expert, the independence of the expert, whether those facts that the expert opinion is based upon have been introduced into evidence, the truthfulness of those facts, and the credibility of the opinions expressed in light of these factors and other evidence accepted by the Chamber.[375]

1.12. Judicial Notice

270. The Chamber observes that Rule 94(A) of the Rules provides that the Chamber shall not require proof of facts of common knowledge but shall instead take judicial notice of them. In accordance with this provision, the Chamber took judicial notice of a number of facts.[376] Once

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[372] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures (TC), 21 June 2005 [*Norman* Decision on Additional Witnesses], p. 4, citing *Prosecutor v. Galic*, IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps (TC), 3 July 2002, p. 2.

[373] *Norman* Decision on Additional Witnesses, p. 4, citing *Prosecutor v. Akayesu*, ICTR-96-4-T, Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness (TC), 9 March 1998 and Richard May and Marieke Wierda, *International Criminal Evidence* (New York: Transnational Publishers, 2002), p. 199, para. 6.83 [May, *International Criminal Evidence*].

[374] *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 & 23/1, Decision on Prosecution's Motion for Exclusion of Evidence and Limitation of Testimony (TC), 3 July 2000, para. 4.

[375] *Vasiljevic* Trial Judgement, para. 20.

[376] *See* Annex E: Judicially Noted Facts.

judicial notice is taken, such facts cannot be challenged during trial.[377] Those facts that have been judicially noticed by the Chamber are, therefore, conclusively established.[378]

1.13. Documentary Evidence

271. Pursuant to the Rules, the Chamber may admit documentary evidence.[379] During the course of trial, the Chamber admitted documentary evidence from both Prosecution and Defence teams.[380] As with all evidence adduced before the Trial Chamber, "the weight and reliability of such 'information' admitted under Rule 92*bis* will have to be assessed in light of all the evidence in the case."[381] The Chamber will not make use of the evidence admitted under this rule, where it goes to prove the acts and conduct charged against the Accused if there is no opportunity for cross-examination.[382]

272. With this flexible approach to the admission of evidence, there is less scope for the restrictive application of technical rules of evidence sometimes found in national jurisdictions and applied to documentary evidence.[383]

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[377] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR73, Fofana - Decision on Appeal Against "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence" (AC), 16 May 2005, para. 32 [Appeal Decision on Judicial Notice].

[378] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence (TC), 2 June 2004, as modified by Appeal Decision on Judicial Notice, paras 41, 43, 45 and 49 [Trial Decision on Judicial Notice].

[379] Rules 89(C), 92*bis* and 92*ter*. Rule 92*bis* was amended on 14 May 2007. Rule 92*ter* was adopted on 24 November 2006.

[380] For example, documents submitted by the Prosecution, such as United Nations and Non-Governmental organisations (*Prosecution v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92*bis* and 89(C) (TC), 14 July 2005); Documents submitted by Defence for Norman (*Prosecution v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Norman Request to Admit Documents in Lieu of Oral Testimony of Abdul One-Mohammed Pursuant to Rules 89(C) and 92*bis* (TC), 15 September 2006) and witness statements adduced by Defence for Fofana (*Prosecution v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Fofana Request to Admit Evidence Pursuant to Rule 92*bis* (TC), 9 October 2006).

[381] Appeal Decision on Judicial Notice, para. 27.

[382] *Prosecutor against Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92*bis* and 89 (C), 15 July 2005, p. 3; *Prosecutor v Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Decision on the Prosecution Confidential Notice Under 92*bis* to Admit the Transcripts of Testimony of TF1-156 and TF1-179, 3 April 2006, p. 3; *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Prosecution Confidential Notice Under 92*bis* to admit the Transcripts of Testimony of TF1-023, TF1-104 and TF1-169, 9 November 2005, p. 3.

[383] As the Appeals Chamber has stated, "[t]he so-called "best evidence rule" [...] has no modern application other than to require a party in possession of the original document to produce it. If the original is unavailable then copies may be relied upon - the rule has no bearing at all on the question of whether an unsigned statement or submission is admissible. If relevant, then under Rule 89(C) they may [...] be admitted, with their weight to be determined

1.14. Article 18 of the Statute - A Reasoned Opinion in Writing

273. Pursuant to Article 18 of the Statute, every Accused has the right to a public judgement accompanied by a reasoned opinion in writing. Although in a case of this size and complexity, a written reasoned opinion will necessarily be fairly lengthy, it is important that it remains readable to the public at large. Cogency, comprehensibility, and conciseness are important qualities. The Chamber has sought to make clear the evidence it has found to be credible, and, more importantly, the evidence it has relied upon in making its legal findings. The Chamber recalls the guidance given by the ICTY Appeals Chamber on this issue:

> With regard to the factual findings, the Trial Chamber is required only to make findings of those facts which are essential to the determination of guilt on a particular count. It is not necessary to refer to the testimony of every witness or every piece of evidence on the record. It is to be presumed that the Trial Chamber evaluated all the evidence presented to it, as long as there is no indication that the Trial Chamber completely disregarded any particular piece of evidence.[384]

274. In handing down its factual findings, the Chamber has consciously opted to present them as a comprehensible narrative. This approach does not comment on the Chamber's evaluation of every piece of evidence on the record. The facts that the Chamber has included within its narration are *only* those facts which it has found established. Furthermore, it includes *only* those established facts that have been seriously considered by the Chamber in determining whether an Accused bears responsibility on the charges against him. Some of the evidence in this case was not useful to the Chamber in determining the liability of the Accused. This can be attributed partly to the wide discretion the Judges gave the parties in adducing evidence, and also because some of the evidence became irrelevant due to the death of one of the original Accused, Norman, prior to Judgement. In adopting this narrative approach, the Chamber has attempted to give as clear a picture as possible of the involvement of the two remaining Accused in the crimes charged against them, and the context in which the relevant actions took place. In so doing, the Chamber has fully

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thereafter. There is no rule that requires, as a precondition for admissibility, that relevant statements or submissions must be signed. That may be good practice, but it is not a rule about admissibility of evidence. Evidence is admissible once it is shown to be relevant: the question of its reliability is determined thereafter, and is not a condition for its admission." (*Fofana* Bail Appeal, para. 24 [original footnotes omitted]).

[384] *Kvocka et al.* Appeal Judgement, para. 23.

taken into consideration, where necessary, the evidence given by the Accused Norman before he died.

275. The ICTY Appeals Chamber also gave useful guidance in determining the level of detail required of a Trial Chamber in its written reasoned opinion as regards how the Trial Judges exercised their discretion to determine that testimony they find credible, and that which they do not:

> Considering the fact that minor inconsistencies commonly occur in witness testimony without rendering it unreliable, it is within the discretion of the Trial Chamber to evaluate it and to consider whether the evidence as a whole is credible, without explaining its decision in every detail. If the Trial Chamber did not refer to the evidence given by a witness, even if it is contradiction to the Trial Chamber's finding, it is to be presumed that the Trial Chamber assessed and weighed the evidence, but found that the evidence did not prevent it from arriving at its actual findings.[385]

276. Adopting this approach, it should be taken that where the Chamber has not discussed the evidence of witnesses who gave testimony at odds with that found as established in the factual narrative, the Chamber has nevertheless fully considered the evidence of each and every witness in light of the evidence of the case as a whole. The Chamber has however determined that such evidence does not meet the threshold of reliability and credibility necessary to make a factual conclusion upon it.

1.15. Credibility Discussion

277. As the Chamber has made clear in the approach outlined above, it does not intend to discuss in this Judgement the credibility of the testimony of each and every witness that testified in the case. However, certain important credibility findings bear highlighting.

278. In its attempt to establish that the Accused bear responsibility under either Article 6(1) or as a superior under Article 6(3) for the crimes charged in the Indictment, the Prosecution brought witnesses that may be regarded as "insider" witnesses. In this case, the Chamber has found that these are witnesses who themselves operated either within the CDF inner circle, or at a fairly high level within the overall CDF structure. The Chamber recalls particularly the evidence of Witnesses

[385] *Kvocka et al.* Appeal Judgement, para. 23.

Albert J Nallo, Bobor Tucker, TF2-017, TF2-201, TF2-005, TF2-008, TF2-011, TF2-079, TF2-082 and TF2-223.[386] Many of these witnesses were directly involved as key participants in the events alleged in the Indictment. With this category of witnesses, who could be considered as co-perpetrators or accomplices, a trier of fact has to exercise particular caution in examining every detail of the witnesses' testimony.

279. Witness Nallo was, in the Chamber's view, the single most important witness in the Prosecution evidence on the alleged superior responsibility of the Accused, particularly Fofana. Nallo was, at the time, the Deputy National Director of Operations and the Director of Operations, Southern Region, and according to the evidence, one of only a few literate Directors within the organisation. The Chamber has found that he was in regular communication with both the senior leadership of the organisation and the Kamajors fighting on the ground. Due to his literacy and his functions in relation to the war front, he regularly prepared reports for the ultimate attention of the National Coordinator, Norman. During his time spent at Base Zero, he worked with and reported directly to Fofana, the Director of War, preparing plans for the war. In short, he was in a unique position.

280. Nallo's frank and public admission of his personal role in the war, including the commission of criminal acts, and his willingness to testify openly (presumably at considerable personal risk) about the activities of his fellow leaders and commanders are important factors that have added to his overall credibility. For the greater part, Nallo testified without hesitation, unambiguously, and, in the Chamber's opinion, through a genuine desire that the truth be known. Parts of his testimony were corroborated by the testimony of TF2-017, one of Nallo's subordinates. Occasionally, however, Nallo appeared equivocal or exaggerated in his responses to questions. The Chamber has rejected those portions of his evidence.

281. The Chamber has also rejected parts of Nallo's testimony for reasons of reliability. Much of this relates to events occurring around Talia. The Chamber, for example, rejected part of the testimony of Nallo describing the attacks on four villages in Bonthe District: Dodo, Sorgia, Pipor and Baomakpengeh. For example, Joseph Lansana, whom the Chamber found to be a largely

[386] The Chamber granted protective measures to almost all Prosecution witnesses. The pseudonym assigned to each witness begins with the letters "TF2".

credible witness, gave evidence about his own mother being thrown into a fire, an event to which Nallo also testified; however Lansana placed this event at a different time than Nallo. Doubts as to Nallo's accurate recollection of this, and other incidents, caused the Chamber to entirely reject this part of his testimony.

282. The Prosecution adduced evidence from former child soldiers. The Chamber found the evidence of TF2-021 pivotal in making its factual findings. According to TF2-021's own testimony, he was nine years old when he was captured by RUF rebels, and eleven years old when the Kamajors captured him from the RUF and initiated him into their society. For this Witness, the events in question occurred when he was very young, and his testimony comes many years after the events in question. Nonetheless, the Chamber found his testimony highly credible and largely reliable. Clearly, the intensity of his experience has left him with an indelible recollection of the events in question.

283. Corroboration, although not required in law, was deemed necessary where the Chamber found that internal inconsistencies and contradictions with other evidence demonstrated a poor, selective, or tainted recollection of events. TF2-057 wildly exaggerated his testimony, perhaps because he has a failing memory, because of the trauma he has suffered, or perhaps for other personal reasons. When juxtaposed with the evidence of TF2-067 it was clear that only those parts of his evidence corroborated by other witnesses could be accepted by the Chamber. TF2-223 is an example of a self-serving witness who seemed more interested in bolstering his own role in the events rather than in assisting the court to establish the truth. The Chamber has accepted the evidence given in this vein only where elsewhere corroborated.

284. Similarly, the Chamber found Kamabote to be an unreliable witness and has accepted his evidence only where corroborated. The Chamber has found that Kamabote was directly involved in the commission of crimes in Tongo Field, however, his blanket denial of any such participation, coupled with his general demeanour in court, has led the Chamber to discount most of his evidence.

285. Some Defence witnesses were clearly testifying with the objective of assisting one of the Accused in his Defence. For example, Joe Kpana Lewis and Yeama Lewis, who testified on behalf of Kondewa, had family and friendship connections to the Accused. Yeama Lewis openly admitted

that she was there to assist him and that she had discussed her evidence with her husband before testifying. Such evidence, which is strongly flavoured with personal motive, is of little value to the Chamber.

286. The Chamber suspected that several witnesses were attempting to mislead the Chamber. Brima Tarawally is one such example. The Chamber found him to be self-interested and deliberately obstructive of the proceedings. The Chamber had similar views on the testimony of Mustapha Lumeh, who was hesitant in answering questions, and whose attitude and behaviour in court led the Chamber to conclude that assisting the Chamber with the discovery of truth was not his primary reason for testifying. Such evidence has been disregarded in its entirety. Several other Defence witnesses, whilst to some extent corroborating each others' testimony, left the Chamber with the distinct impression that they had come prepared with "stock" answers which, at least in part, appeared to be designed to refute the charges against the Accused persons.

287. Finally, the Chamber wishes to reiterate that, regardless of any evidence presented in defence of the Accused persons and the weight the Chamber has attached to such evidence, it is the Prosecution that bears the burden of proving, beyond reasonable doubt, the charges against the Accused.

2. Factual Findings

2.1. Introduction

288. In setting out its factual findings, the Chamber has first dealt with the structure and organisation of the CDF / Kamajors, focussing on the period of time of the existence of Base Zero (*i.e.* from around 15 September 1997 to 10 March 1998). Base Zero was located in Talia Yawbeko chiefdom and was referred to as the CDF Headquarters and the CDF High Command. This section also briefly describes the structure and organisation of the CDF / Kamajors after the dissolution of Base Zero.

289. Secondly, the Chamber has grouped the factual findings relevant to Counts 1-7 of the Indictment according to geographical area. For the sake of clarity, the Chamber has chosen to consider the facts in chronological order, rather than in the order in which they are listed in the

Indictment. These areas consist of the Towns of Tongo Field, Koribondo, Bo District, Bonthe District, Kenema District, Talia / Base Zero and Moyamba District.

290. The factual findings which have a bearing upon offences relating to Child Soldiers (Count 8 of the Indictment), throughout the timeframe of the Indictment, have been extracted from various geographical locations and grouped together under a separate heading. The Chamber considers that they warrant unified treatment because these crimes were charged for locations "throughout the Republic of Sierra Leone".

291. Despite this grouping, it should be understood that events occurring in one area cannot be understood to be entirely distinct from those occurring in another.

2.2. Structure and Organisation of the CDF / Kamajors

2.2.1. Background to Talia / Base Zero

292. The town of Talia is the Chiefdom headquarters of the Yawbeko[387] Chiefdom in Bonthe District.[388] In 1996, the RUF were in control of Talia and were bringing captured civilians to their base there;[389] however, by late 1996 or early 1997 the Kamajors had taken over.[390] The first Kamajor leaders who came to Talia were Ngobeh and Joe Tamidey. Kondewa, who was an herbalist, came two weeks later with his priests and was performing initiations in Mokusi.[391] By the time of the coup on 25 May 1997, the rebel war had subsided in the area and the Kamajors were in control in Talia and surrounding villages.[392]

2.2.2. Events at Talia Prior to the Set up of Base Zero

2.2.2.1. Meeting in Talia After the Coup

293. After the Coup, the Kamajor initiator Kamoh Lahai Bangura called a meeting in Talia that was chaired by MT Collier. Those present at the meeting included, among others, Fofana, Bobor

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[387] Yawbeko is alternatively spelt Yowbeko, Yohbeko.
[388] Transcript of 4 November 2004, TF2-201, p. 84 (CS); Transcript of 18 February 2005, TF2-222, p. 3; Transcript of 17 February 2006, MT Collier, p. 11; Transcript of 8 November 2004, TF2-096, p. 4.
[389] Transcript of 8 November 2004, TF2-096, pp. 4-8.
[390] Transcript of 16 February 2006, MT Collier, pp. 59-65; Transcript of 17 February 2006, MT Collier, p. 11; Transcript of 8 November 2004, TF2-096, pp. 38 and 59-60; Transcript of 12 October 2006, Baimba Jobai, p. 79.
[391] Transcript of 8 November 2004, TF2-096, pp. 14-16; Transcript of 3 June 2005, TF2-134, pp. 25-27.
[392] Transcript of 16 February 2006, MT Collier, pp. 59-61; Transcript of 17 February 2006, MT Collier, p. 11.

Tucker and Rufus Collier. Everyone present agreed to resist the rule of the rebels. Specifically, Bobor Tucker, a.k.a. Jegbeyama and twenty of his men agreed to fight.[393] This group became known as the Death Squad, and was later responsible for the security in and around Talia.[394] Everyone agreed to hold another meeting with Kondewa, who was the chief initiator at that time.[395]

2.2.2.2. Meetings with Kondewa in Tihun

294. Two weeks later, Kamajors and civilians from Moyamba, Bonthe, Bo and Pujehun Districts met with Kondewa in Tihun, a town 14 miles from Talia in Sogbini Chiefdom.[396] Everyone again agreed that they would not accept the rebels, and that they should find Norman, who had been appointed the National Coordinator of the civil defence on 15 June 1997 by President Kabbah.[397] They sent a delegation of four people to find Norman in Liberia so that he could tell President Kabbah that they supported him and would find the means to return him to power.[398] They also wanted to request logistical support from Kabbah and join with Norman to fight the war on two fronts instead of one.[399]

2.2.2.3. Actions of Kondewa in Tihun

295. Around July-August 1997, and while the delegation was searching for Norman, Kondewa was in Tihun performing initiations.[400] During this time, he ordered Tucker and the Death Squad to mount checkpoints around the area, and specifically, at Bauya Junction, Tobanda Junction and in Bumpeh town. Tucker and the Death Squad were also ordered to launch an attack on the Mokanji soldiers in Bo and were given ammunitions from Kondewa's home in Tihun.[401] Tucker reported to Kondewa that the attack on Bo had failed. The two then travelled to Executive

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[393] Transcript of 10 February 2005, Bobor Tucker, pp. 12-15.
[394] Transcript of 10 February 2005, Bobor Tucker, p. 32-33. See section V.2.2.11.6.
[395] Transcript of 10 February 2005, Bobor Tucker, p. 15.
[396] Transcript of 10 February 2005, Bobor Tucker, pp. 15-16; Transcript of 16 February 2006, MT Collier, p. 78; Transcript of 12 May 2006, Haroun Collier, p. 30.
[397] Transcript of 25 January 2006, Samuel Hinga Norman, pp. 25-28; Transcript of 16 February 2006, MT Collier, pp. 78-80.
[398] Transcript of 16 February 2006, MT Collier, pp. 78-80; Transcript of 12 May 2006, Haroun Collier, p. 31.
[399] Transcript of 10 February 2005, Bobor Tucker, p. 26.
[400] Transcript of 16 November 2004, TF2-008, pp. 47-50; Transcript of 10 March 2005, Albert J Nallo, p. 18; Transcript of 15 May 2006, Haroun Collier, pp. 16-17.
[401] Transcript of 10 February 2005, Bobor Tucker, pp. 16-18.

Outcomes at Mombini Sierra Rutile to collect more ammunitions.[402] Kondewa then ordered Tucker to attack Taiama. The attack was successful and a situation report was made to Kondewa.[403]

2.2.2.4. Meeting with Kondewa and Fofana at Talia

296. The delegation that had been sent to find Norman had not returned by the end of two months. Another meeting was held in Talia and those present including, among others, Kondewa, Fofana, Kamoh Lahai Bangura and Tucker, decided to send another delegation to Norman in Gendema.[404] They sent a letter written by Kondewa and a cassette with Kondewa speaking on it. Fofana was among the members of the delegation that went to find Norman.[405]

2.2.2.5. Delegation from Bonthe to Meet Kondewa

297. As a result of a few meetings held in Bonthe Town around August 1997 to discuss the continuing harassment of civilians by soldiers and the security of the island, a delegation of ten, headed by the district officer Mr. LV Kanneh and attended by Father Garrick[406] was sent to Kondewa, who was considered the supreme head of Kamajors, in Tihun Sogbini.[407]

298. The delegation was ordered to disembark from their boat at Momaya. Kamajors were shooting all around them and threatening them. Kamajor Commander Sheku Kaillie, a.k.a. Bombowai, pleaded on the delegation's behalf to allow them to be heard and eventually led them, under his protection, to Kondewa.[408] They learned that Kondewa was no longer in Tihun, but in Talia. After a meeting with the chiefs and elders of Mattru Jong in the morning of 22 August, the delegation was led to Talia by Ngobeh, the district grand Kamajor commander.[409]

299. The delegation arrived at Kondewa's house on 24 August 1997. A young boy around fifteen years of age was playing guitar and percussion and singing about the greatness of Kondewa and the Kamajor society. Kamajors armed with rifles and guns were guarding the house.[410] The

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[402] Transcript of 10 February 2005, Bobor Tucker, pp. 19-22.
[403] Transcript of 10 February 2005, Bobor Tucker, pp. 20-23; Transcript of 12 May 2006, Haroun Collier, p. 31
[404] Transcript of 16 February 2006, MT Collier, pp. 78-79; Transcript of 10 February 2005, Bobor Tucker, pp. 26-27.
[405] Transcript of 10 February 2005, Bobor Tucker, pp. 28-29; See also Transcript of 12 May 2006, Haroun Collier, p. 33.
[406] Transcript of 10 November 2004, Father Garrick, pp. 10-12; Transcript of 11 November 2004, TF2-071, pp. 50-51.
[407] Transcript of 10 November 2004, Father Garrick, pp. 11-12.
[408] Transcript of 10 November 2004, Father Garrick, pp. 13-17.
[409] Transcript of 10 November 2004, Father Garrick, pp. 17-19.
[410] Transcript of 10 November 2004, Father Garrick, pp. 19-20.

delegation was introduced to Kondewa, and they spoke in his veranda. The delegation explained to Kondewa the dreadful effects of the war. In response Kondewa stated: "war means to know that you will die; to know that you have no control over your life; to know that you have no dignity; to know that your property is not yours".[411] Kondewa then called a meeting at the court *barri* that was attended by all of the elders of the region, the paramount chiefs and Kamajor commanders. Kondewa said at the meeting that he was not going to give any of the areas under his control to a military government but to the democratically elected Government of President Ahmad Tejan Kabbah. Kondewa agreed to the cessation of hostilities between the Kamajors and the Soldiers, the stopping of the harassment of civilians and the free movement of boats, and wrote a letter to this effect to all Kamajor commanders around Bonthe.[412] The agreement did not work.[413]

300. The delegation left to return to Bonthe accompanied by Ngobeh. It was stopped in Tihun by a Kamajor who presented a letter, which he demanded to be read in the presence of Kondewa. They returned to Talia. The letter was written by a commander from Gambia and stated that LV Kanneh and his group were responsible for bringing the soldiers to Bonthe. Kondewa declared that if the information was true, all of the delegation would be killed; if it was not true, those responsible for the lie would experience a terrible death.[414]

301. The next morning the delegation proceeded to Gambia in the company of Kondewa, Julius Squire and Bombowai. Kondewa ordered a court sitting in Gambia and placed Pa Lewis, one of the elders of the town, Ngobeh and Bombowai in charge of the investigation. Those responsible for the letter pleaded guilty. They were supposed to be killed, but the delegation pleaded with Kondewa to spare their lives and he agreed.[415]

2.2.3. Arrival of Norman at Talia: Base Zero

302. Around 15 September 1997, Norman arrived in Talia by helicopter.[416] Upon his arrival, he told the crowd that welcomed him that President Kabbah had named him the leader of the

[411] Transcript of 10 November 2004, Father Garrick, pp. 20-21.
[412] Transcript of 10 November 2004, Father Garrick, pp. 21-23.
[413] Transcript of 11 November 2004, TF2-071, pp. 52-53.
[414] Transcript of 10 November 2004, Father Garrick, pp. 23-27.
[415] Transcript of 10 November 2004, Father Garrick, pp. 27-29.
[416] Transcript of 26 January 2006, Samuel Hinga Norman, p. 13; Transcript of 12 May 2006, Haroun Collier, p. 33; Transcript of 16 February 2006, MT Collier, p. 79; See also transcript of 5 November 2004, TF2-201, p. 97 (CS).

Kamajors and told him to join the Kamajors in Talia to fight the war. President Kabbah sent a small amount of logistics, including rice, gari, fuel, guns and ammunitions, to Norman for that purpose.[417]

303. Upon his arrival, Norman gave Talia the code name "Base Zero" because Talia was a common name and its use would alert the rebels to their whereabouts.[418] Base Zero existed from about 15 September 1997 to 10 March 1998 as the headquarters for the Civil Defence Forces High Command.[419] Thousands of civilians and Kamajors travelled to Base Zero for military training and initiation into the Kamajor society during those six months.[420]

2.2.4. Establishment and Functions of the War Council

304. When Base Zero was established, Norman was in charge of all matters other than military training and initiations, which were headed respectively by the trainer Mbogba and Kondewa.[421] The elders were displeased with the situation because many atrocities were then being committed by Kamajors.[422] They approached Norman around mid-October and suggested the establishment of a War Council whereby the elders could be involved in the running of Base Zero as an advisory group. Norman accepted this recommendation.[423] The War Council was to advise Norman on issues such as appointment and promotion of commanders, reports from the frontline, requisitions for arms, ammunition and food from the frontline, settlement of complaints between

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[417] Transcript of 16 February 2006, MT Collier, pp. 79-82; Transcript of 10 February 2005, Bobor Tucker, pp. 29-30; See also Transcript of 12 May 2006, Haroun Collier, pp. 33-37.
[418] Transcript of 26 January 2006, Samuel Hinga Norman, p.17.
[419] Transcript of 26 January 2006, Samuel Hinga Norman, p. 61; Transcript of 26 January 2006, Samuel Hinga Norman, p. 17. See also Exhibit 10, confidential (refers to the "Civil Defence Forces of Sierra Leone Headquarters"); Exhibit 11, confidential, (refers to the "Civil Defence Forces High Command").
[420] Transcript of 15 February 2005, TF2-005, p. 90 (CS); Transcript of 27 May 2005, TF2-079, p. 53; Transcript of 23 November 2004, TF2-008, pp. 28-29; Transcript of 10 February 2005, Bobor Tucker, pp. 41-42; Transcript of 16 November 2004, TF2-008, pp. 66-67; Transcript of 17 November 2004, TF2-068, pp. 78-79 (CS); Testimony of 8 June 2005, TF2-011, pp. 16-17 (CS).
[421] Transcript of 15 February 2005, TF2-005, p. 91 (CS).
[422] Transcript of 15 February 2005, TF2-005, p. 91 (CS); See also Transcript of 17 February 2005, TF2-222, pp. 90-93; Transcript of 17 November 2004, TF2-008, p. 9.
[423] Transcript of 15 February 2005, TF2-005, pp. 91-92 (CS); Transcript of 4 November 2004, TF2-201, p. 87 (CS); Transcript of 26 May 2005, TF2-079, p. 45; Transcript of 16 November 2004, TF2-008, p. 75; Transcript of 17 November 2004, TF2-008, p. 9.

the Kamajors and the surrounding communities, and decisions on when and where to go to war and how many Kamajors should be committed to the effort.[424]

305. The War Council had between 15 and 30 members who were recommended by sitting members of the War Council and appointed by Norman.[425] Its members included, among others: Chief William Quee as the Chairman, Paramount Chief Charlie Tucker as the vice-Chairman, Ibrahim FM Kanneh as the Secretary, regional coordinators from the South, North and East and numerous other representatives from every region.[426]

306. The War Council functioned well at the beginning. The members collectively gave advice to Norman and he would approve or deny their suggestions.[427] Norman, however, did not want an effective structure in place to check his power, and therefore began discouraging all proposals from the War Council, often sitting in on the meetings to discourage members from speaking freely.[428] He began calling meetings with the commanders and excluded the War Council from these meetings.[429] Kondewa also opposed the War Council and acted out against them on more than one occasion, once condoning Kamajors "pelting" the members with stones, once shooting amongst the members during a meeting saying, "[w]hen people say war, you say book", and also threatening the members for attempting to investigate complaints of looting and killing made against the Death Squad.[430] The War Council quickly became ineffective and the three Accused and the commanders ultimately did all of the planning for the prosecution of the war without the War Council's involvement.[431]

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[424] Transcript of 15 February 2005, TF2-005, pp. 93-94 (CS); Transcript of 16 February 2005, TF2-005, p. 10 (CS); Transcript of 4 November 2004, TF2-201, pp. 90-91 (CS); Transcript of 18 November 2004, TF2-068, p. 80 (CS); Transcript of 16 November 2004, TF2-008, p. 75.

[425] Transcript of 17 November 2004, TF2-008, p. 8; Transcript of 4 November 2004, TF2-201, p. 94 (CS); Transcript of 16 November 2004, TF2-008, p. 75.

[426] Transcript of 15 February 2005, TF2-005, pp. 92-93 (CS).

[427] Transcript of 15 February 2005, TF2-005, p. 94 (CS).

[428] Transcript of 17 February 2005, TF2-222, pp. 101-102; Transcript of 15 February 2005, TF2-005, p. 94 (CS).

[429] Transcript of 17 February 2005, TF2-222, pp. 102-103; Transcript of 4 November 2004, TF2-201, pp. 91-93 (CS).

[430] Transcript of 26 May 2005, TF2-079, pp. 46-49; Transcript of 4 November 2004, TF2-201, pp. 92-95 (CS); Transcript of 15 February 2005, TF2-005, pp. 95-98 and 100-101 (CS); TF2-011 also testified that Kondewa was calling the War Council a Mende word for "cunning" saying they were trying to cunningly take the power from Norman, Fofana and Kondewa. Transcript of 8 June 2005, TF2-011, p. 31 (CS).

[431] Transcript of 15 February 2005, TF2-005, p. 94 (CS); Transcript of 5 November 2004, TF2-201, pp. 93-99 (CS); Transcript of 16 November 2004, TF2-008, p. 82.

2.2.5. Discipline

307. There was a disciplinary committee of the War Council at Base Zero that was headed by Dr. Jibao.[432] The process would generally begin when a complaint was made to the War Council by a commander or a civilian.[433] The complaint would then be forwarded to the disciplinary committee, which could take one of two measures. If the matter was a minor complaint, the disciplinary committee and the War Council had a free hand to settle the problem themselves or to hand it back to the commanders to settle. If the matter was a major one, the disciplinary committee would make a recommendation to Norman.[434] In the most severe cases, Norman would refer the matter to the War Council for advice. However, Norman would make the final decision on discipline himself.[435]

308. As with their other functions, members of the War Council were afraid of exercising their functions as a disciplinary body and were often prevented from doing so.[436] In particular, they feared reprisals from the Kamajors. For example, Mr. Robert Kajue, a seventy-year-old former Member of Parliament and member of the War Council, was molested by a young Kamajor with a gun and no disciplinary action was taken against the Kamajor.[437] On a separate occasion, Kondewa threatened the War Council, saying that whoever touched a Kamajor would be punished.[438] Norman also routinely refused to implement the War Council's recommendations[439] and despite recommendations by the War Council as serious as the threat of death,[440] the worst punishment

[432] Transcript of 5 November 2004, TF2-201, p. 95 (CS).
[433] Transcript of 16 February 2005, TF2-005, pp. 14-16 (CS).
[434] Transcript of 23 November 2004, TF2-008, pp. 3-5; Transcript of 15 February 2005, TF2-005, pp. 94-95 (CS); Transcript of 6 February 2006, Samuel Hinga Norman, pp. 38-41.
[435] Transcript of 6 February 2006, Samuel Hinga Norman, pp. 38-41.
[436] Transcript 22 November 2004, TF2-017, pp .46-47 (CS).
[437] Transcript of 8 June 2005, TF2-011, pp. 23-24 (CS).
[438] Transcript of 22 November 2004, TF2-017, p. 46 (CS).
[439] Transcript of 23 November 2004, TF2-008, pp. 4-5.
[440] For example, the War Council recommended that Osman Vandi a.k.a. Vanjawai be executed after he killed a pregnant woman named Jeneba in Jiama Bongo Chiefdom. He was instead removed from command and was not permitted to return to the warfront. See Transcript of 11 March 2005, Albert J Nallo, pp.16-23; Transcript of 26 January 2006, Samuel Hinga Norman, pp.31-34; Transcript of 31 January 2006, Samuel Hinga Norman, pp.44-46. Similar actions were taken against Bobor Tucker, a.k.a. Jegbeyama, the commander of the Death Squad. The Death Squad was found to have been killing civilians and looting. It was recommended that Jegbeyama should remain at Base Zero. See Transcript of 16 November 2004, TF2-008, pp. 76-77.

that was actually given was to 'peg' the offender at Base Zero. This meant only that the person had to remain at Base Zero and could not return to combat.[441]

2.2.6. Reports

309. Throughout the operation of Base Zero, reports were delivered to the High Command from the frontlines. However, there was no uniform reporting system in place. There are examples of a written reporting scheme, with reports ranging from two-page requests for logistics[442] to detailed descriptions of attacks, ambushes and summary executions.[443] There was also a system of verbal reporting whereby battalion commanders would report from the warfront to regional operation commanders, who would then report to the War Council.[444]

310. Norman had a satellite phone at Base Zero which was kept at MT Collier's house.[445] He would use the phone only to keep President Kabbah informed and to request assistance from him when necessary.[446] Reports from the warfront were generally conveyed by foot, and rarely, by more efficient forms of transport like bicycle, motorcycles and other vehicles.[447]

2.2.7. Logistics Procurement

311. One of the principal functions of the reporting scheme was as a means for commanders to request more logistics from Base Zero.[448] Base Zero was also, in addition to its other functions, a central storage and distribution site for all of the CDF's logistics, including weapons, ammunitions, fuel, food and other condiments.[449] Whenever possible, victorious commanders would take the weapons of defeated enemies.[450] The primary source of logistics, however, was Base

[441] Transcript of 17 November 2004, TF2-008, p. 46.
[442] Exhibit 147.
[443] Exhibit 86, confidential.
[444] See also section V.2.2.6 below.
[445] Transcript of 12 May 2006, Haroun Collier, pp. 37-39; Transcript of 15 May 2006, Haroun Collier, p. 66.
[446] Transcript of 16 February 2005, TF2-005, pp. 10-11 (CS); Transcript of 27 January 2006, Samuel Hinga Norman, pp. 97-99; Transcript of 30 January 2006, Samuel Hinga Norman, pp. 2-3.
[447] Transcript of 8 June 2005, TF2-011, pp. 27-28 (CS).
[448] See also section V.2.2.6 below.
[449] Transcript of 4 November 2004, TF2-201, pp. 85, 87 and 96-98 (CS); Transcript of 5 November 2004, TF2-201, p. 100 (CS).
[450] Transcript of 16 November 2004, TF2-008, p. 48.

Zero. Norman would take logistics from Liberia by helicopter and store them at Base Zero.[451] President Kabbah would also provide arms and ammunitions when Norman made such requests.[452] After one request that Norman made in October 1997, President Kabbah organised a meeting between himself, Norman and ECOMOG General Maxwell Khobe at Lungi Airport during which President Kabbah assured Norman that arrangements had been put in place to bring weapons to Base Zero by the end the month.[453] Norman and others returned to Lungi in November and received an assortment of conventional weapons.[454]

312. There were two logistics stores at the court *barri* at Base Zero. One was the goods store, which was run by Commanding Officer Jayah.[455] The other was the arms and ammunitions store, which was run by the National Deputy Director of War, Mohamed Orinco Moosa.[456] Norman kept records of everything that he brought to Base Zero and when he wanted arms and ammunitions distributed, he would write out an order and give it to Fofana for his action.[457]

2.2.8. Initiation

313. Initiation into the Kamajor society and immunisation are two distinct but interrelated concepts.[458] The phenomenon of immunisation developed between 1996 and 1997 when some people, called "initiators", were believed to have developed mystical medicinal herbs which rendered people immune to bullet wounds.[459] Most chiefdom authorities not only invited but paid for the initiators, including among others, Kondewa, Mama Munde Fortune, Siaka Sheriff

[451] Transcript of 4 November 2004, TF2-201, p. 87 (CS); Transcript of 16 November 2004, TF2-008, p. 48; Transcript of 15 March 2005, Albert J Nallo, p. 5; Transcript of 5 May 2006, Mustapha Lumeh, pp. 75-76; Transcript of 17 November 2004, TF2-008, p. 8.
[452] Transcript of 27 January 2006, Samuel Hinga Norman, pp. 98-99; Transcript of 26 January 2006, Samuel Hinga Norman, pp. 25-26.
[453] Transcript of 26 January 2006, Samuel Hinga Norman, pp. 37-39.
[454] Transcript of 26 January 2006, Samuel Hinga Norman, pp. 39-42; Transcript of 5 May 2006, Mustapha Lumeh, pp. 75-78.
[455] Transcript of 17 February 2006, MT Collier, pp. 6-7; Transcript of 16 November 2004, TF2-008, pp. 69-70.
[456] Transcript of 16 November 2004, TF2-008, pp.69-70; Transcript of 4 November 2004, pp.96-98 (CS).
[457] Transcript of 4 November 2004, pp. 97-98 (CS).
[458] Transcript of 27 January 2006, Samuel Hinga Norman, pp. 91-95.
[459] Transcript of 10 February 2006, Albert Joe Demby, pp. 10-11; Transcript of 27 January 2006, Samuel Hinga Norman, pp. 91-95.

(Mualemu) K Saddam and Kamoh Lahai Bangura,[460] to immunise their chiefdom Kamajors.[461] In addition to the Kamajors, civilians, including elders, women and children, were immunised.[462]

314. For a period of time before the coup, initiation was a process through which a fighter joined the Kamajor society. Young male fighters of good character were recommended and selected by the local chiefdom authorities for initiation.[463] One of the foremost reasons for being initiated at that time was to protect civilians and territory.[464] During the initiation, Kamajors were given certain rules and prohibitions that they were bound to follow.[465] Some of these prohibitions precluded, *inter alia*, the killing of civilians who were not participating in the conflict; the killing of women; looting; and the killing of a surrendered enemy.[466] The consequence for violating one of these rules was that a Kamajor would lose his immunisation to bullets and would be killed.[467]

315. After the Coup, there was a need to substantially increase the number of hunters in the Kamajor society, which required a marked increase in the number of initiations. The initiation procedure changed tremendously and was no longer coordinated at the local or chiefdom level. Instead of being recommended by the chiefdom authorities, fighters started seeking initiation individually[468] and the rules were not highlighted to the fighters.[469] Chiefs were in disarray and everybody came to Base Zero to seek refuge and join the Kamajors there.[470] The primary purpose of the initiation was still to prepare the fighters for the war and to receive the protection against

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[460] Transcript of 26 May 2005, TF2-079, pp. 12-14; Transcript of 22 February 2006, Ishmael Koroma, pp. 29-35; Transcript of 31 May 2006, Lansana Bockarie p.17; Transcript of 10 March 2005, Albert J Nallo, pp. 6 and 9; Transcript of 15 February 2005, TF2-001, pp. 80-85 (CS); Transcript of 10 February 2006, Albert Joe Demby, p. 13.
[461] Transcript of 10 February 2006, Albert Joe Demby, pp. 13-15.
[462] Transcript of 10 February 2006, Albert Joe Demby, pp. 13-15.
[463] Transcript of 16 November 2004, TF2-008, pp. 51-55; Transcript of 27 May 2005, TF2-079, pp. 6-8.
[464] Transcript of 17 November 2004, TF2-008, pp. 12-14.
[465] Norman was told about these guiding laws when he was initiated by Moalem Sesay. See Transcript of 3 February 2006, Samuel Hinga Norman, pp. 38-39.
[466] Transcript of 27 January 2006, Samuel Hinga Norman, pp. 47-48; Transcript of 3 February 2006, Samuel Hinga Norman, pp. 39-42; Transcript of 17 September 2004, TF2-082, pp. 6-8, (CS); Transcript of 3 November 2004, TF2-021, pp. 49-51; Transcript of 18 February 2005, TF2-222, p. 20; Transcript of 5 November 2004, TF2-021, pp. 106-107 (CS); Transcript of 14 September 2004, TF2-140, pp. 160-162; Transcript of 16 February 2005, TF2-005, p. 4, (CS).
[467] Transcript of 17 September 2004, TF2-082, pp. 7-8 (CS); Transcript of 3 November 2004, TF2-021, p. 51; Transcript 18 February 2005, TF2-222, p. 21.
[468] Transcript of 3 February 2006, Samuel Hinga Norman, pp. 72-75; 6 February 2006, Samuel Hinga Norman, pp. 73-75.
[469] Transcript of 17 November 2004, TF2-008, p. 24; Transcript of 16 November 2004, TF2-008, p.55; Transcript of 26 May 2005, TF2-079, pp.13-14.
[470] Transcript of 8 June 2005, TF2-011, pp. 16-17 (CS).

bullets by immunisation.[471] However, some initiates, such as members of the War Council, chose only to be immunised and not to fight in the battles.[472]

316. Kondewa was in charge of the initiations at Base Zero; however, it was Norman who decided who should be initiated or who could join the Kamajors.[473] The initiation fee was about 10,000 leones and was paid directly to Kondewa.[474]

317. An example of a Base Zero initiation of fighters was one that involved a group of 400 candidates who were gathered naked in the bush while singing. Children as young as eleven or twelve years of age were in this group, but the majority were adults. Marks were made on initiates' bodies with razor blades and they were told not to bathe for one week. The blade marks symbolised the completion of the initiation. After one week, the initiates were gathered at a graveyard in the middle of the night and allowed to bathe. The initiates were told that if anyone had died for them, that person would return to them in the graveyard and give them something to make them powerful fighters. A substance called "*tevi*", a mixture of burnt human ashes with herbs and leaves in palm oil, was given to all initiates to rub on their bodies before going to the warfront.[475]

2.2.9. Training

318. Training was an important component of the operations at Base Zero. When Norman first landed in Talia, he told the crowd that President Kabbah had sent him there to set up a training base so that they could fight the war and bring peace to the country.[476] Any initiate wanting to become a combatant had to go through military training.[477] MS Dumbuya, who was once the head of the armed wing of the Sierra Leone Police known as the State Security Division ("SSD"), led the

[471] Transcript of 27 January 2006, Samuel Hinga Norman, p. 95.
[472] Transcript of 17 November 2004, TF2-068, pp. 79-80 (CS).
[473] Transcript of 8 June 2005, TF2-011 p. 17 (CS).
[474] Transcript of 2 November 2004, TF2-021, p. 43.
[475] Transcript of 2 November 2004, TF2-021, pp. 37-43; Transcript of 12 October 2006, Abibu Brima, pp. 60-63. For examples of killings as part of Kamajor rituals see the killings of Alpha Dauda Kanu and Mustafa Fallon in Talia and the killing of TF2-088's son in Kpetewoma, described in sections V.2.8.5 and V.2.5.7.2.1; See also Transcript of 19 November 2004, TF2-017, p. 27 (CS).
[476] Transcript of 8 November 2004, TF2-096, pp. 18-19 and 54-55; see also section V.2.2.3.
[477] Transcript of 8 June 2005, TF2-011, p. 44 (CS).

training along with a man named Mbogba.[478] Norman was one of the instructors.[479] There were up to 5,000 trainees at Base Zero at any given time.[480] After the training, a passing out parade would be held at Base Zero, which signified that the Kamajors had passed their training and could present their skills.[481] Thereafter each trainee would be given a certificate, which was signed by Norman, Kondewa and Mbogba.[482]

319. Different levels of training were given for different trainees. For instance, one of the members of the War Council, who was not a combatant, learned "cock and fire" techniques, which took about three to four days, and was given his certificate. A combatant, on the other hand, would be trained for up to two weeks, and learned how to assemble weapons, what to do when ambushed and how to roll like a snake when being followed by a troop. All training was done at the Talia School Field and behind it, where there was an obstacle course with ropes hanging and trenches dug.[483]

2.2.10. Planning Operations: Meetings at Base Zero

2.2.10.1. Passing out Parade in December 1997

320. Between 10 and 12 December 1997, a passing out parade was held at Base Zero. It was witnessed by many civilians and Kamajors at Talia. At this parade instructions for the Tongo and Black December operations were given.[484]

321. Norman said in the open that "the attack on Tongo will determine who the winner or the looser of the war would be" and that "[...] there is no place to keep captured or war prisoners like the juntas, let alone their collaborators".[485] TF2-222 felt uncomfortable with this command because "[g]iving such a command to a group that was 95 percent illiterate who had been wronged,

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[478] Transcript of 18 February 2005, TF2-222, p. 40; Transcript of 10 February 2005, Bobor Tucker, pp. 42-43; Transcript of 16 November 2004, TF2-008, pp. 65-67; Transcript of 26 January 2006, Samuel Hinga Norman, p. 56; Transcript of 17 February 2006, MT Collier, p. 48; Transcript of 8 June 2005, TF2-011, p. 45 (CS).
[479] Transcript of 16 November 2004, TF2-008, pp. 63, 66.
[480] Transcript of 10 February 2005, Bobor Tucker, p. 43
[481] Transcript of 18 February 2005, TF2-222, p .7.
[482] Transcript of 10 February 2005, Bobor Tucker, p. 43; Transcript of 16 November 2004, TF2-008, p. 67; Exhibit 26; Transcript of 19 November 2004, TF2-008, p. 67.
[483] Transcript of 15 February 2005, p. 89 (CS).
[484] Transcript of 17 February 2005, TF2-222, pp. 104-111.
[485] Transcript of 17 February 2005, TF2-222, p. 110; See also Transcript of 7 February 2006, Samuel Hinga Norman, pp. 41-44; Transcript of 15 February 2005, TF2-005, p. 106 (CS).

is like telling them an eye for an eye" and meant telling them not to "[...] spare the vulnerables [*sic*]".[486] Norman also said that "[if] the international community is condemning human rights abuses [...] then I take care of the human left abuses", which was clarified by him to mean that "[...] any junta you capture, instead of wasting your bullet, chop off his left [hand] as an indelible mark [...] to be a signal to any group that will want to seize power through the barrels of the gun and not the ballot paper [;] [w]e are in Africa, we want to practice democracy".[487] He also told the fighters to "spare the houses of those men who burnt down your own houses", which TF2-222 took to be very ironical. He understood the last instruction as telling the fighters indirectly not to spare house of the juntas.[488] Fofana also spoke at this meeting saying "[n]ow, you've heard the National Coordinator [...] any commander failing to perform accordingly and losing your own ground, just decide to kill yourself there and don't come to report to us."[489] Then all the fighters looked at Kondewa, admiring him as a man with mystic power, and he gave the last comment saying "a rebel is a rebel; surrendered, not surrendered, they're all rebels [... t]he time for their surrender had long since been exhausted, so we don't need any surrendered rebel." He then said, "I give you my blessings; go my boys, go."[490]

2.2.10.2. Commanders' Meeting in December 1997 for Tongo

322. Following the passing out parade, a meeting was held by Norman at the *walehun*,[491] which was a small place in the bush which took the role of a big *barri*.[492] Further instructions for the Tongo and Black December operations were then given to the commanders by Norman.[493] The meeting had in attendance, among others, Fofana, Kondewa, Mohamed Orinco Moosa, Albert J Nallo, KG Samai, Ngobeh, some commanders from the Tongo area, such as, Musa Junisa, TF2-

[486] Transcript of 17 February 2005, TF2-222, p. 111.
[487] Transcript of 17 February 2005, TF2-222, pp. 112-114.
[488] Transcript of 17 February 2005, TF2-222, pp. 114-115; TF2-222 also testified that later that day, Alhaji Daramy Rogers held a meeting with TF2-222, Hashim Kallon, George Jambawai and Paramount Chief Charles Caulker to discuss Norman's orders. They were all in agreement that the CDF was now taking the same line of operation as the juntas and doing "unholy acts". Transcript of 17 February 2005, pp. 116-118.
[489] Transcript of 17 February 2005, TF2-222, p. 119.
[490] Transcript of 17 February 2005, TF2-222, pp. 119-120.
[491] Transcript of 26 May 2005, TF2-079, pp. 55-56.
[492] Transcript of 17 February 2005, TF2-222, p. 102.
[493] Transcript of 15 February 2005, TF2-005, pp. 105-107 (CS); Transcript of 26 May 2005, TF2-079, p. 55.

079 and Vandi Songo, and some members of the War Council.[494] Norman repeated that whoever took Tongo would win the war and that it should be taken at all costs. He told them not to spare anyone working with the juntas or mining for them.[495] Norman also said that all collaborators should forfeit their properties and be killed. Norman ordered that gravels mined by the AFRC/RUF should be washed by the Kamajors and the proceeds should be taken to Base Zero.[496] Everyone in the meeting contributed to the discussion, including Fofana and Kondewa. Norman then ordered Fofana to provide logistics for the operation.[497] At the meeting, Norman suggested that a deputy should be elected to deputise Fofana. Orinco Moosa was elected to this position.[498]

2.2.10.3. Passing out Parade in Early January 1998 / "All-out Offensive"

323. One afternoon in early January 1998 the bell rang to say that Norman wanted to see all Kamajors at the training field urgently.[499] The meeting was to plan an "all-out offensive" in all of the areas occupied by the juntas.[500] The War Council members were there, the two Accused, the battalion commanders, the Kamajors who had been trained, and children who were involved in the operations.[501] Norman thanked the Kamajors for the training they had undergone and talked about the operations that had been undertaken and those that were pending and their importance. Norman said that he had given instructions for the pending operations and that the Kamajors should follow those instructions.[502] Norman also said that "whoever knows that he is used to fighting with the cutlass, it is time for him to take up the cutlass[; w]hoever knows that he's

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[494] Transcript of 26 May 2005, TF2-079, p. 53; Transcript of 15 February 2005, TF2-005, pp. 105-106 (CS); See also Transcript of 4 November 2004, pp. 103-105 (CS).
[495] Transcript of 15 February 2005, TF2-005, p. 106 (CS); Transcript of 4 November 2004, TF2-201, pp. 107-108 (CS); Transcript of 5 November 2004, TF2-201, p. 82 (CS): TF2-201 testified that immediately after the Kamajors left for Tongo, Norman went on the BBC radio telling civilians to leave Tongo because there would be an attack and if they did not leave, they would be categorised as a rebel. See also Transcript of 26 May 2005, TF2-079, pp. 63-66; Transcript of 7 February 2006, Samuel Hinga Norman, pp. 41-44.
[496] Transcript of 26 May 2005, TF2-079, p. 55.
[497] Transcript of 15 February 2005, TF2-005, pp. 106-107 (CS).
[498] Transcript of 26 May 2005, TF2-079, p. 40.
[499] Transcript of 19 November 2004, TF2-017, p. 87 (CS).
[500] Transcript of 10 February 2005, Bobor Tucker, p. 45.
[501] Transcript of 10 February 2005, Bobor Tucker, pp. 45 and 83-84; Transcript of 19 November 2004, TF2-017, pp. 87-91 (CS).
[502] Transcript of 10 February 2005, Bobor Tucker, pp. 45-46; Transcript of 19 November 2004, TF2-017, pp. 88-89 (CS).

used to fighting with a gun, it is time for him to take up the gun[; w]hoever knows that he's used to fight with a stick, it is time to him to take up his stick." [503]

324. Fofana also spoke at this meeting saying:

> [T]he advice that Pa Norman had given to us, that the training that we underwent for a long time, the time has come for us to implement what we've learned. Now that we have received the order that we shall attack the various areas where the juntas are located, they have done a lot for the trainees. They've spent a lot on them. So any commander, if you are given an area to launch an attack and you fail to accomplish that mission, do not return to Base Zero.[504]

325. During his speech, Fofana told the fighters to attack the villages where the juntas were located and "to destroy the soldiers finally from where they were [...] settled".[505] Fofana also said that the failure to take Koribondo was "a disgrace to the Kamajors that [*sic*] were [*sic*] close to Base Zero because [...] medicine that is given to Kamajors comes from there [and] [t]hat's where they come from to attack Koribondo [*sic*] many [times]." He then said that "[...] this time around, he wants them to go and capture Koribondo."[506]

326. Kondewa said "I am going to give you my blessings [... and] the medicines, which would make you to be fearless if you didn't spoil the law."[507] Kondewa said that all of his powers had been transferred to them to protect them, so that no cutlass would strike them and that they should not be afraid.[508]

327. Afterwards, Norman said that a commanders' meeting was yet to be held where he would reveal which operations were going to be undertaken.[509]

2.2.10.4. Commanders' Meeting for Koribondo in Early January 1998

328. A subsequent meeting was held by Norman in the *walehun*, where the War Council members, the two Accused and some commanders were present.[510] Norman asked Lamin Ngobeh,

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[503] Transcript of 10 February 2005, Bobor Tucker, pp. 45, line 29 and p. 46 line 5.
[504] Transcript of 10 February 2005, Bobor Tucker, p. 45, lines 13-21.
[505] Transcript of 10 February 2005, Bobor Tucker, pp. 82-84.
[506] Transcript of 4 November 2004, TF2-201, p. 113, lines 11-16 (CS).
[507] Transcript of 4 November 2004, TF2-201, p. 113, lines 16-19 (CS).
[508] Transcript of 10 February 2005, Bobor Tucker, p. 46.
[509] Transcript of 19 November 2004, TF2-017, p. 89 (CS).
[510] Transcript of 16 November 2004, TF2-008, pp. 78-80; see also Transcript of 8 June 2005, TF2-011, pp. 28-29 (CS).

then the National Director of Operations, to call Joe Tamidey, the commander for Koribondo.[511] Joe Tamidey was chosen by Norman to lead the attack on Koribondo.[512]

329. Norman said that they should take Koribondo "at all costs" because they had already spent a lot on Koribondo.[513] He said that Koribondo had been attacked three or four times before without the CDF taking it.[514] He told the commanders that when they got to Koribondo not to "leave any house or any living thing there, except mosque, church, the *barri* and the school."[515] He specified that this time they should destroy or burn everything in the town and that anyone left in Koribondo should be termed an enemy or a rebel and killed since they had been forewarned of such consequences.[516]

330. Joe Tamidey then requested ammunition, food and money, which was approved.[517] Joe Tamidey got his ammunitions at Base Zero from Lumeh at the order of Norman. Bobor Tucker had reserve ammunitions from before that he used.[518]

331. At this meeting Bobor Tucker's group was specifically ordered to reinforce the Bo-Koribondo Highway so that no one could come from Bo to help the juntas.[519]

2.2.10.5. Commanders' Meeting for Bo in Early January 1998

332. In the evening of the same day of passing out parade, a second commanders' meeting was held by Norman at the back of the field. The two Accused, the War Council, and commanders attended. Norman addressed the group and told the Kamajors that they had an assignment to attack Bo Town. They were told to kill enemy combatants and people who had connections with or supported the rebels and who were therefore worse than the combatants. He referred to them as "collaborators". The Kamajors were also told to burn down houses and loot big shops, especially

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[511] Transcript of 4 November 2004, TF2-201, p. 113 (CS); see also Transcript of 8 June 2005, TF2-011, pp. 28-29 (CS).
[512] Transcript of 8 June 2005, TF2-011, pp. 28-29 (CS).
[513] Transcript of 4 November 2004, TF2-201, p. 113 (CS).
[514] Transcript of 8 June 2005, TF2-011, p. 30 (CS).
[515] Transcript of 16 November 2004, TF2-008, p. 79.
[516] Transcript of 8 June 2005, TF2-011, pp. 30-31 (CS); Transcript of 15 September 2004, pp. 10 and 35 (CS); Transcript of 2 November 2004, TF2-021, p. 62.
[517] Transcript of 4 November 2004, TF2-201, p. 114 (CS).
[518] Transcript of 10 February 2005, Bobor Tucker, pp. 47-48.
[519] Transcript of 10 February 2005, Bobor Tucker, p. 47.

pharmacies, in the areas that were rebel-held.[520] Norman added that the adult fighters were doing less than the children, and were just eating and looting.[521]

333. Norman called TF2-017 and said he was a good fighter. He then called other commanders, James Kaillie, Battalion commander from Bumpeh, and Joseph Lappia, deputy battalion commander from Bumpeh. They were told to go on a test case for Bo and to attack Kebi town where the rebel brigade headquarters was located. Norman told them to get ammunitions for the attack directly after the meeting. He told them where they were to meet him after the attack and to bring something back to prove that they had attacked. Norman also said that if they repelled the rebels, they would take the country for three years. Fofana provided the commanders with arms, ammunitions and a vehicle.[522]

2.2.10.6. Meeting with Nallo in Early February 1998 / Specific Instructions for Bo and Koribondo

334. Albert J Nallo did all the planning for the Koribondo attack and then submitted it to the Director of War, Fofana, who then submitted it to Norman. Norman called Nallo before the Koribondo and Bo attacks and gave him specific instructions for these two attacks. Fofana was present.[523]

335. Norman told Nallo that the Kamajors had tried to capture Koribondo many times and that they had failed because the civilians had given their children to the juntas in marriage and thus, they were all "spies and collaborators". Therefore, when he goes to Koribondo "anybody that was met there should be killed" and nothing should be left "not even a farm" or "[...] a fowl". All houses were to be burnt, and he was given petrol for the job. Some specific names were mentioned: Shekou Gbao, the driver, should be killed and his compound burnt because he was giving his vehicle to the juntas. The house of Mike Lamin's father was also to be burnt because Mike Lamin was RUF. Mr Biyo, a driver, should also have his compound burnt.[524] Although Joe

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[520] Transcript of 19 November 2004, TF2-017, pp. 92-95 (CS); See also: Transcript of 11 May 2006, Joe Nunie, pp. 92-93. Joe Nunie testified that the plan to capture Bo was made at Base Zero.
[521] Transcript of 19 November 2004, TF2-017, pp. 89-90 (CS).
[522] Transcript of 19 November 2004, TF2-017, pp. 95-97 (CS).
[523] Transcript of 10 March 2005, Albert J Nallo, pp. 44 and 70-77.
[524] Transcript of 10 March 2005, Albert J Nallo, pp. 77-79.

Tamidey was appointed by Norman to lead the attack on Koribondo, he and the other commanders involved in that attack were under Nallo's overall command.[525]

336. Regarding Bo, Norman told Nallo that he should loot the Southern Pharmacy and bring the medicines to Norman.[526] He also told Nallo to kill Paramount Chief Veronica Bagni of Valunia chiefdom, because she was against the Kamajor movement; JK (Kpundoh) Boima III, Paramount Chief of Bo Kakua; Madam Tuma Alias, chairlady of Bo Town Council, because she used "to collect [...] market dues"; Provincial Secretary Lansana Koroma; MB Sesay because he gave money to the juntas and prepared the *ronko* which the juntas wore so that they could not be differentiated from the Kamajors. MB Sesay should also have his house looted and burnt. Nallo was to kill Ali Fataba and burn his house because he was a collaborator who supplied fuel to the juntas. He should kill Cecil Hanciles for liaising between the juntas and the civilians. He was to kill Brima Tolli, if he saw him, and to burn his house and loot his property because the juntas ate and spent time at the house. Norman ordered Nallo to kill the police officers who used to work under the AFRC junta. Nallo carried out the orders as far as burning and looting but did not see most of the people. He would have killed them had he seen them because the law given by the National Coordinator was that if Kamajors did not follow their orders they would cut off your ear or kill you.[527]

2.2.11. Command Structure

2.2.11.1. Norman, Fofana and Kondewa - the High Command

337. Norman, Fofana and Kondewa were regarded as the "Holy Trinity".[528] "Norman was the God, [...] Fofana was the Son, and [Kondewa] was the Holy Spirit."[529] The three of them were the key and essential components of the leadership structure of the organisation and were the executive of the Kamajor society.[530] They were the ones actually making the decisions[531] and

[525] Transcript of 14 March 2005, Albert J Nallo, p. 44.
[526] Transcript of 10 March 2005, Albert J Nallo, p. 71; Transcript of 8 June 2005, TF2-011, p. 29 (CS).
[527] Transcript of 10 March 2005, Albert J Nallo, pp. 70-77.
[528] Transcript of 11 March 2005, Albert J Nallo, pp. 23-24; Transcript of 8 June 2005, TF2-011, p. 31 (CS).
[529] Transcript of 11 March 2005, Albert J Nallo, p. 24.
[530] Transcript of 16 November 2004, TF2-008, p. 51; see also Exhibit 10 and Exhibit 11, confidential.
[531] Transcript of 8 June 2005, TF2-011, p. 31 (CS).

nobody could make a decision in their absence. Whatever happened, they would come together because they were the leaders and the Kamajors looked up to them.[532]

2.2.11.2. Fofana: Director of War

338. In 1995 Fofana together with Joe Tamidey and Musa Kortuwai gave instructions to the group led by Mustafa Ngobeh to fight in Baomakpengeh and Singihun. Fofana assigned Bobor Tucker specifically to lead the attack on Singihun.[533] In late 1995 or early 1996 Fofana together with Jusu Kapanday, Rufus Collier, Joseph Koroma and John Swaray fought the war in Pujehun. Fofana did not then command troops. He was getting food for the fighters along with Musa and Ansu Vanjawai.[534]

339. At Base Zero Fofana was known as the "Director"[535] or "Director of War".[536] He was appointed to this position solely by Norman;[537] the appointment was later confirmed by the War Council.[538]

340. The duties of the Director of War were to plan and execute the strategies for war operations. He received frontline reports, both written and verbal, from the commanders in the field and passed them to Norman.[539] In executing these functions, Fofana was largely assisted by Albert J Nallo, the National Director of Operations, who was the only literate Director. He wrote everything for Fofana while Fofana planned in Mende.[540] For example, Nallo and Fofana were the architects of the Black December Operation.[541] Sometimes Fofana passed on his responsibilities to

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[532] Transcript of 16 November 2004, TF2-008, p. 51.
[533] Transcript of 10 February 2005, Bobor Tucker, pp. 5-6.
[534] Transcript of 16 September 2004, TF2-082, p. 117 (CS).
[535] Transcript of 16 September 2004, TF2-082, pp. 120-121 (CS); Transcript of 28 September 2006, Billoh Conteh, p. 58; Transcript of 17 February 2006, MT Collier, pp. 7-8.
[536] Transcript of 17 February 2005, TF2-222, p. 87; Exhibit 11, confidential; Transcript of 8 November 2004, TF2-096, p. 20; Transcript of 19 May 2006, Mohammed Kaineh, pp. 38-37.
[537] Transcript of 16 February 2005, TF2-005, pp.54-55 (CS); Transcript of 17 February 2005, TF2-222, pp.96-97.
[538] Exhibit 59.
[539] Transcript of 26 May 2005, TF2-079, pp. 40-43; Transcript of 10 March 2005, Albert J Nallo, pp. 33-35; Transcript of 16 November 2004, TF2-008, pp. 46-47.
[540] Transcript of 14 March 2005, Albert J Nallo, pp. 55-57.
[541] Transcript of 14 March 2005, Albert J Nallo, pp. 51-52.

Nallo.[542] The strategies for war operations, which Fofana and Nallo planned together, did not include the killing of innocent civilians, looting of property or raping of women.[543]

341. Fofana's duties as Director of War were to select commanders to go to battle and to act as the overall boss of the commanders who were at Base Zero.[544] However, the final authority regarding the deployment of Kamajors belonged to Norman.[545] Fofana could, on occasions, issue orders to the commanders.[546] For example, he issued the order to Joe Tamidey not to release captured vehicles and other items to any other person until they were registered with CDF Headquarters.[547]

342. Fofana dealt with the receipt and provision of logistics for the frontline by instructing the Director of Logistics on what to make available. This included both fighting logistics, such as, arms and ammunitions, as well as social logistics, such as cigarettes, tobacco leaves and alcohol.[548] However, Fofana could only give out ammunition if and when directed to do so by Norman.[549] Mohamed Orinco Moosa would hand out the arms and ammunitions and Fofana would check to ensure that the right amount had been handed out to the correct commanders.[550]

343. Fofana was never seen on the battlefield or even with a gun and was only considered to have fought in the war because the man who feeds you is a fighter too.[551] Fofana was seen as having power and authority at Base Zero as he was frequently quoted on the BBC,[552] and because people did not approach him unless he summoned them.[553]

2.2.11.3. Kondewa: High Priest

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[542] Transcript of 11 March 2005, Albert J Nallo, p. 59.
[543] Transcript of 14 March 2005, Albert J Nallo, pp. 56-57.
[544] Transcript of 15 February 2005, TF2-005, p. 101 (CS).
[545] Transcript of 8 June 2005, TF2-011, p. 47 (CS).
[546] Transcript of 16 February 2005, TF2-005, p. 17 (CS).
[547] Exhibit 11, confidential; Transcript of 5 May 2005, Mustapha Lumeh, pp. 9-12.
[548] Transcript of 17 February 2005, TF2-222, p. 92; Transcript of 26 May 2005, TF2-079, p. 42; Transcript of 16 November 2004, TF2-008, p. 47; Transcript of 17 February 2006, MT Collier, pp. 6-7 and 63-64.
[549] Transcript of 15 February 2005, TF2-005, p. 101 (CS).
[550] Transcript of 16 November 2004, TF2-008, pp. 69-70; Transcript of 4 November 2004, pp. 96-98.
[551] Transcript of 16 September 2004, TF2-082, p. 121 (CS).
[552] Transcript of 26 May 2005, TF2-079, pp. 42-43.
[553] Transcript of 28 September 2006, Billoh Conteh, pp. 49-50 and 58.

344. Kondewa was known as the High Priest of the entire CDF organisation and was performing initiations at Talia.[554] He was also appointed by Norman.[555] He was the head of all the CDF initiators initiating the Kamajors into the Kamajor society in Sierra Leone.[556] Kondewa created different types of initiations within the Kamajor movement.[557]

345. Kondewa's job was to prepare herbs which the Kamajors smeared on their bodies to protect them from bullets.[558] Kondewa was not a fighter,[559] he himself never went to the war front[560] or into active combat,[561] but whenever a Kamajor was going to war, he would go to Kondewa for advice and blessing.[562] Kondewa's role was to decide whether a Kamajor could go to the war front that day. Before combat, the Kamajors would go in a line and Kondewa would say, "You, don't go to war this time." Although, he could say, "don't go [...] you go", it was similar to a fortune teller saying so.[563]

346. The Kamajors believed in the mystical powers of the initiators, especially Kondewa, and that the process of the initiation and immunisation would make them "bullet-proof".[564] The Kamajors looked up to Kondewa and admired the man with such powers.[565] They believed that he was capable of transferring his powers to them to protect them.[566] Because of the mystical powers Kondewa possessed, he had command over the Kamajors from every part of the country. No

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[554] Transcript of 17 February 2005, TF2-222, pp. 86-87; Transcript of 26 May 2005, TF2-079, p. 43; Transcript of 8 November 2004, TF2-096, p. 16.
[555] Transcript of 16 February 2005, TF2-005, p. 55 (CS); Transcript of 17 February 2005, TF2-222, pp. 96-97.
[556] Transcript of 26 May 2005, TF2-079, pp. 43-44; Transcript of 16 November 2004, TF2-008, pp. 48-49; Transcript of 23 November 2004, TF2-008, p. 57; Transcript of 3 February 2006, Samuel Hinga Norman, p. 45; Transcript of 6 February 2006, Samuel Hinga Norman, pp. 102-103.
[557] Transcript of 10 March 2005, Albert J Nallo, p. 19.
[558] Transcript of 4 November 2004, TF2-201, p. 107 (CS).
[559] Transcript of 15 March 2005, Albert J Nallo, p. 46.
[560] Transcript of 16 November 2004, TF2-008, p. 50.
[561] Transcript of 23 November 2004, TF2-008, p. 58.
[562] Transcript of 23 November 2004, TF2-008, pp. 58-60.
[563] Transcript of 23 November 2004, TF2-008, pp. 58-60.
[564] Transcript of 25 May 2006, Lahai Koroma, p. 7; Transcript of 18 February 2005, TF2-222, pp. 19-22; Transcript of 1 June 2006, Joseph Kavura Kongomoh, pp. 56-57; Transcript of 21 February 2006, Lt. General Richards, p. 63, pp. 106-107; Transcript of 17 September 2004, TF2-082, pp. 3-6.
[565] Transcript of 17 February 2005, TF2-222, p. 119; Transcript of 12 May 2006, Haroun Collier, p. 13; Transcript of 17 February 2006, Osman Vandi, p. 105.
[566] Transcript of 10 February 2005, Bobor Tucker, p. 45; Transcript of 4 November 2004, TF2-201, p. 113 (CS); Transcript of 18 May 2006, Keikula Amara, pp. 69-70.

1485

Kamajor would go to war without Kondewa's blessing.[567] For example, he did this for the Kamajors leaving Base Zero for Tongo.[568]

347. Kondewa had bodyguards at Base Zero because of his importance as an initiator within the hunters' society.[569] One of his bodyguards was a child soldier.[570] Kondewa had a house in Nyandehun, which was about a quarter mile from Talia.[571]

2.2.11.4. CDF Structure at the National Level

348. During the time of the existence of Base Zero, there were a few positions of Directors within the CDF hierarchy. The Director of War was deputised by his Deputy. This position was occupied by Mohamed Orinco Moosa at least as of December 1997.[572] The National Director of Operations was below the Deputy Director of War.[573] During the existence of Base Zero, Joseph Koroma first occupied this position.[574] He was an elderly person and was given the position to be appeased. Albert J Nallo who was the Deputy to the National Director of Operations[575] did all the work because Koroma was illiterate and was largely dormant and inactive.[576] In early January 1998 Lamin Ngobeh became the National Director of Operations.[577] Despite the existence of the formal structure which presupposed the flow of command from Norman down to Nallo through Fofana, Orinco Moosa and Joseph Koroma, the normal flow of command did not go through these persons. Nallo was also not permanently based at Base Zero and would come and go to the warfronts.[578]

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[567] Transcript of 16 November 2004, TF2-008, pp. 49-50.
[568] Transcript of 4 November 2004, TF2-201, p. 107 (CS).
[569] Transcript of 3 February 2006, Samuel Hinga Norman, p. 74; Transcript of 15 March 2005, Albert J Nallo, pp. 46-47; See also Transcript of 8 June 2005, TF2-011, pp. 45-47 (CS); Transcript of 8 November 2004, TF2-096, p. 28.
[570] Transcript of 27 May 2005, TF2-079, p. 13.
[571] Transcript of 18 February 2005, TF2-222, pp. 49-50; Transcript of 11 October 2006, JD Murana, pp. 32-33 and 45.
[572] Transcript of 26 May 2005, TF2-079, p. 40; Transcript of 4 November 2004, pp. 88-90 (CS); Transcript of 11 March 2005, Albert J Nallo, pp. 24-27; Transcript of 15 February 2005, TF2-005, pp. 92-93 (CS).
[573] Transcript of 11 March 2005, Albert J Nallo, p. 24.
[574] Transcript of 11 March 2005, Albert J Nallo, p. 24.
[575] Transcript of 10 March, Albert J Nallo, p. 32.
[576] Transcript of 11 March 2005, Albert J Nallo, pp. 59-60.
[577] Transcript of 4 November 2004, p. 113 (CS).
[578] Transcript of 11 March 2005, Albert J Nallo, pp. 60-61.

349. The job of deciding when and where to go to war lay with Norman, Kondewa, Fofana, the Deputy Director of War, the Director of Operations, his deputy, and the battalion commanders.[579]

350. In his position as the Deputy National Director of Operations, Nallo had five roles: 1) transmit general and specific instructions from Norman to the warfront;[580] 2) collect reports from the warfront, both written and verbal, and bring them to Base Zero to Fofana before giving them to Norman; if they were written, he would sit with Fofana and go over them before taking them to Norman; 3) take arms and ammunitions to the warfront for the fighters; 4) visit the frontlines to receive reports and ascertain the position of the troops; and 5) plan with Fofana strategies for war operations for the Southern Region because Fofana was illiterate.[581]

351. While at Base Zero, apart from the Directors at the national level, there were a few regional positions within the CDF structure: Musa Junisa was the Director of Operations for the Eastern Region, Dr. Mohamed Mansaray was the Director of Operations for the Northern Region, Pa Lungba was the Director of Operations for the Western Region,[582] and Nallo, in addition to being the Deputy National Director of Operations, was the Director of Operations for the Southern Region. The latter included the districts of Bo, Bonthe, Moyamba and Pujehun.[583]

352. Nallo was appointed by Norman at Base Zero to hold both positions of the Deputy National Director of Operations and the Director of Operations for the Southern Region.[584] As the Director of Operations for the Southern Region, Nallo took general and specific instructions from Norman and passed them to the warfront.[585] In the same capacity, Nallo would arrange the Kamajors wherever they had an operation.[586] He was in charge of the commanders in the Southern Region but he did not have full or strict control of them, especially because of their large numbers. Particularly, he was unable to control the Special Forces and Vanjawai. Nallo was responsible for implementing the commands he received from Base Zero along with his commanders. In implementing commands, he did not distinguish between lawful and unlawful ones and did not

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[579] Transcript of 23 November 2004, TF2-008, p. 11; Transcript of 15 February 2005, TF2-005, pp. 93-94 (CS).
[580] See Transcript of 27 January 2006, Samuel Hinga Norman, p. 99.
[581] Transcript of 10 March, Albert J Nallo, pp. 32-35.
[582] Transcript of 11 March 2005, Albert J Nallo, pp. 25-26.
[583] Transcript of 10 March, Albert J Nallo, p. 32; Transcript of 17 November 2004, TF2-008, pp. 40-41.
[584] Transcript of 10 March, Albert J Nallo, p. 32.
[585] Transcript of 10 March, Albert J Nallo, p. 32.
[586] Transcript of 11 May 2006, Joe Nunie, pp. 53-54.

recognise that he had discretion to not implement them.[587] Nallo went to his operational areas of command three times per week from Base Zero on his Honda motorbike.[588]

353. Norman also developed a system of administrative command through the position of Regional Coordinator. Alhaji Daramy Rogers occupied the position for the Southern Region, Jambawai for the Eastern Region and Dumbuya for the Northern Region. These individuals oversaw the distribution of food and welfare items to the Kamajors in their respective regions.[589]

2.2.11.5. CDF Structure at the Regional Level

354. Since the formation of the Kamajor society in 1991, the Kamajors were organised essentially as a group of native hunters who responded to the directives of the chiefs and chiefdom authorities when being requested to protect people from the rebels and to defend their chiefdoms.[590] Paramount chiefs would select people in their respective chiefdoms to become Kamajors.[591]

355. At the level of the village, the Kamajors appointed their leader/commander usually from either ex-servicemen or strong and active men in the community. At the chiefdom level, the paramount chiefs and their sub-chiefs brought the Kamajors together under one umbrella called "chiefdom Kamajors". Hence, they were under the command and control of the chiefdom authorities led by their paramount chief or regent chief. Therefore, requests for the special services of the Kamajors frequently came through the chiefs.[592] A commander did not have a strict number of men under his command and the number depended upon the available number of men in the various chiefdoms.[593]

356. Upon his arrival at Base Zero, Norman attempted to synchronise the command structure, so that everyone could abide by the centralised commands coming from Base Zero. At that time the Kamajors were still operating in different groups according to which chiefdom they hailed

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[587] Transcript of 11 March 2005, Albert J Nallo, pp. 96-98; Transcript of 14 March 2005, Albert J Nallo, pp. 20-21.
[588] Transcript of 11 March 2005, Albert J Nallo, pp. 103-104.
[589] Transcript of 15 February 2005, p. 93 (CS); Transcript of 16 February 2005, pp. 17-18 (CS).
[590] Transcript of 17 February 2005, TF2-222, pp. 13, 15 and 17 (CS); Transcript of 9 February 2006, Albert Joe Demby, p. 103.
[591] Transcript of 3 February 2006, Samuel Hinga Norman, p. 72; Transcript of 16 November 2004, TF2-008, pp. 51-53.
[592] Transcript of 10 February 2006, Albert Joe Demby, p. 7; Exhibit 165, para. C.1.d.
[593] Transcript of 6 February 2006, Samuel Hinga Norman, p. 108.

from.[594] Positions of a town or a village commander, section commander in charge of one section of a chiefdom, and chiefdom commander in charge of an entire chiefdom still existed.[595]

357. Norman introduced some military terminology and concept into the organisation and the structure of the CDF, such as, division of Kamajors by sections, squads, platoons and companies, varying in size from three to 75-100 men.[596] Positions of battalion and senior battalion commanders were introduced to replace the terminology of chiefdom and district commanders. A new system of appointments was adopted around the end of December 1997, when around 100 to 150 commanders from various chiefdoms, who were considered fit to take up command responsibility, were called to Base Zero to go through the screening and appointment process to be promoted to the rank of battalion and senior battalion commanders.[597] A chiefdom / battalion commander reported to a district commander, while the latter would in turn tell the chiefdom / battalion commander where to deploy the Kamajors.[598] The district commanders reported to the Regional Directors of Operations.[599]

358. Although the CDF was regarded as a cohesive force under one central command, there were some fighters who acted on their own without the knowledge of the central command because their area of operation was so wide.[600] Commanders' authority to discipline their men on the ground was entirely their own. The CDF also did not keep records of its members like a conventional army would.[601] There were literally hundreds of groups spread throughout the country and they would communicate through their commanders. Commanders went to Base Zero from every group and location in the country and received training, facilities and instruction. Instructions came from the High Command or the National Coordinator.[602]

2.2.11.6. Death Squad

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[594] Transcript of 14 March 2005, Albert J Nallo, p. 21.
[595] Transcript of 30 January 2006, Samuel Hinga Norman, pp. 3-5.
[596] The Kamajors were divided into sections, squads and platoons varying in size from three to a company of 75-100 men, the latter organised on the level of chiefdoms. See Transcript of 30 January 2006, Samuel Hinga Norman, pp. 3-4.
[597] Transcript of 30 January 2006, Samuel Hinga Norman, pp. 3-6; See for example Exhibit 10, confidential.
[598] Transcript of 17 February 2006, MT Collier, pp. 18-20 and 61-63.
[599] Transcript of 17 February 2006, MT Collier, pp. 62-63.
[600] Transcript of 16 February 2005, TF2-005, p. 70 (CS).
[601] Transcript of 3 February 2006, Samuel Hinga Norman, p. 73.
[602] Transcript of 17 November 2004, TF2-008, pp. 10-11.

359. The Death Squad was formed at the meeting held by Kamoh Lahai Bangura in Talia,[603] prior to the arrival of Norman.[604] Bobor Tucker, a.k.a. Jegbeyama, was the leader of this group.[605] The Death Squad originally had 20 members and had grown to have 42 members by the time that Norman arrived in Talia.[606] Bobor Tucker was based at Tisana and the Death Squad was based at Sumbuya Junction.[607]

360. The Death Squad was responsible for the security in and around Talia, which was later called Base Zero. The Death Squad would patrol the area and ensured that any group wanting to launch an attack on Base Zero was prevented from doing so. In addition to acting as security, the Death Squad would participate in armed attacks against the junta.[608] After Bobor Tucker was introduced to Norman at Talia, he received orders for these attacks from Norman alone.[609] The Death Squad was under Norman's control,[610] and was answerable and reporting only to Norman.[611] Norman was their "direct boss".[612]

361. Although, originally the duty of the Death Squad was to provide security in and around Base Zero, this was not the work they were actually doing.[613] They were responsible for arresting undisciplined people[614] and for torturing and killing people,[615] especially captives.[616] They also

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[603] Transcript of 10 February 2005, Bobor Tucker, pp. 31-38; see section V.2.2.2.1.
[604] Transcript of 31 January 2006, Samuel Hinga Norman, pp. 15-16.
[605] Transcript of 10 February 2005, Bobor Tucker, p. 32; Transcript of 4 November 2004, TF2-201, pp. 98-99 (CS); Transcript of 16 November 2004, TF2-008, pp. 60-61; Transcript of 11 March 2005, Albert J Nallo, p. 23; Transcript of 17 February 2006, MT Collier, pp. 52-53.
[606] Transcript of 10 February 2005, Bobor Tucker, pp. 31-32 and 59.
[607] Transcript of 12 October 2006, JD Murana, pp. 3-6; Transcript of 15 May 2006, Haroun Collier, p. 35.
[608] Transcript of 8 June 2005, TF2-011, pp. 21-22 (CS); Transcript of 10 February 2005, Bobor Tucker, pp. 33-35.
[609] Transcript of 10 February 2005, Bobor Tucker, p. 35; Transcript of 4 November 2004, TF2-201, pp. 99-100 (CS).
[610] Transcript of 17 November 2004, TF2-068, pp. 90-91 (CS).
[611] Transcript of 10 March 2005, Albert J Nallo, p. 38; Transcript 11 March 2005, Albert J Nallo, p. 23; Transcript 8 June 2005, TF2-011, pp. 21-22 (CS).
[612] Transcript of 11 March 2005, Albert J Nallo, p. 23.
[613] Transcript of 14 March, Albert J Nallo, p. 42.
[614] Transcript of 18 February 2005, TF2-222, pp. 8-9.
[615] Transcript of 10 March 2005, Albert J Nallo, p. 38; Transcript of 14 March 2005, Albert J Nallo, p. 43; Transcript of 16 November 2004, TF2-008, pp. 60-63; Transcript of 15 February 2005, TF2-005, pp. 95-98 (CS); See for example Transcript of 26 May 2005, TF2-079, pp. 48-49: The Death Squad was killing people for their diamonds and was looting around Bumpeh.
[616] Transcript of 10 March 2005, Albert J Nallo, p. 38; see also Section 2.5.3.3.6; Transcript of 10 March 2005, Albert J Nallo, pp. 85-87; Transcript of 22 November 204, TF2-017, pp. 18-21 (CS).

looted properties[617] and brought them to Norman[618] and molested and threatened War Council members.[619] Their actions were "abnormal", "horrible" and "beyond bounds".[620]

2.2.11.7. Special Forces

362. The Special Forces were the bodyguards of Norman, Kondewa and Fofana and they took care of Base Zero.[621] Later, the Special Forces were composed of both Liberians and Sierra Leoneans. They were permanently based at Base Zero and accompanied Norman wherever he went. They reported to Norman.[622]

2.2.11.8. ECOMOG

363. When ECOMOG and the CDF joined forces, the CDF remained independent because they were regionally separated in the country. ECOMOG was in Lungi and Freetown while the CDF was in the south and east.[623]

2.2.12. Structure and Organisation of the CDF / Kamajors Post Base Zero

364. On 10 March 1998, President Kabbah returned to Sierra Leone and the Kabbah government resumed its functions.[624] At this time, several changes were made to the organisation, structure and administration of the CDF.[625]

365. The War Council left Base Zero in February 1998 to set up regional CDF offices in Bo and Kenema Districts.[626] The administrative authority of the CDF was transferred to these offices and

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[617] TF2-011 testified that the Death Squad raided a car in Sembehun and brought it to Talia: Transcript of 8 June 2005, TF2-011, pp. 22-23 (CS); See also Transcript of 16 November 2004, TF2-008, p. 62; Transcript of 26 May 2005, TF2-079, pp. 48-49.
[618] Transcript of 14 March 2005, Albert J Nallo, p. 42.
[619] Transcript of 14 March 2005, Albert J Nallo, p. 42; Transcript of 15 February 2005, TF2-005, pp. 100-101 (CS).
[620] Transcript of 16 November 2004, TF2-008, p. 60, lines 21-24.
[621] Transcript of 16 November 2004, TF2-008, p. 63.
[622] Transcript of 11 March 205, Albert J Nallo, p. 28; Transcript of 10 March 2005, Albert J Nallo, pp. 86-87.
[623] Transcript of 14 November 2004, TF2-008, p. 30.
[624] Transcript of 26 January 2006, Sam Hinga Norman, pp. 77-78; Transcript of 8 February 2006, Peter Penfold, p. 43.
[625] Transcript of 26 January 2006, Sam Hinga Norman, pp. 72-75.
[626] See sections V.2.5.5 and V.2.7.8.1.

the CDF High Command ceased to exist at Base Zero.[627] The War Council continued to act in a limited capacity for another two months, finally disbanding in April 1998.[628]

366. The CDF offices were run by the Regional Coordinators. Alhaji Daramy Rogers, the Regional Coordinator for the Southern Region, was stationed in Bo. Jambawai, the Regional Coordinator for the Eastern Region, was stationed in Kenema. Around June 1998, the position of Regional Coordinator was abolished. In its stead, the position of District Administrator was created and was held by Kosseh Hindowa in Bo and Arthur Koroma in Kenema. The District Administrators received reports from the battalion commanders, and then reported directly to Norman.[629] Their functions included, for examples, distribution of rice and logistics.[630]

367. Sometime after 10 March 1998, control of all military matters, including the CDF forces was transferred to General Khobe, the Chief of Defence Staff of the Sierra Leone Army ("SLA").[631] He was later joined by ECOMOG commander General Shelpidi. The two men took orders from President Kabbah and worked together to manage the daily fighting across the country.[632] Although ECOMOG assumed command responsibility over Kamajors in Bo and Kenema in late February at the end of these operations, it remains doubtful whether ECOMOG exercised effective control over the Kamajors' actions. There are only a few examples of ECOMOG officers disciplining Kamajors and these efforts were largely unsuccessful.[633]

2.2.12.1. The National Coordinating Committee

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[627] Transcript of January 26 2006, Sam Hinga Norman, pp. 72-75; See also sections V.2.5.5 and V.2.7.8.1.

[628] Transcript of 14 March 2005, Albert J Nallo, pp. 11-16; Transcript of 5 May 2006, Mustapha Lumeh, p. 81. The War Council held its last meeting in Kenema in April 1998. Though it continued to function during that time, the War Council's suggestions were largely ignored and most members had returned to their various towns and villages. Exhibit 129; Transcript of 13 February 2006, Albert Joe Demby, pp. 4-6. On 9 March 1999, the War Council, having been superseded by the NCC, was officially abolished.

[629] Transcript of 3 May 2006, Arthur Koroma, pp. 39-41; Transcript of 4 May 2006, Arthur Koroma, p. 105; Transcript of 16 September 2004, pp. 50-51 (CS): For example, the battalion commander in Koribondo reported to Alhaji Daramy Rogers in Bo. When the position of Regional Coordinator was abolished, he made his reports to Kosseh Hindowa, the District Administrator.

[630] Exhibit 87.

[631] Transcript of 10 February 2006, Albert Joe Demby, pp. 52-53 and 70; Transcript of 26 January 2006, Samuel Hinga Norman, pp. 46 and 54; Transcript of 14 June 2005, Colonel Richard Iron, p. 47; Transcript of 13 February 2006, Albert Joe Demby, p. 7: Military matters included deployment, supply of arms and ammunition and supply of food which was stored in military warehouses. These items were distributed through the use of military helicopters.

[632] Transcript of 21 February 2006, Lt. General Richards, p. 101; Transcript of 13 February 2006, Albert Joe Demby, pp. 9-10.

[633] See e.g. section V.2.5.4.1.15 and Exhibit 89.

368. The National Coordinating Committee ("NCC") was formed by President Kabbah on 29 January 1999. It became the highest body in the CDF and was chaired by the then Vice President of Sierra Leone, Albert Joe Demby.[634] The NCC was an administrative body responsible for providing food and other welfare items to the CDF fighters. It was not part of the military.[635]

369. In his capacity as Deputy Minister of Defence, Norman attended meetings of the NCC. However, he was not a member of the NCC and was under the NCC's control. He did not discuss military matters with President Kabbah.[636]

2.2.12.2. Roles of Moinina Fofana and Allieu Kondewa

370. Fofana retained the title of Director of War and was responsible for distributing logistics to the various parts of the country. The position was later incorporated into the organisation of the NCC and Fofana then acted under the authority of the NCC.[637] He was not responsible for the conduct of the war and the fighting forces.[638] Sometime in mid-1999, he became the Director of the Peace Office in Bo.[639]

371. Sometime after 10 March 1998, Kondewa founded and led the *Avondo* society together with Sheku Kaillie, a.k.a. Bombowai. The "cabinet" and subordinate members of the society were Kamoh Gboni, Kamoh Fuwad, Gibrilla, CO Makossi, Hallie Namoi and Woodie. They were known as the "cabinet" because they sat together and were responsible for marking the bodies of initiates.[640]

372. The children who were initiated into the *Avondo* society acted differently. They did not want to be touched by or stand near female teachers. They did not want to hold a sweeping brush, unlike other children who would sweep at the schools. They began to show violent behaviour and

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[634] Transcript of 10 February 2006, Albert Joe Demby, p.55; Exhibit 127; Transcript of 27 May 2005, TF2-079, pp. 22-24; Exhibit 120.
[635] Transcript of 27 May 2005, TF2-079, p. 24; Transcript of 16 February 2006, Albert Joe Demby, pp. 7-8.
[636] Transcript of 21 February 2006, Lt. General Richards, p. 101; Transcript of 6 February 2006, Samuel Hinga Norman, p.66; Exhibit 123.
[637] Exhibit 123.
[638] Transcript of 6 February 2006, Sam Hinga Norman, pp. 62-66.
[639] Transcript of 23 November 2004, TF2-008, pp. 23-28; see section V.2.5.5.2.
[640] Transcript of 10 March 2005, Albert J Nallo, pp. 19-21 and 28-30; Transcript of 16 June 2005, TF2-EW2, pp. 21-22 and 90-91 (CS); Transcript of 3 November 2004, TF2-021, pp. 20-21 and 49.

acted like they were better than the other children - even the other children that had been initiated into the CDF.[641]

373. Kondewa also became part of the organisation of the NCC and continued to act as High Priest under the NCC's control.[642] Sometime in February or March 1999, Kondewa was removed from his position as High Priest and was replaced by Kamoh Lahai Bangura. President Kabbah was notified and he approved the replacement.[643]

2.3. Towns of Tongo Field

2.3.1. Background to Tongo Field

374. Tongo is a mining town in Lower Bambara Chiefdom in Kenema District.[644] The Kamajors and the SLA were both present and mined in Tongo from 1996 until the Coup of 25 May 1997. After 25 May, Kamajors alone occupied Tongo.[645]

375. The AFRC and RUF forces collectively attacked Tongo on 11 August 1997 and occupied it until January 1998.[646] When the AFRC was in Tongo, they forced civilians to mine diamonds for them and killed those who refused.[647] Although the Kamajors were driven out of Tongo Town, they remained in the surrounding towns, which are collectively known as "towns of Tongo Field". The Kamajors launched numerous armed operations against the rebels in an attempt to regain control over Tongo.[648]

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[641] Transcript of 16 June 2005, TF2-EW2, pp. 21-22 and 90-91. See also Transcript of 3 November 2004, TF2-021, pp. 20-21 and 49: TF2-021 testified that *Avondo* means that "when you go to the warfront, the medicine enters your body as you sweat".
[642] Exhibit 123.
[643] Transcript of 3 February 2006, Sam Hinga Norman, pp. 45-46.
[644] Transcript of 11 February 2005, TF2-022, p. 37, Transcript of 26 May 2005, TF2-079, p. 17
[645] Transcript of 15 May 2006, BJK Sei, p. 80, Transcript of 18 February 2005, TF2-027, pp. 77-78, Transcript of 16 May 2006, Siaka Lahai, pp. 89-90. Note that there is also testimony from TF2-222 and TF2-022 that the SLA was not in Tongo until August 1997; Transcript of 4 November 2004, TF2-201, p. 71; Transcript of 11 February 2005, TF2-022, pp. 74-75
[646] Transcript of 1 March 2005, TF2-053, p. 72, Transcript of 18 February 2005, TF2-027, pp. 77-78
[647] Transcript of 22 February 2005, TF2-027, pp. 70-71, Transcript of 22 February 2005, TF2-027, p. 10, Transcript of 18 February 2005, TF2-027, pp. 78-79
[648] Exhibit 86, confidential; see also evidence of Norman that the attack on Tongo would determine who the winner or the loser of the war would be, Transcript of 17 February 2005, TF2-222, p. 110

2.3.2. Attacks on Tongo Town

376. Numerous attacks were launched by Kamajors on Tongo Town, however, the evidence led by the Parties focused mainly on three distinct attacks. For ease of reference, the Chamber refers below to these attacks as the first, second and third attacks on Tongo Town.

377. On 16 November 1997 TF2-079 prepared a situation report on events occurring between 19 September and 13 November 1997 in Zone II Operational Frontline which included Lower Bambara and Dodo Chiefdoms. It requested arms and ammunitions and described attacks which had been launched in the area. It also narrated the following killing which was committed by Kamajors:

> On 9 November 1997, Siaka Lahai and eight of his Kamajor militia were patrolling Gboegiama Village armed with assault rifles and an RPG launcher.[649] The Kamajors entered the village and captured Robert Ndanema, who was in possession of a large number of AFRC market due tickets. Mr. Ndanema admitted complicity with the rebels and was summarily executed.[650]

378. The report was endorsed by Musa Junisa, the then Commander-in-chief of Zone II Operational Frontline and Mohamed Orinco Moosa, his deputy. TF2-079, Junisa and Moosa with 100 other Kamajors then travelled to Base Zero. At Base Zero they gave the report first to Fofana and then to Norman. Norman commended their efforts and told them that a good number of that group should return to the area with another senior commander to keep the area strong and only a few of them should remain at Base Zero to await ammunitions. Seven people, including Moosa and TF2-079 stayed at Base Zero.[651]

379. Around November 1997, while the rebels occupied Tongo and the Kamajors were headquartered in Panguma, Kamajors killed a small boy who had been travelling on foot from Tongo to Panguma. The boy was killed because he was coming from rebel-held territory.[652]

380. The first attack on Tongo Town was launched in late November or early December 1997.[653] Key commanders included Mohamed Kailondo Banya, Keikula Amara, a.k.a. Kamabote,

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[649] Siaka Lahai testified that there is no village named Gboegiama in the Tongo Field area, but that there is a village named Gbongema. Transcript of 17 May 2006, Siaka Lahai, pp. 46-47.
[650] Exhibit 86, confidential; Transcript of 26 May 2005, TF2-079, pp. 33-34.
[651] Transcript of 26 May 2005, pp. 24-28, pp. 33-36; Exhibit 86, confidential.
[652] Transcript of 26 May 2005, TF2-079, pp. 22-23 and 34-35.

and Siaka Lahai.[654] Kamabote was the Base Commander in Talama, a town about ten miles from Tongo.[655] Siaka Lahai was a Battalion Commander for the Lower Bambara Chiefdom who was stationed in Panguma and surrounding towns.[656] The purpose of this first attack was to determine the rebels' location rather than to fight.[657]

381. As found by the Chamber in section V.2.2.10.1, a passing out parade was held between 10 and 12 December 1997 at Base Zero during which Norman addressed the Kamajors. He ordered them to attack and retake Tongo because it was though that possession of Tongo would determine the outcome of the war.[658] In January 1998, the second and third attacks on Tongo were launched by Kamajors.[659]

382. The local planning for the second attack was done in Panguma and was hosted by BJK Sei, the Chiefdom Commander for the Lower Bambara Chiefdom.[660] The plan was to divide Tongo into four sections and to have four commanders, including Kamabote and Siaka Lahai, attack from four separate directions.[661] After this attack failed, the same commanders regrouped in Panguma and returned to Tongo for the third time, taking the town.[662] This last attack took place around 14 January 1998.[663]

2.3.3. Crimes Committed During and Subsequent to the Second Attack on Tongo

2.3.3.1. Talama and Panguma after the Second Attack on Tongo

383. The second attack on Tongo was launched late one morning in early January 1998.[664] More than 1000 civilians attempting to flee the attack were detained at a rebel checkpoint along the Kenema Highway. At some point, 47 Kamajors led by Kamabote attacked the checkpoint and the

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[653] Transcript of 18 February 2005, TF2-027, p. 79.
[654] Transcript of 15 May 2006, BJK Sei, pp. 3-4; Transcript of 17 May 2006, Siaka Lahai, p. 6.
[655] Confidential Exhibit 86, SCSL Registry p. 3723.
[656] Exhibit 86, confidential.
[657] Transcript of 18 May 2006, Keikula Amara, p. 25.
[658] Transcript of 17 February 2005, TF2-222, p. 110.
[659] Transcript of 17 May 2006, Siaka Lahai, p. 5; Transcript of 16 May 1006, BJK Sei, pp. 2 and 28.
[660] Transcript of 17 May 2006, Siaka Lahai, pp. 40-41.
[661] Transcript of 18 May 2006, Keikula Amara, pp. 23 and 25.
[662] Transcript of 18 May 2006, Keikula Amara, pp. 33 and 35.
[663] Transcript of 15 May 2006, BJK Sei, p. 84, Transcript of 23 May 2006, Brima Moriba, p. 8
[664] Transcript of 18 May 2006, Keikula Amara, pp. 33-34; Transcript of 01 March 2005, TF2-053, p. 74; Transcript of 14 February 2005, TF2-035, p. 8.

rebels fled.[665] Kamabote and his Kamajors took control of the civilians and led them towards Kenema.[666]

384. Along the road to Kenema, Kamabote redirected the civilians to Panguma. He stopped them in Talama, a small town outside Panguma, and ordered them to place all of their belongings on the side of the road.[667] He then ordered his Kamajors to search the belongings as well as the civilians' pockets. All of the property found was taken to a house in Talama and kept there.[668]

385. After searching their belongings, the Kamajors ordered the civilians to form queues according to their tribes. Loko, Limba and Temne tribe members were ordered to form one queue, which contained 150 men and one 12-year-old boy named Foday Koroma.[669] Madingo, Susu and Fullah tribe members were ordered to form a second queue and Mende, Sherbro and Kissy tribe members were ordered to form a third one.[670]

386. Kamabote asked 12-year-old Foday Koroma what tribe he belonged to and the boy responded that he was a Loko. The boy also said that he was related to Akim, a rebel based in Tongo. Kamabote responded by striking him on the head with a machete, killing him.[671] The remaining Lokos, Limbas and Temnes were taken 20 to 25 feet away and Kamabote ordered his Kamajors to kill them. They used cutlasses to kill each of the 150 people in the queue. Afterwards, the Kamajors slit open the stomach of one victim and displayed his entrails in a bucket before the remaining civilians.[672]

387. The civilians that were not killed remained under Kamabote's control. He took them to the hospital quarters in Panguma where BJK Sei addressed them. BJK Sei told the civilians that the Kamajors were unable to capture Tongo during the second attack, but that they would attack again, and would kill everyone that had not left the town. BJK Sei summoned an imam from Tongo and gave him a letter containing this warning to take to Tongo.[673] BJK Sei eventually told

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[665] Transcript of 18 May 2006, Keikula Amara, p. 73; Transcript of 14 February 2005, TF2-035, pp. 11-12.
[666] Transcript of 14 February 2005, TF2-035, p. 12.
[667] Transcript of 14 February 2005, TF2-035, pp. 12-13.
[668] Transcript of 14 February 2005, TF2-035, p. 15.
[669] Transcript of 01 March 2005, TF2-053, p. 89; Transcript of 14 February 2005, TF2-035, pp. 16-18.
[670] Transcript of 14 February 2005, TF2-035, p. 56.
[671] Transcript of 01 March 2005, TF2-053, p. 89.
[672] Transcript of 14 February 2005, TF2-035, pp. 18, 20.
[673] Transcript of 14 February 2005, TF2-035, pp. 21-22

the rest of the civilians that anyone with a home or a relative elsewhere should go there because he did not have the resources to host people on a war front.[674]

388. One member of the group of civilians detained by Kamabote, TF2-035, knew a Kamajor commander named Baggey Waters in Panguma. BJK Sei allowed them to leave together.[675] Sometime later, TF2-035 and Baggey Waters settled together in Ngiehun.[676] TF2-035 had been living there for some time when Kamabote arrived and discovered that he was a Limba and had been a member of the group taken from Tongo.[677] TF2-035 had survived the killing of Limbas in Talama by claiming to be a Madingo.[678] Kamabote gave a single-barrel bullet to a 12-year-old boy named "Small Hunter" and ordered him to kill TF2-035. Two Kamajors intervened on TF2-035's behalf but their efforts were unsuccessful.[679] "Small Hunter" shot TF2-035 five times, but he managed to escape into the bush.[680] One bullet is still in his body.[681]

2.3.4. Crimes Committed During and Subsequent to the Third Attack on Tongo

2.3.4.1. Gathering of Civilians at the National Diamond Mining Corporation Headquarters

389. The Kamajors launched a third attack on Tongo in the afternoon of 14 January 1998.[682] Many civilians had received warnings that the Kamajors were planning the attack and most of those that were able to leave had done so.[683] TF2-144 attempted to escape Tongo when the attack began, but was stopped by Kamajors outside his home. The Kamajors took his bag of belongings and ordered him to join a line of civilians and to go to the National Diamond Mining Corporation headquarters in town ("NDMC Headquarters").[684]

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[674] Transcript of 18 May 2006, Keikula Amara, p. 28; Transcript of 16 May 2006, BJK Sei, pp. 21-22.
[675] Transcript of 14 February 2005, TF2-035, pp. 22-23.
[676] Transcript of 14 February 2005, TF2-035, pp. 23-24.
[677] Transcript of 14 February 2005, TF2-035, p. 25.
[678] Transcript of 14 February 2005, TF2-035, p. 16.
[679] Transcript of 14 February 2005, TF2-035, pp. 26 and 28.
[680] See also para. 688(c).
[681] Transcript of 14 February 2005, TF2-035, p. 27.
[682] Transcript of 18 May 2006, Keikula Amara, pp. 33, 35; Transcript of 23 February 2005, TF2-048, p. 8, Transcript of 22 February 2005, TF2-047, p. 125.
[683] Transcript of 17 May 2006, Siaka Lahai, p. 10; Transcript of 15 May 2006, BJK Sei, p. 84; Transcript of 23 February 2005, TF2-048, p. 27; Transcript of 22 February, TF2-048, pp. 71-72.
[684] Transcript of 24 February 2005, TF2-144, pp. 60-61. The National Diamond Mining headquarters were also referred to as the "security headquarters" or the "NDMC security headquarters" because the AFRC and RUF were headquartered there when they occupied Tongo. *See* Transcript of 18 May 2006, Keikula Amara, pp. 77-78; Transcript

390. There was gunfire in Tongo at the beginning of the attack and chaos created by thousands of civilians running toward the NDMC Headquarters.[685] TF2-027 saw corpses on the side of the road on the way to the headquarters. Some had visible wounds on their bodies and others did not.[686] TF2-015 was shot while running to the NDMC Headquarters, as were three women that he was running with.[687] TF2-144 saw the corpse of a man named Joskie lying on the ground; the back of his neck had been chopped at with a machete. TF2-144 also saw the corpse of an unidentified woman, but he was unable to tell whether she had wounds on her body.[688] After the attack, TF2-027 also saw Joskie Mboma's corpse on the street, as well as three other corpses. TF2-027 recognised one of the corpses as that of a Fullah boy who used to sell bread. This corpse was on its stomach and TF2-027 did not see any marks on the body.[689]

2.3.4.2. 14 January 1998 - NDMC Headquarters

391. Witnesses testified that when they arrived at the NDMC Headquarters they saw hundreds of corpses of men, women and children at the entrance. There were also corpses on the football field inside, where the civilians were gathering.[690] Inside the NDMC Headquarters, there was an exchange of fire between the Kamajors and the rebels. This fighting continued until the rebels were eventually overpowered and began to retreat; many of the rebels changed into civilian clothing as they ran.[691] Before the rebels snuck away, a bomb dropped amongst the civilians.[692] After the rebels dispersed, TF2-022 saw a Kamajor with a cutlass chopping at three people who had been lying on the ground to avoid the crossfire.[693]

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of 26 May 2005, TF2-079, p. 63; Transcript of 01 March 2005, TF2-053, p. 75, pp. 91-92; Transcript of 23 February 2005, TF2-048, pp. 27-28; Transcript of 22 February 2005, TF2-047, pp. 47, 76; Transcript of 18 February 2005, TF2-027, p. 89.

[685] Transcript of 01 March 2005, TF2-053, p. 79; Transcript of 24 February 2005, TF2-144, pp. 61 and 64; Transcript of 23 February 2005, TF2-048, pp. 7-8; Transcript of 22 February 2005, TF2-047, pp. 47-48; Transcript of 22 February 2005, TF2-027, pp.13-14 and 89; Transcript of 11 February 2005, TF2-022, pp. 44-45; Transcript of 11 February 2005, TF2-015, pp. 6-7.

[686] Transcript of 22 February 2005, TF2-027, p. 14.

[687] Transcript of 11 February 2005, TF2-015, p. 6.

[688] Transcript of 24 February 2005, TF2-144, pp. 62-63.

[689] Transcript of 18 February 2005, TF2-027, pp. 106, 109.

[690] Transcript of 24 February 2005, TF2-144, p. 64; Transcript of 22 February 2005, TF2-047, p. 48; Transcript of 18 February 2005, TF2-027, pp. 87-88.

[691] Transcript of 01 March 2005, TF2-053, pp. 81 and 92; Transcript of 11 February 2005, TF2-022, pp. 45-46.

[692] Transcript of 01 March 2005, TF2-053, p. 76.

[693] Transcript of 11 February 2005, TF2-022, p. 46.

392. After the rebels retreated, the Kamajors began singing in Mende that they had captured the NDMC Headquarters.[694] TF2-027, who was hiding in a mosque in town during the attack, was taken at gunpoint to the NDMC Headquarters.[695] When he arrived there, civilians were being gathered at the football field. BJK Sei entered the field with Siaka Lahai.[696] BJK Sei told the Kamajors that he would dismiss anyone that he saw killing people. He then left the headquarters and went to Labour Camp, repeating his order to "please be careful about the civilians".[697] Shortly after this, a group of Kamajors came to the *barri* inside the headquarters.[698] One Kamajor reported to Norman on a wireless communication set. He said, "[c]hief, chief. We've captured Tongo, we have captured Tongo, and we are now in Tongo."[699]

393. While this was going on, Kamabote stood before the crowd and called on two women to identify rebels.[700] The women identified two men as rebels and Kamabote shot them both dead.[701] The women were ordered to continue identifying rebels and they pointed out more than 10 men.[702] The Kamajors stripped these men and handed them over to armed-Kamajors who took them toward Dodoma, which is a place behind the NDMC Headquarters where cows are slaughtered.[703] TF2-027 saw Kamajors lead another 200 men and women in the same direction. The members of this group had been identified as rebels and included a rebel youth leader, a woman who sold cookery and a man who sold second-hand clothing.[704]

394. TF2-047 saw a woman named Fatmata Kamara identify a rebel named Dr. Blood to Kamabote.[705] She complained that he and his colleagues used to eat at her shop without paying.[706] Kamabote ordered Dr. Blood to sit on the ground and then struck him in the neck and

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[694] Transcript of 18 February 2005, TF2-027, pp. 86-87 and 105.
[695] Transcript of 18 February 2005, TF2-027, p. 87.
[696] Transcript of 18 February 2005, TF2-027, p. 92.
[697] Transcript of 22 February 2005, TF2-047, p. 50.
[698] Transcript of 18 February 2005, TF2-027, p. 97.
[699] Transcript of 18 February 2005, TF2-027, pp. 98-99.
[700] Transcript of 01 March 2005, TF2-053, p. 82.
[701] Transcript of 01 March 2005, TF2-053, pp. 82-83.
[702] Transcript of 01 March 2005, TF2-053, pp. 83-84.
[703] Transcript of 01 March 2005, TF2-053, p. 84; Transcript of 18 February 2005, TF2-027, p. 102.
[704] Transcript of 18 February 2005, TF2-027, pp. 101-102.
[705] Transcript of 22 February 2005, TF2-047, pp. 51-52.
[706] Transcript of 22 February 2005, TF2-047, p. 52.

decapitated him.[707] Kamabote then killed Fatmata Kamara with a cutlass for having cooked for the rebels.[708] TF2-047 saw the Kamajors kill another person on that day.[709]

395. TF2-048 testified that she saw Kamajors take her husband's uncle behind a house at the NDMC Headquarters and return with blood on their machetes. She has never seen her husband's uncle again.[710] TF2-048 saw the same thing happen to a woman and a child.[711]

396. Kamajors led groups of Temne, Loko, Koranko and Limba tribe members away from the football field during the night.[712]

2.3.4.3. 15 January 1998 - NDMC Headquarters

397. On the night of 14 January 1998, the civilians slept at the NDMC Headquarters because they were not allowed to leave.[713]

398. The following morning, TF2-022 saw many corpses in the field. Some of these corpses appeared to have been hacked by a machete, while others did not have any visible injuries.[714] The same morning, TF2-022 recognised a rebel named Cobra in a line of 20 men surrounded by armed Kamajors.[715] The men were accused of being rebels and were taken to an open space in the NDMC Headquarters known as the MP office, where they were all hacked to death. The bodies of these rebels were left where they were killed.[716]

399. In a different area of the field, where TF2-048 was staying, everyone except for the Limbas, Lokos and Temnes was allowed to leave.[717] The Kamajors said that the Limbas had tapped wine for the rebels and that they, along with the Lokos and Temnes, should be killed.[718] However, before

[707] Transcript of 22 February 2005, TF2-047, p. 52.
[708] Transcript of 22 February 2005, TF2-047, p. 59.
[709] Transcript of 22 February 2005, TF2-047, p. 58.
[710] Transcript of 23 February 2005, TF2-048, pp. 10-11
[711] Transcript of 23 February 2005, TF2-048, p.11.
[712] Transcript of 24 February 2005, TF2-144, p. 65.
[713] Transcript of 23 February 2005, TF2-048, pp. 12-13; Transcript of 11 February 2005, TF2-015, p. 7.
[714] Transcript of 11 February 2005, TF2-022, p. 50.
[715] Transcript of 11 February 2005, TF2-022, pp. 50-51.
[716] Transcript of 11 February 2005, TF2-022, pp. 51-53.
[717] Transcript of 23 February 2005, TF2-048, p. 13.
[718] Transcript of 23 February 2005, TF2-048, pp. 14-15.

anything happened, a group of men speaking a Liberian language arrived and told everyone to return to their homes.[719]

400. Around noon, a Kamajor commander ordered the civilians to leave the NDMC Headquarters. Before they could do so, another commander, angry that they were trying to leave, ordered Kamajors to shoot at the crowd.[720] The Kamajors began shooting sporadically. The civilians dropped to the ground and remained there until the firing stopped.[721] Many were hit by stray bullets.[722] One man next to TF2-022 was hit by a bullet. While the man was suffering from his wound, he was approached by a Kamajor who chopped at his back with a machete, then stole his belt and hit him with it, telling him to get up. The man eventually died.[723]

2.3.4.4. 15 January - Outside NDMC Headquarters

401. TF2-048 left the NDMC Headquarters with her husband and elder sister after being freed.[724] At an intersection near NDMC Headquarters, a Kamajor confiscated her elder sister's bag, which contained all of their belongings.[725] TF2-048 then went with her family to her sister's house.[726] At the back of the house she was approached by a Kamajor who hit her in the waist with a stick.[727] TF2-048 turned and saw her older brother 15 yards away being held by three Kamajors who took his money and left.[728] Another Kamajor approached her brother and showed him a list of Limbas to be killed. He told him that he had come there for him and then cut off his ear.[729] The brother knelt down and asked the Kamajor to spare his life because he had a wife and children. The Kamajor cut his throat with a machete and then mutilated his body.[730] TF2-048 witnessed this, but did not reveal their relationship because she knew that the Kamajors were looking for Limbas.[731]

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[719] Transcript of 23 February 2005, TF2-048, p. 15.
[720] Transcript of 11 February 2005, TF2-022, pp. 55-56.
[721] Transcript of 11 February 2005, TF2-022, p. 56.
[722] Transcript of 11 February 2005, TF2-022, p. 57.
[723] Transcript of 11 February 2005, TF2-022, p. 57
[724] Transcript of 23 February 2005, TF2-048, p. 16.
[725] Transcript of 23 February 2005, TF2-048, pp. 16-17
[726] Transcript of 23 February 2005, TF2-048, p. 22
[727] Transcript of 23 February 2005, TF2-048, p. 22
[728] Transcript of 23 February 2005, TF2-048, p. 23
[729] Transcript of 23 February 2005, TF2-048, pp. 24-25
[730] Transcript of 23 February 2005, TF2-048, p. 25
[731] Transcript of 23 February 2005, TF2-048, pp. 23-24 and 26.

402. Another group of civilians that was allowed to leave the NDMC Headquarters was escorted by Kamajors to a checkpoint where Kamajors took their bags and belongings.[732] After finding a photograph of a rebel in one man's bag, the Kamajors hacked him to death.[733] TF2-022 knew this man to be a civilian.[734] TF2-022 was allowed to pass and eventually came upon another checkpoint where a boy named Sule was hacked to death for carrying a wallet that resembled SLA fatigues.[735]

2.3.4.5. Burial of Corpses

403. TF2-047 was a sanitary officer in Tongo.[736] Kamabote knew this and approached TF2-047 at the NDMC Headquarters on 14 January, telling him he would be burying a lot of corpses that day. Kamabote ordered TF2-047 to use a wheelbarrow to gather the corpses and place them in a pit at the back of the headquarters.[737] TF2-047 buried 75 corpses on the first day of the attack and 75 more on the second day.[738] On the second day, it was BJK Sei that ordered TF2-047 to continue burying corpses.[739] Three days later Kamabote ordered him to help civilians bury corpses at the Methodist Primary School.[740] TF2-047 then went to a place called Olumatic near Tongo and found 25 corpses of rebels. He was not able to bury the corpses because the Kamajors placed tyres on them and set them on fire.[741]

2.3.5. Bumie and Kamboma

404. A group of civilians at the NDMC Headquarters was organised into lines to walk to Bumie.[742] Before they left the NDMC Headquarters, the Kamajors fired at the people in the lines, killing many of them.[743] The remaining people were brought to a house in Bumie.[744] The women were taken behind the house and the men were placed on the veranda in front.[745] The Kamajors

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[732] Transcript of 11 February 2005, TF2-022, pp. 58-59
[733] Transcript of 11 February 2005, TF2-022, p. 59.
[734] Transcript of 11 February 2005, TF2-022, p. 60.
[735] Transcript of 11 February 2005, TF2-022, pp. 60-61.
[736] Transcript of 22 February 2005, TF2-047, p. 53, p. 113.
[737] Transcript of 22 February 2005, TF2-047, pp. 53-54, p. 59.
[738] Transcript of 22 February 2005, TF2-047, pp. 60-62.
[739] Transcript of 22 February 2005, TF2-047, p. 60.
[740] Transcript of 22 February 2005, TF2-047, pp. 64-65.
[741] Transcript of 22 February 2005, TF2-047, p. 66.
[742] Transcript of 11 February 2005, TF2-015, p. 7.
[743] Transcript of 11 February 2005, TF2-015, p. 8.
[744] Transcript of 11 February 2005, TF2-015, pp. 7-8.
[745] Transcript of 11 February 2005, TF2-015, pp. 8-9.

told the men to look at the sun. Five of them were pulled from the group and were shot and killed.[746] Men were then selected from the remaining group to carry loads for the Kamajors.[747]

405. TF2-015 was among the civilians taken to Bumie. He could not carry loads for the Kamajors because he had been shot in the stomach in Tongo.[748] TF2-015 tried to escape, but was caught in the bush and taken to the back of the house where he had been detained previously. He slept there that night and the next morning was taken away along the Kenema Road with a group of 14 other men and women.[749]

406. This group of 15 men and women was joined by other civilians along the Kenema Road. They eventually numbered 65 people.[750] The civilians were attacked by Kamajors at the Kamboma Bridge and taken to a house in Kamboma Town where they were told that the Kamajors had received orders to kill anyone who passed by.[751] The group was separated into two lines. The Kamajors shot each person in both lines and rolled the bodies into a swamp behind the house.[752] When there were only eight civilians left, the commander of Foindu Junction, Mohamed Kaineh,[753] arrived and told the Kamajors that it was an ambush and they should stop spoiling cartridges and use knives to kill the remaining people.[754] The remaining eight people were hacked on the napes of their necks with machetes.[755] TF2-015, who was the last person in the line, was hacked with a machete and rolled into the swamp on top of the other dead bodies. TF2-015 lay there for one hour before he was saved by rebels. He was the only one of the 65 civilians to survive.[756]

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[746] Transcript of 11 February 2005, TF2-015, p. 9.
[747] Transcript of 11 February 2005, TF2-015, p. 10.
[748] Transcript of 11 February 2005, TF2-015, p. 10.
[749] Transcript of 11 February 2005, TF2-015, pp. 10-11.
[750] Transcript of 11 February 2005, TF2-015, pp. 11-12.
[751] Transcript of 11 February 2005, TF2-015, pp. 11-12 .
[752] Transcript of 11 February 2005, TF2-015, p. 13.
[753] *See* transcript of 17 May 2006, Siaka Lahai, p. 44; Transcript of 04 May 2006, Arthur Koroma, p. 59; Transcript of 22 February 2006, TF2-027, p. 4. *But see also* Transcript of 19 May 2006, Mohamed Kaineh, pp. 92 and 97.
[754] Transcript of 11 February 2005, TF2-015, pp. 13-14.
[755] Transcript of 11 February 2005, TF2-015, p. 14.
[756] Transcript of 11 February 2005, TF2-015, pp. 14-15.

2.3.6. Dodo Junction

407. TF2-144 was among a group of civilians who were led by the Kamajors from the NDMC Headquarters toward Dodo on 15 January 1998.[757] In Panguma, on the way to Dodo, they were stopped by Musa Junisa's troops who checked the civilians for passes and taxes. TF2-144 witnessed Kamajors strike a woman on the back after checking her. She was carrying a child on her back. TF2-144 does not know whether she died.[758] The other civilians were allowed to pass, but Kamajors would occasionally arrive and take civilians from the queue as they were walking to Dodo.[759] At a checkpoint in Dodo, this same group of civilians was stopped and told to remove their passes and taxes. TF2-144 saw Kamajors hack the right hand of a man who was identified as a rebel because of the shoes that he wore.[760]

2.3.7. Lalehun

408. In mid-February 1998, Aruna Konowa was tied up and brought to Lalehun by Kamajors.[761] He was forced to sleep at the Kamajors' headquarters in Lalehun that night and the following morning the entire town was gathered at the court *barri*.[762] Chief Baimba Aruna, one of the Kamajor bosses of Lalehun, ordered Aruna Konowa to sit on the ground, denounced him as a rebel collaborator and ordered him to be killed.[763] Kamajors took Konowa to the school compound and slit his throat with a knife and disembowelled him[764] TF2-016 was present for the meeting at the *barri* and saw the body at the school compound afterwards.[765]

409. Kamajors killed Brima Conteh, the Nyawa Town Speaker, a few days later.[766] He was arrested by Kamajors from Lalehun at a meeting of the chiefs held by BJK Sei in Tongo.[767] Brima Conteh was stripped naked and taken to Lalehun, with a cement block on his head and a rope

[757] Transcript of 24 February 2005, TF2-144, p. 66.
[758] Transcript of 24 February 2005, TF2-144, pp. 67-68.
[759] Transcript of 24 February 2005, TF2-144, p. 68.
[760] Transcript of 24 February 2005, TF2-144, pp. 69-70.
[761] Transcript of 01 March 2005, TF2-016, pp. 33 and 35.
[762] Transcript of 01 March 2005, TF2-016, p. 36.
[763] Transcript of 01 March 2005, TF2-016, pp. 36-38.
[764] Transcript of 01 March 2005, TF2-016, pp. 38-39.
[765] Transcript of 01 March 2005, TF2-016, p. 39.
[766] Transcript of 01 March 2005, TF2-016, p. 39.
[767] Transcript of 01 March 2005, TF2-016, pp. 39-40; Transcript of 24 February 2005, TF2-013, pp. 18-19.

around his neck. He was paraded around town in this condition.[768] Baimba Aruna denounced Brima Conteh as the chief of the rebels and ordered his death.[769] Kamajors took Brima Conteh to a banana plantation and slit open his throat and stomach.[770] Two Kamajors ate the insides of his stomach.[771] The Kamajors severed Brima Conteh's head and left his body in the plantation. A Kamajor was ordered to proceed to town with Brima Conteh's head for a celebration.[772] Another Kamajor named Vandi took Conteh's intestines to town in a five gallon container.[773] The Kamajors proceeded from house to house with his head and intestines; eventually they were left at Baimba Aruna's house.[774]

410. From mid-February to at least mid-March, Kamajors looted in Lalehun: they took doors, roofs and zinc from houses. They also burnt nine houses, including TF2-016's father's house.[775] Kamajors were told to take what they wanted.[776] There was an organized operation whereby the town was divided into different areas and civilians were woken every morning at 6:00am to gather at the town *barri*, where they were ordered to carry loads for the Kamajors. If the civilians refused, they would be threatened or kept in the guard room.[777]

2.4. Koribondo

2.4.1. Background to Koribondo

411. Koribondo is situated at the intersection of the roads running from Bo to Pujehun and from Mattru to Kenema. Koribondo is in Jaiama-Bongor Chiefdom, which is the chiefdom where Norman became Regent Chief in October 1994.[778] It is an amalgamated chiefdom: Koribondo was part of Jaiama Section and Telu was part of Bongor. There was animosity between the inhabitants of these two sections; this was exacerbated by the decision of Chief Norman to reside in Telu.[779]

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[768] Transcript of 01 March 2005, TF2-016, p. 40, Transcript of 24 February 2005, TF2-013, pp. 19-20.
[769] Transcript of 24 February 2005, TF2-013, pp. 20-21.
[770] Transcript of 01 March 2005, TF2-016, pp. 40-41; Transcript of 24 February 2005, TF2-013, pp. 22-23.
[771] Transcript of 01 March 2005, TF2-016, p. 41.
[772] Transcript of 01 March 2005, TF2-016, p. 43; Transcript of 24 February 2005, TF2-013, pp. 24-25.
[773] Transcript of 24 February 2005, TF2-013, p. 28.
[774] Transcript of 24 February 2005, TF2-013, p. 29.
[775] Transcript of 01 March 2006, TF2-016, pp. 32-34.
[776] Transcript of 01 March 2006, TF2-016, p. 44.
[777] Transcript of 01 March 2006, TF2-016, p. 44.
[778] Transcript of 30 January 2006, Norman, pp. 43- 44.
[779] Transcript of 30 January 2006, Norman, pp. 43-44.

The inhabitants of Jaiama saw the war as an opportunity to end the amalgamation. The military was quick to notice this strain between Jaiama and Bongor and it decided to establish a base at Koribondo in order to pre-empt any potential arrangement between authorities in Jaiama and the RUF.[780]

412. Since 1991, Koribondo had been the headquarters of the 34th Battalion of the SLA.[781] It served as a company-sized military base until 1997.[782] There were no barracks in Koribondo town so the soldiers and civilians were forced to live together.[783] This resulted in a number of marriages between soldiers and civilians.[784]

413. In his capacity as Regent Chief, Norman held numerous meetings with commanders and elders in Koribondo. During these meetings, it was decided that the inhabitants of Jaiama-Bongor Chiefdom should provide men to be trained as vigilantes. These vigilantes were subsequently provided with military uniforms. This was not considered unusual since during the reign of the NPRC Government[785] both vigilantes and soldiers were issued the same uniform. During the reign of the AFRC, the vigilantes were more loyal to the soldiers than to the hunters[786] or ECOMOG.[787]

414. In 1996, Norman, in his capacity as Regent Chief, invited the Kamajors to Koribondo to assist the soldiers in fighting the rebels.[788] While in Koribondo, the Kamajors and soldiers dressed differently: Kamajors wore a special kind of dress called *ronko* which was made of country cloth. The *ronkos* were covered in cowrie shells and had short sleeves. By contrast, the soldiers wore khaki government uniforms.[789]

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[780] Transcript of 30 January 2006, Norman, pp. 43-44.
[781] Transcript of 15 June 2004, TF2-198, p. 48.
[782] Transcript of 31 January 2006, Norman, p. 8; Transcript of 30 January 2006, Norman, p. 46.
[783] Transcript of 15 June 2004, TF2-198, p. 48.
[784] Transcript of 30 January 2006, Norman p. 47; Transcript of 15 June 2004, TF2-198, p. 15.
[785] The NPRC Government ruled from 29 April 1992 to 29 March 1996.
[786] Hunters were trained by ECOMOG under the Director of training Chief Police Officer, M.S. Dumbuya.
[787] Transcript of 30 January 2006, Norman, p. 46;Transcript of 30th January 2006, Norman, p. 48.
[788] Transcript of 15 June 2004, TF2-198, pp. 15-16.
[789] Transcript of 15 June 2004, TF2-198, pp. 15-16; Transcript of 22 June 2004, TF2-012, p. 30.

415. Initially, the arrival of the Kamajors in Koribondo was welcomed by the soldiers and both lived happily together. However, before the soldiers left Koribondo in 1997, the relationship had soured[790] due to the overthrow of President Kabbah's government by soldiers on 25 May 1997.[791]

416. Before the Coup, Koribondo and its surrounding villages were controlled by rebels. The RUF and AFRC had a battalion stationed at Koribondo. For this reason, the Kamajors wanted to capture Koribondo and flush out the AFRC and RUF rebels from Koribondo.[792] After the Coup, arrangements were put in place at Base Zero for the RUF and AFRC military unit in Koribondo to be captured. The capture and control of Koribondo was expected to facilitate the movement of ECOMOG troops from Pujehun to Bo.[793]

2.4.2. Attacks on Koribondo by Kamajors

417. Between 1997 and 1998, Kamajors armed with RPGs attacked Koribondo on numerous occasions. One attack, a skirmish between hunters and soldiers, occurred between July and September 1997.[794] A subsequent attack took place between September and October 1997.[795] In both attacks, soldiers repelled the Kamajors.[796] While some of these attacks were coordinated from Base Zero, others were planned locally.[797]

2.4.3. Local Planning at Kpetewoma

418. As found in section V.2.2.10.4 above Norman gave an order at Base Zero to attack Koribondo, following which the local planning for the attack was done at Kpetewoma. Albert J Nallo was the intermediary between Norman at Base Zero and Joe Tamidey.[798] There were three meetings; the first and third were operational planning meetings. During the first meeting, local

[790] Transcript of 15 June 2004, TF2-198, p. 45.
[791] Transcript of 15 June 2004, TF2-198, p. 17.
[792] Transcript of 16 September 2004, TF2-082, pp. 136-137; Transcript of 30 January 2006, Norman, pp. 48-49; Transcript of 5 November 2004, TF2-201, p. 101 (CS).
[793] Transcript of 30 January 2006, Norman, pp. 48-49.
[794] Transcript of 30 January 2006, Norman, p. 45.
[795] Transcript of 30 January 2006, Norman, pp. 54-55.
[796] Transcript of TF2-157, 16 June 2004, p. 34; Transcript of TF2-198, 15 June 2004, p. 17; Transcript 15 May 2006, Haroun Collier, p. 9.
[797] Transcript of 10 February 2005, Bobor Tucker, pp. 43-44; Transcript of 16 November 2004, TF2-008, p. 78; Transcript of 8 June 2005, TF2-011, p. 28, (CS); Transcript of 2 November 2004, p. 62; Transcript of 15 May 2006, Haroun Collier, p. 8; Transcript of 15 September 2004, TF2-082, pp.14-15 and 17, Transcript of 10 February 2005, Bob Tucker, pp. 47-48, Transcript of 8 May 2006, Dixon Kosia, pp. 52-53.
[798] Transcript of 15 September 2004, pp. 17-19 (CS); Transcript of 10 February 2005, Bobor Tucker, p. 47.

manpower was provided to assist the Kamajors.[799] At the third meeting, Nallo, on behalf of Norman, supplied cartridges, bombs, G3s and AK-47s to Joe Tamidey. Nallo informed Joe Tamidey that Norman had asked him to bring the ammunitions to Joe Tamidey for the attack on Koribondo.[800]

419. Upon receiving the ammunitions, plans were made, fighters were organized and the arms and ammunition supplied by Nallo were distributed to the various groups by Joe Tamidey.[801] The Kamajors also agreed on the commanders to lead the battle: Bobor Tucker, Joe Tamidey and Lahai George. Bobor Tucker was responsible for the Bo-Koribondo Highway, Lahai George was to attack from the Sumbuya-Koribondo Highway, and Joe Tamidey was to enter Koribondo through Blama.[802] After these strategic arrangements were made, Joe Tamidey informed Nallo so that he could report to Norman on the imminent attack of Koribondo, planned for 13 February 1998.[803]

2.4.4. Final Attack and Capture of Koribondo by Kamajors

420. Around 700 Kamajors attacked Koribondo on Friday, 13 February 1998 at about 1:30pm. The attack lasted for about 45 minutes.[804] The attack started from Jombohun and was commanded by Joe Tamidey, Bobor Tucker, a.k.a. Jegbeyama and Lamin Ngobeh. Although the commanders were operating with different groups, they were all under Albert J Nallo's command.[805] The Kamajors that participated in the attack on Koribondo were predominantly, but not exclusively,

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[799] Transcript of 15 September 2004, pp. 14-15 and 17 (CS); Transcript of 10 February 2005, Bobor Tucker, pp. 47-48; Transcript of 8 May 2006, Dixon Kosia, pp. 52-53.
[800] Transcript of 15 September 2004, pp. 17-19 (CS); Transcript of 10 February 2005, Bobor Tucker, p. 47.
[801] Transcript of 15 September 2004, pp. 14-15 and 17 (CS); Transcript of 10 February 2005, Bobor Tucker, pp. 47-48; Transcript of 8 May 2006, Dixon Kosia, pp. 52-53.
[802] Transcript of 10 February 2005, Bobor Tucker, pp. 48-49; Transcript of 8 May 2006, Dixon Kosia, p. 53.
[803] Transcript of 15 September 2004, p. 17 (CS).
[804] Transcript of 15 June 2004, TF2-198, pp. 18-19; Transcript of 16 June 2004, TF2-157, p. 9; Transcript of 10 February 2005, Bobor Tucker, p. 49; Transcript of 8 September 2004, TF2-162, p. 12; Transcript of 15 September 2004, TF2-082, p. 25 (CS); Transcript of 21 June 2004, TF2-012, p. 23; Transcript of 17 June 2004, TF2-176; pp. 75-76; Transcript of 6 October 2006, Brima Tarawally, p. 53; Transcript of 8 May 2006, Dixon Kosia, p. 52; Transcript of 8 May 2006, Dauda Sheriff, p. 95.
[805] Transcript of 14 March 2005, Albert J Nallo, p. 44; Transcript of 4 November 2004, TF2-201, p. 115; Transcript of 2 November 2004, TF2-021, p. 62.

from the Jaiama-Bongor Chiefdom.[806] Others came from Pujehun District, Bonthe District and Bo District.[807] This attack led to the capture of Koribondo.[808]

2.4.5. Crimes Committed by Kamajors in Koribondo

2.4.5.1. Unlawful Killings, Terrorizing Civilian Population and Collective Punishment

421. On Sunday, 15 February 1998[809] at 9:30am, Kamajors arrested five Limba civilians named Sofiania, Sarrah, Momoh, Kamara and Koroma at the Koribondo junction. They were accused of being junta members responsible for killing Kamajors. While they were beaten, wounded and mutilated, the Kamajors sang the usual Kamajor song which precedes a killing.[810] Two of the civilians were shot and the other three were cut on the back of their necks with a cutlass, all five died from their wounds.[811] Sarrah and Momoh were beheaded and their heads were displayed at the junction; one was turned towards Blama Road and the other towards Sumbuya Road.[812]

422. On the same day, Kamajors mutilated and killed two Limba civilians: Sarah Binkolo and Sarah Lamina. Both of them were killed by the bridge along Blama Road in Koribondo. The Kamajors sang a Kamajor song while mutilating these women.[813]

423. On Monday, 16 February 1998, Kamajors killed eight people along Blama Road in Koribondo. The victims were five men belonging to the junta and three women who were the wives of soldiers. The women's names were Amie, Jainaba and Esther. These eight people were arrested, beaten and mutilated.[814] Two of the women were killed by having sticks inserted through their genitals until they came out through the women's mouths.[815] The third was killed with a

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[806] Transcript of 4 November 2004, TF2-201, p. 115 (CS); Transcript of 15 September 2004, TF2-082, p. 26; Transcript of 10 March 2005, Albert J Nallo, p. 75; Transcript of 15 June 2004, TF2-198, p. 58.
[807] Transcript of 10 March 2005, Albert J Nallo, p. 75.
[808] Transcript of 10 March 2005, Albert J Nallo, p. 81; Transcript of 16 June 2004, TF2-157, p. 4-5; Transcript of 15 June 2004, TF2-198, p. 60; Transcript of 30 January 2006, Norman, p. 43; Transcript of 15 June 2004, TF2-198, p. 49.
[809] Transcript of 9 September 2004, TF2-159, pp. 27-29; Transcript of 14 September 2004, TF2-140, p. 73.
[810] Transcript of 9 September 2004, TF2-159, p. 29; Transcript of 9 September 2004, TF2-159, p. 28; Transcript of 14 September 2004, TF2-140, p. 73.
[811] Transcript of 9 September 2004, TF2-159, pp. 30-31.
[812] Transcript of 9 September 2004, TF2-159, pp. 31-32.
[813] Transcript of 16 June 2004, TF2-157, pp. 14-15; Transcript of 15 June 2004, TF2-198, p. 33.
[814] Transcript of 9 September 2004, TF2-159, pp. 35-36, 38 and 99.
[815] Transcript of 9 September 2004, TF2-159, p. 37.

cutlass.[816] Four of the men were shot and the fifth was cut on the back of his neck with a cutlass; all five died from their wounds.[817]

424. The Kamajors disembowelled the women and put their entrails in a bucket. The women's stomachs were also removed. Their guts were made into checkpoints so that anyone coming past could see them.[818] Part of their entrails were eaten and their bodies were buried.[819]

425. On the same day, Kamajors killed Chief Kafala.[820] Chief Kafala had been accused of being a junta member who was leading soldiers. He was brought from Bendu to Koribondo in the presence of many people. Chief Kafala' was decapitated and his body was mutilated in the street opposite the hospital. This was done in the presence of four civilians. Kamajors took Chief Kafala to the swamp where a Kamajor further mutilated him on the upper right shoulder and then forced him into a small hole with a shovel. Chief Kafala's feet were amputated and he was shot twice. The Kamajors ordered the civilians present to cover him with mud: two of them did so while the Kamajors sang.[821]

2.4.5.2. Flogging Resulting in the Death of Lahai Bassie

426. After the capture of Koribondo, an elderly person named Lahai Bassie was arrested and beaten severely by Kamajors because his son was a soldier. The Kamajors found a picture of his son and also a letter from his son in his house.[822] Lahai Bassie died one week after the serious beatings he suffered at the hands of Kamajors.[823]

2.4.5.3. Burning of Houses

427. Bombs were launched during the Kamajor attack on Koribondo on 13 February 1998; as a result some houses were destroyed or burnt.[824] The nine-room house of TF2-032 was partially

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[816] Transcript of 9 September 2004, TF2-159, pp. 37-38.
[817] Transcript of 9 September 2004, TF2-159, p. 37.
[818] Transcript of 9 September 2004, TF2-159, pp. 38-39.
[819] Transcript of 9 September 2004, TF2-159, p. 39.
[820] Transcript of 16 June 2004, TF2-157, p. 16; Transcript of 13 September 2004, TF2-032, p. 25 (CS); Transcript of 15 June 2004, TF2-198, p. 33.
[821] Transcript of 16 June 2004, TF2-157, pp. 16-17.
[822] Transcript of 16 June 2006, TF2-157, p. 18.
[823] Transcript of 16 June 2006, TF2-157, p. 19.
[824] Transcript of 16 June 2004, TF2-157, p. 14; Transcript of 17 June 2004, TF2-157, p. 37; Transcript of 14 September 2004, TF2-140, p. 82, Transcript of 21 June 2004, TF2-012, p. 24; Transcript of 15 June 2004, TF2-198, pp. 32 and 49.

destroyed.[825] The consequences of this continue to upset TF2-032 as since the destruction of his home, his children are scattered and, despite his advanced age, he now sleeps in a kitchen.[826]

428. Between 13 and 15 February 1998,[827] after the capture of Koribondo, Kamajors went on a rampage in Koribondo and burnt down 25 houses. Dry grass was used to set the houses ablaze.[828] Houses belonging to Daniel Habib, Saidu Bah, Pa Musa and others were burnt.[829] Some of those whose houses were burnt were discouraged; others feared for their lives.[830]

429. Albert J Nallo burnt the compound of Shekou Gbao; he had been ordered to do so by Norman at a private meeting at Base Zero. Albert J Nallo had also been ordered to kill Shekou Gbao but could not find him.[831] Albert J Nallo also burnt the house of Father Mike Lamin[832] and the compound of Mr. Biyo on the order of Norman.[833]

2.4.5.4. Looting in Koribondo

430. After the capture of Koribondo, the Kamajors looted property from houses, including videos, tape-recorders, money and generators.[834] Kamajors took about 20 bushels of rice from TF2-162 and also confiscated his household property.[835] Bob Tucker looted fifty-six bundles of eight-foot zinc.[836] Most of the looted properties were taken at Jimmi Highway on Jimmi Road.[837]

2.4.5.5. Captured Enemy Combatants

431. Following the attack on Korbondo, soldiers and their relatives, who were arrested or captured or who surrendered, were detained for a short period of time. They were later transferred

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[825] Transcript of 13 September 2004, TF2-032, p. 33; Transcript of 17 June 2004, TF2-157, p. 37.
[826] Transcript of 13 September 2004, TF2-032, p. 29.
[827] Transcript of 9 September 2004, TF2-159, p. 26; Transcript of 10 February 2005, Bob Tucker, p. 51; Transcript of 17 June 2004, TF2-176, p. 80; Transcript of 21 June 2004, TF2-012, p. 24; Transcript of 13 September 2004, TF2-032, p. 52; Transcript of 14 September 2004, TF2-140, p. 82; Transcript of 5 November 2004, TF2-201, p. 54 (CS).
[828] Transcript of 9 September 2004, TF2-159, p. 26; Transcript of 10 February 2005, Bob Tucker, p. 51; Transcript of 17 June 2004, TF2-176, p. 80; Transcript of 21 June 2004, TF2-012, p. 24; Transcript of 13 September 2004, TF2-032, p. 52; Transcript of 14 September 2004, TF2-140, p. 82; Transcript of 5 November 2004, TF2-201, p. 54 (CS).
[829] Transcript of 9 September 2004, TF2-159, pp. 26-27; Transcript of 21 June 2004, TF2-176, p. 80; Transcript of 13 September 2004, pp. 34-35.
[830] Transcript of 17 June 2004, TF2-176, p. 81; Transcript of 9 September 2004, TF2-159, p. 27.
[831] Transcript of 10 March 2005, Albert J Nallo, p. 79.
[832] Transcript of 10 March 2005, Albert J Nallo, p. 79.
[833] Transcript of 10 March 2005, Albert J Nallo, p. 79.
[834] Transcript of 14 September 2004, TF2-140, p. 82.
[835] Transcript of 8 September 2004, TF2-162, p. 21.
[836] Transcript of 10 February 2005, Bobor Tucker, p. 50.
[837] Transcript of 14 September 2004, TF2-140; p. 82.

to ECOMOG[838] except for one soldier, Sergeant Kamanda, who was sent to Norman at Baze Zero to prove that the Kamajors had captured soldiers.[839]

2.4.6. Meeting after the Capture of Koribondo

2.4.6.1. Private Meeting between Joe Tamidey and the two Accused

432. Four days after the capture of Bo, around 21 February 1998, Joe Tamidey met with Fofana, Kondewa and Norman in Koribondo. He was taken to Bo where he was questioned by Fofana, as to his reasons for not killing Sheku Gbao.[840]

2.4.6.2. Meetings at the Court *Barri* in Koribondo

433. Norman attended two meetings in Koribondo after its capture.[841]

2.4.6.2.1. First Meeting at the Koribondo Court Barri

434. During the first meeting, at the end of March 1998, Norman addressed the people of Koribondo at the court *barri*. Approximately about 200 civilians and 400 Kamajors were present.[842] Norman stated:

> Hey, Kamajors, I thank you very much, but you people have not done my work which I told you to do. You have not done my work at all. Fellows, what did I tell you to do? That inside Koribondo I only want three houses, only three houses in Koribondo here. Oh, look at all these houses. I told you that I wanted the mosque, the court *barri* and one house where I would have to reside, but look at all this crowd that I am seeing here. You people are afraid of killing. Why? The soldiers killed, nothing happened; Kapras killed, nothing happened; rebels killed, nothing happened. Why are you afraid of killing? Why? Really, you've not done my work, you've disappointed me.[843]

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[838] Transcript of 10 March 2005, TF2-014, p. 76; Transcript of 15 September 2004, TF2-082, p. 47; Transcript of 16 September 2004, TF2-082, pp. 138-139; Transcript of 11 May 2006, Joe Nunie, pp. 35-36; Transcript of 8 May 2006, Dauda Sheriff, pp. 97-98; Transcript of 8 May 2006, Dixon Kosia, p. 80.

[839] Transcript of 15 September 2004, TF2-082, pp.37-38, Transcript of 7 February 2006, Norman, p. 54; See Section on "Crimes Committed in Talia".

[840] Transcript of 15 September 2004, pp. 40-42 (CS).

[841] Transcript of 30 January 2006, Norman, p. 71; Transcript of 15 June 2004, TF2-198, p. 45.

[842] Transcript of 16 June 2004, TF2-157, p. 20, Transcript of 8 May 2006, Dauda Sheriff, p. 99; Transcript of 15 September 2004, TF2-082, p. 48 (CS); Transcript of 15 June 2004, TF2-198, p. 37.

[843] Transcript of 15 June 2004, TF2-198, p. 37; Transcript of 16 June 2004, TF2-157, p. 20-21; Transcript of 15 September 2004, TF2-082, p. 49 (CS); Transcript of 21 June 2004, TF2-012, p. 27; Transcript of 16 June 2004, TF2-157, pp. 20-21; Transcript of 9 September 2004, TF2-159, p. 54; Transcript of 13 September 2004, TF2-032, p. 62, Transcript of 9 September 2004, TF2-162, p. 30; Transcript of 15 September 2004, TF2-082, p. 49.

435. During this visit, Norman was accompanied by Fofana and Kondewa; however, they did not attend the meeting at the court *barri* in Koribondo.[844]

2.4.6.2.2. Second Meeting at the Koribondo Court Barri

436. Norman attended a second meeting at the court *barri* in Koribondo in April 1998.[845] At this meeting Norman stated:

> Oh Koribondo people bless God. He said the Kamajors did not do what I told them to do. He said, we should stop slaying people's children. All this destruction that the Kamajors did, he says, you have to - and they swore at me because I asked them to do it. You know, stop blaming them. Stop blaming them, anything that the Kamajors did here I commanded them to do it.[846]

437. There is no evidence that either Fofana or Kondewa attended the second meeting at the court *barri* in Koribondo.[847]

2.5. Bo District

2.5.1. Background to the conflict in Bo

438. Before the overthrow of President Kabbah's government, the police were in charge of security in Bo. The military was supported by the SSD, the armed wing of the police.[848] The initial arrival of soldiers in Bo was in 1992.[849] In the early stages of the conflict the police were duty-bound to support the soldiers.[850]

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[844] Transcript of 15 September 2004, TF2-082, p. 49; Transcript of 16 September 2004, TF2-082, p. 146 (CS).
[845] Transcript of 15 June 2004, TF2-198, p. 60; Transcript of 9 September 2004, TF2 159, p. 55; Transcript of 7 February 2006, Norman, p. 32; Transcript of 15 September 2004, TF2 082, p. 49; Transcript of 16 June, 2004, TF2-157, p. 21; Transcript of 13 September 2004, TF2-032, p. 62; Transcript of 9 September 2004, TF2-162, p. 3.

[846] Transcript of 15 June 2004, TF2-198, p. 38; Transcript of 15 September 2004, TF2 082, pp. 49 and 50; Transcript of 16 June, 2004, TF2-157, pp. 21-22; Transcript of 13 September 2004, TF2-032, p. 63; Transcript of 9 September 2005, TF2-159, p. 56.
[847] Transcript of 16 September 2004, TF2-082, p. 147(CS).
[848] Transcript of 15 February 2005, TF2-001, p. 15.
[849] Transcript of 15 February 2005, TF2-001, p. 39.
[850] Transcript of 15 February 2005, TF2-001, p. 17.

439. The police initially supported the juntas following the Coup. During this period, the police in Bo were given rifles to save lives and property as well as to defend themselves in case of attacks at night.[851] The police ceased to support the juntas in late 1997.[852]

440. After the coup, the Kamajors left Bo. The police had tried to create a cordial relationship with the Kamajors; however, the Kamajors turned against the police because of their alleged collaboration with the juntas.[853]

441. On 14 February 1998 the soldiers left Bo and immediately thereafter the youth, popularly called vigilantes, took control of Bo for one day before the arrival of the Kamajors on 15 February 1998.[854] During this time, the youth killed and burned collaborators and burned their houses.[855]

2.5.2. Attack on Kebi Town / Local Planning for the Attack on Bo

442. Kebi Town in Bo District was of importance in the Bo campaign because it was the location of the junta's Brigade Headquarters.[856] After receiving orders from Norman to attack Kebi Town and Bo at Base Zero, as found by the Chamber in Section V.2.2.10.5, TF2-017 went with Kamajors to Bumpeh.[857] The tactical planning for the Bo attack was done in Bumpeh which was considered by Norman as the focal point for the eventual attack and capture of Bo.[858] Albert J Nallo knew of the local planning in Bumpeh.[859]

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[851] TF2-119 also testified that after the coup, the security situation in Bo was intense, crime rate was high and there was a public outcry for the police to provide security within the township. Amidst this, the police were facing harassment and suppression. Transcript of 24 November 2004, TF2-119, pp. 21-26.
[852] Transcript of 15 February 2005, TF2-001, pp. 17-18.
[853] Transcript of 24 November 2004, TF2-119, p. 11.
[854] Transcript of 25 November 2004, TF2-156, pp. 34-36: The youths carried cutlasses and sticks, they fought against the juntas to protect and defend their community they even had checkpoint prior to the arrival of the Kamajors: Transcript of 25 November 2004, TF2-156, pp. 83-84, Transcript of 27 September 2006, Morries Ngobeh, pp. 7, 9, 12.
[855] Transcript of 27 September 2006, Morries Ngobeh, pp. 5-6, 12-13, 17-19.
[856] Transcript of 19 November 2004, TF2-017, p. 95 (CS)
[857] Transcript of 19 November 2004, TF2-017, p. 95 (CS); Moses Bangura testified that the Kamajors were to attack the Rebels at the Bo Brigade in order to get arms. Transcript of 17 October 2006, Moses Bangura, pp. 12-13.
[858] Transcript of 22 November 2004, TF2-017, p. 1-3 (CS); Bobor Tucker testified that after the capture of Koribondo on 13th February 1998, he went to Bo because he heard that the Kamajors had captured Bo and Bo was under their control. Transcript of 10 February 2005, Bobor Tucker, pp. 52-53.
[859] Transcript of 14 March 2005, Albert J Nallo, pp. 23-24.

443. Before the attack on Bo in February 1998, an attack on Kebi Town was launched in early January 1998. It was led by Battalion commander James Kaillie who was the commander at Bumpeh and his Deputy was Joseph Lappia.[860]

444. Kebi Town was captured and the Kamajors proceeded to Dar-es-Salaam, Bumpeh Chiefdom, where TF2-017 gave a verbal situation report on the Kebi attack. As proof that they had launched the attack on Kebi Town, TF2-017 handed a captured soldier and solar panels from the communication centre in the Kebi Town Headquarters to Norman, in the presence of Fofana, Kondewa and several other Kamajors.[861] Norman handed over the captured soldier to Kondewa who took him to Base Zero.[862]

445. The order to attack Bo in February 1998 was reiterated to TF2-017 in Bumpeh by Norman in the presence of Fofana and Kondewa.[863] At Bumpeh, Kondewa renewed the initiation of certain Kamajors, to prepare them to attack Bo. These Kamajors took ammunition from Bumpeh as they regrouped with the re-initiated Kamajors and went to attack Bo.[864]

446. Norman met with Nallo before the Koribondo and Bo attacks at Base Zero and gave him specific instructions for these two attacks, while Fofana was present.[865] Norman gave specific orders to Nallo to kill certain identified civilians in Bo who were labelled as "collaborators", loot and burn their houses, loot the Southern Pharmacy and bring the medicines to Norman. Specifically the name of MB Sesay was mentioned.[866] Norman also ordered Nallo to kill the police officers.[867]

447. The attack on Bo proceeded from four flanks.[868] Nallo, in his capacity as the Regional Director of Operations, was regarded by TF2-017 as his "operational" or "division" Commander for the Bo attacks.[869] TF2-017's group was based at Tikonko Road.[870] James Kaillie was the

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[860] Transcript of 19 November 2004, TF2-017, pp. 94-95 (CS).
[861] Transcript of 19 November 2004, TF2-017, pp. 98-99 (CS).
[862] Transcript of 19 November 2004, TF2-017, pp. 98-99 (CS).
[863] Transcript of 19 November 2004, TF2-017, pp. 100-101 (CS).
[864] Transcript of 19 November 2004, TF2-017, pp. 110-111 (CS).
[865] Transcript of 10 March 2005, Albert J Nallo, pp. 70-77; Transcript of 11 May 2006, DW Joe Nunie, pp. 92-93.
[866] Transcript of 10 March 2005, Albert J Nallo, pp. 70-77; Transcript of 8 June 2005, TF2-011, pp. 29-30; Transcript of 22 November 2004, TF2-017, pp. 91-94.
[867] Transcript of 10 March 2005, Albert J Nallo, pp. 75-76; Transcript of 15 March 2005, Albert J Nallo, pp. 55-56.
[868] Transcript of 22 November 2004, TF2-017, pp. 2-3 (CS).
[869] Transcript of 22 November 2004, TF2-017, p. 2 (CS).
[870] Transcript of 22 November 2004, TF2-017, pp. 4-7 (CS).

Battalion Commander of this group from Tikonko Road (Mattru) and Joseph Lappia was his Deputy Battalion Commander.[871] TF2-017 was part of this group and with his 38 Kapras and 270 Kamajors, he participated in the attack.[872]

448. In addition to James Kaillie's group, there were other groups of Kamajors involved in the attack on Bo. The Kamajors attacked Bo from the direction of Gerihun, Dambara, the Bo-Moyamba Highway and the Mattru-Bo Highway.[873] The groups from Gerihun, Dambara and the Bo-Moyamba Highway were all instructed to enter Bo and to wait at a particular area.[874]

2.5.3. Kamajors enter Bo Town on 15 February 1998

449. On 15 February 1998, TF2-017 and his group of Kamajors did not meet resistance when they entered Bo Town.[875] There were young boys among the Kamajors.[876] On the morning of their arrival in Bo, there were no forces fighting in Bo.[877] The juntas had pulled out of Bo early in the morning Saturday, 14 February 1998.[878]

2.5.3.1. Crimes Committed Against Policemen by Kamajors on Arrival in Bo

2.5.3.1.1. Kamajors at the Police Barracks

450. On 15 February 1998, approximately 2000 Kamajors entered Bo from the direction of Kenema. They were carrying AK-47 guns, RPG bombs, machetes, catapults and sticks with nails attached to them.[879]

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[871] Transcript of 22 November 2004, TF2.017, pp. 4-5 (CS).
[872] Transcript of 19 November 2004, TF2-017, p. 97 (CS).
[873] Transcript of 22 November 2004, TF2-017, p. 1-3 (CS); Bobor Tucker testified that after the capture of Koribondo on 13 February 1998, he went to Bo because he heard that the Kamajors had captured Bo and Bo was under their control. Transcript of 10 February 2005, Bobor Tucker, pp. 52-53.
[874] Transcript of 22 November 2004, TF2-017, pp. 3-4 (CS).
[875] Transcript of 22 November 2004, TF2-017, p. 5 (CS); Transcript of 27 September 2006, Morries Ngobeh, p. 13, Transcript of 25 November 2006, TF2-030, p. 3.
[876] Transcript of 9 February 2005, TF2-006, pp. 16-17.
[877] Transcript of 25 November 2004, TF2-030, p. 4.
[878] Transcript of 23 November 2004, TF2-119, pp. 103-104; Numerous witnesses testify that they were able to identify the Kamajors by their uniform, which was commonly known as ronkos, with various items like shells, glasses; cowries were tied to the ronkos like a talisman; Transcript of 23 November 2004, TF2-119, p. 105; Transcript of 29 November 2004, TF2-057, pp. 110-111; Transcript of 9 February 2005, TF2-006, p. 9; Transcript of 25 November 2006, TF2-030, p. 4.
[879] Transcript of 14 February 2005, TF2-001, pp. 70-75.

451. While the Kamajors were in Bo they captured and killed police officers.[880] Those that were missing had been killed; they were not missing in action. The police that had been killed did not have ammunition.[881]

452. On 15 February 1998, Kamajors killed eight police men at the new police barracks; TF2-056 saw the corpses.[882]

2.5.3.1.2. Beating of OC Bundu, OC Katta and OC Ndanema

453. On 15 February 1998, Kamajors under the leadership of Nallo, Agbamu Murray and John Ngombeh beat OC Bundu (the SSD boss) at the Bo police station. OC Bundu was then forcefully taken to his house in which Kamajors searched for ammunition. The Kamajors took the ammunition that they found at OC Bundu's house and returned to the police station.[883] Later on the same day, TF2-001 witnessed another group of Kamajors capture OC Bundu, OC Ndanema and OC Katta at gunpoint and beat them; OC Katta was beaten particularly harshly and he cried.[884] TF2-001 feared for his own life.[885]

2.5.3.1.3. Mistreatment of TF2-001 and Looting of his Property

454. After witnessing this incident, TF2-001 returned to his house where he found Kamajors looting his property. Property worth 3,500,000 leones including a bed, a mattress and his children's property were bundled up by the Kamajors. When TF2-001 objected, the Kamajors threatened to kill him.[886] TF2-001 was distressed by this situation.[887]

2.5.3.1.4. Killing of Corporal Freeman

455. On 15 February 1998, while at Kandeyama Road opposite the police barracks, TF2-001 saw a group of Kamajors rush to Corporal Freeman and drag him to the road. The Kamajors then

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[880] Transcript of 15 March 2005, Albert J Nallo, pp. 55-56.
[881] Transcript of 14 February 2005, TF2-001, pp. 116-117.
[882] Transcript of 6 December 2004, TF2-056, pp. 68-69; Transcript of 7 December 2004, TF2-056, pp. 95-97.
[883] Transcript of 14 February 2005, TF2-001, p. 77. When the Kamajor leaders came to the police station asked for the SSD Boss OC Bundu when they found him, the Kamajor leaders asked OC Bundu to provide them with the guns he had. OC Bundu responded that the guns and ammunition had been distributed among the officers so he had no guns. One of the leaders, Agbamu Murray said they needed the ammunition, OC Bundu refused and he was forcefully taken to his house to search for ammunition: Transcript of 14 February 2005, TF2-001, pp. 76-77.
[884] Transcript of 14 February 2005, TF2-001, pp. 79-80.
[885] Transcript of 14 February 2005, TF2-001, p. 80.
[886] Transcript of 14 February 2005, TF2-001, pp. 77-79.
[887] Transcript of 14 February 2005, TF2-001, p. 81.

hacked Corporal Freeman to death with a cutlass. Freeman's corpse was dragged along the highway while the Kamajors shouted, "Allahu Akbar, Allahu Akbar". A little girl shouted, "Daddy, Daddy they have killed your brother Freeman."[888]

2.5.3.1.5. Kamajors Looted TF2-119's Property

456. On 15 February 1998, a group of Kamajors entered TF2-119's house and threatened him.[889] They searched his house for ammunition and soldiers. While searching, the Kamajors broke suitcases and took valuables belonging to TF2-119's family.[890]

2.5.3.1.6. Mutilation/Personal Injury to TF2-119

457. Later that same day, a second group of Kamajors arrived at TF2-119's house. The Kamajors said Norman had ordered all policemen and soldiers to give their particulars and surrender all of the documents pertaining to their jobs, as well as their uniforms, before they were killed. Norman had assured the Kamajors that they would be approved as military officers, policemen and soldiers with salaries.[891]

458. TF2-119 begged for his life but the Kamajors responded that they would execute him and never defy Norman's orders. One Kamajor cut the back of TF2-119's neck while another shouted "Allahu Akbar". TF2-119's ears were partially severed. TF2-119's face and arm were cut with a machete. The Kamajors chopped at TF2-119's back, shoulders, left arm, the back of his head and the bone of the big toe on his right foot. The Kamajors left thinking TF2-119 was dead.[892]

2.5.3.1.7. Killing of James Vandy

459. On 16 February 1998, some Kamajors left the police barracks and headed towards Bo Township with loads on their heads. James Vandy, the Sub-Inspector of the Police Criminal Investigations Division, had been captured by the Kamajors and was made to walk in front of them. During this walk some Kamajors turned and struck James Vandy; he fell, dead. The Kamajors cut James Vandy into pieces while singing "Allahu Akbar, Allahu Akbar." James Vandy

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[888] Transcript of 14 February 2005, TF2-001, pp. 81-85.
[889] Transcript of 24 November 2004, TF2-119, p. 28.
[890] Transcript of 23 November 2004, TF2-119, pp. 105-106.
[891] Transcript of 23 November 2004, TF2-119, pp. 108-109.
[892] Transcript of 23 November 2004, TF2-119, pp. 111-116.

was decapitated by the Kamajors. His head was thrown in a stream under a bridge and the rest of his body was abandoned on the road.[893]

2.5.3.1.8. Kamajors Arrest TF2-001 and Loot His Property

460. After witnessing the death of James Vandy, TF2-001 attempted to flee but was chased by Kamajors because he had been identified as a policeman. The Kamajors were armed with cutlasses and guns but they retreated after hearing heavy gunfire from the direction of Freetown.[894] TF2-001 followed a large crowd of civilians in the direction of Kenema until they reached Kandeyama[895] where, under the orders of Kamajor leaders including Agbamu Murray, the Kamajors separated civilians from police. TF2-001 was identified as a policeman and was arrested along with other policemen. The Kamajors searched TF2-001 and took from him 15,000 leones and his watch.[896]

2.5.3.1.9. Killings at Bo Government Hospital by Kamajors

461. On 19 February 1998,[897] while TF2-119 was at Bo Government Hospital, a group of Kamajors came and captured an unidentified man next to TF2-119's bed. The captured man said he had been shot by the juntas when they were pulling out of Bo. The Kamajors carried this man away because they suspected he was a junta.[898]

462. TF2-156 was also a patient at the Bo Government Hospital. He witnessed Kamajors open fire at the hospital because several policemen were patients there. The Kamajors said the policemen were all juntas and should be killed.[899]

2.5.3.2. Looting and Burning

2.5.3.2.1. Looting and Burning of MB Sesay's House

463. Upon their arrival in Bo on 15 February 1998, the Kamajors under TF2-017's command went to MB Sesay's hotel on Sewa Road. They looted property belonging to civilians including

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[893] Transcript of 14 February 2005, TF2-001, pp. 85-87.
[894] Transcript of 14 February 2005, TF2-001, pp. 87-89.
[895] Transcript of 14 February 2005, TF2-001, pp. 89-90.
[896] Transcript of 14 February 2005, TF2-001, pp. 90-93.
[897] TF2-119 stated that he was saved and brought to Bo Government Hospital by the Red Cross Personnel; he narrates this incident as happening three days later: Transcript of 23 November 2004, TF2-119, pp.118-119.
[898] Transcript of 23 November 2004, TF2-119, p. 119.
[899] Transcript of 25 November 2004, TF2-156, pp. 51-52.

womens' dresses, mens' clothes and fans.[900] The Kamajors then set the hotel on fire.[901] Norman had ordered Albert J Nallo to loot and burn MB Sesay's property because he was considered a junta collaborator for manufacturing Kamajor *ronkos* which the juntas wore to disguise themselves as Kamajors.[902] This order was given at Base Zero.[903]

2.5.3.2.2. Other Burning

464. Albert J Nallo and other Kamajors burned the houses and properties of junta collaborators that they could not find.[904] The house of TF2-058 was burnt by Kamajors.[905] When TF2-056 arrived at the police barracks, he saw four houses that had been burnt by Kamajors.[906]

465. On 15 February 1998, Kamajors under the command of TF2-017 raided and destroyed two pharmacies situated at Tikonko Road and Bojon Street. The Kamajors broke the padlocks and looted all the medicine from these pharmacies. The Kamajors looted these pharmacies because there was a need for medicine at Base Zero; they were implementing a direct order from Norman to loot pharmacies.[907]

2.5.3.2.3. Other Looting

466. On 15 February 1998, Kamajors looted TF2-156's property including clothes, shoes, utensils, other household property and his business, which was worth 800,000 leones.[908]

467. Two days after the arrival of Kamajors in Bo, the Kamajors went into people's houses and looted their property. The property of TF2-030 was looted and her landlady's shop was broken

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[900] Transcript of 22 November 2004, TF2-017, pp. 6-7 (CS).
[901] Transcript of 22 November 2004, TF2-017, pp. 6-7 (CS); According to Morries Ngobeh, MB Sesay's property, hotel was looted and burned because it was rumored that he was a junta collaborator who made Kamajor uniforms for other members of the junta: Transcript of 27 September 2006, Morries Ngobeh, pp. 7-10.
[902] Transcript of 10 March 2005, Albert J Nallo, pp. 72-73.
[903] Transcript of 10 March 2005, Albert J Nallo, pp. 71-73.
[904] Transcript of 10 March 2005, Albert J Nallo, pp. 75-77.
[905] Transcript of 3 December 2004, TF2-058, p. 87.
[906] Transcript of 6 December 2004, TF2-056, pp. 68-69.
[907] Transcript of 22 November 2004, TF2-017, pp. 11-12 (CS).
[908] Transcript of 25 November 2004, TF2-156, pp. 37-38.

into by the Kamajors.[909] When Bobor Tucker arrived in Bo on Monday, 16 February 1998, he saw Kamajors all over Bo Town looting shops.[910]

2.5.3.3. Killings and Mistreatment of Civilians

468. When the Kamajors led by TF2-017 were in Bo on 15 February 1998, there was fear among the civilians. Many people had been killed. The situation reports of the Kamajors indicated excessive killing of civilians.[911]

2.5.3.3.1. Killing of Collaborators at MB Sesay's Hotel

469. During the raid on MB Sesay's hotel on 15 February 1998, an unidentified woman who cooked for the rebels was found hiding; she was shot and killed by Kamajors on the order of TF2-017.[912]

470. On the same occasion, Joseph Lappia, the Kamajor deputy commanding officer ordered the killing of John Musa. John Musa was considered a collaborator because he traded with rebels.[913]

2.5.3.3.2. Killing of TF2-058's Son

471. TF2-058's son was killed by Kamajors when they entered Bo.[914]

2.5.3.3.3. Mutilation of TF2-006 and Wounding of Five People

472. When the Kamajors entered Bo they chased, captured and chopped at people with cutlasses. TF2-006 witnessed Kamajors attack five people with knives.[915] There was a lot of gunfire and many civilians fled crying. Some civilians were killed and others suffered amputations.[916] The Kamajors hit TF2-006 with a stick and amputated the fingers on his left hand with a cutlass.[917]

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[909] Transcript of 25 November 2004, TF2-030, pp. 4 and 16.
[910] Transcript of 10 February 2005, Bobor Tucker, pp. 56-57; TF2-008 also saw houses burning in Bo Town, and people also made reports that their property had been looted by both the junta and Kamajors: Transcript of 16 November 2004, TF2-008, pp. 105 and 111.
[911] Transcript of 22 November 2004, TF2-017, pp. 13-14 (CS).
[912] Transcript of 22 November 2004, TF2-017, pp. 8-9 (CS).
[913] Transcript of 22 November 2004, TF2-017, p.10 (CS).
[914] Transcript of 3 December 2004, TF2-058, p. 52.
[915] Transcript of 9 February 2005, TF2-006, pp. 8-11.
[916] Transcript of 9 February 2005, TF2-006, pp. 67-69.
[917] Transcript of 9 February 2005, TF2-006, pp. 11-13.

2.5.3.3.4. Killing of a Limba man by Kamajors after 15 February 1998

473. After their occupation of Bo, the Kamajors identified one man as a junta collaborator because he was a Limba. The Kamajors sang a ritual song, "Allahu Akbar", and hacked the man to death. After killing him, the Kamajors mutilated his body.[918]

2.5.3.3.5. Killing of a Woman and Mistreatment of Civilians at a Check Point

474. On 17 February 1998, TF2-001, who left Bo after the attack, reached a Kamajor checkpoint at Fobu village. He saw two men and two women who had been forced to lay naked on the ground on their backs facing the sun. The Kamajors stepped on their stomachs; an unidentified woman's ribs were stepped on and she shouted and then was shot. This woman's guts oozed out between her legs. The woman was taken behind a house and Kamajors came back holding her heart in their hands. The Kamajors threatened to do the same thing to the other people that were lying down. These people were left lying under the sun for hours[919] as the Kamajors opened their anuses to see if they had defecated.[920] Joe Nunie, the senior leader of this group of Kamajors, eventually ordered TF2-001's release.[921]

2.5.3.3.6. Killing of Enemy Combatant John Hota

475. While in Bo, TF2-017 handed an unarmed captured child soldier wearing civilian clothes to Albert J Nallo. At the time, Nallo was deployed at office of the Red Cross, near the clock tower where captured soldiers were taken and imprisoned.[922] John Hota was killed by the Death Squad, which had received direct instructions from Norman to kill John Hota because "he had no place to keep prisoners of war and had no food for them".[923] Hota's head was severed from his body and put in a white plastic bag.[924]

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[918] Transcript of 6 December 2004, TF2-056, pp. 70-72.
[919] Transcript of 14 February 2005, TF2-001, pp. 94-96.
[920] Transcript of 14 February 2005, TF2-001, pp. 95-96.
[921] Transcript of 14 February 2005, TF2-001, pp. 96-97; Transcript of 15 February 2005, TF2-001, p. 38.
[922] Transcript of 22 November 2004, TF2-017, pp. 18-20 (CS).
[923] Transcript of 22 November 2004, TF2-017, p.19 (CS); Transcript of 10 March 2005, Albert J Nallo, pp. 84-87.
[924] Transcript of 10 March 2005, Albert J Nallo, pp. 84-87.

476. One week after the capture of Bo, Norman met Nallo in Bo and confirmed that he had sent the Death Squad to kill John Hota.[925]

2.5.3.3.7. Torture of TF2-198 and Killing of his Brother

477. On 16 February 1998, Kamajors searched the house of TF2-198's brother and found TF2-198 and his brother. They were thrown to the ground, beaten and tied up by Kamajors.[926] Other people who had come to Bo from Koribondo were also beaten.[927]

478. The Kamajors took TF2-198 and his brother to Sikissi Y-Junction, where burning plastic was dropped on the TF2-198 for 30 minutes.[928] The Kamajors put TF2-198 and his brother in a back room with two corpses dressed in civilian clothes. TF2-198 watched as the Kamajors cut off his brother's head.[929]

2.5.3.4. Crimes Committed by Kamajors After the Attack on Bo by Juntas on 18 February 1998[930]

2.5.3.4.1. Killing of TF2-030's Husband and Six Others on 23 February 1998

479. On 22 February 1998, while TF2-030 and her husband were at their home near CKC Bo, a group of fifteen Kamajors armed with machetes and sharp irons surrounded TF2-030's husband. Her husband ran to a nearby swamp but the Kamajors followed him and chopped at him all over his body using a machete. TF2-030's husband died at 6am the following morning.[931] The Kamajors killed TF2-030's husband because he was a Temne; the Kamajors said they would weed all the Temne from Bo Town.[932] Six other people were hacked to death by Kamajors at the same time.[933]

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[925] Transcript of 10 March 2005, Albert J Nallo, pp. 87- 89: Albert J Nallo stated that the Death Squad with two Liberians who were Special Forces] entered Bo Town and said to him that they had received an instruction from Chief Norman that he had no place to keep prisoners of war and no food for them, therefore they should kill John Hota. Nallo said the order was from above and he had no alternative. Transcript of 10 March 2005, Albert J Nallo, pp. 86-88

[926] Transcript of 15 June 2004, TF2-198, pp. 23-25; this incident occurred when TF2-198 flee from Koribondo to Bo just before Kamajors entered Koribondo and arrived on the third day. See Section V.2.4.4: attack occurred on the on 13 February 1998.

[927] Transcript of 15 June 2004, TF2-198, p. 53.

[928] Transcript of 15 June 2004, TF2-198, p. 23.

[929] Transcript of 15 June 2004, TF2-198, pp. 31-32.

[930] On 18 February 1998, the juntas attacked Bo again: Transcript of 22 November 2004, TF2-017, p. 22 (CS); Transcript of 23 November 2004, TF2-119, p. 121; Transcript of 25 November 2004; TF2-156, pp. 39-41.

[931] Transcript of 25 November 2004, TF2-030, pp. 6-10.

[932] Transcript of 25 November 2004, TF2-030, p. 11.

[933] Transcript of 25 November 2004, TF2-030, pp. 11-12.